1–5–07 Friday
Vol. 72 No. 3 Jan. 5, 2007

Pages 463–644

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 72 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, February 13, 2007
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 72, No. 3

Friday, January 5, 2007

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
NOTICES
Privacy Act; systems of records, 523–525

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 580–582

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
Rinderpest and foot-and-mouth disease; disease status change—
Argentina, 475–480
Uncooked pork and pork products, 471–475
NOTICES
Reports and guidance documents; availability, etc.:
Sterile fruit flies; potential sites for production facility or potential alternate sources; information request, 525

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 566–568
Meetings:
National Center for Environmental Health/Agency for Toxic Substances and Disease Registry—
Scientific Counselors Board, 568

Centers for Medicare & Medicaid Services
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 568–569
Medicare:
Hospital inpatient prospective payment systems and 2007 FY rates; correction, 569–574

Coast Guard
RULES
Anchorage regulations:
Maine, 464–466
Texas, 463–464
Drawbridge operations:
Florida, 466–468
PROPOSED RULES
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Great Lakes; Coast Guard water training areas; withdrawn, 520–522

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Copyright Royalty Board, Library of Congress
NOTICES
Copyright royalty funds:
Business establishment services; reasonable rates and terms determination, 584–585

Defense Department
See Engineers Corps

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals; correction, 544

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
San Luis Obispo County, CA; watershed waterway management plan, 544

Environmental Protection Agency
NOTICES
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Knauf Insulation, GmbH, 544–545
Environmental statements; availability, etc.:
Agency comment availability, 545
Agency weekly receipts, 546
Superfund; response and remedial actions, proposed settlements, etc.:
San Gabriel Valley Site, CA, 546

Executive Office of the President
See Presidential Documents

Export-Import Bank
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 546–547

Federal Aviation Administration
PROPOSED RULES
Airmen certification and aircraft registration:
Pilot certificate upgrade; drug enforcement assistance, 489–497
Airworthiness directives:
Alpha Aviation Design Ltd., 481–483, 487–489
PZL-Bielsko, 485–487
SOCATA Groupe AEROSPATIALE, 483–485
Airworthiness standards:
Transport category airplanes—
Design and operation; security considerations, 630–639

Federal Bureau of Investigation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 582–583

Federal Highway Administration
NOTICES
Highway planning and construction; licenses, permits, approvals, etc.:
Mendocino County, CA, 607–608

Federal Housing Finance Board
NOTICES
Federal Home Loan Bank Rating System; implementation, 547–565

Federal Railroad Administration
NOTICES
Meetings:
Private highway-rail grade crossings safety, 608–609

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 566
Formations, acquisitions, and mergers, 566

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Food labeling—
Calcium, vitamin D, and osteoporosis; nutrient content claims, 497–519
Nutrient content claims; general principles; withdrawn in part, 519–520
NOTICES
Meetings:
Supplements; chemistry, manufacturing, controls, and changes to approved marketing applications, 574–576

Forest Service
NOTICES
Environmental statements; notice of intent:
Bridger-Teton National Forest, WY, 525–527

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration

Homeland Security Department
See Coast Guard
See Transportation Security Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 576

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Homeless assistance; excess and surplus Federal properties, 577

Industry and Security Bureau
NOTICES
Meetings:
Deemed Export Advisory Committee, 527

Interior Department
See Land Management Bureau
See National Park Service

Internal Revenue Service
NOTICES
Meetings:
Taxpayer Advocacy Panels, 626

International Trade Administration
NOTICES
Antidumping:
Polyethylene terphthalate film sheet and strip from—
Korea, 527–531
Silicon metal from—
China; correction, 531–532

International Trade Commission
NOTICES
Import investigations:
Ethyl alcohol for fuel use; import base quantity determination, 580

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Federal Bureau of Investigation

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Pocatello Field Office, ID; resource management plan, 577–578
Environmental statements; record of decision:
Craters of the Moon National Monument and Preserve, ID; monument management plan, 578–579

Library of Congress
See Copyright Royalty Board, Library of Congress

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic bluefish, 470
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
Conoco Phillips Alaska, Inc.; Chukchi Sea, AK; open-water seismic operations; small numbers of marine mammals, 536–541
San Francisco-Oakland Bay Bridge, CA; east span construction; California sea lions, etc., 532–535
Meetings:
Gulf of Mexico Fishery Management Council, 541–542
New England Fishery Management Council, 542
Reports and guidance documents; availability, etc.:
Region 2, final regional restoration plan, 543

National Park Service
NOTICES
Environmental statements; record of decision:
Craters of the Moon National Monument and Preserve, ID; monument management plan, 578–579
National Register of Historic Places; pending nominations, 579–580

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 585

Nuclear Regulatory Commission
PROPOSED RULES
Nuclear power reactors; security requirements, 480–481
Rulemaking petitions:
Three Mile Island Alert, 481

NOTICES
Agency information collection activities; proposals, submissions, and approvals, 585–586
Environmental statements; availability, etc.:
Power Resources, Inc., 586–588

Occupational Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 583–584

Postal Service
RULES
Domestic Mail Manual:
Automation-rate flat-size mail; polywrap standards, 468–470

Presidential Documents
ADMINISTRATIVE ORDERS
Government agencies and employees:
Treasury, Department of the; assignment of function to the Secretary (Memorandum of December 29, 2006), 641–643

Research and Innovative Technology Administration
NOTICES
Reports and guidance documents; availability, etc.:
Hydrogen economy; applicable statutory and regulatory provisions, 609–624

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Deutsche Bank Trust Company Americas, 588–591
Opal Private Equity Fund, L.P., et al., 591–596
Securities:
Suspension of trading—
Cosmetic Center, Inc., et al., 596–597
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 597–599
Chicago Board Options Exchange, Inc., 599–600
NASDAQ Stock Market LLC, 600–603

Small Business Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 603–604
Meetings:
National Small Business Development Center Advisory Board, 604
Small business size standards:
Nonmanufacturer rule; waivers—
Re-refining used petroleum lubricating oils, 604–605

Social Security Administration
NOTICES
Ticket to Work and Work Incentives Improvement Act of 1999; implementation:
Attorney fee assessment; 2007 rate, 605

State Department
NOTICES
Culturally significant objects imported for exhibition:
Greek and Roman Galleries, 605
Meetings:
International Telecommunication Advisory Committee, 605
Nonproliferation measures imposition:
China National Electronic Import-Export Co. et al., 606

Surface Transportation Board
NOTICES
Railroad services abandonment:
Union Pacific Railroad Co., et al, 624–625

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Research and Innovative Technology Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 606–607
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 607

Transportation Security Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 576–577

Treasury Department
See Internal Revenue Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Bank Secrecy Act Advisory Group; correction, 625
Meetings:
Financial Literacy and Education Commission, 625–626

Veterans Affairs Department
NOTICES
Meetings:
Veterans' Disability Benefits Commission, 626–627

Separate Parts In This Issue

Part II
Transportation Department, Federal Aviation Administration, 630–639

Part III
Executive Office of the President, Presidential Documents, 641–643

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.

3 CFR

Administrative Orders:

Memorandums:

Memorandum of December 29, 2006 643

9 CFR

Proposed Rules:

94 (2 documents) 471, 475

10 CFR

Proposed Rules:

50.....480

72.....480

73 (2 documents) 480, 481

14 CFR

Proposed Rules:

25.....630

39 (4 documents) 481, 483, 485, 487

47.....489

61.....489

63.....489

65.....489

121.....630

21 CFR

Proposed Rules:

101 (2 documents) 497, 519

33 CFR

110 (2 documents) 463, 464

117.....466

Proposed Rules:

165.....520

39 CFR

111.....468

50 CFR

648.....470

Rules and Regulations

Federal Register
Vol. 72, No. 3
Friday, January 5, 2007

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

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

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD08–06–026]

RIN 1625–AA01

Anchorage Regulations; Sabine Pass Channel, Sabine Pass, TX

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has amended anchorage regulations for the Sabine Pass Channel, Sabine Pass, TX anchorage in order to improve navigation safety for vessels entering and exiting Cheniere Energy's liquefied natural gas terminal. This rule reduces the overall size of the existing anchorage.

DATES: This rule is effective February 5, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD08–06–26] and are available for inspection or copying at U.S. Coast Guard D8, 500 Poydras Street, New Orleans, Louisiana 70130–3396 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Douglas Blakemore, Waterways Management Branch, Eighth Coast Guard District, 500 Poydras Street, New Orleans, LA 70130–3396. Telephone (504) 671–2109; facsimile (504) 671–2137. Please cite CGD08–06–026.

Regulatory Information

On October 3, 2006 we published a notice of proposed rulemaking (NPRM) entitled Anchorage Regulations; Sabine Pass Channel, Sabine Pass, TX in the **Federal Register** (71 FR 58330). We received 2 letters commenting on the proposed rule. No public meeting was requested and none was held.

Background and Purpose

Cheniere Energy is constructing a liquefied natural gas (LNG) terminal on the eastern waterfront of the Sabine Pass Channel. This facility is located immediately north and adjacent to the Sabine Pass Channel anchorage. Due to the angle that the terminal berth lays relative to the channel, vessels intending to berth at or depart the LNG terminal would have to follow a path that passes through the existing anchorage. Vessels anchored in the existing anchorage would be at an increased risk for being struck by an arriving or departing vessel.

In order to reduce this risk, the Coast Guard is reducing the overall size of the Sabine Pass Channel Anchorage. This action reduces the possible conflict associated with vessels that may anchor too close to the entrance of the LNG terminal. This rule also provides a larger maneuvering area for vessels arriving to or departing from the LNG terminal, which consequently will reduce the possibility of a grounding or collision with another vessel in the area.

Discussion of Comments and Changes

Both comments received support this rulemaking. Each commenter noted that reducing the size of the anchorage enhances the navigation safety of LNG carriers. One commenter also stated that the anchorage was infrequently used and would have minimal impact on the economy.

The current description of the anchorage is found in 33 CFR 110.196 and is listed as follows: ''The navigable waters of Sabine Pass within a trapezoidal area 1,500 feet wide and varying uniformly in length from 5,800 feet to 3,000 feet with the long side adjacent to the northeasterly edge of Sabine Pass Channel at a location opposite the town of Sabine Pass.''

This rule shortens the ''long side'', also referred to as the channel side, from 5,800 feet to approximately 5,000 feet. This is accomplished by shortening the northern portion of the ''long side'' by 800 feet. No other changes to the anchorage are made.

In order to eliminate confusion regarding the geographic boundary of the new anchorage, the existing description is replaced with geographic coordinates that define the boundary of the anchorage. The coordinates of the anchorage are as follows:

Latitude	*Longitude*
29°44′14″ N	93°52′24″ W
29°44′18″ N	93°52′06″ W
29°43′53″ N	93°51′47″ W
29°43′32″ N	93°51′52″ W

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Current information indicates that this anchorage area is rarely used, and the overall reduction in anchorage area would not significantly impact those vessels desiring to use the anchorage.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to anchor in the Sabine Pass Channel, Sabine Pass, TX anchorage. This rule will not have a significant economic impact upon these entities since the affected portion of the anchorage area is believed to be rarely used.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. However, we received no requests for assistance from any small entities. 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 will call 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 would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation because we are changing the size of the anchorage grounds.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.

■ 2. In § 110.196, revise paragraph (a) to read as follows:

§ 110.196 Sabine Pass Channel, Sabine Pass, Texas.

(a) *The anchorage area.* The water bounded by a line connecting the following coordinates:

Latitude	*Longitude*
29°44′14″ N	93°52′24″ W
29°44′18″ N	93°52′06″ W
29°43′53″ N	93°51′47″ W
29°43′32″ N	93°51′52″ W

* * * * *

Dated: December 14, 2006.

J.R. Whitehead,

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

[FR Doc. E6–22586 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD01–06–084]

RIN 1625–AA01

Anchorage Regulations; Camden, Maine, Penobscot Bay

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard hereby amends two special anchorage areas in Camden Harbor, Camden, Maine. This action is necessary to facilitate safe navigation in that area and provide safe and secure anchorages for vessels not more than 65 feet in length. This action is intended to increase the safety of life and property in Camden Harbor, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: This rule is effective February 5, 2007.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–06–084), and are available for inspection or copying at room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223–8355, e-mail: *John.J.Mauro@uscg.mil.*

Regulatory Information

On August 10, 2006, we published a notice of proposed rulemaking (NPRM) entitled ''Anchorage Regulations; Camden, ME, Penobscot Bay'' in the **Federal Register** (71 FR 45746). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

This rule is intended to reduce the risk of vessel collisions by creating two special anchorage areas in Camden Harbor. This rule will establish a special anchorage area to the west of Northeast Point and a second special anchorage area to the northwest of Curtis Island, creating anchorage for approximately 400 vessels.

The Coast Guard is designating the special anchorage areas in accordance with 33 U.S.C. 471. Under that statute, vessels will not be required to sound signals or exhibit anchor lights or shapes which are otherwise required by rule 30 and 35 of the Inland Navigation Rules, codified at 33 U.S.C. 2030 and 2035.

The Coast Guard has defined the anchorage area contained herein with the advice and consent of the Army Corps of Engineers, Northeast, located at 696 Virginia Rd., Concord, MA 01742.

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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This finding is based on the fact that this rule conforms to the changing needs of the Town of Camden, the changing needs of recreational, fishing and commercial vessels, and makes the best use of the available navigable water. This rule is in the interest of safe navigation and protection of Camden and the marine environment.

Small Entities

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

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

Assistance for Small Entities

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

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact John J. Mauro, at the address listed in **ADDRESSES** above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will 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 considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(f), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A final ''Categorical Exclusion Determination'' and a final ''Environmental Analysis Check List'' are available in the docket for inspection or copying where indicated under **ADDRESSES**. This rule fits the category selected from paragraph (34)(f) as it would establish two special anchorage areas.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g); and Department of Homeland Security Delegation No. 0170.

■ 2. Amend § 110.4 by adding paragraph (b) to read as follows:

§ 110.4 Penobscot Bay, Maine.

* * * * *

(b) *Camden Harbor, Sherman Cove and adjacent waters.*

(1) *Anchorage A.* All of the waters enclosed by a line beginning at Eaton Point at latitude 44°12′31″ N, longitude 069°03′34″ W; thence to latitude 44°12′28″ N, longitude 069°03′33″ W; thence to latitude 44°12′32″ N, longitude 069°02′49″ W; thence along the shoreline to the point of beginning. DATUM: NAD83

(2) *Anchorage B.* All of the waters enclosed by a line beginning at Dillingham Point at latitude 44°12′12″ N, longitude 069°03′20″ W.; thence to latitude 44°12′14″ N, longitude 069°02′58″ W.; thence to latitude 44°12′19″ N, longitude 069°03′08″ W; thence to latitude 44°12′28″ N, longitude 069°03′13″ W; thence to latitude 44°12′26″ N, longitude 069°03′39″ W; thence along the shoreline to the point of beginning. DATUM: NAD83

Note to paragraph (b): Anchorages A and B are special anchorage areas reserved for yachts and other recreational craft. Fore and aft moorings will be allowed in this area. Temporary floats or buoys for marking anchors or moorings in place will be allowed. Fixed mooring piles or stakes are prohibited. All moorings must be so placed that no vessel when anchored is at any time extended into the thoroughfare. This is to ensure that a distance of approximately 150 feet is left between Anchorages A and B for vessels entering or departing from Camden Harbor. All anchoring in the area is under the supervision of the local harbor master or such other authority as may be designated by the authorities of the Town of Camden, Maine.

Dated: December 15, 2006.

Timothy S. Sullivan,

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

[FR Doc. E6–22613 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–06–130]

RIN 1625–AA09

Drawbridge Operation Regulations; Southern Boulevard (SR 700/80) Bridge, Atlantic Intracoastal Waterway, Mile 1024.7, Palm Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulation governing the operation of the Southern Boulevard (SR 700/80) Bridge across the Atlantic Intracoastal Waterway, mile 1024.7, Palm Beach, Florida. The rule will require the drawbridge to open twice an hour. The schedule is based on requests from vessel operators along the Atlantic Intracoastal Waterway. The schedule will require the bridge to open on the quarter and three quarter hour and would meet the reasonable needs of navigation while not impacting vehicular traffic.

DATES: This rule is effective February 5, 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 docket (CGD07–06–130) and are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131–3050 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, telephone number 305–415–6743.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 30, 2006, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Southern Boulevard (SR 700/80) Bridge, Atlantic Intracoastal Waterway, mile 1024.7, Palm Beach, FL'' in the **Federal Register** (71 FR 51540). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The current regulation governing the operation of the Southern Boulevard Bridge is published in 33 CFR

117.261(w) and states the draw shall open on the hour and half-hour.

In 2005, the Coast Guard changed the regulations on most of the bridges in Palm Beach County to facilitate increased vehicular traffic while meeting the reasonable needs of navigation. Recently waterway users have requested that the Southern Boulevard (SR 700/80) Bridge regulation be changed from opening on the hour and half-hour to opening on the quarter and three-quarter hour in order to improve vessel transit sequencing on the Atlantic Intracoastal Waterway through Palm Beach County. This schedule will improve transit times for vessels while not impairing vehicular traffic.

Discussion of Comments and Changes

The Coast Guard received no responses to the Notice of Proposed Rulemaking. The rule will improve staggered bridge openings and allow vessels traveling at five knots to significantly reduce wait times to pass through the Southern Boulevard (SR 700/80) Drawbridge. The schedule will have the Southern Boulevard (SR700/80) Bridge opening on the quarter and three-quarter hour.

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.

Small Entities

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

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

This rule would affect the following entities, some of which may be small entities: The owners or operators of vessels needing to transit the Intracoastal Waterway in the vicinity of the Broward County bridges. The rule would not have a significant economic impact on a substantial number of small entities because the rule provides timed openings for vehicular traffic and continues to provide twice an hour sequenced openings for vessel traffic.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). 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 will 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 does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.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 amends 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); § 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Amend § 117.261 by revising paragraph (w) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(w) Southern Boulevard (SR 700/80) bridge, mile 1024.7 at Palm Beach. The draw shall open on the quarter and three-quarter hour.

* * * * *

Dated: December 17, 2006.

D.W. Kunkel,

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

[FR Doc. E6–22555 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

New Polywrap Standards for Automation-Rate Flat-Size Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service™ has simplified the standards for polywrap film on automation-rate flat-size mailpieces, so that customers only have to meet one set of standards instead of the previous two.

DATES: *Effective Dates:* February 4, 2007, for manufacturers; March 4, 2007, for mailers.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., RM 3436, Washington, DC 20260–3436; 202–268–7278.

SUPPLEMENTARY INFORMATION: Postal Service automated flat sorting machines (AFSM 100s) process the majority of non-carrier route flat-size mail. To improve our ability to process polywrapped pieces on our primary flat-mail processing equipment, we published a proposed rule in the **Federal Register** on August 22, 2006 (71 FR 48868), regarding polywrap used on automation-rate flat-size mailpieces.

Our proposed rule included the following changes:

- We removed two characteristics, tensile strength and density, because they were irrelevant to performance.
- We removed the ''USPS AFSM 100 Approved Polywrap'' endorsement requirement.
- We modified the testing protocol to measure the minimum film-to-metal coefficient of friction.
- We increased the allowable film-to-film coefficient of friction to be more compatible with mailer bindery operations.
- We changed the method to measure blocking to more closely match the environment that mailpieces undergo during normal transportation and storage.

The new standards eliminate the difference in polywrap specifications for mailpieces designed for processing on the AFSM 100 and the upgraded flat sorting machine (UFSM) 1000.

Comments Received

We received comments and questions on the proposed rule from two customers. One customer suggested that we allow successful testing of the thinnest gauge of a specific polywrap film to suffice for certification of all thicknesses of the same film. We made that change in the final standards.

Another customer raised several questions. One question pertained to how the Postal Service would process UFSM 1000 pieces in the future. Pieces with polywrap meeting either the old specifications or the new specifications may be processed on a UFSM 1000 machine. Another question was about how the changes would impact the standard that requires a ''Periodicals'' endorsement for mailpieces with a wrapper. This rule does not change any standards for Periodicals, but, as information, the ''Periodicals'' endorsement may be placed on either the mailpiece contents or the polywrap. Another question was about polywrap film meeting all of the new specifications except haze when the address information is on the outside of the film. Such a film will remain eligible as it is under current standards.

A customer commented about the testing specification, USPS–T–3204, *Test Procedures for Automatable Polywrap Films*, listed on our Rapid Information Bulletin Board System (RIBBS). The specification indicated that the tests were required for polywrap film used on AFSM 100-qualifying pieces, whereas the proposed rule stated that the new standards would apply for polywrap used on all automation-rate flats. We revised the testing specification to indicate that the new specifications apply to polywrap used on all automation-rate flats. The customer also questioned if the supplementary testing indicated in the specification would be required in addition to the American Society for Testing and Materials (ASTM) tests. As noted in the testing specification, some of the testing methods required are necessary supplements to each other.

New Test Procedures

To ensure that all manufacturers use the same criteria in meeting the new specifications, we developed USPS–T–3204, *Test Procedures for Automatable Polywrap Films.* Manufacturers may obtain the new test procedures at *http://ribbs.usps.gov* (click on ''Polywrap Manufacturers'' in the left frame) or by contacting the Postal Service's Engineering office at: Engineering, Flat Mail Technology, U.S. Postal Service, 8403 Lee Hwy, Merrifield VA 22082–8101.

The specification describes exact test procedures and acceptable values for polywrap film characteristics. If the manufacturer lacks the facilities or experience to conduct each of the test procedures in USPS–T–3204, the specification also provides a list of

testing laboratories that have experience in conducting these tests.

Polywrap Certification

Currently, manufacturers must provide us with a certificate stating that their film complies with polywrap specifications before we include the film in the list of approved polywrap for flat-size mailpieces mailed at automation rates.

We will require manufacturers to provide an updated certificate of conformance on their letterhead to the Postal Service's Mailing Standards office after verifying that each polywrap film meets the new characteristics. The certificate of conformance must state the values of the six characteristics for each film to be listed as approved.

Implementation

As of February 4, 2007, polywrap not meeting the new standards will no longer be listed as approved for automation rates, but we will allow mailpieces presented with ''old'' polywrap on automation-rate flats through March 3, 2007. The conditions for mailing are as follows:

• Mailpieces with polywrap approved for AFSM 100 pieces under the ''old'' standards will be accepted at automation flat rates through March 3, 2007.

• Beginning March 4, 2007, mailers who present polywrapped flats that do not meet the new standards for polywrap may request an exception to the new standards in writing. Requests will be handled on a case-by-case basis.

We will incorporate the following revisions into the next printed version of *Mailing Standards of the United States Post Service*, Domestic Mail Manual (DMM) and into the next monthly update of the online DMM available via Postal Explorer® at *pe.usps.com.* We encourage manufacturers to certify their polywrap under the new standards as soon as possible, but no later than February 3, 2007. We encourage mailers to use polywrap meeting the new specifications on their mailpieces as soon as practical. Beginning March 4, 2007, all polywrap films used an automation-rate flat-size mailpieces must meet the new standards.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

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

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

■ 2. Amend the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as explained below:

300 Discount Flats

301 Physical Standards

* * * * *

3.0 Physical Standards for Automation Flats

* * * * *

3.5 Polywrap Coverings

3.5.1 Polywrap Films

[Revise 3.5.1 by changing the introduction and removing items a and b to eliminate the distinction between polywrap used on pieces qualifying for the AFSM 100 and the UFSM 1000, as follows:]

Polywrapped flat-size mailpieces claimed at automation rates must meet the standards in 3.5 Film approved for use under 3.5.4 and 3.5.5 must meet the specifications in Exhibit 3.5.1. If mailers affix the address label to the outside of the polywrap, the film need not meet the haze property.

[Revise title of Exhibit 3.5.1 as follows:]

Exhibit 3.5.1 Polywrap Specifications

[Revise Exhibit 3.5.1 by changing the introduction, eliminating the distinction between AFSM 100 and UFSM 1000 pieces, removing current properties 4 and 5 and renumbering current properties 6 through 8 as new properties 4 through 6, changing the specifications and testing methods for coefficients of friction, revising the comments for ''blocking,'' and specifying testing methods, as follows:]

Effective March 4, 2007, mailers who polywrap automation-rate flats must use polywrap that meets all of the properties in this exhibit.

Property	Requirement	Test methods in USPS T–3204	Comment
1. Kinetic Coefficient of Friction, MD:			
a. Film on Stainless Steel with No. 8 (Mirror) Finish.	<0.45	USPS–T–3204. Section 4.5.2.	
b. Film on Film	0.20 to 0.55	USPS–T–3204. Section 4.5.1.	
2. Haze	<70	USPS–T–3204 .. Section 4.5.3.	Affixing address labels to outside of polywrap is an alternative to meeting this requirement.
3. Secant Modulus, 1% elongation:.			
a. TD	>50,000 psi	USPS–T–3204. Section 4.5.4.	
b. MD	>40,000 psi	USPS–T–3204. Section 4.5.4.	
4. Nominal Gauge	>0.001 in	USPS–T–3204. Section 4.5.5.	
5. Static Charge	<2.0 kV	USPS–T–3204. Section 4.5.7.	
6. Blocking	<15 g	USPS–T–3204 .. Section 4.5.6.	To be conducted at 140 (±3.6°) degrees Fahrenheit.

* * * * *

[Delete 3.5.4 to remove the requirement for markings on polywrap.] [Renumber current 3.5.5 as new 3.5.4 and revise the title and text to require polywrap meeting new standards as of March 4, 2007, as follows:]

3.5.4 Polywrap on Mailpieces

Effective March 4, 2007, mailers claiming automation flat rates for polywrapped pieces must use polywrap that meets the new specifications in 3.5.1. Only products listed on the USPS RIBBS Web site (*http://ribbs.usps.gov*) may be used on automation-rate flats. *[Add new 3.5.5 to specify the*

certification process for polywrap manufacturers, as follows:]

3.5.5 Polywrap Certification Process for Manufacturers

To ensure that all polywrap manufacturers use the same criteria in meeting the new specifications, the Postal Service developed specification USPS–T–3204, *Test Procedures for Automatable Polywrap Films.* This specification describes exact test procedures and acceptable values for polywrap film characteristics. Independent testing laboratories may certify products for manufacturers who do not have the facilities or experience to conduct each of the test procedures in specification USPS–T–3204. The specification includes a list of laboratories experienced in conducting these tests. Customers may obtain the new test procedures by contacting USPS Engineering (see 608.8.1 for address) or on the USPS RIBBS Web site (*http://ribbs.usps.gov*). Effective February 4, 2007, manufacturers must submit a letter, on their letterhead, indicating the value for each of the specifications in 3.5.1 for each polywrap film, to USPS Mailing Standards (see 608.8.1 for address). Manufacturers are encouraged to submit the certificate of conformance before February 4, 2007. When USPS receives the certificate of conformance, films with values meeting the standards will be listed on *http://ribbs.usps.gov.* Manufacturers should follow this process before submitting the letter certifying compliance with the specifications:

a. Test each film according to procedures listed in USPS–T–3204, *Test Procedures for Automatable Polywrap Films.*

b. Test each surface treatment separately. Manufacturers may test the thinnest film of one product with identical surface treatment and characteristics. If the thinnest film satisfactorily meets the characteristics after being tested, USPS will list the product as approved for all gauges of that product that also meet the gauge test.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 06–9979 Filed 1–4–07; 8:45 am]

BILLING CODE 7710–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051104293–5344–02; I.D. 122806A]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfers

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the Commonwealth of Massachusetts is transferring 20,000 lb (9,072 kg) of commercial bluefish quota to the State of Rhode Island from its 2006 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective December 29, 2006 through December 31, 2006, unless NMFS publishes a superseding document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281–9341, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.160.

Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.160(f). The Regional Administrator is required to consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Massachusetts has agreed to transfer 20,000 lb (9,072 kg) of its 2006 commercial quota to Rhode Island. The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met for each of these transfers. The revised quotas for calendar year 2006 are: Rhode Island, 622,101 lb (282,180 kg) and Massachusetts, 514,823 lb (233,520 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 28, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–9994 Filed 12–29–06; 1:29 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 3
Friday, January 5, 2007

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2006–0186]

RIN 0579–AC24

Importation of Uncooked Pork and Pork Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for importing animal products to allow the importation of uncooked pork and pork products from regions where classical swine fever (CSF) is considered to exist if the uncooked pork and pork products originate in a region free of CSF and meet certain other conditions with respect to processing and shipping. This action would remove some restrictions on the importation of uncooked pork and pork products from regions where CSF is considered to exist while continuing to protect against an incursion of CSF into the United States.

DATES: We will consider all comments that we receive on or before March 6, 2007.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0186 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0186, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0186.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Masoud A. Malik, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 prohibit or restrict the importation of certain animals and animal and poultry products into the United States to prevent the introduction of communicable diseases of livestock and poultry. Section 94.9 contains requirements that apply to the importation of pork and pork products from regions where classical swine fever (CSF) exists.

Currently, the regulations provide that pork and pork products may be imported into the United States from regions where CSF exists only if they have been cooked or cured in the affected region as specified in our regulations. This is the case even if the pork or pork products originated in a region free of CSF but were imported through a region where CSF exists.

We are proposing to allow the importation, under certain conditions, of uncooked pork and pork products from regions where CSF is considered to exist if the pork and pork products originate in a region free of CSF. The primary purpose of this proposed change is to allow uncooked pork and pork products that originate in the United States to be shipped for processing to Mexico, which contains areas where CSF is considered to exist, and then be returned to the United States.[1] The proposal would, however, also allow uncooked pork and pork products that originate in another CSF-free region to be processed in a region where CSF is considered to exist and then be shipped to the United States. If the region of origin is free of CSF but affected with another serious livestock disease such as African swine fever (ASF), swine vesicular disease (SVD), foot-and-mouth disease (FMD), or rinderpest, the existing regulations for the importation of products from regions affected with those diseases would continue to govern imports from that region. This action would remove some restrictions on the importation of uncooked pork and pork products from regions where CSF is considered to exist while continuing to provide appropriate safeguards against an incursion of CSF into the United States.

Shipment To Approved Establishments

Under this proposed rule, uncooked pork or pork products that originate in a region free of CSF would have to be shipped for processing to the region where CSF is considered to exist in closed containers sealed with serially numbered seals applied by an official of the national government of the region of origin. The shipments would have to be accompanied by a certificate that was signed by an official of the national government of the region of origin and that specifies the products' region of origin, the slaughtering establishment where the animal was slaughtered and from which the products were shipped, the processing establishment to which the products are consigned, and the numbers of the seals applied to the shipping containers.

Upon arrival at the processing establishment, the uncooked pork or pork products could only be removed from the containers after an official of the national government of the region where the processing establishment is

[1] This rule covers only the processing of uncooked pork and pork products. Any pork or pork products that are cooked or cured must meet the requirements of § 94.9(c).

located had determined that the seals were intact and free of any evidence of tampering and the shipment is accompanied by the certificate described above.

Handling at Approved Establishments

Under this proposed rule, the uncooked pork or pork products would be eligible for importation to the United States only if they were handled and processed in accordance with the following criteria:

1. The processing establishment in a region where CSF is considered to exist would have to meet requirements of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the regulations of the Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture (USDA) in 9 CFR, chapter III, part 327. FSIS periodically audits foreign country inspection systems, including a sample of establishments, to make sure that all FSIS requirements are met. If there is indication that any FSIS requirements are not being met by a particular establishment, FSIS can terminate the eligibility of the foreign establishment to import its products into the United States as well as refuse entry of shipments that fail to meet their requirements. FSIS can issue a hold order to inspect shipments of pork and pork products coming from that establishment until they are certain that all FSIS requirements are being met.

2. The processing establishment that processes the uncooked pork and pork products for export to the United States could not receive or process any live swine, since CSF is easily spread in environments where swine are held or slaughtered.

3. The processing establishment would have to be dedicated to processing uncooked pork and pork products from CSF-free regions. No pork or pork products that originate in regions where CSF is considered to exist could be processed at the same facility as pork or pork products from CSF-free regions.

4. Operators of processing establishments would have to sign a compliance agreement with the Animal and Plant Health Inspection Service (APHIS), stating that all meat processed for importation to the United States would be processed in accordance with our requirements, that a full-time, salaried meat inspection official of the national government of the region where the processing facility is located would supervise the processing and examination of the product and certify that it has been processed in accordance with our requirements, and that APHIS personnel or other persons authorized by the Administrator may enter the establishment, unannounced, to inspect the establishment and its records.

5. The establishment operator or a party acting on its behalf would have to enter into a cooperative service agreement with APHIS to ensure that all expenses incurred by APHIS in inspecting the establishment would be paid by the operators of the processing establishment. APHIS anticipates that an initial evaluation would be conducted and that subsequent inspections would occur approximately once a year. The cooperative service account would be required to contain a balance at least equal to the cost of one inspection. APHIS would charge the cooperative service account for travel, salary, and subsistence of APHIS employees, as well as administrative overhead and other incidental expenses (including excess baggage charges up to 150 pounds).

In addition, the signed certificate which accompanied the shipment would have to be kept on file at the processing establishment for at least 2 years after the export of the processed products to the United States, and would have to be made available to USDA inspectors to demonstrate compliance with our regulations, when requested, during announced or unannounced inspections.

Shipment to the United States

Uncooked pork and pork products to be imported into the United States would have to be shipped from the region where they were processed in closed containers sealed with serially numbered seals applied by an official of the national government of that region. The shipments would have to be accompanied by a certificate signed by an official of the national government of the region where the uncooked pork and pork products were processed. The certificate would have to list the numbers of the seals applied; state that all of the conditions listed above have been met; and state that when the uncooked pork or pork products arrived at the processing establishment, the seals on the containers were intact and free of any evidence of tampering. A copy of this certificate would also have to be kept on file at the processing establishment for at least 2 years after the products were shipped to the United States.

We believe the conditions described above would ensure that the uncooked pork and pork products present a minimal risk of introducing CSF into the United States.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing to amend the regulations for importing animal products to allow the importation of uncooked pork and pork products from regions where CSF is considered to exist if the uncooked pork and pork products originate in a region free of CSF and meet certain other conditions with respect to processing and shipping. This action would remove some restrictions on the importation of uncooked pork and pork products from regions where CSF is considered to exist while continuing to protect against an incursion of CSF into the United States. We expect the benefits of this rule to exceed costs, although neither benefits nor costs are likely to be significant.

The United States is a major producer as well as trader of swine and swine products. Total cash receipts from hogs and pigs were $15 billion in 2003, about 11 percent over the previous year. Marketing totaled 27.2 billion pounds in 2005.[2] The United States exported a total of 1,811 million pounds valued at $2,068 million in 2005. Although exports are widely distributed, a few regions represent major markets. The major destinations include Japan (51.28 percent), Mexico (14.54 percent), Canada (13.06 percent), South Korea (6.47 percent), Russia (2.58 percent), Australia (2.38 percent), Romania (2.29 percent), and Taiwan (1.55 percent). These regions accounted for 94.15 percent of U.S. fresh or frozen pork exports in 2005. The most recent data (January–September 2006) also show the same pattern, with the above-named regions accounting for 93.96 percent of U.S. total fresh or frozen pork exports during that period.[3]

The United States imported 793 million pounds of fresh or frozen pork valued at $945 million in 2005. Most of the imports were from Canada (78.93 percent) and Denmark (16.40 percent). Other regions that supplied pork include Ireland (1.29 percent), United Kingdom (1.14 percent), Netherlands (0.99 percent), Finland (0.51 percent), Sweden (0.25 percent), Australia (0.01

[2] NASS/USDA, Meat Animals Production, Disposition, and Income: 2005 Summary, April 2006.

[3] *Source:* The World Trade Atlas: Global Trade Information Services, Inc., U.S. Edition, September 2006.

percent), Mexico (0.45 percent), and Germany (0.03 percent). The 2006 (January–September) imports also show the same pattern. The United States imported 566 million pounds of fresh or frozen pork valued at $655 million for this partial year. (See table 1.)

TABLE 1.—U.S. IMPORTS OF FRESH OR FROZEN PORK, 2002–2006

Source	2002		2003		2004		2005		2006 (Jan.–Sept.)	
	Million dollars	Million lbs	Million dollars	Million lbs	Million dollars	Million lbs	Million dollars	Million lbs	Million dollars	Million lbs
Canada	571.936	717.653	644.806	770.337	760.886	706.22	745.496	694.75	507.718	485.886
Denmark	132.211	82.126	156.324	100.829	182.794	102.95	154.933	76.01	114.042	63.095
Ireland	7.511	5.076	9.998	6.406	128.38	6.37	12.192	5.711	7.246	3.251
Finland	3.673	2.344	2.115	1.813	6.792	4.82	4.797	2.99	4.311	2.401
Netherlands	0.054	0.042	0	0	8.511	4.24	9.373	4.96	9.627	5.110
United Kingdom	2.205	1.464	4.281	3.282	4.184	2.25	10.787	4.82	5.48	2.347
Mexico	0	0	0.949	0.864	2.498	1.60	4.212	2.29	3.669	2.349
Sweden	0	0	0.098	0.090	2.950	1.61	2.400	1.230	1.635	0.757
Germany	9.437	0.362	9.353	0.303	0	0	0.319	0.26	0.381	0.201
Australia	0.121	0.066	0.038	0.027	0.05	0.020	0.056	0.053	0	0
New Zealand	0	0	0.037	0.032	0	0	0	0	0	0
Chile	0	0	0	0	0	0	0	0	0.336	0.293
Iceland	0	0	0	0	0	0	0	0	0.161	0.053
Belgium	0	0	0	0	0	0	0	0	0.058	0.051
World total	718.241	809.333	819.000	883.983	928.504	823.45	944.565	793.08	654.662	565.792

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities. We expect the impact of this rule for businesses large and small to be insignificant, but note here that the main industries that could be affected—meat processing (NAICS 311612) and meat and meat product merchant wholesalers (NAICS 424470)—are primarily composed of small entities. Under Small Business Administration (SBA) standards, meat processing establishments with no more than 500 employees and meat and meat product wholesalers with no more than 100 employees are considered small. In 2002, there were 1,335 companies in the United States that processed and sold meat. More than 97 percent of these establishments are considered to be small entities and had average sales of $15.4 million, while large meat processors had average sales of $188 million. In 2002, there were 2,535 meat and meat product wholesalers in the United States. Of these establishments, 2,456 (97 percent) employed not more than 100 employees and are, thus, considered small by SBA standards. Small wholesalers had average sales of $9.3 million, while large entities had average sales of $131 million.[4]

Additionally, entities that produce hogs and pigs (NAICS 112210) could also be affected.[5] There were 82,028 such farms with sales of hogs. About 94 percent of these farms are considered to be small. The majority of entities that could be affected by the proposed changes would be small entities. The magnitude of impact would depend on the extent of an increase in U.S. trade with regions affected with CSF, especially with Mexico.

As indicated above, the rule would allow uncooked pork and pork products that originate in the United States to be shipped for processing to Mexico, which contains areas where CSF is considered to exist, and then be returned to the United States. As the Mexican Government and U.S. pork producers are the entities that have requested this proposed rule, this trade may increase under the proposed rule, but we are unable to predict the size of the increase. Pork imports from Mexico accounted only for 0.45 percent (in terms of value and only 0.29 percent in terms of volume) of total imports in 2005.

To illustrate the very small impact that the rule is expected to have on the U.S. economy, we estimate that a doubling of pork imports from Mexico in 2005 (including products that originate in the United States), that is, an increase from 2.29 million pounds to 4.58 million pounds, would result in our domestic production of pork declining by only 0.013 percent and the quantity demanded increasing by only 0.011 percent. The estimated quantity changes, as well as the insignificant price effect and the welfare impacts, are shown in Table 2. We estimate in this example that the annual net welfare gain of this outcome of the rule for the United States would equal about $92,000.

TABLE 2.—THE ESTIMATED IMPACT ON THE U.S. ECONOMY OF PORK IMPORTS FROM MEXICO DOUBLING FROM THEIR 2005 LEVEL OF 2.29 MILLION POUNDS

Assumed pork imports, million pounds	4.58
Change in U.S. consumption, million pounds	2.183
Change in U.S. production, million pounds	−2.397
Change in wholesale price of pork, dollars per pound	$0.000086
Change in consumer welfare	$1,650,000
Change in producer welfare	−$1,558,000
Annual net welfare gain	$92,000

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

[4] U.S. Census Bureau, 2002 Economics Census: Manufacturing—Industries Series and Wholesale Trade-Subject, August 2006.

[5] SBA, Small Business Size Standards matched to North American Industry Classification System, Effective July 31, 2006.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2006–0186. Please send a copy of your comments to: (1) Docket No. APHIS–2006–0186, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would allow the importation of uncooked pork and pork products from regions where CSF is considered to exist provided the uncooked pork and pork products originate in a region free of CSF and meet certain other conditions with respect to processing and shipping. Allowing such importations will necessitate the use of several information collection activities, including certificates, compliance agreements, cooperative service agreements, and recordkeeping requirements. These information collection activities would aid in our efforts to ensure that uncooked pork and pork products processed in regions where CSF exists do not pose a disease incursion threat when imported into the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5 hour per response.

Respondents: Federal animal health authorities in Mexico.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 50.

Estimated annual number of responses: 250.

Estimated total annual burden on respondents: 30 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In 94.9, a new paragraph (e) would be added to read as follows:

§ 94.9 Pork and pork products from regions where classical swine fever exists.

* * * * *

(e) Uncooked pork or pork products that originated in a region considered to be free of classical swine fever (CSF) and are processed in a region where CSF exists may be imported into the United States under the following conditions:

(1) *Shipment to approved establishments.* (i) The uncooked pork or pork products must be shipped from the CSF-free region of origin in closed containers sealed with serially numbered seals applied by an official of the national government of that region. They must be accompanied by a certificate that is signed by an official of that region's national government and that specifies the product's region of origin, the name and number of the establishment of origin, and the processing establishment to which the uncooked pork or pork products are consigned, and the numbers of the seals applied to the shipping containers.

(ii) The uncooked pork or pork products may be removed from containers at the processing establishment in the region where CSF is considered to exist only after an official of that region's national government has determined that the seals are intact and free of any evidence of tampering.

(2) *Handling of uncooked pork and pork products.* Establishments [12] in regions where CSF is considered to exist that process uncooked pork or pork products for export to the United States:

(i) May not receive or handle any live swine;

(ii) May not receive, handle, or process uncooked pork or pork products that originate in regions affected with CSF;

(iii) Must keep the certificate required by paragraph (e)(1)(i) of this section on file at the facility for a period of at least 2 years after export of processed products to the United States, and must make those records available to USDA inspectors during inspections; and

(iv) Must be evaluated and approved by APHIS through a site inspection.

(3) *Compliance agreement.* The operators of the processing establishment must sign a compliance agreement with APHIS, stating that:

(i) All meat processed for importation to the United States will be processed in accordance with the requirements of this part; and

(ii) A full-time, salaried meat inspection official of the national

[12] See footnote 9 in § 94.8.

government of the region in which the processing facility is located will supervise the processing and examination of the product, and certify that it has been processed in accordance with this section; and

(iii) APHIS personnel or other persons authorized by the Administrator may enter the establishment, unannounced, to inspect the establishment and its records.

(4) *Cooperative service agreement.* The processing establishment, or a party on its behalf, must enter into a cooperative service agreement with APHIS to pay all expenses incurred by APHIS for the initial evaluation of the processing establishment and periodically thereafter, including travel, salary, subsistence, administrative overhead, and other incidental expenses, including excess baggage up to 150 pounds. In accordance with the terms of the cooperative service agreement, before the APHIS representative's site inspection, the operator of the processing establishment or the party acting on their behalf must deposit with the Administrator an amount equal to the approximate cost of one inspection by an APHIS, including travel, salary, subsistence, administrative overhead, and other incidental expenses, including excess baggage up to 150 pounds. As funds from that amount are obligated, a bill for costs incurred based on official accounting records will be issued to restore the deposit to the original level, revised as necessary to allow for inflation or other changes in estimated costs. To be current, bills must be paid within 14 days of receipt.

(5) *Shipment to the United States.* Uncooked pork or pork products to be imported into the United States must be shipped from the region where they were processed in closed containers sealed with serially numbered seals applied by an official of the national government of that region. The shipments must be accompanied by a certificate signed by an official of the national government of the region where the pork or pork products were processed that lists the numbers of the seals applied and states that all of the conditions of this paragraph (e) have been met. The certificate shall also state that the container seals specified in paragraph (e)(1)(i) and (ii) of this section were found by an official of the region's national government to be intact and free of any evidence of tampering on arrival at the processing establishment in the CSF-affected region. A copy of this certificate must be kept on file at the processing establishment for at least 2 years.

* * * * *

§ 94.12 [Amended]

3. In § 94.12, footnotes 12 and 13 would be redesignated as footnotes 13 and 14, respectively.

§ 94.16 [Amended]

4. In § 94.16, footnote 14 would be redesignated as footnote 15.

§ 94.17 [Amended]

5. Section 94.17 would be amended as follows:

a. Footnotes 15 and 16 would be redesignated as footnotes 16 and 17, respectively.

b. In newly redesignated footnote 17, the words ''footnote 15'' would be removed and the words ''footnote 16'' added in their place and the words ''§ 94.17(e) of this part'' would be removed and the words ''paragraph (e) of this section'' added in their place.

§ 94.18 [Amended]

6. In § 94.18, footnotes 17 and 18 would be redesignated as footnotes 18 and 19, respectively.

Done in Washington, DC, this 28th day of December 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–22629 Filed 1–4–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2005–0096]

Change in Disease Status of the Patagonia South Region of Argentina With Regard to Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to add that portion of the Patagonia region of Argentina located south of latitude 42° south (Patagonia South) to the list of regions considered free of rinderpest and foot-and-mouth disease (FMD). We are taking this action because we have determined that Patagonia South is free of rinderpest and FMD. We are also proposing to add that region to the list of regions that are subject to certain import restrictions on meat and meat products because of their proximity to or trading relationships with rinderpest-or FMD-affected countries. These actions would update the disease status of Patagonia South with regard to rinderpest and FMD while continuing to protect the United States from an introduction of those diseases by providing additional requirements for any meat and meat products imported into the United States from Patagonia South.

DATES: We will consider all comments that we receive on or before March 6, 2007.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2005–0096 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2005–0096, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2005–0096.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Silvia Kreindel, Veterinary Medical Officer, Regionalization Evaluation Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8419.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, classical swine fever, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD exists in all other parts of the world not listed. Section 94.11 of the regulations lists regions of the world that have been determined to be free of rinderpest and FMD, but that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest-or FMD-affected regions.

We are proposing to amend the regulations in § 94.1 by adding that portion of the Patagonia region of Argentina located south of latitude 42° south (referred to below as Patagonia South) to the list of regions that are considered free of both rinderpest and FMD. We are proposing this because there has been no outbreak of FMD in the Patagonia South region of Argentina since 1976 and there is no evidence that there are any species currently infected with FMD in Patagonia South. In addition, because rinderpest has never been diagnosed in Argentina and is not endemic to that region of the world, we are also proposing to recognize Patagonia South as free of rinderpest. Finally, we are proposing to amend the regulations in § 94.11 by adding Patagonia South to the list of regions that are subject to certain import restrictions on meat and meat products because of their proximity to or trading relationships with rinderpest-or FMD-affected regions.

Risk Evaluation

Using information submitted to us by the Federal Government of Argentina through the Servicio Nacional de Sanidad y Calidad Agroalimentario (SENASA), as well as information gathered during a site visit by APHIS staff to Argentina in December 2003 and published reports, we have reviewed and analyzed the animal health status of Patagonia South relative to rinderpest and FMD. This review and analysis was conducted in light of the factors identified in our regulations in 9 CFR 92.2, ''Application for recognition of the animal health status of a region,'' which are used to evaluate the risk associated with importing animals or animal products into the United States from a given region. Based on the information submitted to us, we have concluded the following:

Veterinary Infrastructure

The veterinary services authorities in Argentina have the legal authority, organization, and infrastructure to detect, control, and eradicate FMD. Argentina's veterinary services are organized under SENASA, which translates in English to the National Health and Agrifood Quality Service. SENASA is divided into several sections, four of which focus on animal health issues: (1) The National Animal Health Office (DNSA), which is responsible for animal health control and eradication programs; (2) the National Agrifood Inspection Office (DNFA), which is responsible for enforcing hygiene and health requirements in slaughter establishments, processing plants, and storage facilities for animal and plant products and byproducts; (3) the Quarantine, Borders and Certification Unit (CCFyC), which oversees animal and plant quarantine and border movements and control; and (4) the Laboratories and Technical Control Office (DILACOT), which operates the national reference laboratory for food safety and animal and plant health, and manages regional laboratories and laboratories accredited by SENASA. Additional support for the animal health system in Argentina comes from 349 local animal health offices, 10 of which are located in the Patagonia South region.

In 2003, SENASA reported a total of 3,479 employees, including personnel who deal with plant issues. Of these, 2,558 were permanent staff members, of which 572 were veterinarians. SENASA has the authority to hire contract personnel, including veterinarians and animal health technicians, and to call on private veterinary practitioners, police, and local authorities to provide support to the Central Veterinary Office in depopulating infected premises, disposing of animal carcasses, and controlling and restricting animal movements. In 2003, SENASA reported a complement of 921 contractors, of which 219 were contract veterinarians. SENASA's permanent staff in Patagonia South includes 12 veterinarians, 20 veterinary inspectors, 19 provincial veterinarians, 202 private veterinarians, 20 technicians, and a number of administrative personnel.

SENASA personnel are distributed among 25 regions within Argentina, each of which falls under the supervision of a regional supervisor. In the event of an animal disease emergency, SENASA has the legal authority to implement control measures.

Disease History and Surveillance

Rinderpest has never been diagnosed in Argentina and is not endemic to that region of the world. The last outbreak of FMD in the Patagonia South region of Argentina occurred in October 1976 and was traced to its origin north of 42° South. There is no evidence that there are any species currently infected with FMD in Patagonia South.

Argentina has a structured system of notification and official involvement to investigate any suspected cases of FMD. Argentina maintains an active FMD surveillance program to monitor viral activity in various FMD-susceptible species. Surveillance for FMD in Patagonia South is conducted under the national surveillance program in Argentina and includes both active and passive surveillance for the disease. Argentina's surveillance program is adequate to detect disease and identify and measure FMD activity in the region.

Diagnostic Capabilities

Argentina has the authority, personnel, and diagnostic capabilities to test herds for, and diagnose, FMD. Currently, there is one diagnostic laboratory in Argentina, located in Buenos Aires, that is authorized to perform FMD diagnostic and surveillance activities. This laboratory meets the biosafety requirements established by SENASA, as well as the biosafety guidelines issued by the World Organization for Animal Health (OIE). The OIE is recognized by the World Trade Organization as the international organization responsible for the development of standards, guidelines, and recommendations with respect to animal health and zoonoses (diseases that are transmissible from animals to humans).

Vaccination Status

Vaccination against FMD is not practiced and has never been systematically applied in Patagonia South. In the event of a confirmed FMD outbreak in Patagonia South, the primary control measure would be to stamp out affected animals and contacts. Emergency vaccination against FMD may be undertaken in the event of a risk of an extensive outbreak of the disease. Emergency vaccination against FMD was last implemented in Patagonia South during the outbreak of FMD in 1976.

Disease Status of Adjacent Regions

Patagonia South is bordered by the Atlantic Ocean and shares land borders with Chile and the province of Rio Negro, Argentina. The province of Rio Negro, Argentina, is located in ''Patagonia North B,'' which is an FMD surveillance area situated to the north of Patagonia South. The last outbreak of FMD in Patagonia North B occurred in 1994. Chile is recognized by APHIS as free of FMD.

Degree of Separation From Adjacent Regions

Patagonia South is sufficiently separated from Patagonia North B by mountains and other natural barriers; however, for the few areas where there are no natural barriers, government control measures compensate. These control measures include mobile patrols and a permanent coordination between national and provincial entities to maintain a constant presence at the region route controls by the National Border Police and other police authorities.

Movement Across Borders

The movement of animals and animal products into Patagonia South from regions of higher disease risk is strictly controlled. The Government of Argentina has established a sanitary barrier across the entire line of latitude 42° South to preserve the FMD-free status of Patagonia South. Movement of FMD-susceptible animals to Patagonia South is not allowed from any region of Argentina other than Patagonia North B. Imports from Patagonia North B to Patagonia South are allowed, provided that certain import requirements are met.

There are 45 animal inspection border posts located in Argentina with SENASA personnel on duty at each to inspect animal products. All live animals and animal products imported into Argentina require an animal health permit issued by SENASA. In addition, all live animals imported into Argentina are placed in quarantine for 15 to 60 days, depending on the length of time it takes to complete required testing procedures, and are observed on the farm of destination for a period of 60 days.

Patagonia South shares an international land border with only one country: Chile. There are three animal inspection border posts located along this border. The animal health status of Chile and Patagonia South are equivalent. Breeding stock and commercial meat shipments are traded between these two regions.

Livestock Demographics and Marketing Practices

Sheep production is the primary livestock production system in Patagonia South. In 2003, Patagonia South had approximately 7.49 million sheep, 265,960 head of cattle, 12,731 pigs, and 141,614 goats. Each province has established standards for identifying and tracking animals. There is no known feature of livestock production in the region that increases the risk of disease spread.

Detection and Eradication of Disease

FMD is a compulsorily notifiable disease in Argentina. The veterinary services in Argentina possess the authority, diagnostic capability, and personnel to rapidly detect, contain, and eradicate any incursion of FMD that might occur.

These findings are described in further detail in a risk analysis that may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. This analysis may also be viewed on the Internet on the Regulations.gov Web site (see **ADDRESSES** above for information about accessing documents on Regulations.gov). The risk analysis documents the factors that have led us to conclude that Patagonia South is free of FMD. As noted previously, rinderpest has never occurred in Argentina and is not endemic to the Americas. Therefore, we are proposing to recognize Patagonia South as free of rinderpest and FMD and add the region to the list in § 94.1(a)(2) of regions that are considered free of rinderpest and FMD.

These proposed actions would relieve certain restrictions due to FMD and rinderpest on the importation into the United States of certain live animals and animal products from Patagonia South. However, because Patagonia South shares common land borders with a region of Argentina not considered free of rinderpest and FMD under the regulations, the importation of meat and other products from ruminants and swine into the United States from Patagonia South would continue to be subject to certain restrictions.

Specifically, we are proposing to add Patagonia South to the list in § 94.11(a) of regions declared free of rinderpest and FMD but that are subject to special restrictions on the importation of their meat and other animal products into the United States. The regions listed in § 94.11(a) are subject to these special restrictions because they: (1) Supplement their national meat supply by importing fresh (chilled or frozen) meat of ruminants or swine from regions that are designated in § 94.1(a) as regions where rinderpest or FMD exists, (2) have a common land border with regions where rinderpest or FMD exists, or (3) import ruminants or swine from regions where rinderpest or FMD exists under conditions less restrictive than would be acceptable for importation into the United States.

Patagonia South has a common land border with a region (Patagonia North B) not considered free of FMD. As a result, there is some risk that the meat and other animal products produced in Patagonia South could be commingled with the fresh (chilled or frozen) meat of animals from a region in which FMD exists and present an undue risk of introducing FMD into the United States if imported without restriction.

Under § 94.11, meat and other animal products of ruminants and swine, including ship stores, airplane meals, and baggage containing these meat or animal products, may not be imported into the United States except in accordance with § 94.11 and the applicable requirements of the USDA's Food Safety and Inspection Service at 9 CFR chapter III.

Section 94.11 generally requires that the meat and other animal products of ruminants and swine be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; (2) accompanied by a Department-approved meat inspection certificate; and (3) accompanied by an additional certificate, issued by a full-time salaried veterinary official of the national government of the exporting region, assuring that the meat or other animal products have not been commingled with or exposed to meat or other animal products originating in, imported from, transported through, or that have otherwise been in a region where rinderpest or FMD exists.

The proposed changes discussed in this document would update the disease status of Patagonia South with regard to rinderpest and FMD while continuing to protect the United States from an introduction of those diseases by providing additional requirements for any meat and meat products imported into the United States from Patagonia South.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This proposed rule would recognize the Patagonia South region of Argentina free of FMD and rinderpest. As such, this proposed rule would allow ruminants and ruminant products to be imported from this region into the United States, provided all other import requirements are satisfied. In the following initial regulatory flexibility analysis, we estimate the welfare effects of the proposed rule, as well as consider potential effects of the proposed rule on small entities, as required by the Regulatory Flexibility Act.

While the proposed rule would allow the importation of all ruminants and ruminant products from the Patagonia South region, APHIS expects the rule to result in imports of lamb, mutton, and goat meat, with the overwhelming majority being lamb and mutton. According to information supplied by the government of Argentina, and supported in an APHIS risk assessment and by site visits, bovine production in Patagonia South is consumed locally. In fact, matured and deboned beef is imported to meet the consumption demands of the population in this region. On the other hand, the sheep industry in Patagonia South is the prevailing livestock activity, with this region producing almost 60 percent of the entire sheep population in Argentina. The government of Argentina forecasts that it would export an average of 6,000 metric tons per year (or 13.2 million pounds) of sheep meat to the United States, with a maximum of 9,000 MT per year (or 19.8 million pounds) and a minimum of 4,000 MT per year (or 8.8 million pounds).[1]

The U.S. sheep and wool industries have been marked by smaller inventories, declining production, shrinking revenues, and fewer operations over the last few decades. In fact, the United States is a net importer of lamb and mutton and relies on imports to meet domestic consumption demands. For example, in 2005, imports of lamb and mutton totaled 177 million pounds, and accounted for 47 percent of total supply, which was 372 million pounds. U.S. exports of lamb and mutton in 2005 totaled only 10 million pounds. Total reported consumption for that same year was 352 million pounds.[2]

We use a non-spatial, partial equilibrium welfare model to quantitatively estimate the economic effects of the proposed rule, referred to as welfare effects. This model measures expected changes in consumer surplus and producer surplus attributable to the rule. Consumer surplus is the difference between what a consumer would be willing to pay for a good or service and what that consumer actually has to pay, and producer surplus is the difference between what a supplier is paid for a good or service and what it cost to supply. Thus, the net expected effects of the proposed rule can be summed up by examining changes in consumer and producer surplus.

We estimate the welfare effects of the proposed rule for three import quantity scenarios: (1) Average imports of 13.2 million pounds annually; (2) a low-end estimate of 8.8 million pounds annually; and (3) a high-end estimate of 19.8 million pounds annually. The baseline quantities and price we use are from 2005: U.S. consumption, 352 million pounds; U.S. production, 192 million pounds; U.S. domestic supply,[3] 182 million pounds; and a wholesale carcass price of $209.80 per cwt, or $2.09 per pound.[4] In addition, we use a demand elasticity of −0.729 for lamb and mutton, and a supply elasticity of 0.14.[5] Table 1 presents the expected effects of the proposed rule, as measured by changes in consumer and producer surplus, for the three import scenarios.

TABLE 1.—ESTIMATED WELFARE EFFECTS OF THE PROPOSED RULE FOR THREE IMPORT SCENARIOS

Import scenario	Change in domestic price $/lb	Change in consumer surplus	Change in producer surplus $1,000	Net change in welfare
13,224,000 lbs.	−$0.10	$35,033.60	−$17,751.24	$17,282.36
8,816,000 lbs.	−0.07	23,224.92	−11,847.13	11,377.79
19,936,000 lbs.	−0.15	52,991.88	−26,583.08	26,408.81

Since the Government of Argentina estimates it would export an average of 6,000 MT per year (or 13.2 million lbs) of lamb and mutton to the United States, we focus on the implications of the rule using this scenario.

Costs

The proposed rule may result in about a 4.7 percent reduction in the domestic wholesale price of lamb and mutton, or a price decline of about 10 cents per pound. The domestic sheep and lamb industry would be directly impacted by this price decline, as indicated by the annual $17.7 million loss in producer surplus. In 2004, there were 2,679,000 sheep and lambs and 582,000 goats slaughtered in the United States.[6] If we assume the same number were slaughtered in 2005, and given that there were 68,280 sheep and goat farms in the United States last year, we approximate that the number of animals sold for slaughter averaged about 50 head per farm. Assuming an average dressed carcass weight of 75 pounds per lamb sold and a price of $209.80 per cwt yields an approximate average annual revenue of $7,868 per farm.[7] Thus, a 4.7

[1] USDA, APHIS–VS. *Risk Analysis: Risk of exporting FMD in FMD-Susceptible Species from Argentina, South of the 42° Parallel (Patagonia South), to the United States.* Riverdale, MD: APHIS-Veterinary Services, National Center for Import and Export, Regionalization Evaluation Services, June 2005.

[2] USDA, ERS. *Agricultural Outlook: Statistical Indicators, Table 10—U.S. Meat Supply & Use.* Washington, DC: Economic Research Service, Feb. 2006.

[3] U.S. domestic supply is calculated by subtracting exports from U.S. production [192 million lbs. − 10 million pounds].

[4] Source for baseline quantities: ''Table 10—U.S. Meat Supply & Use.'' Source for baseline price: Red meat Yearbook, ''Table 85—Lamb Carcass Price, East Coast, Choice-Prime Wholesale Price, 55–65 lb.'' Livestock, Meat, & Wool, AMS, USDA; provided by ERS. [Note: East Coast wholesale prices are reflective of U.S. prices, because although lamb meat is primarily produced in the Southern Plains, Mountain, and Pacific regions, consumption patterns are overwhelmingly located throughout the Northeast.]

[5] Source for demand elasticity: USDA, ERS. ''Demand for U.S. Lamb and Mutton by Country of Origin: A Two-Stage Differential Approach'' by Keithly G. Jones, William F. Hahn, and Christopher G. Davis. Washington, DC: Economic Research Service, 2003. Source for supply elasticity: Research conducted at the University of Tennessee at Knoxville, the Policy Analyses System (POLYSYS) modeling framework. ''The POLYSYS Modeling Framework: A Documentation—Chapter 5: Livestock Module'' by Daryll E. Ray, et al., May 1998. [*http://apacweb.ag.utk.edu/polysys.html*]

[6] USDA, NASS. 2005 Agricultural Statistics, Table 7–79. Washington, DC: National Agricultural Statistics, 2005.

[7] The average live weight of slaughter lambs, 136 lbs; the conversion rate for dressed carcass weight is 55 percent. Both of these values are based on information provided by ERS livestock specialists.

percent reduction in the wholesale price of lamb and mutton, a decline of $7.40 per animal, would result in a decrease in annual revenue of about $370 per farm, assuming average annual sales of 50 head.

Other factors may also minimize effects of the proposed rule for producers. First, we assume that Patagonia South would be primarily engaging in the export of lamb meat. In the event that they decide to export large quantities of mutton, which is primarily used in the industrial market, such as for pet food, the potential price impacts of the proposed rule would be much less. The wholesale price of mutton meat is less than half that of the wholesale price of lamb meat.[8]

Secondly, historically, lamb and mutton are viewed as byproducts of wool production for domestic producers. As such, if wool prices are high, producers would keep lambs longer to get additional shearing of wool, which would mean fewer animals would be sent to slaughter and lamb and mutton production would fall.[9] The high correlation between wool prices and lamb and mutton production may serve to explain the inelasticity of supply. As indicated, the farm-level supply of lamb and mutton is highly inelastic, that is, producers are relatively unresponsive to price changes.[10] Thus, this may illustrate that farm-level production decisions are dictated more by changes in the price of wool than by changes in the wholesale price of lamb and mutton. The analysis shows that with the proposed rule there may be a decrease in the price of lamb of 4.7 percent, suggesting a decrease in supply of about 0.66 percent.[11] So, in the case of high wool prices, the potential impacts of the proposed rule may be even smaller than described.

Thirdly, the estimated welfare gains and losses assume that none of the lamb and mutton meat imported from the Patagonia South region would substitute for, or displace, U.S. imports from other countries. In the case that such displacement may occur, the estimated price impacts of the proposed rule for sheep and lamb producers and other U.S. entities would be smaller than depicted.

Benefits

The reduction in price of lamb and mutton would benefit domestic purchasers. As the model demonstrates, the annual change in consumer surplus as a result of the rule would be an increase of about $35 million. This benefit would be realized at the wholesale level, but at least a portion of this gain may be passed on to subsequent retail buyers of lamb and mutton. We estimate the annual net benefit of the proposed rule would be about $17.2 million.

Affected Entities

The proposed rule would have direct effects on domestic sheep and goat producers, specifically those engaged in lamb and mutton production. In 2005 there were 68,280 sheep, lamb, and goat farms.[12] Inventory and value estimates for 2005 were 6.1 million sheep, with a total value of over $799 million, and 274,000 angora goats, with a total value of over $16 million.[13] Additionally, in 2005 there were 192 million pounds of lamb and mutton produced domestically.[14]

The U.S. Small Business Administration's (SBA) size standard for sheep and goat farming is $750,000 or less in annual receipts.[15] The exact number of sheep and goat operations that would be considered small by SBA standards is unknown. However, the 2002 Census of Agriculture estimated there were 150 sheep and lamb farms with inventories of 5,000 or more. The value per head for sheep and lambs in 2002 was $94.[16] From this, we approximate that only 150 farms, or less than 1 percent, had total market values of $470,000 or more annually. This value is well below the small-entity threshold, and moreover, represents the 2002 inventory value of the largest holdings, not their annual receipts. Therefore, it is clear most sheep and goat operations are small.

Other industries that may be affected by the proposed rule, as categorized in the North American Industry Classification System (NAICS), are Meat and Meat Product Merchant Wholesalers (NAICS 424470), Supermarkets and Other Grocery (except Convenience) Stores (NAICS 445110), and Meat Markets (NAICS 445210). All of these industries primarily consist of small entities.[17] The first of these industries includes meat importers, who may directly benefit by the availability of lamb and mutton from the Patagonia South region. Other wholesale buyers of lamb and mutton may also benefit from the expected decline in price of lamb and mutton as a result of the proposed rule. Grocery stores and meat markets may also gain, depending on the extent to which decreases in wholesale prices are passed forward to the retail level.

There are no projected reporting, recordkeeping, or other compliance requirements that small entities will be subject to as a result of implementing the proposed rule. (See ''Paperwork Reduction Act'' below).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

[Carcass weight calculation: 136 lbs multiplied by 55 percent = 74.8 lbs. Note: For the purposes of this discussion, we have rounded that up, to get an average carcass weight of slaughtered animals of 75 lbs.] A price of $209.80 per cwt, multiplied by an average carcass weight of 0.75 cwt [result = value per animal, or $157.35], multiplied by 50 animals per year, yields a potential annual revenue of about $7,868.

[8] Per telephone conversation with Keithly Jones (ERS), March 28, 2006.

[9] USDA–ERS. Briefing Room: Sheep and Wool: Overview. Washington, DC: Economic Research Service, August 23, 2004.

[10] The price elasticity of supply is equal to the percentage change in quantity supplied given a certain percentage change in price. A price elasticity of supply for lamb and mutton of 0.14 means, for example, that an increase (decrease) in price of 10 percent would increase (decrease) the supply by 1.4 percent.

[11] Assuming a price elasticity of supply of 0.14 and a price decline of 4.7 percent yields a decrease in supply of 0.66 percent ($0.14 \times 0.047 = 0.0066$).

[12] USDA–NASS, Quick Stats: Sheep & Lambs—Operations: Number by State & US, 2005. Washington, DC: National Agricultural Statistics Service.

[13] USDA–NASS, 2005 Agricultural Statistics, Tables 7–41 and 7–80. Washington, DC: National Agricultural Statistics Service.

[14] USDA–ERS, Agricultural Outlook: Statistical Indicators, ''Table 10—U.S. Meat Supply & Use.'' Washington, DC: Economic Research Service, Feb. 2006.

[15] Table of Size Standards based on NAICS 2002 [Sheep farming: NAICS code 112410; Goat farming: NAICS code 112420]. Washington, DC: U.S. Small Business Administration, effective January 5, 2006.

[16] USDA, 2005 Agricultural Statistics, Tables 7–41; and Quick Stats: Sheep & Lambs—Operations: Number by State & U.S., 2002 [in 2002 there were 68,150 sheep and goat operations]. Washington, DC: National Agricultural Statistics Service.

[17] The small entity definition for meat wholesalers is not more than 100 employees; for grocery stores, not more than $25 million in annual receipts; and for meat markets, not more than $6.5 million in annual receipts. Based on information from the SBA, Office of Advocacy, based on data provided by the U.S. Census Bureau, Statistics of U.S. Businesses, small operations comprise more than 80 percent of meat wholesalers, more than 60 percent of grocery stores, and more than 90 percent of meat markets.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) would be amended by adding the words ''Argentina (only that region south of 42° S.),'' before the word ''Australia''.

§ 94.11 [Amended]

3. In § 94.11, paragraph (a) would be amended by adding the words ''Argentina (only that region south of 42° S.),'' before the word ''Austria''.

Done in Washington, DC, this 28th day of December 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–22627 Filed 1–4–07; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 72, and 73

RIN 3150–AG63

Power Reactor Security Requirements; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 26, 2006 (71 FR 62664), the Nuclear Regulatory Commission (NRC) published for public comment a proposed rule that would amend its current security regulations and would add new security requirements pertaining to nuclear power reactors. Additionally, this rulemaking includes new proposed security requirements for Category I strategic special nuclear material (SSNM) facilities for access to enhanced weapons and firearms background checks. The proposed rulemaking would: Make generically applicable security requirements imposed by Commission orders issued after the terrorist attacks of September 11, 2001, based upon experience and insights gained by the Commission during implementation; fulfill certain provisions of the Energy Policy Act of 2005; add several new requirements that resulted from insights from implementation of the security orders, review of site security plans, and implementation of the enhanced baseline inspection program and force-on-force exercises; update the regulatory framework in preparation for receiving license applications for new reactors; and impose requirements to assess and manage site activities that can adversely affect safety and security. A 75-day comment period was provided for the propose rule, set to expire on January 9, 2007. Comments specific to the information collection aspects of the proposed rule were due on November 27, 2006.

The proposed rule deadline is extended from the original January 9, 2007, deadline to February 23, 2007, and the information collections analysis deadline is extended from the original November 27, 2006 deadline to January 11, 2007.

DATES: The comment period for the proposed rule has been extended and now expires on February 23, 2007. The comment period for the information collection aspects of this proposed rulemaking has been extended and now expires on January 11, 2007. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

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

Hand delivered comments should also be addressed to the Secretary, U.S. Nuclear Regulatory Commission, and delivered to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site: *http://ruleforum.llnl.gov.* This site also provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail: *CAG@nrc.gov.*

Certain documents relating to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Room O1–F21, Rockville, MD. The same documents may also be viewed and downloaded electronically via the rulemaking Web site: *http://ruleforum.llnl.gov.* Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 202–634–3273 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Rasmussen, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–0610; e-mail: *RAR@nrc.gov* or Mr. Timothy Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1462; e-mail: *TAR@nrc.gov.*

SUPPLEMENTARY INFORMATION: During a public meeting held on November 15, 2006, the State of Pennsylvania and the Nuclear Energy Institute (NEI) requested that the comment period for the proposed rulemaking be extended by 45 days. Subsequently, on November 17, 2006, the NEI provided a written request to NRC for a 60-day extension to the public comment period for both the proposed rulemaking and the information collection aspects of the rulemaking. NEI stated four reasons to support their request (listed below):

(1) There are two major holidays during the comment period;

(2) This is a major and complex rulemaking as evidenced by the sheer volume of the rulemaking package (SECY–06–0126 exceeds 1000 pages);

(3) Since June 2006, NEI has been engaged in the development of NEI 06–12, ''B.5.b Phase 2&3 Submittal Guideline'' which licensees will use to respond to the NRC site-specific Phase 3 letters. Licensee responses are due in early January 2007; and,

(4) Comments on the proposed § 73.21 rulemaking are due January 2, 2007.

In view of the NRC's desire to receive high quality comments from external

stakeholders, and recognizing the extenuating circumstances that adversely impact the capability of external stakeholders to comment on the proposed rulemaking given ongoing activities which are competing for the same industry resources, the comment period, for both the proposed rulemaking and for the information collections analysis, will be extended for an additional 45 days. This partial grant of the request from both NEI and the State of Pennsylvania recognizes that the power reactor security requirements impact new reactor applications, and it is the NRC's objective to not adversely impact new reactor applications which are scheduled to be submitted in late 2007.

Dated at Rockville, Maryland, this 27th day of December 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–22581 Filed 1–4–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM–73–11]

Petition for Rulemaking Filed by Scott Portzline, Three Mile Island Alert; Consideration of Petition

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; consideration of petition.

SUMMARY: On November 2, 2001 (66 FR 55603), the Nuclear Regulatory Commission (NRC) published for public comment a petition for rulemaking (PRM) filed by Scott Portzline, Three Mile Island Alert. The petitioner requested that the NRC regulations governing physical protection of plants and materials be amended to require NRC licensees to post at least one armed guard at each entrance to the ''owner controlled areas'' (OCAs) surrounding all U.S. nuclear power plants. The petitioner states that this should be accomplished by adding armed site protection officers (SPOs) to the security forces—not by simply moving SPOs from their protected area (PA) posts to the OCA entrances. The petitioner believes that its proposed amendment would provide an additional layer of security that would complement existing measures against radiological sabotage and would be consistent with the long-standing principle of defense-in-depth.

This document informs the public that PRM–73–11 and public comments received in response to the above notice will be considered in a proposed rulemaking, ''Power Reactor Security Requirements,'' published in the **Federal Register** on October 26, 2006 (71 FR 62664). This rulemaking proposes extensive revisions to the NRC regulations in 10 CFR parts 50, 72, and 73 that address security requirements for nuclear power reactor licensees and certain materials licensees. The comment period on that proposed rule expires on February 23, 2007. Because the public has already had opportunity to comment on PRM–73–11, the NRC is requesting that comments focus on the proposed rule provisions in light of the subject PRM. Refer to the preamble of the proposed rule for instructions on how to provide comments.

FOR FURTHER INFORMATION CONTACT: George Tartal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–0016, or toll-free: 800–368–5642, e-mail *gmt1@nrc.gov,* or Everett Byre, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7825, or toll free: 800–368–5642, e-mail *exb4@nrc.gov.*

Dated at Rockville, Maryland, this 27th day of December 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–22582 Filed 1–4–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26496; Directorate Identifier 2006–CE–81–AD]

RIN 2120–AA64

Airworthiness Directives; Alpha Aviation Design Limited (Type Certificate No. A48EU Previously Held by APEX Aircraft and AVIONS PIERRE ROBIN) Model R2160 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a deficiency in compliance with 14 CFR 23.967(d). There have been instances indicating that production aircraft may not have a metal barrier between the cabin and the fuel tank bay. Lack of a barrier could allow flammable fuel vapors to enter the cabin. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 5, 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 proposed 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: Karl Schletzbaum, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4146; 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 proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26496; Directorate Identifier 2006–CE–81–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD 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 proposed AD.

Discussion

The Civil Aviation Authority of New Zealand, which is the aviation authority for New Zealand, has issued AD DCA/R2000/38, dated June 29, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that there have been instances indicating that production aircraft may not have a metal barrier between the cabin and the fuel tank bay. Lack of a barrier could allow flammable fuel vapors to enter the cabin. The MCAI requires that, to ensure that the aircraft is in compliance with 14 CFR 23.967(d), inspect the aircraft to determine if a metal barrier is installed behind the seats and, if not installed, to manufacture and install a barrier. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Alpha Aviation Design Limited has issued Alpha Aviation Service Bulletin AA–SB–28–001, dated July 10, 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 Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 10 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $300 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $5,400, or $540 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Alpha Aviation Design Limited (Type Certificate No. A48EU previously held by APEX Aircraft and AVIONS PIERRE ROBIN): Docket No. FAA–2006–26496; Directorate Identifier 2006–CE–81–AD.

Comments Due Date

(a) We must receive comments by February 5, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model R2160 airplanes, serial numbers 001 through 378, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that there have been instances indicating that production aircraft may not have a metal barrier between the cabin and the fuel tank bay. Lack of a barrier could allow flammable fuel vapors to enter the cabin. The MCAI requires that, to ensure that the aircraft is in compliance with 14 CFR 23.967(d), inspect the aircraft to determine if a metal barrier is installed behind the seats and, if not installed, to manufacture and install a barrier.

Actions and Compliance

(e) Unless already done, do the following actions within the next 100 hours time-in-service or within 6 months of the effective date of this AD, whichever occurs first.

(1) Inspect the aircraft to determine if a metal barrier is installed behind the seats per Alpha Aviation Service Bulletin AA–SB–28–001, dated July 10, 2006.

(2) If a metal barrier is installed per Alpha Aviation Service Bulletin AA–SB–28–001, dated July 10, 2006, and (e)(1) of this AD then no further action is required.

(3) If a metal barrier is not installed, manufacture and install a barrier per Alpha Aviation Service Bulletin AA–SB–28–001, dated July 10, 2006 and Alpha Aviation Drawing No. 60–53–119 (page 3 of 3 of the Service Bulletin).

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, ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, MO 64106; telephone: (816) 329–4146; 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 MCAI Civil Aviation Authority of New Zealand AD DCA/R2000/38, dated June 29, 2006, and Alpha Aviation Service Bulletin AA–SB–28–001, dated July 10, 2006, for related information.

Issued in Kansas City, Missouri, on December 28, 2006.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–22577 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26489; Directorate Identifier 2006–CE–74–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA-Groupe AEROSPATIALE Models M.S. 760, M.S. 760 A, and M.S. 760 B Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

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

Following Safety Alert No. SA–006, issued by the National Transportation Safety Board (NTSB) on aircraft icing, it was impossible to demonstrate that the aircraft can safely takeoff when contaminated by frost, ice, snow, or slush, and fly into icing conditions.

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

DATES: We must receive comments on this proposed AD by February 5, 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 proposed 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: Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; 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 proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26489; Directorate Identifier 2006–CE–74–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD 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 proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Emergency Airworthiness Directive AD No. 2006–0348–E, dated November 20, 2006, referred to after this as ''the MCAI'', to correct an unsafe condition for the specified products. The MCAI states:

Following Safety Alert No. SA–006, issued by the National Transportation Safety Board (NTSB) on aircraft icing, it was impossible to demonstrate that the aircraft can safely takeoff when contaminated by frost, ice, snow, or slush and fly into icing conditions.

The MCAI requires operational limitation on takeoff with contamination and requirement for a pre-takeoff check in ground icing conditions and flight into icing conditions. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EADS SOCATA has issued MS760 Aircraft Mandatory Service Bulletin SB SB 76–053, ATA No. 30, dated October 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 Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 41 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $3,280, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SOCATA-Groupe AEROSPATIALE: Docket No. FAA–2006–26489; Directorate Identifier 2006–CE–74–AD.

Comments Due Date

(a) We must receive comments by February 5, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models M.S. 760, M.S. 760 A, and M.S. 760 B airplanes, all serial numbers, certificated in any category.

Reason

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

following Safety Alert No. SA–006, issued by the National Transportation Safety Board (NTSB) on aircraft icing, it was impossible to demonstrate that the aircraft can safely takeoff when contaminated by frost, ice, snow, or slush and fly into icing conditions.

Actions and Compliance

(e) Do the following unless already done:

(1) Prior to the next flight after the effective date of this AD, insert a copy of this AD into

the Limitations Section of the Airplane Flight Manual (AFM) to incorporate the following.

(i) Takeoff with frost, ice, snow, or slush on the wing, control surfaces, horizontal tail, and air intakes, and flight into icing conditions are prohibited.

(ii) Prior to each flight in which ground icing conditions exist as described in EADS SOCATA MS760 Aircraft Mandatory Service Bulletin SB 76–053, ATA No. 30, dated October 2006, perform a visual/tactile check. No visible trace of frost is acceptable particularly on stabilizers and wing upper surfaces and leading edges as well as on air intakes.

(2) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the actions of this AD. Make an entry into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: We added information in paragraph (e) that allows the owner/operator to insert a copy of this AD into the Limitation Section of the AFM. Without this information, a licensed mechanic would be required to do the AFM insertion.

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: Albert J. Mercado, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; 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 MCAI European Aviation Safety Agency Emergency Airworthiness Directive AD No. 2006–0348–E, dated November 20, 2006, and EADS SOCATA MS760 Aircraft Mandatory Service Bulletin SB 76–053, ATA No. 30, dated October 2006, for related information.

Issued in Kansas City, Missouri, on December 28, 2006.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–22578 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26497; Directorate Identifier 2006–CE–82–AD]

RIN 2120–AA64

Airworthiness Directives; Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa ''PZL–Bielsko'' Model SZD–50–3 ''Puchacz'' Gliders

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

ACTION: Notice of proposed rulemaking (NPRM).

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

Some cases of turnbuckle adjusting screws fatigue failure have occurred, due to lateral load component applied by pilot's foot. Such events may lead to rudder and pedals disconnection.

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

DATES: We must receive comments on this proposed AD by February 5, 2007.

ADDRESSES: You may sent 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 proposed 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: Gregory Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 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 proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26497; Directorate Identifier 2006–CE–82–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD 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 proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2006–0317, dated October 16, 2006, referred to after this as ''the MCAI'', to correct an unsafe condition for the specified products. The MCAI states:

> Some cases of turnbuckle adjusting screws fatigue failure have occurred, due to lateral load component applied by pilot's foot. Such events may lead to rudder and pedals disconnection.

The MCAI requires:

> Within the next 3 months after the effective date of this directive, modify the aircraft by introducing the extra pull rod between rear pedals and turnbuckle adjusting screws in accordance with the instructions contained in AllStar PZL Glider Mandatory Bulletin No. BE–057/SZD–50–3/2006 ''PUCHACZ''.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Allstar PZL Glider Sp. Z o.o. has issued Mandatory Service Bulletin No. BE–057/SZD–50–3/2006 ''PUCHACZ'', dated October 16, 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 Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 8 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $100 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,080, or $260, per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa ''PZL-Bielsko'': Docket No. FAA–2006–26497; Directorate Identifier 2006–CE–82–AD

Comments Due Date

(a) We must receive comments by February 5, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model SZD–50–3 ''Puchacz'' Gliders, all serial numbers, certificated in any category.

Reason

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

> Some cases of turnbuckle adjusting screws fatigue failure have occurred, due to lateral load component applied by pilot's foot. Such events may lead to rudder and pedals disconnection.

Actions and Compliance

(e) Unless already done, within the next 3 calendar months after the effective date of this AD, install the extra pull rod between the rear pedals and turnbuckle adjusting screws following Allstar PZL Glider Sp. Z o.o. Mandatory Service Bulletin No. BE–057/SZD–50–3/2006 ''PUCHACZ'', dated October 16, 2006, except as specified in paragraphs (e)(1) through (e)(4) of this AD. For owners/

operators that have installed an additional short cable between the rear seat pedal and turnbuckle prior to Allstar PZL's issuance of Mandatory Service Bulletin No. BE–057/SZD–50–3/2006 ''PUCHACZ'', dated October 16, 2006, this additional short cable assembly must comply with the requirements of Allstar PZL Glider Sp. Z o.o. Mandatory Service Bulletin No. BE–057/SQD–50–3/2006 ''PUCHACZ'', dated October 16, 2006. Upon completion, a logbook entry is required. Reference Allstar PZL Glider Sp. Z o.o. Mandatory Service Bulletin No. BE–054/SZD–050–3/2003.

Other FAA AD Provisions:

(1) Paragraph 1 of Allstar PZL Glider Sp. Z o.o. Mandatory Service Bulletin No. BE–057/SZD–50–3/2006 ''PUCHACZ'', dated October 16, 2006, describes the dimension length of the extra segment pull rod to be 140 mm. Modify this to read: ''140 mm (5.5118 inches)''.

(2) Paragraph 4 of Allstar PZL Glider Sp. Z o.o. Mandatory Service Bulletin No. BE–057/SZD–50–3/2006 ''PUCHACZ'', dated October 16, 2006, describes the dimensions of the short pull rod to be 3 mm diameter core and approximately 140 mm. Modify this to read: ''3 mm (0.1181 inch) and 140 mm (5.5118 inches)''.

(3) Paragraph 4.4 of Allstar PZL Glider Sp. Z o.o. Mandatory Service Bulletin No. BE–057/SZD–50–3/2006 ''PUCHACZ'', dated October 16, 2006, describes a 1 mm diameter cotter pin. Modify this to read: ''1 mm (0.03937 inch)''.

(4) Paragraph 5 of Allstar PZL Glider Sp. Z o.o. Mandatory Service Bulletin No. BE–057/SZD–50–3/2006 ''PUCHACZ'', dated October 16, 2006, reads, ''The parts necessary for modification are available at Allstar PZL Glider, or substitute aircraft parts may be used—capable to withstand a load of 6100N at minimum.'' Change this to read: ''The parts necessary for modification are available at Allstar PZL Glider, or substitute aircraft parts may be used—capable to withstand a load of 6100N (1,372 lbs) at minimum. If a substitute part is used, the hole diameter specified in Figure 1 of the service bulletin as 'Ø 6 Hg' means a 6 mm (0.2362 inch) diameter hole with a dimensional tolerance of +0.03 mm (+0.0012 inch). Contact the manufacturer for further details.''

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: Paragraphs (e)(1) and (e)(4) of this AD have been added to clarify certain procedures in the service bulletin.

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Gregory Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 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 MCAI EASA AD 2006–0317, dated October 16, 2006, and Allstar PZL Glider Sp. Z o.o. Mandatory Service Bulletin No. BE–057/SZD–50–3/2006 ''PUCHACZ'', dated October 16, 2006, for related information.

Issued in Kansas City, Missouri, on December 27, 2006.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–9988 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26493; Directorate Identifier 2006–CE–78–AD]

RIN 2120–AA64

Airworthiness Directives; Alpha Aviation Design Limited (Type Certificate No. A48EU Previously Held by APEX Aircraft and AVIONS PIERRE ROBIN) Model R2160 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: ''an occurrence of inadvertent manipulation of the fuel shut-off control has been reported.'' The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 5, 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 proposed 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: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, MO, 64106; telephone: (816) 329–4146; 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 proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26493; Directorate Identifier 2006–CE–78–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD 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 proposed AD.

Discussion

The Civil Aviation Authority of New Zealand, which is the aviation authority for New Zealand, has issued AD DCA/R2000/32, Effective Date: June 29, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states: ''an occurrence of inadvertent manipulation of the fuel shut-off control has been reported.'' The MCAI requires installing a protector on the fuel shut-off control. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Robin Aviation (current type certificate responsibility with Alpha Aviation Design Limited) has issued Imperative Service Bulletin No. 180, dated March 20, 2001. 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 Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 10 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $400 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,800, or $480 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Alpha Aviation Design Limited (Type Certificate No. A48EU previously held by APEX Aircraft and AVIONS PIERRE ROBIN): Docket No. FAA–2006–26493; Directorate Identifier 2006–CE–78–AD

Comments Due Date

(a) We must receive comments by February 5, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model R2160 airplanes, serial numbers 1 through 378, that:

(1) Are certificated in any category; and

(2) Do not have Robin Aviation Modification No. 14 Fuel Shut-off Control Protector installed.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states: ''an occurrence of inadvertent manipulation of the fuel shut-off control has been reported.''

Actions and Compliance

(e) Do the following actions, unless already done: Within the next 200 hours time-in-

service after the effective date of this AD, install a protector on the fuel shut-off control according to the instructions of Robin Aviation Imperative Service Bulletin No. 180, dated March 20, 2001.

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: Karl Schletzbaum, Aerospace Engineer, 901 Locust, Room 301, Kansas City, MO 64106; telephone: (816) 329–4146; 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 MCAI Civil Aviation Authority AD DCA/R2000/32, Effective Date: June 29, 2006, and Robin Aviation Imperative Service Bulletin No. 180, dated March 20, 2001, for related information.

Issued in Kansas City, Missouri, on December 28, 2006.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–22623 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 47, 61, 63, and 65

[Docket No. FAA–2006–26714; Notice No. 06–21]

RIN 2120–AI43

Drug Enforcement Assistance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing changes to its airmen certification and aircraft registration requirements. Two years after the final rule becomes effective, paper pilot certificates may no longer be used to exercise piloting privileges. Five years after the final rule becomes effective, certain other paper airmen certificates, such as those of flight engineers and mechanics, may no longer be used to exercise the privileges authorized by those certificates. To exercise the privileges after those respective dates, the airmen would have to hold upgraded, counterfeit-resistant plastic certificates. Student pilots would not be affected. In addition, those who transfer ownership of U.S.-registered aircraft would have five days from the transaction to notify the FAA Aircraft Registry. Those who apply for aircraft registration would have to include their printed or typed name with their signature. These changes are responsive to concerns raised in the FAA Drug Enforcement Assistance Act. The purpose of the changes is to upgrade the quality of data and documents to assist Federal, State, and local agencies to enforce the Nation's drug laws.

DATES: Send your comments to reach us by March 6, 2007.

ADDRESSES: You may send comments, identified by Docket Number FAA–2006–, using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001. Note that mail delivery may be delayed due to security concerns.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

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 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark D. Lash, Civil Aviation Registry, Mike Monroney Aeronautical Center, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169, telephone (405) 954–4331.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA 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 adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. Please include the regulatory docket or amendment number on your comments, and if you mail or hand deliver your comments, send two copies. We will file all comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, in the public docket. The docket is available for public inspection before and after the comment closing date.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you mail your comments and want the FAA to acknowledge receipt of the comments, you must include with your comments a preaddressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–26714.'' We will date stamp the postcard and mail it to you.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process each request to examine or copy information marked as proprietary or confidential under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of this NPRM using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

On March 12, 1990, the FAA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (55 FR 9270). The NPRM proposed changes to certain requirements concerning registration of aircraft, certification of pilots, and penalties for registration and certification violations. The NPRM also announced non-rulemaking procedural changes. We intended the changes to correct deficiencies in our systems and procedures identified in the FAA Drug Enforcement Assistance Act of 1988 (Pub. L. 100–690) (hereafter, ''the Act''). The Act amended FAA's authorizing legislation (49 U.S.C. 40101 *et seq.*) to—

- Declare that it is FAA policy to assist law enforcement agencies in the enforcement of laws that regulate controlled substances, to the extent consistent with aviation safety;
- Modify the aircraft registration system to more effectively serve the needs of buyers and sellers of aircraft, drug enforcement officials, and other users of the system;
- Modify the pilot certification system to more effectively serve the needs of pilots and drug enforcement officials;
- Modify the system for processing major repair and alterations of fuel tanks and fuel systems on aircraft, to more effectively serve users of the system, including drug enforcement officials;
- Establish and collect the fees necessary to cover the costs of issuing aircraft registration certificates, issuing airman certificates for pilots, and processing forms for major repairs and alterations of fuel tanks and fuel systems of aircraft;
- Pursue civil actions and assess civil penalties for violations of the regulations governing registering aircraft and recording aircraft title documents; and
- Create criminal penalties for forgery of airman certificates, false marking of aircraft, and other aircraft registration violations and to make it unlawful for any person to knowingly and willingly operate an aircraft in violation of any requirement for display of navigation or anti-collision lights.

The comment period closed on May 11, 1990. We received 373 comments, very few of which expressed support for the proposed changes. For the most part, commenters believed that the proposed changes would impose burdens only on law-abiding citizens, while criminals would simply circumvent them. As a result, FAA decided to delay the rulemaking process to assess whether specific technological improvements to the FAA Civil Aviation Registry (the Registry) could meet the intent of the Act. We believe we have now fulfilled most requirements of the Act through changes to systems and procedures used by the Registry. For this reason, we have withdrawn the 1990 NPRM in its entirety. Readers interested in the specific actions we have taken to fulfill the requirements of the Act should refer to the notice withdrawing the 1990 NPRM (70 FR 72403, Dec. 5, 2005).

To complete our obligations under the Act, we are proposing to address two deficiencies noted in the Act and not fully addressed through changes made to the Registry. The first issue concerns the proper identification of pilots. Law enforcement agencies must be able to establish the true identity of those who hold pilot certificates. The second issue concerns the timely reporting of aircraft sales or other transfers of ownership. Law enforcement agencies must be able to determine who is the owner of an aircraft, particularly when ownership of the aircraft has recently been transferred. Later in this preamble, we describe the specific changes we are proposing to address these issues.

Related Rulemaking Activities

The FAA has two ongoing rulemaking activities that relate to airmen certificates and aircraft registration. This NPRM would bring closure to FAA actions related to the FAA Drug Enforcement Assistance Act. The second NPRM will address requirements of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458). While both cover issues concerning airmen certificates and aircraft registration, they are each driven by different requirements and circumstances.

During the process of preparing this NPRM for publication in late 2004, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004. Section 4022 (Improved Pilot Licenses) of that Act requires pilots' certificates be resistant to tampering, alteration, and counterfeiting. The FAA began issuing plastic certificates in July 2003 that are resistant to tampering, alteration, and counterfeiting. This NPRM would establish dates by which paper certificates may not be used to exercise the privileges authorized by the certificates. This will allow the FAA to also meet the first requirement of the Intelligence Reform Act and increase the security of airman certificates in a timely manner.

The Intelligence Reform Act also requires the inclusion of a photograph on pilots' certificates. The FAA is currently working on an NPRM that would establish the regulations and procedures necessary to implement this requirement. We expect to publish the NPRM in the near future. We have already completed a prototype for inclusion of a photograph on an airmen's certificate.

While this NPRM completes action by the FAA on the FAA Drug Enforcement Assistance Act, the FAA is continuing to evaluate other changes to improve data quality of the Registry, possibly

including periodic registration of aircraft. In a post-9/11 environment, there are important benefits that would result from a more up-to-date and accurate Registry.

Pilot Identification and Certification

Under our authorizing legislation, the FAA must issue an ''airman certificate'' to an individual when we find that the individual is qualified for, and physically able to perform the duties related to, the position authorized by the certificate. *See* 49 U.S.C. 44703. Sometimes people think of a pilot certificate when the words ''airmen certificate'' are used, even though there are many other categories of airmen. In this preamble, we use the term ''airman certificate'' to refer generally to all those who hold airmen certificates, including pilots, flight crewmembers other than pilots (such as flight engineers), and airmen other than flight crewmembers (such as air traffic control tower operators and mechanics). When we use the term ''pilot certificate'' in this preamble, we are referring only to pilots, not to student pilots, flight instructors, flight engineers, or ground instructors who are also regulated under part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61). The airman certificate must—

- Contain the name, address, and description of the individual to whom the certificate is issued;
- Contain any necessary terms, conditions, and limitations; and
- Specify the capacity in which the holder of the certificate may serve as an airman with respect to an aircraft.

The current regulations and procedures for getting an airman certificate usually require that an applicant pass both a knowledge test and a flight or practical test. The applicant sends the application and supporting documents to an FAA designee, who in turn sends the application to an FAA Flight Standards District Office for review. Alternatively, the applicant may appear before an FAA inspector in the District Office. The District Office forwards the documents to the Registry where the documents are reviewed for compliance with the regulations. If the Registry accepts the documents, it issues the airman certificate and mails it to the applicant.

The FAA Drug Enforcement Assistance Act amended section 44703 to direct the FAA to modify the system for issuing airman certificates to pilots to make the system more effective in serving the needs of pilots and officials responsible for enforcement of laws relating to the regulation of controlled substances. The Act identified a number of deficiencies and abuses that the modifications must address, including the use of counterfeit and stolen airman certificates by pilots and the submission of unidentifiable names of individuals on applications for registration of aircraft. The Act also amended section 44703 to require the FAA to prescribe regulations to address the abuses and deficiencies.

In 2002, the FAA revised the pilot certificate requirements of part 61 to require a person to carry photo identification when exercising the privileges of the pilot certificate and to present photo identification when requested by law enforcement officials. See 67 FR 65858, October 28, 2002. These changes address security and law enforcement concerns regarding the identification of pilots. Also, in July 2003, the FAA discontinued issuing paper airman certificates and began issuing airman certificates that incorporate a number of security features. The new certificates are made of high-quality plastic card stock and include micro printing, a hologram, and an ultraviolet-sensitive layer that contains certain words and phrases. These new certificates greatly reduce the ability to create counterfeit airman certificates.

As far as airman certificates issued since July 2003 are concerned, these measures address the problem of counterfeit and stolen airman certificates. However, there is no requirement that a holder of a paper airman certificate get a new plastic certificate. So the outstanding paper certificates are all subject to a higher risk of counterfeiting for the foreseeable future. If there were a requirement for a holder of a paper certificate to periodically get a re-issued certificate, such as is the case with driver's licenses issued by most States, the problem of potential counterfeiting would gradually diminish over time. However, there is currently no reissuance requirement for most airman certificates.

For this reason, the FAA is proposing that the holder of a paper pilot certificate may not exercise the privileges of the paper certificate after two years from the date of adoption of the final rule. After the two-year period, only an FAA-issued plastic pilot certificate may be used to exercise piloting privileges. The proposal would not revoke or otherwise cancel a paper certificate. It would simply require the pilot to have the plastic certificate to exercise the attendant privileges.

We believe that two years is a reasonable time to allow for the replacement of pilot certificates by those who want to act as a pilot after the two-year period without interruption. (A person may apply for a plastic certificate after the two-year period, but he or she would not be able to exercise piloting privileges until he or she obtained the plastic certificate.) We are assuming that applications for the plastic replacement certificate would be evenly spread out through the two-year period. If all pilots waited until close to the end of the two-year period to apply for the replacement certificate, there would undoubtedly be delays in processing and receipt of the new certificate. The two-year period balances our ability to receive and process applications for replacement certificates, to maintain our existing range of services, and to reduce the risk of counterfeiting of paper certificates.

To effect this change, we are proposing to add new 14 CFR 61.19(h), titled, ''Duration of pilot certificates.'' Readers should note that the NPRM would not require a holder of a paper pilot certificate to surrender the certificate when getting the new plastic certificate. The paper certificate would not authorize the holder to exercise piloting privileges, but those who wish to retain it may do so. The fee for replacing an existing paper certificate would be $2.00. This nominal fee would defray part of the Registry's cost of replacing the approximately 440,000 existing paper pilot certificates. At the same time, the $2.00 fee would not be an undue burden on individuals. The NPRM would not apply to student pilot certificates or flight instructor certificates. Under existing regulations, these certificates expire 24 calendar months from the month in which they are issued or renewed. See 14 CFR 61.19(b) and (d).

We are also proposing that ground instructors, flight crewmembers other than pilots (regulated under 14 CFR part 63) and airmen other than flight crewmembers (regulated under 14 CFR part 65) who hold paper airmen certificates may not exercise the privileges of the paper certificates after five years from the effective date of the final rule. After the five-year period, only an FAA-issued plastic airmen certificate could be used to exercise these privileges. The proposal would not revoke or otherwise cancel a paper certificate. It would simply require the airman to have the plastic certificate to exercise the attendant privileges.

Although the FAA Drug Enforcement Assistance Act only addressed pilot certificates, we are proposing a parallel change for these other airmen certificates under the FAA's general rulemaking authority. Ground instructors and part 63 and part 65

airmen play an essential role in the functioning of the civil aviation system. We would be remiss if we did not also seek to address any potential problems associated with accurate identification of these airman certificate holders. A mechanic or flight engineer would have access to aircraft and have opportunities to participate in drug smuggling activities, such as concealment of drugs on the aircraft.

To effect these changes, we are proposing to revise existing 14 CFR 61.19(e) and add new 14 CFR 63.15(d) and 65.15(d). As is the case with pilot certificates, replacement of these certificates would cost the holder $2.00. To make the replacement process as quick and easy as possible, the Registry has recently set up a system that allows a certificate holder to request a replacement certificate using the Internet. Certificate holders may access this system by going to the following address: *https://amsrvs.registry.faa.gov/amsrvs.*

Aircraft Registration

Under the FAA's authorizing legislation, a person may operate an aircraft in the United States only when the aircraft is registered under 49 U.S.C. 44103, with three exceptions. One exception allows operation of an aircraft for a reasonable period of time after transfer of ownership until the new owner completes the registration process. See 49 U.S.C. 44101(b)(3).

The current regulations for aircraft registration (14 CFR part 47) require an aircraft seller to fill in the reverse side of the aircraft registration certificate with the name and address of the buyer and return it to the Registry in Oklahoma City. To operate the newly purchased U.S. civil aircraft, the buyer must complete an application for aircraft registration and send it with evidence of ownership, such as a bill of sale, to the Registry (§ 47.31(a)). Once the Registry examines the application and supporting documents for legibility and compliance with part 47, it issues an aircraft registration certificate to the new owner. It typically takes 30 to 40 days to issue an aircraft registration certificate if there are no complications. During this review period (or for up to 90 days), the buyer may operate the aircraft under temporary authority by retaining a duplicate copy of the registration application—the so-called ''pink slip.'' The buyer must carry the pink slip in the aircraft as evidence of temporary authority to operate the aircraft without a certificate of registration. The buyer can take advantage of this temporary operating authority only after sending the aircraft registration package to the Registry (§ 47.31(b)). The current requirements, including the ability to operate an aircraft under temporary authority based on the pink slip, were established to provide a smooth transfer of ownership that would not unduly restrict operation of the aircraft during processing of an application for registration.

The Act authorizes the FAA to modify the system for registering and recording conveyances to make the system more effective in serving the needs of buyers and sellers of aircraft and of officials responsible for enforcement of laws relating to the regulation of controlled substances. See 49 U.S.C. 44111. The Act identified a number of deficiencies and abuses that the modifications must address, including the practice of allowing temporary operation and navigation of aircraft without issuance of a certificate of registration and submission of unidentifiable names of individuals on applications for registration of aircraft. The Act also authorized the FAA to prescribe regulations to address the abuses and deficiencies.

The FAA has taken a number of steps to address the period after sale or transfer of ownership and before application is made for registration. A document index is now available on-line at the Registry Web site (*http://registry.faa.gov*) or through an inquiry to the FAA Law Enforcement Assistance Program. The index, which is updated daily, tells whether the Registry has received documents related to a specific aircraft. The FAA Law Enforcement Assistance Program can retrieve all documents associated with an aircraft in a matter of minutes. If there is any question as to the ownership of an aircraft, the documents can be forwarded to the appropriate law enforcement organization.

If law enforcement personnel are questioning the operator of an aircraft who is using a pink slip, they can check the document index to determine if documents have been received for that aircraft. If no documents are shown in the index, then there is increased likelihood the aircraft is being operated in an unauthorized manner. Also, the entire aircraft registry database is available on-line at the Registry Web site. When an aircraft is sold, the seller must notify the Registry of the sale, and the Registry identifies the aircraft as ''sale reported'' until it processes the buyer's registration application. The Registry updates this information daily. Anyone can check an aircraft's registration through the Registry Web site to see if the aircraft is identified as ''sale reported.'' The Registry contains over 25 million pages of aircraft information in digital format.

Our current regulations at 14 CFR 47.31(a) require each applicant for aircraft registration to send the registration application to the Registry. Paragraph (b) of the same section allows the applicant to carry the pink slip in the aircraft as temporary authority to operate it *after complying with paragraph (a).* (Emphasis added.) To use the pink slip as temporary operating authority, the aircraft operator must have already sent the registration application to the Registry. It is not legal to operate the aircraft under a pink slip if the operator has not sent the registration application to the Registry.

In spite of current regulatory requirements and the administrative actions we have taken, as outlined above, we still have a concern about the accuracy of ownership information contained in the Registry. Those who transfer ownership of U.S.-registered aircraft may not be notifying the Registry of the transfer in a timely fashion. The effectiveness of the Registry's document index and aircraft registry database depends on the accuracy and timeliness of the information they contain. If a law enforcement agency investigating an aircraft goes to the index or the database for ownership information, and the information does not reflect a recent transfer of ownership, the investigation may be stymied or delayed. For this reason, we are proposing an amendment to 14 CFR 47.41(b) that would require the person selling, or otherwise transferring ownership of, a U.S.-registered aircraft to return the certificate of aircraft registration to the Registry within five days of sale or transfer.

We believe that five days is a reasonable amount of time to complete the reverse side of the certificate and send it to the Registry. It achieves a balance between our need to have accurate, up-to-date information in the Registry for the use of law enforcement agencies and our desire not to unduly burden individuals. We specifically request comments from the public, particularly owners of U.S.-registered aircraft, concerning whether this is a reasonable time frame.

To address the problem of the submission of illegible names of individuals on applications for registration of aircraft, we are proposing to require each applicant to provide a printed or typed name with his or her signature. The Registry has already included this requirement in the instructions for completing the aircraft registration application. We are

proposing to add it to our regulations to bolster our authority to reject applications that contain illegible names. To effect this change, we are modifying a previously undesignated portion of 14 CFR 47.31 that appears between existing paragraphs (a) and (b). Currently, the FAA rejects an application if it is not completed or if the name and signature on the application are not the same throughout. Under this proposal, the currently undesignated provision would become new 14 CFR 47.31(b) and would include the requirement for a printed or typed name under the signature. Existing paragraphs (b) and (c) would be redesignated as paragraphs (c) and (d).

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Drug Enforcement Assistance.

Summary: Two years after the final rule becomes effective, paper pilot certificates may no longer be used to exercise piloting privileges. Five years after the final rule becomes effective, certain other paper airmen certificates, such as those of flight engineers and mechanics, may no longer be used to exercise the privileges authorized by those certificates. To exercise the privileges after those respective dates, the airmen would have to hold upgraded, counterfeit-resistant plastic certificates.

Use: These changes are responsive to concerns raised in the FAA Drug Enforcement Assistance Act. The purpose of the changes is to upgrade the quality of data and documents to assist Federal, State, and local agencies to enforce the Nation's drug laws.

Respondents (including number of): The FAA estimates that there are 900,000 active airmen, of which 450,000 are pilots.

Frequency: This is a one-time requirement.

Annual Burden Estimate: Each airman having a paper certificate would need to provide the FAA, the Airmen Certification Branch at the Civil Aviation Registry, with the appropriate paperwork. This can be done either through the mail or electronically. The fee for this new replacement certificate is $2. The FAA assumes that it will take no more than five minutes for each airman to process the paperwork; the total cost to each airman would be about $3. Five-year costs range from $2.80 million ($2.42 million, discounted) to $4.43 million ($3.82 million, discounted).

The agency 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 through the use of 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 requirement by March 6, 2007, and should direct them to the address listed in the **ADDRESSES** section of this document. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for FAA.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, FAA's policy is to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Economic Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

In conducting these analyses, FAA has determined this rule: (1) Has benefits that justify its costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, but is ''significant'' under DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not affect international trade; and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Total Costs and Benefits of This Rulemaking

Total estimated costs, over five years, to replace paper certificates with plastic, range from a low of $3.73 million ($3.22 million, discounted) to $5.91 million ($5.09 million, discounted). These are the estimated costs that the rule would impose on the government and the private sector by requiring replacement of paper certificates with plastic.

Reliable data is not available upon which to quantify benefits. However, this proposed rule is mandated by statute; consequently, the American people, through their elected officials, have established that the benefits justify the costs.

Who Is Potentially Affected by This Rulemaking

Private Sector

All airmen who currently have paper certificates that want to continue to be able to exercise those privileges.

Government

The Civil Aviation Registry would need to process an estimated 545,900 to 863,900 certificates because of the rule.

Our Cost Assumptions and Sources of Information

- Discount rate—7%;
- Period of analysis—2006 through 2010;
- All monetary values are expressed in 2005 dollars;
- There are currently 900,135 paper certificates for airmen—of these, almost 450,000 are pilots, while the balance are other airmen; all but those that would normally be issued for replacement and additional ratings without the proposed rule and those that are currently held by certified flight instructors (CFI) would need to be replaced by the rule.
- By the start of 2006 the FAA estimates that the number of paper certificates would be reduced to 863,859 because pilots and airmen are currently being issued plastic certificates due to replacements and additional ratings.
- The FAA assumes that an equal number of certificates would be replaced each year. For pilots, approximately 208,700 would be replaced in each of the first two years, and for all other airmen, approximately 89,300 would be replaced each year;
- The FAA considered a low cost and high cost scenario.
- The time for an airman to fill out the Pilot Certificate Reissuance Form is five minutes. The FAA believes that the actual amount of time is probably less than this, but is using five minutes uniformly so as to be conservative and not underestimate costs;
- Airman's time is costed out at $37.76 per hour;
- An FG–10 time is costed out at $33.09 per hour; and
- An FG–6 time is costed out at $22.11 per hour.

Low Cost Scenario Assumptions

- Not all replacements can be attributed to the rule.
- The FAA assumes that approximately 56,200 airmen certificates would be replaced each year without the rule.
- In addition, the FAA assumes that approximately 48,000 certificates would be issued annually for additional ratings on an existing certificate.
- 65% of both the replacement and new certificates issued for additional ratings are for pilots.
- Without the rule, each year approximately 36,500 pilot certificates would be replaced and approximately 31,200 pilot certificates would be issued for additional ratings. Of the approximately 208,700 pilot certificates that must be replaced, approximately 67,800 would be replaced without the rule and therefore approximately 140,900 would have to be replaced because of the rule in each of the first two years.
- 35% of both the replacement and new certificates issued for additional ratings are for other airmen.
- Without the rule, each year approximately 19,700 other airmen certificates would be replaced and approximately 16,800 other airmen certificates would be issued for additional ratings. Of the approximately 89,300 other airmen certificates that would be replaced each year, approximately 36,500 would be replaced without the rule and approximately 52,800 would have to be replaced because of the rule in each of the first five years.

High Cost Scenario Assumption

- Assumes that airmen would not replace or upgrade paper certificates without the rule.

Benefits of This Rulemaking

Congress has determined that, at the present time, the smuggling of drugs into the United States by general aviation aircraft is a major contributing factor in the illegal drug crisis facing the nation. As a result of that determination, the Congress expanded the mission of the FAA to include assisting law enforcement agencies in the enforcement of laws regulating controlled substances, to the extent consistent with aviation safety.

The Congress has stated in the Drug-Free America Policy of the Drug Enforcement Assistance Act of 1988 that the total cost of drug use to the economy is estimated to be over $100 billion annually. Were this rule to reduce society's economic cost of drug use by approximately 1/85,000th for the high cost scenario or 1/134,000th for the low cost scenario over five years, that achievement would approximately equal the estimated cost to society of these regulatory changes. The FAA believes that such a reduction is achievable. Congress, which reflects the will of the American public, has determined that this proposed action is in the best interest of the nation.

Costs of This Rulemaking

The FAA assumes that an equal number of paper airmen certificates will be replaced each year. The FAA projects that there will be about 417,300 pilots who will still hold paper certificates at the start of 2006, so the FAA assumes that about 208,700 would get their new plastic certificate in 2006 and in 2007. Excluding the CFI's, about 446,500 other individuals with airman certificates would need to replace their certificates over a 5 year period, or about 89,300 a year.

The FAA has considered two cost scenarios. The first low cost scenario assumes that, since some airmen have been replacing their paper certificates with the new plastic certificates either because they have requested replacement certificates or because they have received new certificates after attaining additional ratings, they would continue to do so without the rule. The cost that these pilots would incur to replace their certificates cannot be considered a cost of the proposed rule, since they would replace their certificates without the rule. The second high cost scenario assumes that no pilots or airmen would replace their paper certificates with plastic certificates unless the rule required them to do so.

Low Cost Scenario

In this scenario, we assume that without the rule, approximately 36,500 pilots and about 19,700 other airmen would replace their certificates annually. Further, some airmen acquire a new certificate because they earn additional ratings. We estimate that approximately 31,200 pilots and about 16,800 other airmen would earn additional ratings annually and be issued a new plastic certificate to reflect these additional ratings. Since this would occur regardless of the proposed rule, the cost to replace these certificates would not be considered a cost of the rule.

To summarize, approximately 67,800 pilots would acquire plastic certificates annually regardless of the proposed rule. In each of the first two years, approximately 140,900 pilots would have to replace their certificates because of the proposed rule (208,700 minus 68,000). In addition, approximately 36,500 other airmen would acquire plastic certificates annually regardless of the proposed rule. In each of the first five years, approximately 52,800 other airmen would have to replace their certificates because of the proposed rule (89,300 minus 36,500). This scenario may underestimate costs because it assumes that replacements and upgrades that would occur regardless of the proposed rule would always replace paper certificates. However, once paper certificates become replaced with plastic, some of the later replacements/upgrades not related to the rule, would

involve replacement/upgrades of plastic certificates.

High Cost Scenario

In this scenario the FAA assumes that there would be no replacements or upgrades without the rule and that the cost of the proposed rule would be the cost to replace all paper certificates that exist as of the start of 2006 (which is when we assume the rule will take effect). Therefore, the FAA assumes that in each of the first two years, approximately 208,700 pilots would have to replace their paper certificates with plastic, and that these costs are attributed completely to the proposed rule. The FAA also assumes that in each of the first five years, approximately 89,300 other airmen would have to replace their paper certificates with plastic because of the proposed rule. This is an extremely conservative scenario, which overestimates cost.

Costs

There are two sets of costs associated with replacing the current paper certificates, one for airmen and one for the Government.

Airmen Costs

Each airman having a paper certificate would need to provide the FAA, the Airmen Certification Branch at the Civil Aviation Registry with the appropriate paperwork. This can be done either through the mail or electronically. The fee for this new replacement certificate is $2. The FAA assumes that it will take no more than five minutes for each airman to process the paperwork; the total cost to each airman would be about $3. Five-year costs range from $2.87 million ($2.47 million, discounted) to $4.54 million ($3.90 million, discounted). The lower cost represents the low cost scenario; the higher cost represents the high cost scenario.

Government Costs

There are several steps involved with the FAA processing a request for a duplicate airman certificate. These steps include different grade levels and/or contract costs and includes Legal Instruments Examiners as well as contractors who would preprocess and scan the images, index the image, review the certificate for accuracy, and print and mail the certificates. The total costs per new certificate sum to $3.59. However, airmen would pay $2 for the certificate and therefore the net cost to the government would be $1.59 per certificate; five-year costs range from $867,900 ($749,300, discounted) to $1.37 million ($1.18 million discounted). The lower cost represents the low cost scenario; the higher cost represents the high cost scenario.

Total costs, over five years, to replace the existing paper certificates range from $3.73 million ($3.22 million, discounted) to $5.91 million ($5.09 million, discounted). The lower cost represents the low cost scenario; the higher cost represents the high cost scenario.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule affects aircraft owners, through part 47, and pilots, through parts 61, 63, and 65.

The change to part 47 would affect all aircraft owners. However, as stated above, they have always been required to send in the registration package upon purchase of a new aircraft; this proposal does not impose any new requirements on new aircraft owners. Accordingly, there are no additional costs for these owners.

The changes to parts 61, 63, and 65 would impose an estimated $5 in compliance costs on pilots applying for certificate reissuances. This cost covers the costs for the postage, applicant's time, and the $2 reissuance fee charged to pilots. However, pilots are not small entities and are not covered by the Regulatory Flexibility Act. The FAA recognizes that there are one-man businesses that provide aviation services; however, the cost of this proposed rule to them would be negligible and, therefore, not significant.

Thus, the FAA certifies that this proposal would not have a significant economic impact on a substantial number of small entities.

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. The FAA has assessed the potential effect of this NPRM and has determined that it would have only a domestic impact and therefore no affect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) 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 an expenditure of $100 million or more (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.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this NPRM under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this NPRM does not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 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 the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 47

Aircraft, Reporting and recordkeeping requirements.

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Teachers.

14 CFR Part 63

Aircraft, Airmen, Alcohol abuse, Drug abuse, Navigation (air), Reporting and recordkeeping requirements.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Drug abuse, Reporting and recordkeeping requirements.

The Proposed Amendments

In consideration of the foregoing the Federal Aviation Administration proposes to amend Chapter I of Title 14 Code of Federal Regulations as follows:

PART 47—AIRCRAFT REGISTRATION

1. The authority citation for part 47 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113–40114, 44101–44108, 44110–44111, 44703–44704, 44713, 45302, 46104, 46301; 4 U.S.T. 1830.

2. Redesignate existing paragraphs (b) and (c) as (c) and (d) and the undesignated text following paragraph (a)(3) is designated as a new paragraph (b) and revised to read as follows:

§ 47.31 Application.

* * * * *

(b) The FAA rejects an application when—

(1) Any form is not completed;

(2) The name and signature of the applicant are not the same throughout; or

(3) The applicant does not provide a legibly printed or typed name with the signature in the signature block.

* * * * *

3. Amend § 47.41 by revising paragraph (b) to read as follows:

§ 47.41 Duration and return of Certificate.

* * * * *

(b) The Certificate of Aircraft Registration, with the reverse side completed, must be returned to the FAA Aircraft Registry—

(1) Within 5 days in the case of registration under the laws of a foreign country, by the person who was the owner of the aircraft before foreign registration;

(2) Within 60 days after the death of the holder of the certificate, by the administrator or executor of his estate, or by his heir-at-law if no administrator or executor has been or is to be appointed; or

(3) Within 5 days of the termination of the registration, by the holder of the Certificate of Aircraft Registration in all other cases mentioned in paragraph (a) of this section.

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

4. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

5. Amend § 61.19 by:

A. Revising paragraph (e); and

B. By adding new paragraph (h) to read as follows:

§ 61.19 Duration of pilot and instructor certificates.

* * * * *

(e) *Ground instructor certificate.*

(1) A ground instructor certificate issued under this part is issued without a specific expiration date.

(2) The holder of a paper certificate issued under this part may not exercise the privileges of that certificate after [DATE 5 YEARS AND 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

* * * * *

(h) *Duration of pilot certificates.* The holder of a paper certificate issued under this part may not exercise the privileges of that certificate after [DATE 2 YEARS AND 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

7. Amend § 63.15 by adding new paragraph (d) to read as follows:

§ 63.15 Duration of certificates.

* * * * *

(d) The holder of a paper certificate issued under this part may not exercise the privileges of that certificate after [DATE 5 YEARS AND 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

8. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

9. Amend § 65.15 by adding new paragraph (d) to read as follows:

§ 65.15 Duration of certificates.

* * * * *

(d) The holder of a paper certificate issued under this part may not exercise the privileges of that certificate after [DATE 5 YEARS AND 30 DAYS FROM

DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Issued in Washington, DC, on December 27, 2006.

James Ballough,

Director, Flight Standards Service.

[FR Doc. 06–9989 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2004P–0464]

Food Labeling: Health Claims; Calcium and Osteoporosis, and Calcium, Vitamin D, and Osteoporosis

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulation authorizing a health claim on the relationship between calcium and a reduced risk of osteoporosis to: Include vitamin D so that, in addition to claims for calcium and osteoporosis, additional claims can be made for calcium and vitamin D and osteoporosis; eliminate the requirement in § 101.72(c)(2)(i)(A) (21 CFR 101.72(c)(2)(i)(A)) that the claim list sex, race, and age as specific risk factors for the development of osteoporosis; eliminate the requirement in § 101.72(c)(2)(i)(B) that the claim does not state or imply that the risk of osteoporosis is equally applicable to the general U.S. population, and that the claim identify the populations at particular risk for the development of osteoporosis; eliminate the requirement in § 101.72(c)(2)(i)(C) that the claim identify the mechanism by which calcium reduces the risk of osteoporosis and instead make it optional; and eliminate the requirement in § 101.72(c)(2)(i)(E) that the claim include a statement that reflects the limit of the benefits derived from dietary calcium intake, when the level of calcium in the food exceeds a set threshold level. FDA is taking these actions, in part, in response to a health claim petition submitted by The Beverage Institute for Health and Wellness, LLC. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing certain proposed amendments to a proposed rule that published in the **Federal Register** of December 21, 1995 (60 FR 66206) related to the calcium and osteoporosis health claim.

DATES: Submit written or electronic comments by March 21, 2007.

ADDRESSES: You may submit comments, identified by Docket No. 2004P–0464, 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(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may 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(s), 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: Jillonne Kevala, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1450.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Petition and Grounds for Amending the Health Claim on Calcium and Osteoporosis
  A. The Petition
  B. Nature of the Substance
III. Review of Scientific Evidence of the Substance-Disease Relationship
  A. Basis for Evaluating the Relationship between Calcium and Vitamin D and Osteoporosis
  B. Review of the Scientific Evidence of the Substance-Disease Relationship
IV. Decision to Amend the Calcium and Osteoporosis Health Claim
  A. Addition of Vitamin D
  B. Amendments to the Calcium and Osteoporosis Health Claim Other than the Inclusion of Vitamin D
  C. Elimination of the Requirement to List Race, Age and Sex as Risk Factors for the Development of Osteoporosis
  D. Elimination of the Requirement that the Claim Not State or Imply that the Risk of Osteoporosis is Equally Applicable to the General Population, and that the Claim Identify the Populations at Particular Risk for the Development of Osteoporosis
  E. Elimination of the Requirement that the Claim Identify the Mechanism by Which Calcium Reduces the Risk of Osteoporosis
  F. Elimination of the Requirement in § 101.72(c)(2)(i)(E) that Certain Products Bearing the Claim Include a Statement that Reflects the Limits on the Benefits from Calcium
V. Description of Modifications to § 101.72
  A. Title of the Regulation
  B. General Requirements
VI. Analysis of Economic Impacts
  A. Preliminary Regulatory Impact Analysis
  B. Small Entity Analysis (or Initial Regulatory Flexibility Analysis)
VII. Environmental Impact
VIII. Paperwork Reduction Act
IX. Federalism
X. Comments
XI. References

I. Background

The Nutrition Labeling and Education Act of 1990 (NLEA) (Public Law 101–535) amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. The NLEA clarified FDA's authority to regulate health claims on food labels and in food labeling by amending the act to add section 403(r) to the act (21 U.S.C. 343(r)). Section 403(r) specifies, in part,

that a food is misbranded if it bears a claim that expressly or by implication characterizes the relationship of a nutrient to a disease or health-related condition unless the claim is made in accordance with section 403(r)(3) (for conventional foods) or 403(r)(5)(D) (for dietary supplements).

The NLEA directed FDA to issue regulations authorizing health claims (i.e., labeling claims that characterize the relationship of a substance to a disease or health-related condition) for conventional foods only if the agency determines, based upon the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement (SSA), among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence (21 U.S.C. 343(r)(3)(B)(i)). Congress delegated to FDA the authority to establish the procedure and standard for health claims for dietary supplements (21 U.S.C. 343(r)(5)(D)).

FDA issued regulations establishing general requirements for health claims in labeling for conventional foods (58 FR 2478; January 6, 1993). By regulation (59 FR 395; January 4, 1994), and under Congressional authority,[1] FDA adopted the same general requirements, including the procedure and standard, for health claims in dietary supplement labeling that Congress had prescribed in the NLEA for health claims in the labeling of conventional foods. (See 21 U.S.C. 343(r)(3) and (r)(4)).

The regulations require the evidence supporting a health claim to be presented to FDA for review before the claim may appear in labeling (§§ 101.14(d) and (e) and 101.70 (21 CFR 101.14(d) and (e) and 21 CFR 101.70)). The standard requires a finding of ''significant scientific agreement'' (SSA) before FDA may authorize a health claim by regulation (§ 101.14(c)).

Among its provisions regulating claims, the NLEA required FDA to determine whether claims respecting 10 specific substance/disease relationships met the requirements for a health claim (NLEA section 3(b)(1)(A)(vi) and (x), Public Law 101–535). The relationship between calcium and a reduced risk of osteoporosis was one of those 10 nutrient/disease relationships. On March 28, 1991, FDA published a notice in the **Federal Register** requesting scientific data and information on the 10 specific topic areas identified (56 FR 12932). Scientific studies and data received in response to the notice, that were relevant to the agency's review, were considered as part of the agency's review of the scientific literature on calcium and osteoporosis and were included in the proposed rule for the calcium and osteoporosis health claim for use on foods, including dietary supplements (56 FR 60689; November 27, 1991) (the 1991 proposed rule). Before publication of the calcium and osteoporosis final rule (58 FR 2665; January 6, 1993), the agency reviewed any scientific research and review articles relevant to calcium intake and osteoporosis that became available after publication of the proposed rule and concluded that the new studies were consistent with the tentative conclusions drawn in the 1991 proposed rule (58 FR 2665 at 2672). Thus, in the calcium and osteoporosis final rule FDA concluded that, based on the totality of the publicly available scientific evidence, there was significant scientific agreement among qualified experts that a health claim for calcium and a reduced risk of osteoporosis was supported by the evidence (id.) (Codified in § 101.72 (21 CFR 101.72)).

In December of 1995, in response to citizen petitions submitted by the National Food Processors Association (Docket No. 1994P–0390) and the American Bakers Association (Docket No. 1995P–0241), FDA proposed to amend its regulations on health claims and nutrient content claims to provide more flexibility in the use of these claims on food products (60 FR 66206; December 21, 1995) (the 1995 proposal). This document discussed many proposed amendments to FDA regulations intended to benefit public health by encouraging manufacturers to use health claims and nutrient content claims to assist consumers in maintaining healthy dietary practices. In the 1995 proposal, FDA proposed, among other things, certain amendments to simplify the current required claim language for the calcium and osteoporosis health claim in § 101.72.

In response to requests by stakeholders and other FDA initiatives and developments, the agency reopened the comment period for the 1995 proposal several times. The most recent reopening of the comment period was announced in the **Federal Register** on May 4, 2004 (69 FR 24541), and the comment period was open until July 6, 2004. Because many of the amendments in the 1995 proposal are similar to or exactly the same as those requested by The Beverage Institute for Health and Wellness in their health claim petition, and that FDA is proposing herein, the agency considered the comments submitted in response to the 1995 proposal in the development of this proposed rule. Comments on other aspects of the 1995 proposal are not considered in this proposed rule. Elsewhere in this issue of the **Federal Register**, the agency is withdrawing the part of the 1995 proposed rule related to the calcium and osteoporosis claim language.

II. Petition and Grounds for Amending the Health Claim on Calcium and Osteoporosis

A. The Petition

On July 12, 2004, the agency received a health claim petition submitted by The Beverage Institute for Health and Wellness (the petitioner) under section 403(r)(4) of the act.[2] The petitioner noted that the agency already has an authorized health claim (§ 101.72) on the ability of calcium to reduce the risk of osteoporosis among teen and young adult white and Asian women who engage in regular physical activity, and stated that they believed that there was now significant scientific agreement to support authorization of an expanded osteoporosis health claim that includes vitamin D and eliminates the restrictive language regarding age, race, gender, and physical activity. The petitioner also noted that FDA had already proposed most of the petitioner's proposed amendments in the 1995 proposal (60 FR 66206).

Specifically, the petitioner's proposed amendments to § 101.72 would: (1) Include vitamin D so that, in addition to claims for calcium and osteoporosis, additional claims can be made for calcium and vitamin D and osteoporosis; (2) eliminate the required claim language in § 101.72(c)(2)(i)(A) regarding race, age, gender, and the need for physical activity; (3) eliminate the requirement in § 101.72(c)(2)(i)(B) that the claim identify the population at particular risk for osteoporosis; (4) eliminate the requirement in § 101.72(c)(2)(i)(C) that the claim identify the mechanism by which calcium reduces the risk of osteoporosis and instead make this information

[1] FDA issued regulations establishing general requirements for health claims in dietary supplement labeling (59 FR 395) under the NLEA and the Dietary Supplement Act of 1992 (Public Law 102–571).

[2] Although the petitioner cited only section 403(r)(4) of the act, which applies to the use of the claim on conventional foods, the agency is including within its review the use of the claim in dietary supplement labeling under section 403(r)(5)(D) of the act. This is consistent with the calcium and osteoporosis health claim in § 101.72, which applies to both conventional food and dietary supplements.

optional; (5) simplify the language used in the claim; and (6) increase the amount of calcium present in the food (from 400 milligrams (mg) of calcium per reference amount customarily consumed or per daily recommended supplement intake to more than 1,500 mg calcium per day) before the claim must include a statement that reflects the limit on the benefit derived from dietary calcium intake. The petitioner concluded that amending the osteoporosis and calcium health claim in the above manner would provide the availability of a simplified, understandable health claim that would allow food manufacturers to help address the public health issue of osteoporosis by educating consumers about the importance of both vitamin D and calcium in reducing the risk of osteoporosis in later life (Ref. 1). Finally, the petitioner requested that the agency exercise its authority under section 403(r)(7) of the act to make any proposed regulation based on their petition effective upon publication, pending consideration of public comment and publication of a final rule.

On October 20, 2004, we notified the petitioner that we had completed our initial review of the petition and that the petition had been filed for further action (Docket No. 2004P–0464, Let 1) in accordance with section 403(r)(4) of the act. The October 20, 2004, letter stated that if the agency did not act, by either denying the petition or issuing a proposed regulation to authorize the health claim, within 90 days of the date of filing, the petition would be deemed to be denied unless an extension was mutually agreed upon by the agency and the petitioner (section 403(r)(4)(A)(i) of the act and § 101.70(j)(3)(iii)). FDA and the petitioner agreed to extend the publication date of a regulation until January 18, 2007 (Docket No. 2004P–0464, Let 6).

B. Nature of the Substance

The petition requested, among other things, that FDA amend the calcium and osteoporosis health claim (§ 101.72) to include vitamin D so that, in addition to claims for calcium and osteoporosis, claims can be made for calcium and vitamin D and osteoporosis. Thus, FDA considered two substances that are the subject of the petition: (1) Calcium and (2) calcium and vitamin D. Unless specified, the term 'vitamin' D means D_2 (ergocalciferol), D_3 (cholecalciferol) or a combination of vitamin D_2 and D_3.

C. Review of the Preliminary Requirements

1. The Substance is Associated With a Disease for Which the U.S. Population is at Risk

Osteoporosis, which is defined as a skeletal disorder characterized by compromised bone strength, continues to be a major public health problem in the United States, even after authorization of the calcium and osteoporosis health claim in 1993. The continued public health problem is reflected, in part, by the observation that the number of bone fractures in the United States has increased as well as the direct medical costs required to treat osteoporosis (Ref. 2). The petitioner stated that in 2002 the National Osteoporosis Foundation estimated that approximately 44 million men and women in the United States had low bone density or osteoporosis and that this value was projected to increase to more than 61 million by 2020 (Ref. 3). White and Asian women are the most susceptible to chronic bone disease, but the petitioner noted that the condition was also prevalent among African Americans (Ref. 3). Five percent of the African American U.S. population (more than 13 million people) are currently thought to have osteoporosis compared to 20 percent for White and Asian women (Ref. 3). The incidence of low bone mineral density in 2002 for African Americans and White and Asian women was estimated to be 35 and 52 percent, respectively (Ref. 3). The direct care expenditures resulting from osteoporosis range from 12.2 to 17.9 billion dollars each year measured in 2002 dollars (Ref. 4).

FDA agrees with the petitioner that, as required in § 101.14(b)(1), osteoporosis is a disease for which the U.S. population is at risk.

2. The Substances are Components of Food

A health claim characterizes the relationship between a substance and a disease or a health-related condition (§ 101.14(a)(1)). A substance means a specific food or a component of food, regardless of whether the food is in conventional food form or a dietary supplement (§ 101.14(a)(2)). The petition identified calcium and vitamin D as a new substance for consideration in the calcium and osteoporosis health claim. Calcium, one of the essential nutrients for humans, is a component of milk and milk products (approximately 300 mg per serving), as well as other food sources (e.g., Chinese cabbage, kale, and broccoli) (Ref. 5). Vitamin D is naturally present in a small number of foods, such as some fish liver oils, the flesh of fatty fish, the liver and fat from aquatic mammals such as polar bears and seals, and eggs from hens that have been fed vitamin D (Ref. 6). Therefore, the agency concludes that calcium and vitamin D, are components of food and meet the definition of a substance in the health claim regulation.

Health claim general requirements provide that where a substance is to be consumed at ''other than decreased dietary levels'' the substance must contribute taste, aroma, or nutritive value, or any other technical effect listed in 21 CFR 170.3(o), and must retain that attribute when consumed at levels necessary to justify the claim (§ 101.14(b)(3)(i)). Nutritive value as defined in § 101.14(a)(3) means a value in sustaining human existence by such processes as promoting growth, replacing loss of essential nutrients, or providing energy. Calcium and vitamin D are essential nutrients and thus provide nutritive value to the diet (Refs. 5 and 6) and retain that attribute when consumed at levels necessary to justify the claim. Therefore, FDA concludes that the requirement of § 101.14(b)(3)(i) is satisfied.

3. The Substances are Safe and Lawful

Under § 101.14(b)(3)(ii), if the substance is to be consumed at other than decreased dietary levels, the substance must be a food or a food ingredient whose use at levels necessary to justify a claim has been demonstrated by the proponent of the claim, to FDA's satisfaction, to be safe and lawful under the applicable food safety provisions of the act.

FDA evaluates whether the substance is ''safe and lawful'' under the applicable food safety provisions of the act. For conventional foods, this evaluation involves considering whether the ingredient that is the source of the substance is generally recognized as safe (GRAS), approved as a food additive, or authorized by a prior sanction issued by FDA. (See § 101.70(f).)

Dietary ingredients in dietary supplements are not subject to the food additive provisions of the act (see section 201(s)(6) of the act (21 U.S.C. 321(s)(6)). Rather, they are subject to the adulteration provisions in section 402 of the act (21 U.S.C. 342) and, if applicable, the new dietary ingredient provisions in section 413 of the act (21 U.S.C. 350b), which pertain to dietary ingredients that were not marketed in the United States before October 15, 1994. The term ''dietary supplement'' is defined in section 201(ff)(1) of the act and includes vitamins; minerals; herbs

and other botanicals; dietary substances for use by man to supplement the diet by increasing total daily intake; and concentrates, metabolites, constituents, extracts, and combinations of the preceding types of ingredients.

For dietary supplements, the applicable safety provisions require, among other things, that the dietary ingredient not present a significant or unreasonable risk of illness or injury under conditions of use recommended or suggested in labeling or, if no conditions of use are suggested or recommended in the labeling, under ordinary conditions of use (section 402(f)(1)(A) of the act). Further, a dietary supplement must not contain a poisonous or deleterious substance which may render the supplement injurious to health under the conditions of use recommended or suggested in the labeling (section 402(f)(1)(D) of the act).

The use of a health claim for calcium, or calcium and vitamin D, and osteoporosis is being evaluated for use on the labels and in the labeling of both conventional foods and dietary supplements. Thus, the agency is evaluating the safety and lawfulness of both calcium and vitamin D under the relevant provisions of the act for both conventional foods and for dietary supplements.

a. *Vitamin D*

The petitioner asserts that vitamin D_2 (ergocalciferol) and vitamin D_3 (cholecalciferol) have been affirmed as GRAS when used as a source of this nutrient for breakfast cereals, grain products and pastas, milk, and milk products according to § 184.1950(c)(1) (21 CFR 184.1950(c)(1)). Vitamin D may also be added to infant formula in accordance with section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)), and as an optional ingredient in margarine according to § 166.110 (21 CFR 166.110). The petitioner also asserts that FDA recently approved vitamin D_3 as a food additive that may be added in amounts up to 100 International Units (IU) per serving to 100 percent fruit juices (excluding those specifically formulated for infants) that are fortified with greater than 33 percent of the Reference Daily Intake (RDI) of calcium per reference amount customarily consumed (RACC) and to fruit drinks (excluding those specifically formulated for infants) that are fortified with greater than 10 percent of the RDI of calcium per RACC (68 FR 9000; February 27, 2003). As part of that rulemaking, FDA determined that persons 1 year of age or older would not be exposed to amounts of vitamin D greater than the Tolerable Upper Intake Levels (UL) after fortification of eligible juice products (68 FR 9000 at 9002). However, the agency did not allow vitamin D fortification of juice products specifically formulated for infants (id.). Thus, FDA concluded that the addition of vitamin D_3 to calcium-fortified fruit juices and juice drinks, excluding fruit juices and juice drinks specifically formulated or processed for infants, at levels not to exceed 100 IU per RACC is safe (68 FR 9000 at 9002).

FDA acknowledges that vitamin D_2 and vitamin D_3 have been affirmed as GRAS when used in breakfast cereals, grain products, pastas, milk and milk products at the intended levels (§ 184.1950) and that vitamin D_3 has been approved as a food additive to calcium-fortified 100 percent fruit juice and fruit drinks not intended for infants ((§ 172.380) (21 CFR 172.380)). FDA also acknowledges that vitamin D may be added to infant formulas in accordance with section 412(a)(2) of the act and to margarine as an optional ingredient (§ 166.110). Thus, the agency is satisfied that the petitioner has demonstrated that vitamin D may be lawfully used in conventional foods for the specific uses cited.

UL, as defined by the Institute of Medicine (IOM), are the highest levels of daily nutrient intake that are likely to pose no risks of adverse effects to almost all individuals in the general population (Ref. 7). The IOM has established a UL for vitamin D by life stage, gender, and age (Ref. 6). The IOM concluded that the most biologically important possible adverse effect of excessive vitamin D is hypercalcemia (i.e., an abnormally high concentration of calcium compounds in the circulating blood) due to hypervitaminosis D. Hypervitaminosis D is a condition resulting from the ingestion of an excessive amount of the fat-soluble vitamin D. Using hypercalcemia as the clinically defined endpoint, the IOM identified a no-observed-adverse-effect level (NOAEL) at 2,400 IU per day for adults. The IOM established 2,000 IU of vitamin D as the UL for individuals older than 18 years by dividing the NOAEL by an uncertainty factor of 1.2 to be conservative to account for uncertainties in the data set. The UL for individuals 1 through 18 years and pregnant and lactating women is specified as 2,000 IU per day (Ref. 6).

The most recent nationally representative data, 1988-1994 National Health and Nutrition Examination Survey (NHANES), found that the median intake vitamin D intake from foods, excluding dietary supplements, to be 164 IU/day for all individuals aged 2 months and older, excluding nursing infants (Ref. 8). Vitamin D can be obtained from dietary supplement sources as well as other food sources. Results from the NHANES 1988-1994 survey indicate that approximately 40 percent of the U.S. population, ages 2 months or older take dietary supplements and that the most frequent amount of vitamin D taken as a dietary supplement is 400 IU/day (Ref. 9).

Supplemental vitamin D can be obtained from multiple vitamin and mineral products, products where calcium and vitamin D are the only ingredients, or products where vitamin D is the sole ingredient (Ref. 9). Supplemental vitamin D can also be obtained from fish liver oils, such as cod liver oil (Ref. 10). Multiple vitamin and mineral supplement products generally contain 200 or 400 IU of vitamin D per RACC and recommend consumption of 1 serving per day. The RACC for dietary supplements is the maximum amount recommended as appropriate on the label for consumption per eating occasion, or in the absence of recommendations, one unit (i.e., one tablet, one capsule, one packet, one teaspoon etc. (see § 101.12(b) (21 CFR 101.12(b)) Table 2.—Reference Amounts Customarily Consumed Per Eating Occasion: General Food Supply [1, 2, 3, 4] (Table 2)). Calcium and vitamin D only products generally contain between 100 to 600 IU of vitamin D per RACC (Ref. 11). Calcium and vitamin D only products with a RACC of less than 400 IU of vitamin D recommend consumption of one to three servings per day and the recommended vitamin D intake does not exceed 600 IU per day. Calcium and vitamin D only products with an RACC of 400 IU of vitamin D or more recommend consumption of 1 serving per day and the recommended vitamin D intake does not exceed 1,000 IU per day (id.). Supplements that contain only vitamin D generally contain 400 to 1,000 IU per RACC, and recommend consumption of 1 serving per day (id). Cod liver oil products contain between 100 to 540 IU of vitamin D per RACC and the recommended vitamin D intake does not exceed 1,000 IU per day in these products (id.). Thus, the range of vitamin D intake from the various types of dietary supplement products generally varies from 100 to 1,000 IU/day. Only 7 percent of the products surveyed recommend consumption of 1,000 IU of vitamin D per day (id).

FDA has also considered the intake of vitamin D from food and dietary supplements among consumers of fruit juices and juice drinks, as part of its rulemaking in response to a food additive petition for vitamin D_3 (68 FR 9000). Relying on data submitted by the

petitioner for consumers of fruit juices and juice drinks 2 years of age and older, it was estimated that the average and 90th percentile dietary intakes from currently regulated uses in conventional foods (including naturally occurring sources) and proposed food uses of vitamin D, were 306 IU per person per day (IU/p/d) and 519 IU/p/d, respectively (68 FR 9000 at 9001). Taking into account that the most frequent level of vitamin D taken as a dietary supplement is 400 IU/day, FDA estimated the mean and 90th percentile dietary intakes for consumers of fruit juices and juice drinks 2 years of age and older from current and proposed food uses and dietary supplement uses were 706 IU/p/d and 919 IU/p/d, respectively (id.). Thus, the mean and 90th percentile vitamin D intake for this population of consumers is also well below the UL of 2,000 IU/day.

The petitioner is proposing that for a food to be eligible for the additional calcium and vitamin D and osteoporosis health claim that the food meet or exceed the requirements for a ''high'' level of calcium and a ''high'' level for vitamin D, as ''high'' is defined in § 101.54 (21 CFR 101.54), as the levels necessary to justify the health claim. For a food to be labelled as ''high'' in vitamin D, it must contain 20 percent or more of the RDI per RACC for the specified nutrient. The RDI for vitamin D is 400 IU. Twenty percent of the RDI for vitamin D per day is 80 IU.

FDA notes that certain prepared foods are subject to food additive regulations that limit the amount of vitamin D that can be added to such foods. As noted previously, § 184.1950 allows the addition of vitamin D to breakfast cereals (350 IU/100 g), grain products and pastas (90 IU/100 g), milk (42 IU/100g) and milk products (89 IU/100 g). In addition, § 166.110 permits fortification of margarine (330 IU/100 g) and the newly issued § 172.380 permits the addition of vitamin D_3 to calcium-fortified 100 percent fruit juice and fruit drinks not intended for infants (100 IU/serving). Of these foods, those that are ''high'' in calcium (i.e., milk, certain milk products, fortified breakfast cereals and juices) are permitted to add enough vitamin D to be ''high'' in vitamin D to qualify for the additional claim. Foods that are not ''high'' in calcium (e.g., margarine, enriched grain products and pastas) would not be permitted to bear the calcium only claim. Likewise, these foods would not be permitted to bear the calcium and vitamin D and osteoporosis claim because both calcium and vitamin D must each be present at ''high'' levels to be eligible to bear the claim.

The amounts of vitamin D that are allowed in flavored milk and milk drinks (89 IU/100 g) and certain fruit juices and drinks (100 IU/serving) are similar to the amount that is needed to be eligible for the calcium and vitamin D and osteoporosis health claim (at least 80 IU per RACC). The amounts of vitamin D in certain fortified cereals (350 IU/ 100 g) would provide a higher amount of vitamin D. For example, a serving of a ready-to-eat biscuit-type breakfast cereal with a RACC of 55 g (see Table 2 in § 101.12(b)) with the maximum amount of vitamin D added would contain 192 IU of vitamin D/RACC.

The agency usually assumes that food consumption patterns generally reflect 3 meals a day and a snack, with about 25 percent daily intake for each (58 FR 2303 at 2379; January 6, 1993). Using this approach, considering 4 servings a day from either the lowest (42 IU) or the highest (350 IU) vitamin D containing categories that could be eligible for a vitamin D and calcium and osteoporosis health claim, one could consume from approximately 170 to 1,400 IU of vitamin D. Thus, consumers who choose foods that bear the calcium and vitamin D and osteoporosis health claim would be able to incorporate such foods into the diet in a manner that would likely keep their total intake of vitamin D well below the UL of 2,000 IU per day. For example, a serving of a biscuit-type cereal with the maximum amount of vitamin D added (192 IU) prepared with 1/2 cup of skim milk, which also has the maximum amount of vitamin D added (51 IU), for breakfast would provide 243 IU of vitamin D. A glass of orange juice with the maximum amount of vitamin D added for lunch and as an afternoon snack would provide 200 IU of vitamin D. At dinner a serving of low-fat yogurt, to which vitamin D has been added as an optional ingredient, would provide 92 IU of vitamin D. The total vitamin D intake from these foods would provide 535 IU of vitamin D in a day. Furthermore, FDA believes it reasonable to consider that consumers who supplement their diets with vitamin D would likely be consuming the most frequent level of vitamin D containing supplements (400 IU) per day. Thus, consumers who choose foods that bear the calcium and vitamin D and osteoporosis health claim and that consume a vitamin D supplement would likely keep their total intake of vitamin D below the UL of 2,000 IU/day. The agency believes it is unlikely that consumers would be consuming total amounts of vitamin D, from both conventional foods and dietary supplements that can bear the claim, at levels that would pose a safety concern.

Therefore, FDA tentatively concludes, that the use of vitamin D in conventional foods, at levels necessary to justify the claim, as described in section IV.A.2 of this document, and in accordance with the GRAS affirmation (§ 184.1950) or the food additive regulation (§ 172.380), is safe and lawful under the applicable food safety provisions of the act. Further, FDA tentatively concludes that use of vitamin D as a dietary ingredient or dietary supplement, at levels necessary to justify the claim, as described in section IV.A.2 of this document is safe and lawful under the applicable food safety provisions of the act. Thus, FDA tentatively concludes that the preliminary requirements in 21 CFR 101.14(b)(3)(ii) are satisfied.

b. *Calcium*

The petitioner stated the preliminary requirements for a health claim for calcium and osteoporosis, including the requirement that the substance is safe and lawful at the level necessary to justify a claim, have already been established, as evidenced by the currently authorized claim. In the 1993 calcium and osteoporosis health claim final rule, FDA concluded that calcium's use at the levels necessary to justify the claim was safe and lawful under the applicable food safety provisions of the act (58 FR 2665 at 2670). At the time the calcium and osteoporosis health claim was authorized, in order for a food or dietary supplement to carry the claim, it had to meet or exceed the requirements for a ''high'' level of calcium as defined in § 101.54(c). A ''high'' level of calcium is at least 20 percent of the RDI of calcium per RACC. The RDI for calcium is 1,000 mg/day. Twenty percent of the RDI for calcium (200 mg) is well below the UL of 2,500 mg for calcium.

In the final rule for the authorized health claim about calcium and osteoporosis (21 CFR 101.72) (58 FR 2665 at 2670), FDA identified 10 specific calcium compounds that are deemed to be safe and lawful for use in a dietary supplement or as a nutrient supplement (i.e., added to food) that may bear the calcium and osteoporosis health claim. The 10 compounds (calcium carbonate, calcium citrate, calcium glycerophosphate, calcium oxide, calcium pantothenate, calcium phosphate, calcium pyrophosphate, calcium chloride, calcium lactate, and calcium sulfate) are either approved as food additives (21 CFR part 172), GRAS substances (21 CFR part 182), or affirmed as GRAS substances (21 CFR part 184).

At the time FDA published the final rule authorizing the health claim about calcium and osteoporosis (January 6, 1993), ingredients used in dietary supplements were subject to the premarket safety evaluations required for new food ingredients and for new uses of food ingredients. That is, such ingredients were required to be approved as food additives, determined as GRAS substances, or affirmed as GRAS substances before they could be used in food, including dietary supplements. With passage of the Dietary Supplement Health and Education Act in 1994 (DSHEA) (Public Law 103–417), Congress amended the act to provide that ingredients for dietary supplements are exempt from premarket safety evaluations for food additives or GRAS substances. Instead, Congress provided that dietary ingredients are subject to the adulteration provisions in section 402 of the act (excluding the food additive adulteration provision), and, if applicable, the new dietary ingredient provisions in section 413 of the act, which pertain to dietary ingredients that were not marketed in the United States before October 15, 1994. Therefore, the uses of these sources of calcium are subject to review under different provisions of the act, depending upon their use in or as a conventional food, or alternatively, as a dietary ingredient or dietary supplement. Since authorization of the calcium and osteoporosis health claim, no other calcium compound, other than the 10 discussed previously, has been demonstrated to FDA's satisfaction to be safe and lawful for use in a dietary supplement or as a nutrient supplement in conventional food.

Subsequent to the publication of the final rule authorizing the calcium and osteoporosis health claim, the IOM established a UL for calcium based on life stages, gender, and age in 1997 (Ref. 5). Although calcium is known to be an essential nutrient, it can also cause adverse effects. The IOM noted that the adverse effects of excess calcium intake in humans concern calcium intake from ''nutrient supplements'' i.e., calcium taken as a dietary supplement, and that the most widely studied and biologically important possible adverse effects of excessive calcium intake are kidney stone formation, the syndrome of hypercalcemia and renal insufficiency (milk alkali syndrome), and the interaction of calcium with the absorption of other essential minerals (Ref. 5). Using milk alkali syndrome as the clinically defined critical endpoint, the IOM identified the lowest-observed-adverse-effect level (LOAEL) of calcium intake in the range of 4,000 to 5,000 mg/day. The IOM established 2,500 mg/day of calcium as the UL for individuals over 12 months old by dividing a LOAEL of 5,000 mg/day by an uncertainty factor of 2 to take into account the relatively high prevalence of renal stones in the U.S. population, which is 12 percent, and potential increased risk of hypercalciuria and depletion of other minerals among susceptible individuals.

The most recent nationally representative data, 1999-2000 NHANES, found the median calcium intake from foods, excluding dietary supplements, to be 735 mg/day for all individuals, excluding nursing infants and children (Ref. 12). Calcium can be obtained from dietary supplement sources as well as food sources.

Calcium is often contained in multiple vitamin and mineral supplement products. Most of these products contain about 100 to 200 mg of calcium per RACC and recommended consumption of the dietary supplement once per day (Ref. 11). Some of these products contain 250 to 500 mg calcium with a recommendation of once per day, and 1 product surveyed contained up to 1,000 mg calcium with a recommended serving of once per day (id.). Calcium is also often contained in products where calcium is the sole ingredient or where calcium and vitamin D are the only ingredients. These types of products generally contain between 500 to 1,000 mg of calcium per RACC (id.). Calcium and vitamin D only products with a RACC of 500 mg of calcium recommend consumption of 1 to 3 servings per day and the recommended calcium intake does not exceed 1,500 mg per day (id.). Calcium and vitamin D only products with a RACC of 600 mg of calcium recommend consumption of 1 or 2 servings per day (id.). Products with a RACC greater than 600 mg of calcium recommend consumption of only 1 serving per day (id.). The daily intake level of calcium suggested in calcium and vitamin D only products is between 300 to 1,500 mg/day. Thus, the range of calcium intake from the various types of calcium containing dietary supplement products generally varies from 100 to 1,500 mg calcium per day, which when added to the median level of calcium intake from food (735 mg/day) is 835 to 2,235 mg calcium. This range includes amounts that are below the UL of 2,500 mg/day for calcium.

FDA also considered the amount of calcium that may be added to food in order for foods to be eligible to bear the claim. Foods that are eligible to bear the calcium or the vitamin D and calcium and osteoporosis health claim must contain at least 200 mg calcium per RACC. To estimate the daily intake of calcium from foods, the agency assumed the same food consumption patterns as considered for vitamin D, since the foods that provide enough calcium to be eligible for the claim or the proposed additional claim, also contain vitamin D. Thus, four servings of foods eligible to bear the health claim would provide at least 800 mg calcium. Such an amount is well below the UL of 2,500 mg calcium. Thus, consumers who choose foods that bear the calcium, or the calcium and vitamin D, and osteoporosis health claim would be able to incorporate such foods into the diet in a manner that would likely keep their total intake of calcium well below the UL of 2,500 mg per day. Furthermore, consumers who choose conventional foods that bear the calcium or the additional calcium and vitamin D claim and that consume up to 1,500 mg of calcium per day from supplements would also likely keep their total intake of calcium below the UL of 2,500 mg per day.

Therefore, FDA tentatively concludes, under the preliminary requirements of § 101.14(b)(3)(ii), that the use of calcium in foods, including dietary supplements, at levels necessary to justify the health claim (20 percent or more of the RDI for calcium) is safe and lawful under the applicable provisions of the act.

III. Review of Scientific Evidence of the Substance-Disease Relationship

A. Basis for Evaluating the Relationship Between Calcium and Vitamin D and Osteoporosis

1. Background of the Relationship Between Calcium and Osteoporosis

FDA authorized the calcium and osteoporosis health claim in response to NLEA, after conducting a review of the scientific literature on calcium and osteoporosis. The current petitioner is requesting, among other things, that the existing health claim for calcium and osteoporosis (§ 101.72) be amended to allow additional language for calcium and vitamin D and osteoporosis. FDA conducted its review of the effects of calcium and vitamin D on osteoporosis consistent with how the agency conducted its review for calcium and the osteoporosis health claim. Thus, the agency examined the effects of calcium and vitamin D on direct measures of bone status (i.e. bone mineral density (BMD) and bone mineral content (BMC)).

According to the National Institutes of Health (NIH) Consensus Statement ''Osteoporosis, Prevention, Diagnosis,

and Therapy'' (hereinafter, the 2000 NIH Consensus Statement),'' osteoporosis is a skeletal disorder characterized by compromised bone strength predisposing to an increased risk of fracture (Ref. 2). Bone strength is dependent upon bone density and bone quality. Bone density is determined by peak bone mass and amount of bone loss (Ref. 2). Bone quality is a function of architecture, turnover, damage accumulation (e.g., micro fractures) and mineralization (Ref. 2). A fracture occurs when a failure-inducing force (e.g., trauma) is applied to osteoporotic bone (Ref. 2). Thus, osteoporosis is a significant risk factor for fractures, which are commonly described as osteoporotic fractures. The most common osteoporotic fractures are in the vertebrae, hip, and wrist-forearm.

The most common measures of overall bone strength are those for bone mass, namely, BMD and BMC. Bone mineral content is the amount of mineral at a particular skeletal site such as the femoral neck, lumbar spine, or total body; whereas BMD is BMC divided by the area of the scanned region (Ref. 5). As in the 1991 review, FDA has identified bone mass (i.e., BMD, BMC) as a surrogate endpoint for osteoporosis. Thus, FDA used bone mass to identify osteoporosis risk reduction for the purpose of evaluating the scientific evidence for a health claim about calcium, vitamin D, and osteoporosis (Ref. 2).

2. Physiological Role of Vitamin D in Maintaining Calcium Homeostasis

In humans and other mammals, vitamin D_3 is photosynthesized in the skin by the actions of solar ultraviolet B (UV–B) radiation followed by isomerization, and is the normal dietary form of vitamin D (Ref. 6). Vitamin D_2 is synthesized from ergosterol, a yeast and plant sterol (Ref. 6). Both vitamin D_2 and vitamin D_3 are used as ingredients in conventional food and as dietary ingredients in dietary supplements. Vitamin D_2 and vitamin D_3 are biologically inert, but serve equally as substrates for the production of the biologically active 1,25-dihydroxy-vitamin D_3 (calcitriol) (Ref. 6). Vitamin D_2 or D_3 is hydroxylated at the 25 position in the liver to produce 25-hydroxy-vitamin D_3 (25-hydroxycholecalciferol), which is then further hydroxylated in the kidney to form 1,25-dihydroxy-vitamin D_3 (Ref. 6).

The predominant biological role of vitamin D is to maintain serum calcium and phosphorus concentrations within their normal ranges (Ref. 6). 1,25-dihydroxy-vitamin D_3 acts directly on intestinal mucosal cells to increase absorption of calcium and on bone to further release calcium (Refs. 6 and 13). If dietary calcium intake is inadequate and serum calcium concentration starts to drop below required levels, the parathyroid produces parathyroid hormone (PTH), which then stimulates increased production of 1,25-dihydroxy-vitamin D_3 in the kidney. Together, PTH and 1,25-dihydroxy-vitamin D_3 mobilize calcium from bone and stimulate calcium reabsorption in the kidney (Refs. 6, 13 and 14). To prevent hypercalcemia, the elevated 1,25-dihydroxy-vitamin D_3 acts as a negative feedback regulator on the parathyroid gland to reduce PTH secretion (Ref. 13). In addition, elevated serum calcium concentrations stimulate thyroid production of calcitonin, which lowers the circulating calcium levels by preventing bone resorption and increasing renal calcium excretion (Ref. 15). Thus, 1,25-dihydroxy-vitamin D_3 first acts by increasing intestinal calcium absorption and then, if dietary calcium is not adequate and serum calcium concentration remains low, PTH increases 1,25-dihydroxy-vitamin D_3 levels to increase calcium reabsorption from urine and ultimately liberate calcium stores from bone (Ref. 14).

B. Review of the Scientific Evidence of the Substance-Disease Relationship

The petitioner requested, among other things, that the existing health claim for calcium and osteoporosis (§ 101.72) be amended to allow additional language for calcium and vitamin D intake and reduced risk of osteoporosis. The petitioner also requested other amendments, in addition to including calcium and vitamin D as a substance of the claim, and the agency will discuss the scientific evidence about these other proposed amendments in sections IV. B through F of this proposed rule.

FDA has previously concluded that there is significant scientific agreement among qualified experts to support the relationship between calcium intake and reduced risk of osteoporosis (58 FR 2665 at 2672). FDA is not changing this conclusion. There is still significant scientific agreement for such a relationship (Refs. 2, 4, and 16). Since the petitioner has requested that the agency authorize an additional claim for calcium and vitamin D intake and osteoporosis, FDA focused its review on studies that examined the effects of calcium and vitamin D intake on osteoporosis risk. In order to authorize a health claim relating calcium and vitamin D intake to reduced risk of osteoporosis, FDA will consider whether there is significant scientific agreement among qualified experts to support the relationship between calcium and vitamin D intake and reduced risk of osteoporosis. FDA's review of the evidence to support an amendment to include calcium and vitamin D as a substance of the calcium and osteoporosis health claim was conducted consistent with FDA published guidance on significant scientific agreement in the review of health claims (Ref. 17).

The petition cited 221 references that summarized 3 bodies of evidence in support of the health claim for calcium and vitamin D intake and risk of osteoporosis. These included studies on the relationship between: (1) Calcium intake and risk of osteoporosis, (2) vitamin D intake and risk of osteoporosis, and, (3) calcium and vitamin D intake and risk of osteoporosis. Scientific conclusions about the substance-disease relationship cannot be drawn from studies that did not analyze whether calcium plus vitamin D, together, were associated with risk factors for osteoporosis (BMD or BMC).

1. Assessment of Intervention Studies

FDA identified a total of 13 intervention studies in the petition on calcium and vitamin D intake and risk of osteoporosis for its review of the proposed calcium and vitamin D and osteoporosis health claim (Refs. 18 through 30). Scientific conclusions about the substance-disease relationship could not be drawn from three of these studies. Specifically, Aloia et al. (1994) (Ref. 18) and Prestwood et al. (1999) (Ref. 28) did not include appropriate control groups that would allow assigning any observed effects to calcium and vitamin D supplementation (Ref. 31). Therefore, it could not be determined whether changes in the endpoint of interest were due to calcium or vitamin D intake or to unrelated and uncontrolled extraneous factors (Ref. 31). In addition, Prestwood et al. (1999) measured outcomes (biochemical markers of bone formation and resorption) that are not recognized as valid surrogate endpoints for osteoporosis. The only validated surrogate endpoints for osteoporosis are BMD and BMC. Grados et al. (2003) (Ref. 25) studied women with vitamin D deficiency and the results could not be extrapolated to the general population. Nutrient status and metabolism can be severely altered when an individual is malnourished. Vitamin D deficiency causes abnormalities in calcium and bone metabolism (Ref. 6). Vitamin D deficiency will cause a decrease in ionized blood calcium, which will lead

to an increase in the production of secretion of parathyroid hormone (Ref. 6). The effect of vitamin D on calcium and bone metabolism can be different than the effect of the same nutrient on healthy, well-nourished individuals. Therefore, scientific conclusions cannot be drawn from this study.

Thus, FDA identified 10 reports of 8 intervention studies, which included 2 followup studies (Refs. 21 and 24), from which scientific conclusions could be drawn about the effects of calcium and vitamin D intake on reduced risk of osteoporosis (Refs. 19 through 24 and Refs. 26, 27, 29, and 30).

Orwoll et al. (1990) (Ref. 27) was a 3-year, randomized, double-blind placebo-controlled study that provided U.S. men (n=36 control group; n=41 treatment group; mean of 58 years for both groups) a supplement containing 1,000 mg/day calcium and 1,000 IU/day vitamin D or a placebo. IU is equivalent to the specific biological activity of 0.025 microgram (µg) of vitamin D_3 (i.e., 1 mcg equals 40 IU; 1 milligram (mg) equals 40,000 IU). There was no effect of calcium and vitamin D supplementation on BMC (radius, vertebrae) when compared to men receiving a placebo (Ref. 27).

Chapuy et al. (1992, 1994) reported the results from 1 1/2 years (Ref. 20) and 3 years (Ref. 21) supplementation of French women (n=1,634/group; 84 years mean) with 1,200 mg/day calcium and 800 IU/day vitamin D or a placebo. In this randomized, double-blind placebo-controlled study, calcium and vitamin D supplementation resulted in significantly fewer hip and non-vertebral osteoporotic fractures (Refs. 20 and 21) and improved proximal femur BMD (Ref. 21), compared with the placebo group.

Dawson-Hughes et al. (1997) (Ref. 23) provided a placebo or a supplement containing 500 mg/day calcium and 700 IU/day vitamin D to U.S. men and women (n=187–202/group; approximately 70 years mean) in a 3-year randomized, double-blind placebo-controlled study. For all subjects, calcium and vitamin D produced a benefit in BMD (femoral neck, spine, total body) and reduced non-vertebral fracture incidence compared with subjects given placebo. When the BMD results for men (n=86) and women (n=101) were analyzed separately, men had significant effects at all three sites; whereas only total body bone loss was significantly reduced in women. Two years following withdrawal of the calcium and vitamin D supplements, BMD returned to levels observed in the placebo group, with the exception of total body BMD in men, which remained significantly higher in men previously given calcium and vitamin D (Ref. 24).

Kreig et al. (1999) (Ref. 26) was a 2-year randomized, controlled study in which French women (n=50-53/group; 84 years mean) were given a supplement containing 1,000 mg/day calcium and 880 IU/day vitamin D or left untreated. Bone density was significantly higher in the supplemented group compared to the untreated group (Ref. 26).

Baeksgaard et al. (1998) (Ref. 19) was a 2-year, randomized, double-blind placebo-controlled study in which Danish women (n=63-69/group; 62.5 years mean) were given a placebo or a supplement containing 1,000 mg/day calcium and 560 IU/day vitamin D. A significant increase in lumbar spine BMD was observed in the supplemented group compared to the placebo group (Ref. 19).

Sosa et al. (2000) (Ref. 29) provided either a supplement containing 1,000 mg/day calcium or 1,000 mg/day calcium and 1,520 IU/day vitamin D to Spanish women (n=28-30/group; 78 years mean) in a 1-year randomized, active controlled study. Calcium and vitamin D supplementation significantly increased femoral neck BMD compared to the calcium only group. No differences between the groups were observed for fracture incidence (Ref. 29).

Dawson-Hughes et al. (1991) (Ref. 22) provided a supplement containing 377 mg/day calcium or 377 mg/day calcium and 400 IU/day vitamin D to U.S. women (n=124-125/group; 61 years mean) for 1 year in a randomized, double-blind active-controlled study. Spine BMD was significantly higher in the women that received calcium and vitamin D compared to women who received calcium alone (Ref. 22).

Jackson et al. (2006) (Ref. 30) provided a supplement containing 1,000 mg/day calcium and 400 IU/day vitamin D_3 to postmenopausal women (n=16,936; 62 years mean) for 7 years who were already enrolled in a Women's Health Initiative (WHI) clinical trial. This was a randomized, double-blind placebo controlled study. Total hip BMD was significantly higher in women who received calcium and vitamin D compared to women in the placebo group. Spine and whole-body BMD were not significantly different between the groups (Ref. 30).

2. Assessment of Observational Studies

The petition identified 8 observational studies on calcium and vitamin D intake, consisting of 1 prospective cohort (Ref. 32), 2 prospective sub-cohorts (Ref. 33 and 34), and 5 cross-sectional studies (Refs. 35 through 39). The eight observational studies either calculated calcium and/or vitamin D intake from estimates of dietary intake and/or dietary supplements.

When calcium or vitamin D intake is calculated from estimates of intake of calcium or vitamin D containing foods or dietary supplements, human and measurement error can occur, affecting the accuracy of the calculation. In observational studies that calculate nutrient intake from conventional foods or dietary supplements, measure of calcium and/or vitamin D intake is based on recorded dietary intake methods, such as food frequency questionnaires, diet recalls, or diet records, in which the type and amount of foods and dietary supplements consumed are estimated. Calcium and vitamin D levels in conventional foods are then estimated using typical calcium and vitamin D concentration values for the food product category, based on a source such as the U.S. Department of Agriculture National Nutrient Database for Standard Reference. A common weakness of observational studies is the limited ability to ascertain the actual food, dietary supplement or nutrient intake for the population studied as a result of poor memory, over-, or underestimation of portion sizes and recall bias (Ref. 40). Thus, it is difficult to ascertain an accurate amount of the nutrient consumed based on reports of dietary intake from conventional foods and dietary supplement use. Furthermore, the bioavailability of calcium from foods can vary due to food processing and cooking procedures that are not indicated in a recorded dietary intake method or not indicated nor available for foods that have an assigned calcium concentration value (Ref. 41).

In addition, conventional foods and multivitamin and multi-ingredient supplements contain not only calcium and vitamin D, but also other nutrients that may be associated with the metabolism of calcium and vitamin D on bone health. Thus, it is not possible to attribute any observed associations to calcium and vitamin D intake alone from conventional foods and/or multivitamin and multi-ingredient supplements because of the potential confounding effects from the other components contained in the conventional foods and dietary supplements. Because conventional foods and dietary supplements consist of many nutrients and substances, it is difficult to study the nutrient or food components in isolation (Ref. 42). For instance, bone health requires more than just calcium and vitamin D (Refs. 4 to 6). Most notably, phosphorus and

magnesium make up more than half of bone mineral density (Refs. 4 and 5). Insufficient levels of magnesium may interfere with the ability to metabolize calcium (Ref. 4).

As discussed previously, when evaluating the relationship between vitamin D and calcium and a reduced risk of osteoporosis, there are inherent problems associated with an observational study design in assessing vitamin D and calcium intake from conventional food and/or dietary supplements and in controlling for the intake of other nutrients that may affect vitamin D and calcium metabolism. Based on the problems associated with the use of an observational study design to assess a relationship between calcium and vitamin D intake and a reduced risk of osteoporosis, none of the eight observational studies provided, nor could they provide, a sufficient assessment of the intake of calcium and vitamin D from foods and/or dietary supplements in order to evaluate such a relationship. In addition, none of the eight observational studies controlled for, nor could they control for, the intake from other components in foods and dietary supplements that are associated with the metabolism of calcium and vitamin D, which control is necessary in order to evaluate the relationship between calcium and vitamin D and a reduced risk of osteoporosis. Further, two of these studies (Refs. 34 and 36) measured serum vitamin D levels, which are not a valid biomarker of dietary vitamin D intake because serum levels reflect the cumulative effect of both exposure to sunlight and dietary intake (Ref. 6). For the previously stated reasons, FDA concludes that no scientific conclusions about the relationship between calcium and vitamin D intake and the risk of osteoporosis can be drawn from the eight observational studies on conventional foods or dietary supplements.

3. Authoritative Statements

In its review of the scientific evidence, FDA also considered conclusions from the 2000 NIH Consensus Statement, which was submitted with the petition, and the Surgeon General Report ''Bone Health and Osteoporosis'' (hereafter, the 2004 Surgeon General Report) (Refs. 2 and 4). The 2000 NIH Consensus Statement concluded that ''adequate calcium and vitamin D intake are crucial to develop optimal peak bone mass and to preserve bone mass throughout life'' and further, ''osteoporosis occurs in all populations and at all ages'' (Ref. 2). Similarly, the 2004 Surgeon General Report states that ''calcium and vitamin D intake and physical activity are now known to be major contributors to bone health for individuals of all ages, and while bone disease often strikes late in life, the importance of beginning prevention at a very young age and continuing it throughout life is now well understood'' (Ref. 4). These results extend the scientific conclusions that not only calcium reduces the risk of osteoporosis but that calcium and vitamin D also reduce the risk of osteoporosis.

IV. Decision to Amend the Calcium and Osteoporosis Health Claim

A. Addition of Vitamin D

The majority of the intervention studies FDA evaluated and submitted with the petition established that calcium and vitamin D significantly reduces the risk of osteoporosis (Refs. 18 through 29). One intervention study (Ref. 29), which compared calcium supplementation to supplementation with calcium and vitamin D showed no difference in fracture incidence but did demonstrate significantly increased femoral neck BMD with calcium and vitamin D. Another study (Ref. 22) showed a significantly higher spine BMD in women with calcium and vitamin D supplementation compared to calcium supplementation alone. Therefore, the two studies (Refs. 22 and 29) that compared supplementation with calcium to calcium and vitamin D suggest that the combination of calcium and vitamin D may enhance the effects of reduction in risk of osteoporosis when compared to calcium alone. The role of vitamin D in enhancing the bioavailability of calcium through increased intestinal absorption of dietary calcium, and increased renal reabsorption of urinary calcium is well established. Based on its review of the publicly available evidence pertaining to calcium, vitamin D, and osteoporosis, FDA tentatively concludes that there is sufficient evidence to amend § 101.72 to include vitamin D so that, in addition to claims for calcium and osteoporosis, additional claims can be made for calcium and vitamin D and osteoporosis. Accordingly, FDA is proposing to amend § 101.72 to authorize an additional health claim for calcium and vitamin D and reduced risk of osteoporosis.

1. Nature of the Food Eligible to Bear the Calcium and Osteoporosis Claim

The agency is not making any changes to the nature of the food, including dietary supplements, labeled with the calcium and osteoporosis health claim (§ 101.72(c)(2)(ii)). Those requirements are that: (1) The food shall meet or exceed the requirements for a ''high'' level of calcium as defined in § 101.54(b), i.e., the food must contain 20 percent or more of the RDI for calcium per RACC; (2) the calcium content of the product shall be assimilable; (3) dietary supplements shall meet the United States Pharmacopeia (U.S.P.) standards for disintegration and dissolution applicable to their component calcium salts, except that dietary supplements for which no U.S.P. standards exist shall exhibit appropriate assimilability under the conditions of use stated on the product label; and (4) the food or total daily recommended supplement intake shall not contain more phosphorus than calcium on a weight per weight basis.

2. Nature of the Food Eligible to Bear the Calcium and Vitamin D and Osteoporosis Claim

The general requirements for health claims (21 CFR 101.14(d)(2)(vii)) provide that, if the claim is about the effects of consuming the substance at other than decreased dietary levels, the level of the substance must be sufficiently high and in an appropriate form to justify the claim. If a definition for the use of the term ''high'' for the substance has been established, the substance must be present at a level that meets the requirements for the use of that term. A ''high'' claim about the level of a nutrient in a food in relation to the RDI established for that nutrient requires that the food contain 20 percent or more of the RDI per RACC (see § 101.54(b)). The RDI for vitamin D is 400 IU. Thus, a conventional food must contain 20 percent or more of the RDI for vitamin D per RACC (i.e., at least 80 IU) to be eligible for the additional calcium, vitamin D and osteoporosis health claim. A dietary supplement must contain 20 percent or more of the RDI for vitamin D per RACC (see Table 2 of § 101.12(b)).

Accordingly, FDA is proposing that, in order for a food to be eligible for the additional calcium and vitamin D and osteoporosis health clam the food must: (1) Be eligible to bear a claim for the calcium and osteoporosis health claim in § 101.72, (2) meet or exceed the requirements for a ''high'' level of vitamin D as defined in § 101.54(b), and (3) meet all of the general health claim requirements set forth in § 101.14.

B. Amendments to the Calcium and Osteoporosis Health Claim Other Than the Inclusion of Vitamin D

As noted in the section I of this proposed rule, FDA published a proposed rule entitled ''Food Labeling:

Nutrient Content Claims, General Principles; Health Claims, General Requirements and Other Specific Requirements for Individual Health Claims'' (the 1995 proposal), to amend several provisions of the regulations on nutrient content claims and health claims to increase the flexibility in the use of nutrient content claims and health claims on food products (60 FR 66206). The agency either extended or reopened the comment period four times for the 1995 proposal, in response to request from stakeholders (61 FR 11793, March 22, 1996; 62 FR 3635, January 24, 1997; 62 FR 11129, March 11, 1997; and 69 FR 24541, May 4, 2004). The agency received approximately 160 comments in response to the proposed rule. The comments specific to the requirements for the calcium and osteoporosis health claim generally supported the agency's tentative proposals. Specific comments are discussed below as they pertain to the appropriate sections.

C. Elimination of the Requirement to List Race, Age and Sex as Risk Factors for the Development of Osteoporosis

1. The 1995 Proposal

In the 1995 proposal, FDA proposed to amend several specific requirements to the nature of the claim for the calcium and osteoporosis health claim (60 FR 66206). The first required element for the calcium and osteoporosis health claim is contained in § 101.72(c)(2)(i)(A) and provides that: ''The claim makes clear that adequate calcium intake throughout life is not the only recognized risk factor in this multifactorial bone disease by listing specific factors, including sex, race, and age that place persons at risk of developing osteoporosis and stating that an adequate level of exercise and a healthful diet are also needed.'' The original intent of presenting the information as specified in § 101.72(c)(2)(i)(A) was to convey the message that for any individual several factors define disease risk.

FDA's tentative decision to amend § 101.72(c)(2)(i)(A) in the 1995 proposal was based, in part, on the 1994 NIH Consensus Statement on optimal calcium intake, which was published after authorization of the calcium and osteoporosis final rule. The first of several significant conclusions from the 1994 NIH Consensus Statement was that a large percentage of Americans did not meet the currently recommended guidelines for optimal calcium intake (Ref. 43). Because of the need to correct this public shortfall and to improve bone health, which would reduce the risk of osteoporosis, FDA tentatively concluded that a singular focus on achieving and maintaining adequate calcium intake as a required element of the claim was important (60 FR 66206 at 66216). In the 1995 proposal, FDA also acknowledged, that the number of food products bearing health claims, during this time, was not as great as the agency had anticipated and FDA was concerned that manufacturers may have been disinclined to use such lengthy health claims on food labels. (id.) These concerns coupled with the fact that most Americans, regardless of sex, race, or age, were not meeting the recommended guidelines for optimal calcium intake led the agency to reevaluate the requirement in § 101.72(c)(2)(i)(A). Accordingly, FDA proposed to simplify § 101.72(c)(2)(i)(A) by limiting the requirement to a balanced statement that reflects the importance of the nutrient calcium over a lifetime in a healthful diet to reduce osteoporosis risk, but that does not imply that calcium is the only risk factor for the development of osteoporosis. FDA also proposed to replace the provision in § 101.72(c)(2)(i)(A) that the specific risk factors and the need for an adequate level of exercise be stated in the claim, with the more simple requirement that the claim not imply that adequate dietary calcium intake is the only recognized risk factor for a reduced risk of osteoporosis (60 FR 66206 at 66216 and 66217). In concert with these proposed changes to § 101.72(c)(2)(i)(A), FDA provided that the claim may list the sex, age, or race of populations at risk for osteoporosis, or the need for an adequate level of exercise as optional information (60 FR 66206 at 66217).

The agency did not receive any comments opposing these proposed amendments. Rather, several comments that addressed this issue supported the agency's tentative amendments to § 101.72(c)(2)(i)(A). The agency considered these comments when responding to the health claim petition submitted by The Beverage Institute for Health and Wellness.

2. The Beverage Institute for Health and Wellness Petition

The petitioner requested that the agency amend § 101.72(c)(2)(i)(A) to eliminate reference to age, sex, race, and the need for an adequate level of exercise. The petitioner did not include the provision in § 101.72(c)(2)(i)(A) concerning calcium's role in a 'healthful diet' and did not state why such provision was not included in their proposed amendment. The petitioner stated that their request for eliminating reference to age, sex, and race in the claim was supported by scientific evidence establishing that calcium or calcium and vitamin D reduces the risk of osteoporosis in all age groups of both sexes and in all races. The petitioner stated that their request for eliminating reference to the need for an adequate level of exercise from the claim was supported by scientific evidence, submitted with the petition, showing that calcium or calcium and vitamin D can reduce the risk osteoporosis regardless of the level of physical activity.

3. Agency's Proposed Amendments to the Calcium and Osteoporosis Health Claim

The agency agrees with the petitioner that the claim no longer needs to list specific risk factors for the development of osteoporosis, including sex, race, and age. However, the agency also tentatively concludes that a reference to a ''healthful diet'' and to adequate physical activity is still a necessary part of the claim, as well as the importance of adequate calcium or adequate calcium and vitamin D intake throughout life.

Sex, Age, and Race Categories

The 2000 NIH Consensus Statement concluded that ''osteoporosis occurs in all populations and at all ages'' and that ''adequate calcium and vitamin D intake are crucial to develop optimal peak bone mass and to preserve bone mass throughout life'' (Ref. 2). Furthermore, evidence provided in the 2004 Surgeon General's Report as well as the 2000 NIH Consensus Statement establishes that the benefits of calcium or calcium and vitamin D on prevention of bone diseases, including osteoporosis, are not dependent on age and not specific to any subpopulation in the United States (Refs. 2 and 4).

Osteoporosis occurs in all populations at all ages (Ref. 4). Osteoporosis is the major cause of fractures in the elderly, both men and women. It begins later in men than women (Ref. 2). In women it often follows menopause, especially in white women. Osteoporosis is a disease that takes many years to develop and most often is not discovered until the later years. For every 10 white women, 4 by age 50 or older in the United States will experience a hip, spine, or wrist fracture sometime during the remainder of their lives and for white men the number is 13 percent (Ref. 44). Though the lifetime risk for types of fractures is less in men and nonwhite women, it does represent a significant risk and may be increasing in certain populations, such as Hispanic women (Ref. 45). Because of the mistaken view

that osteoporosis is a disease that affects postmenopausal white women, it often goes undetected in men and racial and ethnic minorities (Ref. 4). Risk of developing osteoporosis is likely to increase for all ethnic groups as people's lifespan increases (Ref. 4).

Achieving and maintaining optimal bone health is a process that occurs in both men and women throughout the lifespan (Ref. 2). Bone mineral density declines with age in both men and women. Peak bone mass is achieved at an early age and is a life-long determinant of skeletal health. Calcium is the most important nutrient for achieving and maintaining good skeletal health and vitamin D is required for optimal absorption and utilization of calcium (Refs. 2 and 4). Thus, specific reference to sex, race, and age is not necessary since the benefits of dietary intake of calcium, or calcium and vitamin D would apply to both sexes and all age and race categories.

Healthful Diet

Studies have shown that a well-balanced diet is important for bone health throughout life (Ref. 4). Calcium and vitamin D remain the primary nutrients required for good bone health and consuming diets that include foods that contain these nutrients is critical. In addition, other nutrients such as vitamin K, vitamin C, copper, manganese, zinc, potassium, iron, and others may also play a role in optimal bone health (Ref. 4). Thus, since many nutrients are involved in bone health, it is important to consume a well-balanced diet that consists of a variety of foods, including grains, fruits, vegetables, nonfat or low-fat dairy products or other calcium-rich foods, meat or beans.

In the 1995 proposal, FDA stated that it included a reference to a ''healthful diet'' in § 101.72(c)(2)(i)(A) for consistency with the general requirement in § 101.14(d)(2)(v) that ''the claim enable the public ***to understand the relative significance of such information in the context of a total daily diet'' (60 FR 66206 at 66216). Similar to what the agency concluded in the 1995 proposed rule for the effect of adequate calcium intake, the effect of calcium and vitamin D can only be realized if the calcium and vitamin D is a part of a healthy, well-balanced diet that provides all essential and other nutrients to optimize nutritional health status. Thus, the agency is retaining the requirement in § 101.72(c)(2)(i)(A) that the claim make clear the importance of adequate calcium intake, or when appropriate, adequate calcium and vitamin D intake over a lifetime in a healthful diet is essential to reduce osteoporosis risk.

Physical Activity

Physical activity, along with intake of calcium and vitamin D, is known to be a major contributor to bone health for people of all ages (Ref. 4). In order to reduce the risk of osteoporosis, it is important to begin physical activity at an early age and continue throughout life. Physical activity needs to be maintained for optimal bone health. Physical activity helps to increase or preserve bone mass and reduces the risk of falls (Ref. 4). Studies have shown that physical activity, as well as diet, are responsible for 10 to 50 percent of bone mass and structure (Ref. 4). Physical activity plays an important role in skeletal health. Thus, physical activity has a significant impact on one's risk for developing osteoporosis.

Two studies have shown that physical activity can have a more beneficial effect in infants or young children if these groups have adequate calcium intakes (Refs. 46 and 47). As with children, the positive effects of physical activity and calcium in older adults on bone health has also been shown (Ref. 4). Thus, there is a synergistic effect between intake of calcium and physical activity.

Both the more current 2004 Surgeon General's Report (Ref. 4), and the 2000 NIH Consensus Statement continue to emphasize the importance of physical activity on bone health (Ref. 2). Thus, because physical activity is integral to bone health, along with the need for adequate calcium, and, as applicable, calcium and vitamin D, the agency is requiring a reference to the need for physical activity as part of the health claim.

In summary, FDA tentatively concludes that specific reference to sex, race, age in the claim is no longer necessary since the benefits of calcium or calcium and vitamin D apply to both sexes at all ages and race categories. FDA also tentatively concludes, however, that the nutritional status of the diet and physical activity have a significant impact on bone health, and thus, one's risk of developing osteoporosis. Accordingly, FDA, is proposing to eliminate the provision in § 101.72(c)(2)(i)(A) that specific risk factors including sex, race, and age be listed in the claim, but to retain the provisions concerning a healthful diet and exercise. Thus, the proposed revision to § 101.72(c)(2)(i)(A) reads as follows: ''The claim makes clear the importance of adequate calcium intake or when appropriate, adequate calcium and vitamin D intake throughout life, in a healthful diet along with physical activity are essential to reduce osteoporosis risk. The claim does not imply that adequate calcium intake or when appropriate, adequate calcium and vitamin D intake is the only recognized risk factor for the development of osteoporosis.''

FDA is requesting comments on whether the provision to specify sex, race, or age in the claim language should be retained and why.

D. Elimination of the Requirement that the Claim Not State or Imply that the Risk of Osteoporosis is Equally Applicable to the General Population, and that the Claim Identify the Populations at Particular Risk for the Development of Osteoporosis

1. The 1995 Proposal

The second element for the calcium and osteoporosis claim is contained in § 101.72(c)(i)(2)(B) and provides that: ''The claim does state or imply that the risk of osteoporosis is equally applicable to the general United States population. The claim shall identify the populations at particular risk for the development of osteoporosis. These populations include White (or the term (''Caucasian'') women and Asian women in their bone forming years (approximately 11 to 35 years of age or the phase ''during teen or early adult years'' may be used). The claim may also identify menopausal (or the term ''Middle-aged'') women, persons with a family history of the disease, and elderly (or ''older'') men and women as being at risk.''

FDA's tentative decision to amend § 101.72(c)(2)(i)(B) in the 1995 proposed rule was based on the 1994 NIH Consensus Statement and an FDA report published in 1995 on consumer understanding of health claims (hereinafter referred to as the 1995 FDA health claims report (Ref. 48)).

The 1994 NIH Consensus Statement concluded that the two most important factors that influence the occurrence of osteoporosis are optimal bone mass attained in the first two or three decades of life and the rate at which bone loss occurs in later years (Ref. 43). Thus, the 1994 NIH Consensus Statement did not ascribe the relative risk of osteoporosis on the basis of race or ethnicity.

As part of the 1995 FDA health claims report, FDA tested participants understanding of a model calcium and osteoporosis health claim, such as the following: ''Regular exercise and a healthy diet with enough calcium helps teen and young adult white and Asian women maintain good bone health and may reduce their high risk of osteoporosis later in life.''

Results from this study (Ref. 48) showed that minority women were unanimous in objecting to the inference

that black American women do not need calcium and questioned the accuracy of the information contained in the claim. All of the survey participants recognized that calcium is essential for everyone. Although there was some recognition based on prior knowledge that younger women need to be concerned about osteoporosis, no participant thought the model claim communicated that concept very well.

The agency did not intend that the calcium and osteoporosis health claim imply that calcium is not needed by any individual or specific population. Given that calcium is essential for every person, the agency attempted to present this disease claim in a truthful, nonmisleading, and scientifically valid manner. Likewise, the agency tentatively concluded in the 1995 proposal that greater use in food labeling of the calcium and osteoporosis health claim, articulated in a manner that will be accepted and followed by consumers, could help support significant strides in improving calcium intake in all segments of the U.S. population. Thus, the agency proposed to revise § 101.72(c)(2)(i)(B) by removing the provision that the claim identify by race and ethnicity those populations at particular risk for the development of osteoporosis, but to retain identification of teen and young adult women, irrespective of race as the focus of the claim (60 FR 66206 at 66218).

All comments received from the 1995 proposal regarding identification of the at-risk population by race and ethnicity agreed with FDA's tentative decision to remove that requirement from § 101.72(c)(2)(i)(B). However, most of the same comments disagreed with the tentative decision to retain a focus on teen and young adult women. One comment stated that, if the agency were to rely on the 1994 NIH Consensus Statement (Ref. 43) in making its decision, the health claim would also have to cite older people as a second group for whom calcium intake is important, which would lengthen the claim sufficiently to discourage its use on food labels. It said that requiring the claim to emphasize the calcium needs of young adults and teenagers might lead other consumers to conclude that calcium is not important for them. The comment stated that nearly all teens and adults will need encouragement to reach the high levels of calcium, 1,000 to 1,500 mg per day, recommended by the 1994 NIH Consensus Statement. Several comments urged the agency to allow calcium and osteoporosis claims to express the lifelong need for adequate dietary calcium without requiring the identification of any particular population segment as being at a higher than average risk for the disease. The comments stated that a claim such as ''adequate calcium in a healthful diet throughout life may reduce the risk of osteoporosis'' would be appropriate. The agency considered these comments when responding to the health claim petition submitted by The Beverage Institute for Health and Wellness.

2. The Beverage Institute for Health and Wellness Petition

The petitioner included, in proposed language for § 101.72(c)(2)(i)(B), that the claim not state or imply that the risk of osteoporosis is equally applicable to the general U.S. population. In addition, the petition included, as optional, a statement that identifies other populations at risk for developing osteoporosis, including women in their bone forming years from approximately 11 to 35 years of age. The petitioner provided scientific evidence that calcium and calcium and vitamin D reduce the risk of osteoporosis in both men and women in all age groups regardless of race or ethnicity.

3. Agency's Proposed Amendments to the Calcium and Osteoporosis Health Claim

Scientific evidence from both the Surgeon General's Report on Bone Health and Osteoporosis and the 2000 NIH Consensus Statement shows that osteoporosis occurs in both sexes at all ages and that adequate calcium and vitamin D are essential to the development of peak bone mass and the preservation of bone mass throughout life (Refs. 2 and 4).

Osteoporosis does not affect everyone to the same degree (Ref. 4). Osteoporosis is most prevalent in postmenopausal women (Ref. 4), and white postmenopausal women experience almost 75 percent of hip fractures and have the highest age adjusted fracture incidence (Ref. 2). Both men and women experience an age-related decline in BMD starting in midlife, and men, especially older men do develop osteoporosis (Ref. 4).

Based on the Surgeon General's Report on Bone Health and Osteoporosis and the 2000 NIH Consensus Statement, specifically that osteoporosis is most prevalent in White postmenopausal women (Refs. 2 and 4), FDA tentatively concludes that the provision in § 101.72(c)(2)(i)(B) that the claim must identify certain populations for particular risk for osteoporosis as White or Asian women between the ages of 11 and 35 is no longer correct.

FDA also tentatively concludes that the provision in § 101.72(c)(2)(i)(B) providing that the claim not state or imply that the risk of osteoporosis is equally applicable to the general population is no longer appropriate. While the risk of osteoporosis is not equally applicable to the general population, in the sense that there may be some subpopulations that are at a greater risk for developing osteoporosis than others, osteoporosis still occurs in all populations at all ages (Refs. 2 and 4). Since osteoporosis is most prevalent and thus more associated with White postmenopausal women, it often has gone unrecognized in men and other age and ethnic populations (Refs. 2 and 4). Thus, FDA tentatively concludes that it is no longer necessary to limit the wording of the claim to targeted subgroups, even though such subgroups may be at a relatively greater risk than others in the general population. Accordingly, FDA is proposing to eliminate the requirement in § 101.72(c)(2)(i)(B).

FDA is requesting comments about whether the identification of any population or populations at particular risk of osteoporosis should be required or optional in the claim language and why.

E. Elimination of the Requirement that the Claim Identify the Mechanism by Which Calcium Reduces the Risk of Osteoporosis

1. The 1995 Proposal

Section 101.72(c)(2)(i)(C) of the calcium and osteoporosis health claim established a requirement for identifying the mechanism whereby adequate dietary calcium over a lifetime reduces the risk of osteoporosis as described below: ''The claim states that adequate calcium intake throughout life is linked to reduced risk of osteoporosis through the mechanism of optimizing peak bone mass during adolescence and early adulthood. The phrase ''build and maintain good bone health'' may be used to convey the concept of optimizing peak bone mass. When reference is made to persons with a family history of the disease, menopausal women, and elderly men and women, the claim may also state that adequate calcium intake is linked to reduced risk of osteoporosis through the mechanism of slowing the rate of bone loss.'' The agency concluded in developing this requirement, for the calcium and osteoporosis health claim, that it was important for consumers to have a basic understanding of the biological and physiological mechanisms by which adequate dietary intake of calcium achieves a reduced

risk of osteoporosis (60 FR 66206 at 66218).

In the 1995 proposal, FDA proposed to make the statement of the mechanism by which calcium intake affects the risk of osteoporosis optional information (60 FR 66206 at 66218). This tentative conclusion was based on information contained in the 1995 FDA health claims report, which focused on consumer understanding of health claims (Ref. 48). The 1995 FDA health claims report found that because participants had learned elsewhere that calcium intake is related to general bone health, they thought the food label was not the right means for conveying this information. The awareness by consumers that calcium's ability to ''build and maintain good bone health'' is the mechanism whereby risk of osteoporosis is reduced raised the question as to whether there was a need to state that fact in a health claim. Thus, in the interest of streamlining the claim, FDA proposed to make the statement of the mechanism by which calcium intake affects the risk of osteoporosis optional information (60 FR 66206 at 66218). No comments were received objecting to this aspect of the 1995 proposal.

2. The Beverage Institute for Health and Wellness Petition

The petitioner requested that the agency allow information on the mechanism by which calcium reduces the risk of osteoporosis to be optional instead of required, and to extend this optional information to the additional calcium and vitamin D and osteoporosis claim.

3. Agency's Proposed Amendments to the Calcium and Osteoporosis Health Claim

Based on the petitioner's request and FDA's tentative conclusions in the 1995 proposal that many consumers were aware that calcium was necessary for good bone health, FDA is proposing to eliminate the requirement in § 101.72(c)(2)(i)(C) that the claim state the mechanism by which calcium reduces osteoporosis risk. FDA is also proposing that information of the mechanism by which calcium reduces the risk of osteoporosis may be optional, for either the calcium or the newly proposed calcium and vitamin D and osteoporosis claim. FDA requests comments on the proposed amendments to § 101.72(c)(2)(i)(C).

F. Elimination of the Requirement in § 101.72(c)(2)(i)(E) that Certain Products Bearing the Claim Include a Statement that Reflects the Limits on the Benefits from Calcium

1. The 1995 Proposal

Section 101.72(c)(2)(i)(E) contains a conditional requirement that a calcium and osteoporosis health claim include a statement that reflects the limit on the benefit derived from dietary calcium intake when the food contains 40 percent or more of the RDI of 1,000 mg of calcium per day or 400 mg or more of calcium per RACC as defined in § 101.12(b).

In the 1995 proposal, FDA proposed to amend this requirement by increasing the amount of calcium present in a food that would trigger the conditional requirement in § 101.72(c)(2)(i)(E), from 400 mg per RACC to 1,500 mg per day (60 FR 66206 at 66219). FDA based this proposal on conclusions from the NIH 1994 Consensus Statement regarding methods to achieve optimal calcium intake and the absence of reported adverse effects with moderate supplementation up to 1500 mg/day (60 FR 66206 at 66219). FDA's proposal to increase the threshold level in § 101.72(c)(2)(i)(E) was also based on several Congressional findings in the Dietary Supplement Health and Education Act of 1994 (Public Law 103–417) (60 FR 66206 at 66218). One of those findings identified a link between ingestion of certain nutrients or dietary supplements and reduced risk of several chronic diseases, including osteoporosis, and stated that the Federal government should not take any actions to impose unreasonable regulatory barriers that limit or slow the flow of safe products and accurate information to consumers.

One comment did not support FDA's tentative decision to amend § 101.72(c)(2)(i)(E) to change the threshold from 400 mg of calcium per RACC to 1,500 mg per day. The comment stated that a statement that reflects the limit on the benefit derived from dietary calcium intake is needed to protect consumers from over consumption of this nutrient. The comment stated that 400 mg of calcium per RACC should be retained as the threshold since most calcium-rich conventional foods do not contain more than that amount and would not have to bear this type of statement as part of a calcium and osteoporosis health claim. The comment maintained that this approach is appropriate because such a statement on conventional foods would appear to run at cross purposes with the goal to increase calcium consumption and would be inconsistent with the conclusion in the 1994 NIH consensus statement that ''the preferred source of calcium is through calcium-rich foods such as dairy products.''

The comment maintained that, because calcium supplements provide calcium in addition to the calcium that consumers get from conventional foods, it is important for consumers to know the maximum recommended safe dose, and cited a second conclusion from the 1994 NIH consensus statement that ''practices that might encourage total calcium intake to approach or exceed 2,000 mg per day seem more likely to produce adverse effects and should be monitored carefully.'' The comment suggested that consumers should be made aware that a total daily intake of 2,000 mg of calcium from conventional foods and dietary supplements appears to be safe, but that higher intakes provide no further benefit. The comment maintained that a lower threshold for a statement of the limits of benefit on calcium supplements would not limit the flow of these supplements to those who need them but would provide information to help prevent their overuse by consumers.

The comment stated further that if FDA did raise the 400 mg calcium per RACC threshold, several issues should be addressed. The comment stated that FDA's proposal to require that the statement of limited benefit apply to foods that provide more than 1,500 mg of calcium per day means that the requirement pertains only to supplements and not to foods since, for conventional foods, the requirement must be on a per reference amount basis. The comment stated that the per day basis could only apply to supplements.

Noting that the highest recommendation for calcium intake in the 1994 NIH consensus statement was 1,500 mg calcium per day, the comment maintained that this level represents total dietary calcium intake from conventional foods and dietary supplements. The comment stated that 1,500 mg should not be the threshold level for a limited benefit statement. The comment argued that setting the threshold higher than 1,000 mg per day would encourage supplementation to an inappropriately high level. The comment pointed out that the Food and Nutrition Board's text, ''Eat for Life,'' advises consumers to avoid taking vitamin or mineral dietary supplements in excess of the U.S. Recommended Dietary Allowance (currently, the Reference Dietary Intake) in any one day—for calcium, that amount is 1,000 mg per day. Accordingly, the comment

recommended that the requirement for the limited benefit statement apply only to dietary supplements of calcium whose recommended total daily intake is 1,000 mg or more per day. The agency considered these comments when responding to the health claim petition submitted by The Beverage Institute for Health and Wellness.

2. The Beverage Institute for Health and Wellness Petition

The petitioner proposed to adopt the amendments to § 101.72(c)(2)(i)(E) exactly as proposed in the 1995 proposal. The petitioner also requested that FDA not extend a conditional requirement for vitamin D in the proposed additional health claim for calcium and vitamin D and osteoporosis.

3. Agency's Proposed Amendments to the Calcium and Osteoporosis Health Claim

FDA has been persuaded to reevaluate the conditional requirement in § 101.72(c)(2)(i)(E) due to the Dietary Reference Intakes (DRIs) established for calcium by the IOM (Ref. 5). DRIs for calcium were established after FDA proposed amendments to the calcium and osteoporosis health claim in the 1995 proposal and after FDA's receipt of the comment opposing FDA's proposed changes to the conditional requirement in § 101.72(c)(2)(i)(E).

In 1997 the IOM conducted a major review of bone-related nutrients (Ref. 4). A goal of the DRI effort was to determine the level of nutrient intake for normal, healthy individuals that would prevent the development of a chronic condition associated with that nutrient (Ref. 5). The DRIs for calcium, which were based on life stages and gender, were set at intake levels of calcium to achieve adequate calcium balance in the body (i.e., AI) and intake levels of calcium that pose no risk of adverse health effects (i.e., UL). The AI for infants up to 6 months of age is 210 mg/day, for infants ages 7 months through 12 months it is 270 mg/day, for children ages 1 through 3 it is 500 mg/day, for children ages 4 through 8 years it is 800 mg/day, for young adults ages 9 through 18 it is 1,300 mg/day, for individuals aged 19 through 50 it is 1,000 mg/day, for individuals ages 51 and above it is 1,200 mg/day, for pregnant and lactating women ages 14 through 18 it is 1,300 mg/day, and for pregnant and lactating women aged 19 and older it is 1,000 mg/day. The UL for all individuals ages 1 and above is 2,500 mg/day (Ref. 5).

The concept of a threshold level of calcium beyond which no further bone benefit occurs is not presented in either the 2004 Surgeon General's Report or the 2000 NIH Consensus Statement (Refs. 2 and 4). Instead these reports discuss the level of calcium at which calcium poses no risk of adverse health effects (i.e., UL).

When the calcium and osteoporosis health claim was initially proposed the scientific evidence supported the concept that a threshold nutrient intake level existed for calcium, below which bone health was jeopardized, and above which no further benefit to bone health occurred (56 FR 60689 at 60692 and 60695). Based on two observational studies that reflected findings that calcium intakes of 800 to 1,000 mg of calcium a day appear to be the upper level of calcium intake beyond which no benefit to bone status has been observed and the observation that higher amounts of calcium are needed in old age, FDA proposed to require that a calcium and osteoporosis claim state that a total dietary intake of calcium greater than 200 percent of the RDI has no known additional benefit (56 FR 60689 at 60698). At the time of the 1991 proposal, the proposed RDI for calcium was 950 mg; 200 percent of the RDI was 1,800 mg.

The agency's current thinking is that a statement reflecting the limit on the benefit derived from dietary calcium intake, as derived in the 1991 proposed rule, is no longer the appropriate approach.

Thus, FDA has tentatively concluded not to require a statement about no known further benefit for foods containing 40 percent or more of the RDI of 1,000 mg or 400 mg calcium per RACC. Accordingly, FDA is proposing to eliminate the requirement in § 101.72(c)(2)(i)(E). The agency requests comments on the proposed amendment to eliminate the requirement in § 101.72(c)(2)(i)(E).

V. Description of Modifications to § 101.72

A. Title of the Regulation

FDA is proposing to revise the title of the regulation to: ''Health claims: calcium, vitamin D, and osteoporosis.'' This proposed amendment is necessary to reflect the additional claim for calcium and vitamin D and osteoporosis.

B. General Requirements

1. General requirements

Current § 101.72(a) is entitled ''Relationship between calcium and osteoporosis.'' FDA is proposing to revise § 101.72 to permit additional claims for calcium and vitamin D and osteoporosis. Thus, proposed § 101.72(a) includes information describing the effects of vitamin D on calcium in reducing the risk of osteoporosis, including the scientific evidence that establishes the role of vitamin D in enhancing the effects of calcium in terms of bone health. As a result, FDA is proposing to revise the title for § 101.72(a) to ''Relationship between calcium, vitamin D, and osteoporosis.''

Current § 101.72(b) sets out the significance of calcium on osteoporosis, describes the various factors that play a role in the development of osteoporosis, a multifactorial bone disease, and stipulates that adequate calcium intake is not the only recognized risk factor for osteoporosis. Since FDA is proposing to amend § 101.72 so that additional claims can be made for calcium and vitamin D and osteoporosis, § 101.72 (b) will need to address the significance of calcium as well as the significance of calcium and vitamin D on osteoporosis. Therefore, FDA is proposing to: (1) Revise the title of § 101.72(b) to ''Significance of calcium or calcium and vitamin D'' and (2) make it clear that adequate calcium intake or adequate calcium and vitamin D intake are not the only recognized risk factors in the development of osteoporosis.

Current § 101.72(b)(1) sets out key factors of heredity and being female for identifying those individuals most at risk for developing osteoporosis, and includes information on peak bone mass for Caucasian, Asian women, and American women of African heritage. FDA is proposing to remove § 101.72(b)(1).

Current § 101.72(b)(2) discusses the importance of maintenance of an adequate intake of calcium throughout life for the target subpopulation of adolescent and young adult Caucasian and Asian women. If FDA eliminates, as proposed, the requirement that the claim identify adolescent and young adult Caucasian and Asian women between the ages of 11 and 35, as the populations at particular risk for the development of osteoporosis, § 101.72(b)(2) would no longer be appropriate. Therefore, FDA is proposing to update the information in § 101.72(b)(2) and include it in proposed § 101.72(b). Thus, proposed § 101.72(b) will include information about the importance of maintenance of adequate calcium or adequate calcium and vitamin D throughout life and will read as follows: ''*Significance of calcium or calcium and vitamin D.* Adequate calcium intake, or adequate calcium and vitamin D intake, is not the only recognized risk factor in the development of osteoporosis, which is a

multifactorial bone disease. Maintenance of adequate calcium and vitamin D intakes throughout life is necessary to achieve optimal peak bone mass and to reduce the risk of osteoporosis in later life. However, vitamin D is most effective in this regard when calcium intakes are adequate. Increasing intake of calcium has been shown to have beneficial effects on bone health independent of dietary vitamin D.''

2. Requirements on the Nature of the Claim

Section 101.72(c)(2)(i) contains requirements for the nature of the claim. FDA is proposing to revise § 101.72(c)(2)(i) to read as follows: ''*Nature of the claim.* A health claim associating calcium, or when appropriate, calcium and vitamin D, with a reduced risk of osteoporosis may be made on the label or labeling of a food described in paragraphs (c)(2)(ii) and (d)(1) of this section, provided that:''

Current § 101.72(c)(2)(i)(A) contains the specific requirement that the claim makes clear that adequate calcium intake throughout life is not the only recognized risk factor in this multifactorial bone disease by listing specific factors, including sex, race, and age that place persons at risk of developing osteoporosis and stating that an adequate level of exercise and a healthful diet are also needed. The agency is proposing to revise § 101.72(c)(2)(i)(A) to read as follows: ''The claim makes clear the importance of adequate calcium intake, or when appropriate, adequate calcium and vitamin D intake, throughout life, in a healthful diet along with physical activity, are essential to reduce osteoporosis risk. The claim does not imply that adequate calcium intake, or when appropriate, adequate calcium and vitamin D intake, is the only recognized risk factor for the development of osteoporosis;''

Current § 101.72(c)(2)(i)(B) contains the specific requirement that the claim does not state or imply that the risk of osteoporosis is equally applicable to the general U.S. population. Furthermore, the claim shall identify the populations at particular risk for the development of osteoporosis. These populations include white (or the term ''Caucasian'') women and Asian women in their bone forming years (approximately 11 to 35 years of age or the phrase ''during teen or early adult years'' may be used). The claim may also identify menopausal (or the term ''middle-aged'') women, persons with a family history of the disease, and elderly (or ''older'') men and women as being at risk. The agency is proposing to remove these specific requirements in § 101.72(c)(2)(i)(B).

Current § 101.72(c)(2)(i)(C) contains the specific requirement that the claim identify the mechanism by which calcium reduces the risk of osteoporosis. The agency is proposing to eliminate this specific requirement and is providing in new § 101.72(d)(4) that information about the mechanism by which calcium, or when appropriate, calcium and vitamin D, reduces the risk of osteoporosis is optional.

Current § 101.72(c)(2)(i)(D) contains the specific requirement that the claim does not attribute any degree of reduction in risk of osteoporosis to maintaining an adequate calcium intake throughout life. The agency is proposing to revise this specific requirement to include information about calcium and vitamin D. Since the agency is proposing to remove the specific requirements in § 101.72(c)(2)(i)(B) and (c)(2)(i)(C), the agency will redesignate newly revised § 101.72(c)(2)(i)(D) as § 101.72 (c)(2)(i)(B). Thus, § 101.72(c)(2)(i)(B) will read as follows: ''The claim does not attribute any degree of reduction in risk of osteoporosis to maintaining an adequate dietary calcium intake, or when appropriate, an adequate dietary calcium and vitamin D intake, throughout life.''

Current § 101.72(c)(2)(i)(E) contains the specific requirement that a calcium and osteoporosis health claim include a statement that reflects the limit on the benefit derived from a total dietary calcium intake of greater than 200 percent of the recommended daily intake of calcium (2,000 mg of calcium). The agency is proposing to remove this specific requirement.

Current § 101.72(d)(1) and (d)(2) set out the optional information that may be included in the claim. FDA is proposing to add a new paragraph (d)(1) to include as optional the term ''vitamin D'' if the food meets or exceeds the requirements for a ''high'' level of vitamin D as defined in § 101.54(b). Thus, proposed § 101.72(d)(1) will read as follows: ''*Optional information.* The claim may include the term ''vitamin D'' if the food meets or exceeds the requirements for a ''high'' level of vitamin D as defined in § 101.54(b);''

Since FDA is proposing to add new paragraph (d)(1) to § 101.72, the agency is proposing to redesignate current § 101.72(d)(1) and (d)(2) as § 101.72(d)(2) and (d)(3), respectively. The agency is also proposing to revise newly redesignated § 101.72(d)(3) by removing reference to the publication ''Dietary Guidelines for Americans.'' FDA is proposing to take this action since the ''Dietary Guidelines for Americans,'' may not necessarily contain information on the number of people in the United States who have osteoporosis. Thus, proposed § 101.72(d)(3) will read as follows: ''The claim may include information on the number of people in the United States who have osteoporosis or low bone density. The sources of this information must be identified, and it must be current information from the National Center for Health Statistics, the National Institutes of Health, or the National Osteoporosis Foundation.''

The agency is proposing to add new paragraph (d)(4) to § 101.72, which will provide that the mechanism by which calcium, or when appropriate, calcium and vitamin D, reduces the risk of osteoporosis may be optional information in the claim. Thus, new paragraph (d)(4) would read as follows: ''The claim may state that the role of adequate calcium intake, or when appropriate, the role of adequate calcium and vitamin D intake, throughout life is linked to reduced risk of osteoporosis through the mechanism of optimizing peak bone mass during adolescence and early adulthood. The phrase ''build and maintain good bone health'' may be used to convey the concept of optimizing peak bone mass. When reference is made to persons with a family history of the disease, menopausal women, and elderly men and women, the claim may also state that adequate intake of calcium, or adequate intake of calcium and vitamin D, if applicable, is linked to reduced risk of osteoporosis through the mechanism of slowing the rate of bone loss.''

Since many of the amendments FDA is proposing will alter language used in the calcium and osteoporosis or the additional calcium and vitamin D and osteoporosis health claim, FDA is proposing to revise § 101.72(e) to provide model health claims for the calcium and osteoporosis health claim and to add new paragraph (f) to § 101.72 to provide model health claims for the additional calcium and vitamin D and osteoporosis health claim.

The agency invites comments to any or all of the proposed amendments to § 101.72.

VI. Analysis of Economic Impacts

A. Preliminary Regulatory Impact Analysis

FDA has examined the impacts of the proposed 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 proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. The proposed rule, if finalized, amends the current calcium and osteoporosis health claim language and would require changes to the claim language on products currently bearing the health claim. Thus, the only mandatory costs of this proposed rule, if finalized, would be the costs to update the current wording of the calcium and osteoporosis health claim on those products that currently bear the claim. Based on FDA's 2001 Food Labeling and Product Survey (FLAPS) (see discussion in section VI.A.2 ''Background'' of this document), very few products bear the calcium and osteoporosis health claim. Therefore, because of the limited use of the current calcium and osteoporosis health claim, the agency certifies that the proposed 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 $122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount and has determined that this proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

1. Need for This Regulation

Current regulations do not permit food producers to claim health benefits for products by linking the intake of vitamin D, when combined with the intake of calcium, with a reduced risk of osteoporosis. However, current regulations do permit food producers to claim health benefits for products by linking calcium intake with a reduced risk of osteoporosis only if they also list the specific risk factors and at-risk subpopulations for osteoporosis, the mechanism by which calcium reduces the risk of osteoporosis, and the limit of the benefits of dietary calcium at certain levels.

Health claims can inform consumers about diet-disease relationships and encourage producers to produce more healthful foods. This proposed rule would allow producers to make more nutrition information related to osteoporosis available to consumers (linking the intake of calcium and vitamin D to the risk of osteoporosis), while eliminating other information currently required to be given to consumers when claiming health benefits relating to the link between calcium intake and the risk of osteoporosis.

2. Background

Osteoporosis represents a major public health problem in the United States. This disease affects more than 10 million individuals and causes approximately 1.5 million fractures annually. Every year, these lead to 2.6 million physician office visits, 800,000 emergency room visits, and more than 500,000 hospitalizations, and the placement of nearly 180,000 people into nursing homes. The direct care expenditures for osteoporotic fractures alone range from $12 to $18 billion each year (measured in 2002 dollars) (Ref. 4). The indirect health costs, such as pain, suffering, and lost mobility, of osteoporosis are also large. Average calcium and vitamin D intakes are below recommended levels for many consumers (Refs. 4, 49, and 50). Even though many consumers are not achieving recommended intakes of calcium, producers have rarely placed the calcium-osteoporosis health claim on products that qualified for the claim. FDA's 2001 FLAPS (the most recently available data) showed only 1 out of the 87 shelf-stable juice products surveyed, a fortified orange juice, bearing the calcium osteoporosis health claim. None of the 10 milk products surveyed bore the claim (Ref. 51).

3. Regulatory Options

FDA has identified four regulatory options for this proposed rule: (1) Take no new regulatory action; (2) reduce the required language in the existing calcium-osteoporosis health claim; (3) expand the existing calcium-osteoporosis health claim to include vitamin D; or (4) reduce the required language in the existing calcium osteoporosis health claim and include vitamin D as an option to the claim, as described in this proposed rule.

4. Changes in Market Behavior in Response to Options

This proposed rule, if finalized as proposed, would require that any food manufacturers wishing their products' labels to make the calcium, or calcium and vitamin D, and osteoporosis health claim be redesigned. Labels must be redesigned in order for a food to carry the health claim since information on populations at particular risk for osteoporosis would no longer be required or allowed for the claim (see § 101.72(c)(2)(A) and (c)(2)(B)).

Products that wish to continue making a calcium health claim would not need to reformulate their products under the proposed rule. The nature of the food eligible to make a calcium health claim remains food that meets or exceeds a ''high'' level of calcium (as defined in § 101.54(b)). Manufacturers wishing to take advantage of the expanded calcium and vitamin D claim may voluntarily choose to reformulate their products. If some producers choose to reformulate their products to take advantage of the calcium and vitamin D health claim, they reveal that they expect the private benefit that the claims give them to exceed the expense of making the claims. If this is not the case, no producer will voluntarily choose to use the claims. Likewise, consumers who choose to purchase the products with the amended health claims reveal that they value the products more highly than other alternatives, including not purchasing the products.

We consider five potential effects in estimating the relative public health benefits of the options: (1) The extent to which the option encourages producers to use the health claims on their food labels; (2) the extent to which the option encourages producers to reformulate their products to make the health claims; (3) the extent to which the option provides information to consumers; (4) potential risk-risk tradeoffs (where the action taken to reduce the risk posed by one hazard causes an increase in the risk posed by another hazard) with each option; and (5) the availability of information on the relationship between osteoporosis and calcium and vitamin D to consumers who do not consume dairy products.

Producer responses

There are four likely responses to this proposal from producers: (1) Make no

changes (i.e., continue not making the calcium or calcium and vitamin D health claim; (2) create new product labels to continue making the calcium health claim (for products already making the existing claim); (3) add the health claims to their products that qualify for the health claims (increase usage of the claim due to the new required wording); and (4) reformulate their products (by fortifying with calcium or vitamin D, for example) to qualify for the health claims.

Several factors affect whether producers choose to use health claims, including the flexibility of the health claims and how appealing the health claims are to consumers. Revising the existing calcium osteoporosis health claim language to make it shorter will make it more appealing to put the health claims on labels. Package space is limited, so more flexible and shorter claims are easier to use. Also, Wansink, et al. (2004) found that shorter health claims on the front of the package led to more favorable beliefs about the product and a more positive image of the product among consumers (Ref. 52).

Approving a calcium, vitamin D, and osteoporosis health claim should encourage the manufacturers of foods that are eligible for fortification with vitamin D to do so because they will be able to publicize the relationship between vitamin D, calcium, and osteoporosis on their labels. If producers fortify more products with vitamin D, consumers can get more vitamin D in their diet without making changes in their dietary choices.

Consumer responses

Providing information about the relationship between calcium, vitamin D, and osteoporosis on food packages provides a number of benefits to consumers, including: (1) Informing them about the nutrient-disease relationship; (2) helping them identify products that are high in calcium and vitamin D; and (3) helping them make dietary choices that reduce their risk of osteoporosis. The extent to which consumers realize these benefits will depend on the consumers knowledge of the relationship between calcium, vitamin D, and bone health; how many products bear the calcium or calcium and vitamin D health claims; how many consumers read the health claims; and how much they change their behavior to include such products in their diets. There is evidence that consumers who read nutrition information on packages eat healthier diets (Refs. 53 and 54). However, there is a great deal of uncertainty about how much consumers change their behavior in response to label information.

Risk-risk tradeoffs

A potential concern is that allowing these osteoporosis health claims on juice drinks will result in consumers switching away from milk to juice drinks, which are higher in calories, for dietary sources of calcium and vitamin D. Table 1 of this document presents the caloric and nutrient profile of non-fat and low-fat milk products and an orange juice drink product as reported in the USDA National Nutrient Database for Standard Reference. Orange juice drinks are higher in calories and contain less of some important nutrients than either non-fat or low-fat milk (table 1 of this document).

TABLE 1: PROFILES OF SELECTED NUTRIENTS IN NON-FAT AND LOW-FAT MILK AND ORANGE JUICE DRINK (PER 8-OUNCE SERVING)

Nutrient	(1) Orange juice drink	(2) Non-fat Milk (Skim), with added vitamin A	(3) Low Fat Milk (1%), with added vitamin A
Energy, kcal	134	83	102
Protein, g	0.5	8.25	8.22
Total Fat, g	0	0.2	2.37
Saturated Fat, g	0	0.286	1.545
Carbohydrate, g	33.36	12.14	12.18
Total Dietary Fiber, g	0.5	0	0
Total Sugars, g	23.29	12.46	12.69
Calcium, mg	5	306	290
Iron, mg	0.27	0.07	0.07
Magnesium, mg	7	27	27
Phosphorus, mg	10	247	232
Potassium, mg	104	382	366
Sodium, mg	5	103	107
Zinc, mg	0.05	1.03	1.02
Copper, mg	0.045	0.032	0.024
Manganese, mg	0.017	0.007	0.007
Selenium, mcg	0	7.6	8.1
Vitamin C, mg	37.3	0	0
Thiamin, mg	0.945	0.11	0.049

TABLE 1: PROFILES OF SELECTED NUTRIENTS IN NON-FAT AND LOW-FAT MILK AND ORANGE JUICE DRINK (PER 8-OUNCE SERVING)—Continued

Nutrient	(1) Orange juice drink	(2) Non-fat Milk (Skim), with added vitamin A	(3) Low Fat Milk (1%), with added vitamin A
Riboflavin, mg	1.07	0.446	0.451
Niacin, mg	12.44	0.23	0.227
Pantothenic acid, mg	0.149	0.874	0.881
Vitamin B–6, mg	1.244	0.091	0.09
Folate, mcg	10	12	12
Vitamin B–12, mcg	0	1.3	1.07
Vitamin A, IU	109	499	478
Vitamin D, IU	0	101.46	126.77
Cholesterol, mg	0	5	12

The likelihood of consumers switching from non-fat or low-fat milk or to higher caloric juice drinks because of this rule is expected to be small because non-fat and low-fat milk and juice drinks that are eligible can already make the existing calcium and osteoporosis health claim. Permitting the same set of products to make the proposed, simpler calcium and osteoporosis health claim should not change the relative appeal of the claim to producers of one type of beverage over another. The allowance of the new calcium and vitamin D osteoporosis health claim could expand the set of products making an osteoporosis claim; however, the relative appeal of the new claim (calcium and vitamin D) to producers of non-fat and low-fat milk and juice drinks should be similar to the appeal of the existing calcium osteoporosis claim.

There is little evidence to support that consumers would switch from non-fat or low-fat milk to juice drinks as a result of this proposed rule. As stated in the Surgeon General's report on bone health and osteoporosis, consuming adequate levels of calcium and vitamin D throughout life are critically important to an individual's bone health. However, the report's review of national surveys suggests that the average calcium intake of individuals is far below the levels recommended for optimal bone health. One reason cited by the report for these low levels of calcium intake relates to current lifestyle and food preferences, which have resulted in reduced intake of dairy products and other naturally occurring calcium-rich foods. The report also posits that for some individuals lactose intolerance[3] may also play a role in not consuming adequate levels of calcium. Given this information on the current preference and tolerance for dairy products, expanding the calcium and osteoporosis health claim to include vitamin D as a result of this proposed rule should only lead to an increase in the overall consumption of these essential, under consumed nutrients.

In addition, according to the American Beverage Association, U.S. sales of calcium-fortified orange juice has grown dramatically over recent years, reaching nearly $1 billion in 2003 (Ref. 55), while overall sales of juice have not grown. Therefore, FDA expects that the nutritional profile of diets would most likely improve as a consequence of changes in consumption resulting from this proposed rule. Switching from unfortified to fortified juices would increase needed consumption of calcium and vitamin D.

5. Benefits and Costs of Regulatory Options

The simplification of the current health claim for calcium and osteoporosis, along with the additional proposed health claim for calcium, vitamin D, and osteoporosis should increase and expand the current usage of the health claim and therefore improve the U.S. population's intake of these two important nutrients. Therefore, all of the options considered below would improve public health relative to the baseline of taking no new regulatory action. In our analysis of the benefits and costs of the options, we compare the benefits and costs of each option with each other option based on their relative effects on consumer and producer behavior.

Option 1: Take no new regulatory action

This option would result in no change to the current situation. This is the baseline for comparison of options and entails no costs or benefits.

Option 2: Reduce the required language in the existing calcium osteoporosis health claim.

Compared with Option 1, this option would increase the appeal of the claim for producers, increase the use of the claim on products, and thereby provide consumers with more information on the calcium and osteoporosis diet-disease relationship. It could encourage more reformulation of products to fortify with calcium than has occurred with the existing claim. Like Option 1, this option provides consumers with no information about the relationship of vitamin D to osteoporosis.

With this option, manufacturers of some products making the current calcium and osteoporosis health claim may have to re-label their products to reflect the updated wording provided by the proposed claim. The potential costs associated with a required label change will vary depending on when the new effective compliance date is established. Table 2 of this document shows the possible range of costs by product type of having to re-label to be in compliance with the revised calcium and osteoporosis health claim. The product re-labeling costs were estimated using the FDA Labeling Cost Model (Ref. 56). The costs of re-labeling included are administrative, graphic, prepress,

[3]Lactose intolerance is a condition in which individuals cannot metabolize lactose, the main sugar found in milk and other calcium-rich dairy products. Information in the Surgeon General's report on bone health and osteoporosis indicates that an estimated 30 to 50 million Americans are affected by lactose intolerance, although to varying degrees.

engraving, and inventory costs. Re-labeling costs are shown for both a 12 month and 24 month compliance period.

TABLE 2: COST OF LABEL CHANGES FOR OPTION 2

		12 months to comply, cost per label SKU			24 months to comply, cost per label SKU		
NAICS Codes	Product	Low Cost	Med Cost	High Cost	Low Cost	Med Cost	High Cost
311421 311411	Fruit Juices	$7,478	$10,186	$15,282	$5,455	$7,595	$11,897
311514 311511	Non-fat and Low-fat Milk, fluid, dry, powered, condensed, flavored	$11,216	$14,086	$20,437	$7,127	$9,236	$14,327
311513	Low-fat Cheese, multiple types	$6,611	$8,759	$13,758	$5,106	$6,999	$11,489
311511	Yogurt-like products	$4,554	$6,490	$10,857	$4,140	$5,900	$9,880
325412	Dietary Supplements	$9,728	$13,345	$22,834	$8,540	$11,739	$20,266
Average cost of label change regardless of product type		$7,917	$10,573	$16,633	$6,074	$8,294	$13,572

Option 3: Expand the existing calcium and osteoporosis health claim to include vitamin D

Failing to shorten the existing calcium and osteoporosis health claim will not make the health claim as appealing to producers and consumers as Option 2, leading to less claim use and reformulation and less information provided to consumers than Option 2. This option would provide consumers with more information on vitamin D than Option 2, should producers decide to voluntarily re-label and/or reformulate their products to make use of the added vitamin D language.

Option 4: Reduce the required language in the existing calcium and osteoporosis health claim and include vitamin D as an option to the claim, as described in this proposed rule

Like Option 2, this option would increase the appeal of the calcium and osteoporosis health claim for producers and thereby provide consumers with more information on the calcium and osteoporosis diet-disease relationship. Also like Option 2, producers of products with existing calcium and osteoporosis health claim labeling will have to revise their labeling in order to comply with the revised claim language. Like Option 3, this option would provide consumers with more information on vitamin D than Option 2 because the new, simplified calcium and osteoporosis health claim can now contain information about vitamin D as well. It could also encourage more reformulation of products to fortify with vitamin D than would Option 2 and as many products to fortify with calcium as Option 2.

Summary

FDA is unable to quantify the benefits of this proposed rule due to uncertainty about the degrees of changes in consumer and producer behavior. However according to information compiled in the Surgeon General's report on bone health and osteoporosis, there are about 1.5 million osteoporotic fractures in the United States each year that carry annual direct care expenditures of $12 to $18 billion per year (2002 dollars). These fractures cause more than half a million hospitalizations, over 800,000 emergency room encounters, more than 2.6 million physician office visits, and the placement of nearly 180,000 individuals into nursing homes annually (Ref. 4). The direct costs of other complications from osteoporosis, and the indirect costs of these fractures and other osteoporotic ailments (e.g., the value of functional disability to the patient, the value of the pain and suffering to the patient, the costs experienced by the care giver) if calculated, would add substantially to the annual costs of this disease. Any increase in calcium and vitamin D intake by consumers insufficient in these nutrients as a result of this proposed rule could possibly lower the incidence of osteoporosis and therefore the annual costs associated with the disease.

Table 3 of this document provides a summary of the effects of the rule, and which options create the smallest and largest behavior changes for consumers and producers. All options should produce positive net benefits, with the largest net benefit arising from Option 4, the proposed rule. With Option 4, the largest number of products and labels would change, leading to the largest reduction in the risk of osteoporosis.

TABLE 3: SUMMARY OF EFFECTS OF OPTIONS

Effect	Largest effect	Smallest effect
Encouraging producer use of the claims	Option 4	Option 1
Encouraging fortification	Option 4	Option 1
Informing consumers	Option 4	Option 1
Informing consumers who do not buy dairy products about alternative food sources for vitamin D	Option 4	Option 1

B. Small Entity Analysis (or Initial Regulatory Flexibility Analysis)

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities consistent with statutory objectives. FDA does not believe that this proposed rule will have a significant economic impact on a substantial number of small entities because the only mandatory costs of this rule are the costs to update the current wording of the calcium osteoporosis

health claim for manufacturers of products that currently make the claim and wish to continue doing so. Also previously mentioned, FDA's 2001 Food Labeling and Product Survey showed only 1 out of 87 shelf-stable juice products surveyed bore the current calcium and osteoporosis health claim while none of the 10 milk products surveyed bore the claim. This implies that not many products eligible to bear the current claim would need to be re-labeled as a result of this proposed rule.

In addition, FDA establishes uniform compliance dates for final food labeling regulations in 2-year intervals. Therefore, companies whose products currently make the calcium and osteoporosis health claim and wish to continue doing so will have between 1 and 2 years to use existing label inventory and expense the costs of designing revised labeling. FDA estimates that on average, the cost to re-label a product according to the revised health claim language will be $7,900 to $16,600 per product if the compliance period is 12 months; and $6,100 to $13,600 per product if the compliance period is 24 months. FDA requests comment on whether this rule will have a significant impact on a substantial number of small entities. Manufacturers that wish to begin using the revised calcium and osteoporosis health claim or the new calcium, vitamin D, and osteoporosis health claim will only do so if the benefits of labeling their products to inform consumers of the claim outweigh the costs of doing so.

VII. Environmental Impact

The agency has determined under 21 CFR 25.32(p) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act

FDA concludes that the labeling provisions of this proposed rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather the food labeling health claim on the association between calcium only, or calcium and vitamin D, and reduced risk osteoporosis is a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

IX. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized as proposed, has a preemptive effect on State law. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal Statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. Section 403A(a)(5) of the act (21 U.S.C. 343–1(a)(5)) provides that: ''***no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce—***(5) any requirement respecting any claim of the type described in section 403(r)(1) of the act made in the label or labeling of food that is not identical to the requirement of section 403(r) * * *.'' Currently, this provision operates to preempt States from imposing health claim labeling requirements concerning calcium and vitamin D and reduced risk of osteoporosis because no such requirements had been imposed by FDA under section 403(r) of the act. This proposed rule, if finalized as proposed, would amend existing food labeling regulations to add vitamin D to the authorized health claim for calcium and a reduced risk of osteoporosis and would simplify the claim language. Although any final rule would have a preemptive effect in that it would preclude States from promulgating any health claim labeling requirements for calcium or calcium and vitamin D and a reduced risk of osteoporosis that are not identical to those that would be required by a final rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act. Section 403A(a)(5) of the act displaces both state legislative requirements and state common law duties. *Medtronic* v. *Lohr*, 518 U.S. 470, 503 (1996) (Breyer, J., concurring in part and concurring in judgment); id. at 510 (O'Connor, J., joined by Rehnquist, C.J., Scalia, J., and Thomas, J., concurring in part and dissenting in part); *Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504, 521 (1992) (plurality opinion); id. at 548–49 (Scalia, J., joined by Thomas, J., concurring in judgment in part and dissenting in part).

FDA believes that the preemptive effect of this proposed rule, if finalized as proposed, is consistent with Executive Order 13132. Section 4(e) of the Executive order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' FDA provided the States with an opportunity for appropriate participation in this rulemaking when it sought input from all stakeholders on February 17, 2006, when FDA's Division of Federal and State Relations provided notice via fax and e-mail transmission to State health commissioners, State agriculture commissioners, food program directors, and drug program directors as well as FDA field personnel of FDA's potential amendment to the health claim regulation authorizing health claims for calcium and osteoporosis (§ 101.72). The notice provided the States with further opportunity for input on the rule. It advised the States of FDA's possible action and encouraged the States and local governments to review the notice and to provide any comments to the docket (Docket No. 2004P–0294), until March 2, 2006. FDA received no comments in response to the notice. FDA is also providing an opportunity for State and local officials to comment on this proposed rule.

In conclusion, the agency has determined that the preemptive effects of this proposed rule are consistent with Executive Order 13132.

X. Comments

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

XI. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes

to the Web sites after this document publishes in the **Federal Register**.)

1. The Beverage Institute for Health and Wellness, ''Petition for Vitamin D, Calcium and Osteoporosis,'' (Docket No. 2004P–0464, CP1), July 12, 2004.

2. Osteoporosis, Prevention, Diagnosis, and Therapy, National Institutes of Health Consensus Statement, 17(1):1–45, March 27–19, 2000.

3. National Osteoporosis Foundation, America's Bone Health: The State of Osteoporosis and Low Bone Mass, 2002, *http://www.nof.org/advocacy/prevelence/index.htm*.

4. Bone Health and Osteoporosis: A Report of the Surgeon General, Rockville, MD: United States Department of Health and Human Services, Office of the Surgeon General, 2004.

5. Standing Committee on the Scientific Evaluation of Dietary Reference Intakes, Food and Nutrition Board, Institute of Medicine, ''Dietary Reference Intakes for Calcium, Phosphorus, Magnesium, Vitamin D and Fluoride,'' Chapter 4, National Academy Press, Washington, DC, 1997.

6. Standing Committee on the Scientific Evaluation of Dietary Reference Intakes, Food and Nutrition Board, Institute of Medicine, ''Dietary Reference Intakes for Calcium, Phosphorus, Magnesium, Vitamin D and Fluoride,'' Chapter 7, National Academy Press, Washington, DC, 1997.

7. Standing Committee on the Scientific Evaluation of Dietary Reference Intakes, Food and Nutrition Board, Institute of Medicine, ''Dietary Reference Intakes for Calcium, Phosphorus, Magnesium, Vitamin D and Fluoride,'' Chapter 3, *National Academy Press*, Washington, DC, 1997.

8. Bialostosky, K., J. Wright, J. Kennedy-Stephenson, et al., ''Dietary Intake of Macronutrients Micronutrients and Other Dietary Constituents: United States 1988–1994,'' *National Center for Health Statistics, Vital Health Statistics* 11(245), Tables 93 and 94, 2002.

9. Erwin, R. E., J. D. Wright, and D. Read-Gillette, ''Prevalence of Leading Types of Dietary Supplements Used in the Third National Health and Nutrition Examination Survey, 1988–1994,'' *National Center for Health Statistics, Advance Data from Vital and Health Statistics*; no. 349, Hyattsville, MD: 2004.

10. Rajakumar, K., ''Vitamin D, Cod Liver Oil, Sunlight and Rickets: A Historical Perspective,'' *Pediatrics*, 112:132–135, 2003.

11. Memorandum to the record, Determination of Amounts of Vitamin D and Calcium in Common Dietary Supplement Products, prepared by Jillonne H. Kevala, FDA, February 22, 2006.

12. Ervin, R. B., C. Y. Wang, J. D. Wright, et al., ''Dietary Intake of Selected Minerals for the United States Population: 1999–2000,'' *National Center for Heath Statistics, Advance Data from Vital and Health Statistics*; no. 341 Hyattsville, MD: 2004.

13. Prentice, A., J-P. Bonjour, F. Branca, et al., ''PASSCLAIM—Bone Health and Osteoporosis,'' *European Journal of Nutrition*, 42(Suppl 1):1/28–1/49, 2003.

14. H. F. DeLuca, ''Overview of General Physiologic Features and Functions of Vitamin D,'' *American Journal of Clinical Nutrition*, 80(suppl):1689S–1696S, 2004.

15. William F. Ganong, ''Hormonal Control of Calcium Metabolism and the Physiology of Bone,'' Chapter 21 in *Review of Medical Physiology*, 21st ed., New York, McGraw-Hill Companies, 2003.

16. R. P. Heaney, ''The Importance of Calcium, Intake for Lifelong Skeletal Health,'' *Calcified Tissue International*, 70:70–73, 2002.

17. ''Guidance for Industry: Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements,'' Rockville, MD: (*http://www.cfsan.fda.gov/~dms/ssaguide.html*), December 1999.

18. Aloia, J.F., A. Vaswani, J. D. Yeh, et al., ''Calcium Supplementation With and Without Hormone Replacement Therapy to Prevent Postmenopausal Bone Loss,'' *Annals of Internal Medicine*, 120:97–103, 1994.

19. Baeksgaard, L., K. P. Andersen, and L. Hyldstrup, ''Calcium and Vitamin D Supplementation Increases Spinal BMD in Healthy, Postmenopausal Women,'' *Osteoporosis International*, 8:255–260, 1998.

20. Chapuy, M. C., M. E. Arlot, F. Duboeuf, et al., ''Vitamin D_3 and Calcium to Prevent Hip Fractures in Elderly Women'', *The New England Journal of Medicine*,'' 327:1637–1642, 1992.

21. Chapuy, M. C., M.E. Arlot, P. D. Delmas, et al., ''Effect of Calcium and Cholecalciferol Treatment for Three Years on Hip Fractures in Elderly Women,'' *British Medical Journal*, 308:1081–1082, 1994.

22. Dawson-Hughes, B., G. E. Dallal, G.E., Krall, E.A., Harris, S., Sokoll, L.J., and G. Falconer, ''Effect of Vitamin D Supplementation on Wintertime and Overall Bone Loss in Healthy Postmenopausal Women,'' *Annuals of Internal Medicine*, 115:505–512, 1991.

23. Dawson-Hughes, B., S. S. Harris, E. A. Krall, et al., ''Effect of Calcium and Vitamin D Supplementation on Bone Density in Men and Women 65 Years of Age or Older,'' *The New England Journal of Medicine*, 337:670–676, 1997.

24. Dawson-Hughs, B., S. S. Harris, E. A. Krall, et al., 2000 ''Effect of Withdrawal of Calcium and Vitamin D Supplements on Bone Mass in Elderly Men and Women,'' *American Journal of Clinical Nutrition*, 72:745–750, 2000.

25. Grados, F., M. Brazier, S. Kamel, et al., ''Effects on Bone Mineral Density of Calcium and Vitamin D Supplementation in Elderly Women With Vitamin D Deficiency,'' *Joint Bone Spine*, 70:203–208, 2003.

26. Krieg, M. A., A. F. Jacquet, M. Bremgartner, et al., ''Effect of Supplementation with Vitamin D_3 and Calcium on Quantitative Ultrasound of Bone in Elderly Institutionalized Women: A Longitudinal Study,'' *Osteoporosis International*, 9:483–488, 1999.

27. Orwoll, E. S., S. K. Oviatt, M. R. McClung, et al., ''The Rate of Bone Mineral Loss in Normal Men and the Effects of Calcium and Cholecalciferol Supplementation,'' *Annuals of Internal Medicine*, 112:29–34, 1990.

28. Prestwood, K. M., D. L. Thompson, A. M. Kenny, et al., ''Low Dose Estrogen and Calcium Have an Additive Effect on Bone Resorption in Older Women,'' *Journal of Clinical Endocrinology Metabolism*, 84:179–183, 1999.

29. Sosa, M., P. Láinez, A. Arbelo, et al., ''The Effect of 25-dihydroxyvitamin D on the Bone Mineral Metabolism of Elderly Women with Hip Fracture,'' *Rheumatology*, 39:1263–1268, 2000.

30. Jackson, R. D., et al., ''Calcium Plus Vitamin D Supplementation and the Risk of Fractures, The Women's Health Initiative,'' *The New England Journal of Medicine*, 354:669–683, 2006.

31. Spilker, B. in Guide to Clinical Trials, Philadelphia, PA: Lippincott Williams & Wilkins, 2000, p. 59–64.

32. Cumming, R. G., and M. C. Nveitt, ''Calcium for Prevention of Osteoporotic Fractures in Postmenopausal Women,'' *Journal of Bone Mineral Research*, 12:1321–1329, 1997.

33. Ensrud, K. R., T. Duong, J. A. Cauley, et al., ''Low Fractional Calcium Absorption Increases the Risk for Hip Fracture in Women with Low Calcium Intake,'' *Annuals of Internal Medicine*, 132:345–353, 2000.

34. Hannan, M. T., D. T. Felson, B. Dawson-Hughes, et al., ''Risk Factors for Longitudinal Bone Loss in Elderly Men and Women: The Framingham Osteoporosis Study,'' *Journal of Bone Mineral Research*, 15:710–720, 2000.

35. Ilich, J. Z., M. Skugor, T. Hangartner, et al., ''Relation of Nutrition, Body Composition and Physical Activity to Skeletal Development: A Cross-Sectional Study in Preadolescent Females,'' *Journal of the American College of Nutrition*, 17:136–147,1998.

36. Kardinaal, A. F. M., A. Ando, P. Charles, et al., ''Dietary Calcium and Bone Density in Adolescent Girls and Young Women in Europe,'' *Journal of Bone Mineral Research*, 14:583–592, 1999.

37. Kristinsson, J. Ö., Ö. Valdimarsson, G. Sigurdsson, et al., ''Serum 25-hydorxyvitamin D Levels and Bone Mineral Density in 16-20-Year-Old Girls: Lack of Association,'' *Journal of Internal Medicine*, 243:381–388, 1998.

38. Lamberg-Allardt, C. J. E., T. A. Outila, M. U. M. Kärkkäinen, et al., ''Vitamin D Deficiency and Bone Health in Healthy Adults in Finland: Could this be a Concern in Other Parts of Europe?,'' *Journal of Bone Mineral Research*, 16:2066–2073, 2001.

39. Oliveri, M. B., A. Wittich, C. Mautalen, et al., ''Peripheral Bone Mass is Not Affected by Winter Vitamin D Deficiency in Children and Young Adults from Ushuaia,'' *Calcified Tissue International*, 67:220–224, 2000.

40. Flegal, K. M., ''Evaluating Epidemiologic Evidence of the Effects of Food and Nutrient Exposures,'' *American Journal of Clinical Nutrition*, 69:1339S–1344S, 1999.

41. Reddy, M. B. and M. Love, ''The Impact of Food Processing on the Nutritional Quality of Vitamins and Minerals,'' *Advances in Experimental Medicine and Biology*, 459:99–106, 1999.

42. Sempos, C. T., K. Liu, and N.D. Ernst, ''Food and Nutrient Exposures: What to Consider When Evaluating Epidemiologic Evidence,'' *American Journal of Clinical Nutrition*, 69:1330S–1338S, 1999.

43. National Institutes of Health, Office of the Director, ''NIH Consensus Statement, Optimal Calcium Intake,'' vol. 12, No. 4, June 6–8, 1994.

44. Cummings, S. R. and L. J. Melton, III, ''Epidemiology and Outcomes of Osteoporotic Fractures,'' *The Lancet*, 359:1761–1767, 2002.

45. Zingmond, D. S. and L. J. Melton, 3rd, and S. L. Silverman. ''Increasing Hip Fracture Incidence in California Hispanics, 1983 to 2000,'' Osteoporosis International, 8:603–610, 2004.

46. Specker B. L., L. Mulligan, and M. L. Ho, ''Longitudinal Study of Calcium Intake, Physical Activity, and Bone Mineral Content in Infants 6-18 Months of Age,'' *Journal of Bone Mineral Research*, 4:569–576, 1999.

47. Specker B., and T. Binkley, ''Randomized Trial of Physical Activity and Calcium Supplementation on Bone Mineral Content in 3- to 5-Year-Old Children,'' *Journal of Bone Mineral Research*, 18:885–892, 2003.

48. Levy, A., Food and Drug Administration, Center for Food Safety and Applied Nutrition, Division of Market Studies, ''Summary Report on Health Claims Focus Groups,'' June 15, 1995.

49. Calvo, M. S., S. J. Whiting, and C. N. Barton, ''Vitamin D Fortification in the United States and Canada: Current Status and Data Needs,'' *American Journal of Clinical Nutrition*, 80(suppl):1710S–1716S, 2004.

50. Moore, C., M. M. Murphy, D. R. Keast, et al., ''Vitamin D Intake in the United States,'' *Journal of the American Dietetic Association*, 104(6):980–983, 2004.

51. U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Nutritional Products, Labeling, and Dietary Supplements, ''Food Label and Package Survey 2000–2001,'' (*http://www.cfsan.fda.gov/~dms/lab-flap.html*), August 2004.

52. Wansink B., Sonka, S.T. and C.M. Hasler, ''Front-Label Health Claims: When Less is More,'' *Food Policy*, 29(6):659–667, 2004.

53. Kim, S., R. M. Nayga, Jr., and O. Capps Jr., ''The Effect of Food Label Use on Nutrient Intakes: An Endogenous Switching Regression Analysis,'' *Journal of Agricultural and Resource Economics*, 25(1):215–231, 2000.

54. Neuhouser, M. L., A. R. Kristal, and R. E. Patterson, ''Use of Food Nutrition Labels Associated With Lower Fat Intake,'' *Journal of the American Dietetic Association*, 99(1):45–50, 53, 1999.

55. American Beverage Association, Press Release, September 17, 2004, (*http://www.ameribev.org/news-detail/index.aspx?nid=32*).

56. ''Food and Drug Administration Labeling Cost Model,'' Health, Social, and Economics Research, Research Triangle Park, NC, January 2003.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of the Food and Drugs, and redelegated to the Deputy Director for Regulatory Affairs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

2. Section 101.72 is revised to read as follows:

§ 101.72 Health claims: calcium, vitamin D, and osteoporosis.

(a) *Relationship between calcium, vitamin D, and osteoporosis.* An inadequate intake of calcium or calcium and vitamin D contributes to low peak bone mass, which has been identified as one of many risk factors in the development of osteoporosis. Peak bone mass is the total quantity of bone present at maturity, and experts believe that it has the greatest bearing on whether a person will be at risk of developing osteoporosis and related bone fractures later in life. Another factor that influences total bone mass and susceptibility to osteoporosis is the rate of bone loss after skeletal maturity. Vitamin D is required for normal absorption of calcium and to prevent the occurrence of high serum parathyroid hormone (PTH) concentration, which stimulates mobilization of calcium from the skeleton and can lower bone mass. Calcium, along with vitamin D and several other nutrients, is required for normal bone mineralization. While vitamin D is required for optimal bone mineralization, it is more effective when calcium intake is adequate. An adequate intake of calcium and vitamin D is thought to exert a positive effect during adolescence and early adulthood in optimizing the amount of bone that is laid down. However, the upper limit of peak bone mass is genetically determined. The mechanism through which adequate intakes of calcium and vitamin D and optimal peak bone mass reduce the risk of osteoporosis is thought to be as follows. All persons lose bone with age. Hence, those with higher bone mass at maturity take longer to reach the critically reduced mass at which bones can fracture easily. The rate of bone loss after skeletal maturity also influences the amount of bone present at old age and can influence an individual's risk of developing osteoporosis. Maintenance of adequate intakes of calcium and vitamin D later in life is thought to be important in reducing the rate of bone loss particularly in the elderly and in women during the first decade following menopause, but a significant protective effect is also seen among men and younger women.

(b) *Significance of calcium or calcium and vitamin D.* Adequate calcium intake, or adequate calcium and vitamin D intake, is not the only recognized risk factor in the development of osteoporosis, which is a multifactorial bone disease. Maintenance of adequate calcium and vitamin D intakes throughout life is necessary to achieve optimal peak bone mass and to reduce the risk of osteoporosis in later life. However, vitamin D is most effective in this regard when calcium intake is adequate. Increasing intake of calcium has been shown to have beneficial effects on bone health independent of dietary vitamin D.

(c) *Requirements.* (1) All requirements set forth in § 101.14 shall be met.

(2) *Specific requirements*—(i) *Nature of the claim.* A health claim associating calcium or, when appropriate, calcium and vitamin D with a reduced risk of osteoporosis may be made on the label or labeling of a food described in paragraphs (c)(2)(ii) and, (d)(1) of this section, provided that:

(A) The claim makes clear the importance of adequate calcium intake, or when appropriate, adequate calcium and vitamin D intake, throughout life, in a healthful diet along with physical activity, are essential to reduce osteoporosis risk. The claim does not imply that adequate calcium intake, or when appropriate, adequate calcium and vitamin D intake, is the only recognized risk factor for the development of osteoporosis;

(B) The claim does not attribute any degree of reduction in risk of osteoporosis to maintaining an adequate dietary calcium intake, or when appropriate, an adequate dietary calcium and vitamin D intake, throughout life.

(ii) *Nature of the food.* (A) The food shall meet or exceed the requirements for a ''high'' level of calcium as defined in § 101.54(b);

(B) The calcium content of the product shall be assimilable;

(C) Dietary supplements shall meet the United States Pharmacopeia (U.S.P.) standards for disintegration and dissolution applicable to their component calcium salts, except that dietary supplements for which no U.S.P. standards exist shall exhibit appropriate assimilability under the conditions of use stated on the product label;

(D) A food or total daily recommended supplement intake shall not contain more phosphorus than calcium on a weight per weight basis.

(d) *Optional information.* (1) The claim may include the term ''vitamin D'' if the food meets or exceeds the requirements for a ''high'' level of vitamin D as defined in § 101.54(b);

(2) The claim may include information from paragraphs (a) and (b) of this section.

(3) The claim may include information on the number of people in the United States who have osteoporosis or low bone density. The sources of this information must be identified, and it must be current information from the National Center for Health Statistics, the National Institutes of Health, or the National Osteoporosis Foundation.

(4) The claim may state that the role of adequate calcium intake, or when appropriate, the role of adequate calcium and vitamin D intake, throughout life is linked to reduced risk of osteoporosis through the mechanism of optimizing peak bone mass during adolescence and early adulthood. The phrase ''build and maintain good bone health'' may be used to convey the concept of optimizing peak bone mass. When reference is made to persons with a family history of the disease, menopausal women, and elderly men and women, the claim may also state that adequate intake of calcium or adequate intake of calcium and vitamin D, if applicable, is linked to reduced risk of osteoporosis through the mechanism of slowing the rate of bone loss.

(e) *Model health claims.* The following model health claims may be used in food labeling to describe the relationship between calcium and osteoporosis:

Physical activity and adequate calcium throughout life, as part of a well-balanced diet, may reduce the risk of osteoporosis.

Adequate calcium as part of a healthful diet, along with physical activity, may reduce the risk of osteoporosis in later life.

(f) *Model additional health claims for calcium and vitamin D.* The following model health claims may be used in food labeling to describe the relationship between calcium, vitamin D, and osteoporosis:

Physical activity and adequate calcium and vitamin D throughout life, as part of a well-balanced diet, may reduce the risk of osteoporosis.

Adequate calcium and vitamin D as part of a healthful diet, throughout life along with physical activity, may reduce the risk of osteoporosis in later life.

Dated: December 18, 2006.

Michael M. Landa,

Deputy Director, Regulatory Affairs, Center for Food Safety and Applied Nutrition.

[FR Doc. E6–22573 Filed 1–4–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 1994P–0390 (formerly 94P–0390) and 1995P–0241 (formerly 95P–0241)]

Food Labeling: Nutrient Content Claims, General Principles; Health Claims, General Requirements and Other Specific Requirements for Individual Health Claims; Withdrawal in Part

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal in part.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is withdrawing certain proposed amendments of a proposed rule that published in the **Federal Register** of December 21, 1995 (60 FR 66206), related to the calcium and osteoporosis health claim (21 CFR 101.72). FDA is taking action in response to a health claim petition submitted by The Beverage Institute for Health and Wellness to amend the calcium and osteoporosis claim. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to amend the calcium and osteoporosis claim.

DATES: The proposed rule that published on December 21, 1995 (60 FR 66206) is withdrawn in part for § 101.72(c)(2)(i)(A), (B), and (E) as of January 5, 2007.

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

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 21, 1995, FDA published a proposed rule entitled ''Nutrient Content Claims, General Principles; Health Claims, General Requirements and Other Specific Requirements for Individual Health Claims'' (60 FR 66206), the 1995 proposal, to amend its regulations on health claims and nutrient content claims to provide more flexibility in the use of these claims on food products, and to amend specific requirements to certain individual health claims. FDA took this action in response to citizen petitions submitted by the National Food Processors Association (NFPA) (Docket No. 1994P–0390) and the American Bakers Association (ABA) (Docket No. 1995P–0241). The agency has extended or reopened the comment period for the 1995 proposal four times in response to requests by stakeholders and other FDA initiatives and developments. The most recent reopening of the comment period was announced in the **Federal Register** of May 4, 2004 (69 FR 24541), and the comment period was open until July 6, 2004.

On July 12, 2004, the agency received a health claim petition submitted by The Beverage Institute for Health and Wellness requesting that the agency amend the calcium and osteoporosis health claim to, among other things, simplify the language used in the claim. In response to this health claim petition, FDA is publishing elsewhere in this issue of the **Federal Register** a proposed rule to, among other things, simplify the language used in the calcium and osteoporosis health claim. Accordingly, the agency is withdrawing certain proposed amendments to the specific requirements in the calcium and osteoporosis health claim.

II. Withdrawn Proposed Amendments to § 101.72(c)(2)(i)(A), (B), and (E) of the 1995 Proposal

In the 1995 proposal, FDA proposed to simplify § 101.72(c)(2)(i)(A) by limiting the requirement to a balanced statement that reflects the importance of the essential nutrient calcium over a lifetime in a healthful diet to reduce osteoporosis risk, but that does not imply that calcium is the only risk factor for the development of osteoporosis, and to eliminate the provision in § 101.72(c)(2)(i)(A) that the specific risk factors, including sex, race, age, and the need for an adequate level of exercise be stated in any claim. Elsewhere in this issue of the **Federal Register**, FDA is proposing alternative amendments to § 101.72(c)(2)(i)(A). Therefore, FDA is withdrawing this proposed amendment of the 1995 proposal.

In the 1995 proposal, FDA proposed to revise § 101.72(c)(2)(i)(B) by removing the requirement to identify by race or ethnicity those populations at particular risk for the development of osteoporosis, but to retain identification of teen and young women, irrespective of race or ethnicity, as the focus of the claim. Elsewhere in this issue of the **Federal Register**, FDA is proposing alternative amendments to § 101.72(c)(2)(i)(B). Therefore, FDA is withdrawing this proposed amendment of the 1995 proposal.

In the 1995 proposal, FDA proposed to increase the amount of calcium

present in a food that triggers the requirement in § 101.72(c)(2)(i)(E) that the claim include a statement that reflects the limit of the benefits derived from dietary calcium intake. Elsewhere in this issue of the **Federal Register**, FDA is proposing alternative amendments to § 101.72(c)(2)(i)(E). Therefore, FDA is withdrawing this proposed amendment of the 1995 proposal.

III. Related Action

Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to amend § 101.72 to, among other things: (1) Eliminate the requirement in § 101.72(c)(2)(i)(A) that the claim list sex, race, and age as specific risk factors for the development of osteoporosis; (2) eliminate the requirement in § 101.72(c)(2)(i)(B) that the claim does not state or imply that the risk of osteoporosis is equally applicable to the general U.S. population, and that the claim identify the populations at particular risk for the development of osteoporosis; and (3) eliminate the requirement in § 101.72(c)(2)(i)(E) that the claim include a statement that reflects the limit of the benefits derived from dietary calcium intake, when the level of calcium in the food exceeds a set threshold level.

Comments specific to the proposed amendments in § 101.72(c)(2)(i)(A), (B), and (E) that were submitted in response to the 1995 proposal were considered in the development of the proposed rule that responds to the health claim petition submitted by The Beverage Institute for Health and Wellness.

Authority: Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the proposed rule published on December 21, 1995 (60 FR 66206), is withdrawn in part for § 101.72(c)(i)(A), (B), and (E).

Dated: December 18, 2006.

Michael M. Landa,

Deputy Director, Regulatory Affairs, Center for Food Safety and Applied Nutrition.

[FR Doc. E6–21996 Filed 1–4–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2006–25767 formerly CGD09–06–123]

RIN 1625–AB11

Safety Zones; U.S. Coast Guard Water Training Areas, Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its notice of proposed rulemaking (NPRM) concerning the establishment of safety zones throughout the Great Lakes for the purpose of conducting gunnery training. The Coast Guard is authorized to conduct training in realistic conditions and in locations including in, on, and over the internal waters of the United States. In order to maximize safety, the NPRM proposed establishing safety zones in order to maintain Coast Guard control over the training area during training periods. This NPRM is being withdrawn, however, because of comments received from the public regarding the number and location of the proposed safety zones, the frequency of use, notification procedures as well as other concerns raised by the public. There will be no further gunnery training on the Great Lakes to satisfy non-emergency training requirements unless we first propose to the public and then publish a final rule. Because the Coast Guard is mandated to provide for the safety and security of the more than 30 million people in Great Lakes region, the critical infrastructure that make up the Great Lakes system, and the vessels that use it, we are evaluating all available options, including a new NPRM for gunnery training.

DATES: The notice of proposed rulemaking is withdrawn on January 5, 2007.

FOR FURTHER INFORMATION CONTACT: Commander Gustav Wulfkuhle, Enforcement Branch, Response Division, Ninth Coast Guard District, Cleveland, OH at (216) 902–6091.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 1, 2006, the Coast Guard published a notice of proposed rulemaking (NPRM) (71 FR 43402) to establish permanent safety zones throughout the Great Lakes which would restrict vessels from portions of the Great Lakes during live-fire gun exercises that would be conducted by Coast Guard cutters and small boats. The initial comment period for the NPRM ended on August 31, 2006. In response to public requests, the Coast Guard re-opened the comment period (71 FR 53629, September 12, 2006) from September 12, 2006 to November 13, 2006, in order to provide the public more time to submit comments and recommendations. On September 19 and 27, 2006, the Coast Guard published brief documents announcing the dates and other information on public meetings regarding the NPRM and the gunnery exercises. (71 FR 54792, 56420).

On October 12, 2006, the Coast Guard announced the addition of three more public meetings and again stated that more detailed information related to the meetings would be published at a later date. (71 FR 60094). On October 23, the Coast Guard published a document containing detailed information about five additional public meetings. (71 FR 62075).

Background

Thirty-four safety zones were to be located throughout the Great Lakes in order to accommodate 56 separate Coast Guard units. The proposed safety zones were all located at least three nautical miles from the shoreline.

The Coast Guard proposed to establish permanent zones on the Great Lakes to provide the public with more notice and predictability when conducting infrequent periodic training exercises of brief duration, and to give the public an opportunity to comment on the proposals. The proposed safety zones would have appeared on National Oceanographic and Atmospheric Administration nautical charts, which would have provided a permanent reference for mariners.

The proposed safety zones would have been utilized only upon notice by the cognizant Captain of the Port for the area involved in the exercise. Under the procedure outlined in the NPRM, the cognizant Captain of the Port would have issued notice of the enforcement of a live-fire exercise safety zone by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification would have included, but not been limited to, Broadcast Notice to Mariners or Local Notice to Mariners before, during, and at the conclusion of training exercises.

The coordinates of the proposed safety zones were published on August

1, 2006 at 71 FR 43402. All coordinates used to determine the zones were based upon North American Datum 1983 (NAD 83).

Withdrawal

The Coast Guard is withdrawing the NPRM published on August 1, 2006 concerning the establishment of safety zones throughout the Great Lakes, but will examine options for future consideration which may include a new NPRM. The Coast Guard will reevaluate the proposal in light of issues raised in the comments the Coast Guard received during the course of this rulemaking. Whatever option the Coast Guard pursues, it intends to address the concerns of the Great Lakes community and to work with the region's stakeholders to develop an acceptable solution that meets the readiness needs of Coast Guard Forces and addresses the public's concerns.

Discussion of the Comments

The Coast Guard received over 900 comments regarding this NPRM. The Coast Guard received comments from Members of Congress, state and local government representatives, environmentalists, recreational boaters, commercial users, Native American tribes, local businesses, and members of the general public in the Great Lakes region.

Several commenters unconditionally supported the Coast Guard's proposal and recognized the Coast Guard's need to be trained in order to carry out its law enforcement and homeland security missions. Several other commenters supported the Coast Guard's proposal but like many commenters raised concerns about the number, size, and location of the proposed safety zones and whether they would impede recreational and commercial activity, including tourism. Some stated that the water training areas would negatively impact the economy, and some ferry operators commented that the locations of the areas would negatively impact their operations.

Commenters also expressed concerns related to safety and notification issues surrounding the establishment of the water training areas. For example, there were questions on the distance that bullets can travel if they ricochet off the surface of the water and how far they could travel generally. Notification questions included how small craft and vessels without radios would be notified that a live-fire exercise was being conducted in their area. Some people stated that the 2 hour broadcast notice to mariners was insufficient and suggested additional notification procedures, including the use of local media or announcements on the emergency broadcast system. While some commenters suggested that notification begin two weeks before the scheduled exercise, others requested that training be limited to particular days of the week and seasons of the year. In particular, commenters requested that the training schedule avoid peak boating season to accommodate safety and notification concerns.

Many commenters mentioned environmental concerns, including the potential for lead to find its way into their drinking water. Native American tribes, along with other groups, also expressed concerns regarding subsistence fishing and the impact of lead on the food supply.

Other environmental comments related to the Preliminary Health Risk Assessment.[1] Based upon standard risk evaluation procedures and ''realistic worst case'' assumptions, the Risk Assessment concluded that the proposed training would result in no elevated risks for the Great Lakes/freshwater, estuarine/Chesapeake Bay, and riverine systems scenarios. Commenters raised concerns, among others that the Risk Assessment did not consider current levels of contamination or contemplate potential cumulative effects beyond 5 years.

Some commenters raised concerns over the Rush-Bagot Agreement of 1817 that limits naval forces on the Great Lakes, and the impact of the training exercises on the relationship between the United States and Canada. Other commenters expressed general concern over the perceived militarization of the Great Lakes.

Commenters suggested a variety of alternatives. Some commenters suggested limiting the number of zones and reducing their size. Other suggestions included using ''green'' ammunition, simulators and/or lasers, and conducting the training in areas other than the Great Lakes.

In light of these comments and input received during the public meetings, the Coast Guard is withdrawing the current NRPM. The Coast Guard will not conduct further gunnery training on the Great Lakes to satisfy non-emergency training requirements unless the Coast Guard publishes notice of its proposed action, allows the public an opportunity to comment, and publishes a final rule. A terrorist attack or other emergency may alter these plans. The Coast Guard will ensure that any live-fire training is conducted responsibly, safely, and in accordance with applicable legal requirements.

Future Proposals/Training Areas

The threat against our Nation remains very real, and vulnerabilities within the Great Lakes system are extensive, diverse, and significant. The Coast Guard is mandated to provide for the safety and security of the more than 30 million people in the Great Lakes Basin, as well as the 11 major ports, 13 nuclear power plants, 348 regulated terminals and facilities, 22 high capacity passenger vessels and ferries, and the hundreds of locks, dams, bridges and other critical infrastructure that make up the Great Lakes system. The Coast Guard is also responsible for the safety and security of several thousand annual Great Lakes commercial vessel transits.

The Coast Guard must be prepared to counter overseas, cross-border, or domestic threats. This includes protecting the citizens of the Great Lakes as well as vessels, ports, waterways and critical infrastructure in the Great Lakes. The Coast Guard must be trained and prepared to meet all threats and all hazards. In order to be proficient, the Coast Guard must train in the maritime environment in which it operates. Operating in the maritime environment is inherently different from land operations, and Coast Guard personnel must be able to shoot safely and effectively from vessels at moving targets in the water.

While the Coast Guard must be ready to confront threats to homeland security originating in the maritime domain, training in the environment must be conducted with due regard for public safety and in a manner that is protective of human health and the environment.

To properly consider the many equities involved, the Coast Guard is withdrawing the NPRM. The Coast Guard is analyzing temporary options to ensure that Coast Guard boat crews obtain training outside the Great Lakes that they require to retain current gunnery qualifications. Maintaining these qualifications is imperative to the Coast Guard mission of providing adequate levels of maritime security in the Great Lakes. The Coast Guard will evaluate all available options including whether to issue a new NPRM prior to conducting non-emergency training exercises on the Great Lakes.

[1] This study, entitled ''Preliminary Health Risk Assessment for Proposed U.S. Coast Guard Weapons Training Exercises,'' is publicly available as part of electronic docket number 25767. You may electronically access the public docket by performing a ''Simple Search'' for docket number 25767 on the Internet at *http://dms.dot.gov.* The Risk Assessment is the third document in the docket.

Authority

This action is taken under the authority of 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

Dated: December 28, 2006.

John E. Crowley, Jr.,

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

[FR Doc. E6–22632 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 72, No. 3
Friday, January 5, 2007

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Revision of Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice to amend Privacy Act Systems of Records.

SUMMARY: Pursuant to the Privacy Act (5 U.S.C. 552a), notice is hereby given that the United States Department of Agriculture (USDA) proposes to amend the Privacy Act System of Records FCIC–8, entitled ''List of Ineligible Producers''. The system of records is maintained by the Risk Management Agency (RMA), an agency of USDA, which administers programs of the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government corporation. The list of ineligible producers system of records is being revised to reflect changes in the administration and management of the Federally reinsured plan of insurance contractors and to reflect more completely the types of information collected and maintained in this system of records. The primary purpose of the system of records is to aid private insurance companies in identifying ineligible persons and to reduce fraud and misuse of Federal funds. Private insurance companies operate under a reinsurance agreement with FCIC to deliver programs in accordance with policy and procedure issued by RMA. The reinsurance agreement is authorized by the Federal Crop Insurance Act and regulations of FCIC published at 7 CFR chapter IV. Additionally, 7 CFR part 400, subpart Q, provides general administrative regulations for Social Security Number (SSN) and Employer Identification Number (EIN) collection, storage, use and confidentiality to all holders of crop insurance policies sold by insurance providers, their contractors and subcontractors, including past and present officers and employees of such companies, their contractors and subcontractors.

DATES: *Effective Date:* This notice will be effective without further publication on February 5, 2007, unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system that describes the ''routine uses'' of the system be published for comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before February 5, 2007.

FOR FURTHER INFORMATION CONTACT: Chief, Underwriting Standards Branch, Risk Management Agency, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133–4676, telephone (816) 926–7861.

SUPPLEMENTARY INFORMATION: RMA is responsible for implementation and maintenance of a list of ineligible persons. This list is maintained in the RMA Ineligible Tracking System (ITS). The ITS contains records of individuals and legal entities who are ineligible to participate in programs administered by RMA under the Federal Crop Insurance Act (Act) due to delinquent debt, disqualification under section 506(n) of the Act, violation of the controlled substance provisions of the Food Security Act of 1985, as amended, and persons having a substantial beneficial interest in an ineligible legal entity. Private insurance companies, reinsured by FCIC in accordance with the reinsurance agreement with FCIC and regulations of FCIC published at 7 CFR chapter IV, part 400, subpart U, submit delinquent debt records to RMA for inclusion into the ITS. RMA inputs records into ITS related to disqualification, suspension, debarment, controlled substance violations and debt due FCIC. RMA is responsible for consolidating and updating the ITS and providing notification to private insurance companies and other Federal agencies to prevent ineligible persons from receiving Federal benefits.

Major revisions and the reasons for change to this system of records are as follows. The system location is revised to show the current location of records at the Kansas City Office. The categories of individuals covered by the system are revised to reflect person included in the system. The categories of records in the system are revised to reflect current information stored within the system. The routine uses of records maintained in the system are revised to (a) delete routine use number (2) because it is not applicable to the system of records; (b) renumber routine use number (3) to (2) and to permit disclosure to any judicial or administrative tribunal if the record sought is relevant; (c) renumber routine use number (4) to (3); (d) delete routine use number (5) because it is no longer applicable; (e) renumber routine use number (6) to (4) and revise to reflect that information will be provided to private insurance companies reinsured by FCIC to preclude producers from switching private insurance companies in order to circumvent ineligibility; (f) add routine use (5) to permit disclosure of information to Federal agencies to prevent ineligible producers from erroneously receiving government loans and other benefits; (g) add routine use (6) to permit disclosure to contractors and Federal agencies to deter fraud, waste and abuse by conducting analysis to identify ineligible producers potentially circumventing the ineligible process; (h) add routine use (7) to permit information to be disclosed for use in the administration and evaluation of this system of records as it relates to Federally reinsured plans of insurance administered by RMA under the authority of the Act, (i) add routine use (8) to permit information to be provided to the Department of the Treasury for collection of outstanding debt, and (j) add routine use (9) to permit information to be provided to the Department of Justice to represent the United States Government in litigation when the use of the information is compatible with the purposes of the Act. The provisions related to storage, retrievability and safeguards are updated to reflect current practices. The system manager and address have been updated to show the current location of records. The notification procedure, records access procedures, contesting record procedures, and record source categories have also been updated to document current procedures.

In conformance with 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, USDA sent a report describing the proposed changes to the Chairman, Committee on Homeland Security and Government Affairs, United States

Senate; the Chairman, Committee on Government Reform, United States House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on December 27, 2006.

Signed at Washington, DC on December 27, 2006.

Mike Johanns,

Secretary of Agriculture.

SYSTEM NAME:

List of Ineligible Persons.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Kansas City Office, Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City Missouri 64133–4676.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of information about an entity who has been determined to be ineligible to participate in any program administered by the Risk Management Agency (RMA), an agency of the United States Department of Agriculture (USDA) which administers programs of the Federal Crop Insurance Corporation (FCIC) authorized under the Federal Crop Insurance Act (Act), due to non-payment of premium or other indebtedness arising under the terms of a Federally reinsured plan of insurance contract; disqualification, suspension, or debarment in any administrative proceeding; violation of the controlled substance provisions of the Food Security Act of 1985, as amended; or persons having a substantial beneficial interest in an ineligible entity.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of standardized records containing identifying information on entities such as the name, address, tax identification number (social security number or employer identification number) and entity type; the name, address, and tax identification number of individuals having a substantial beneficial interest in an ineligible individual or legal entity; and information related to ineligibility such as date and cause of ineligibility, date of notification letter and current status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501 et seq.

PURPOSE(S):

To aid private insurance companies in identifying ineligible persons and to reduce fraud and misuse of Federal funds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be routinely disclosed as follows:

(1) Disclosure to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute or by rule, regulation or order issued pursuant thereto.

(2) Disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before a court, magistrate, or administrative tribunal, of any record within the system that constitutes evidence in that proceeding, or which is sought in the course of discovery, to the extent that FCIC determines that the records sought are relevant to the proceeding.

(3) Disclosure may be made to a congressional office from the record of an individual or legal entity in response to an inquiry from the congressional office made at the request of that individual or legal entity.

(4) Disclosure to private insurance companies under a reinsurance agreement with FCIC to deliver programs in accordance with policy and procedure issued by RMA to assist in determining eligibility for participation in the Federal insurance program under the authority of the Federal Crop Insurance Act and regulations of FCIC published at 7 CFR part 400, subpart U. Private insurance companies must adhere to 7 CFR part 400, subpart Q general administrative regulations for SSN and EIN collection, storage, use and confidentiality to all holders of crop insurance policies sold by insurance providers, their contractors and subcontractors, including past and present officers and employees of such companies, their contractors and subcontractors.

(5) Disclosure of information to other Federal agencies, in accordance with 31 U.S.C. 3720B, for the purpose of identifying persons in delinquent status for programs administered under authority of the Act and barring these delinquent Federal debtors from obtaining applicable Federal loans or loan insurance guarantees.

(6) Disclosure to contractors of FCIC or other Federal agencies to conduct research and analysis to identify patterns, trends, anomalies, instances and relationships of private insurance companies, agents, loss adjusters and policyholders that may be indicative of fraud, waste, and abuse.

(7) Disclosure to private insurance companies, contractors, cooperators, and other Federal agencies for any purpose relating to the sale, service, administration, analysis and evaluation of the Federally reinsured plans of insurance administered by RMA under the authority of the Act. 7 CFR part 400, subpart Q provides general administrative regulations for SSN and EIN collection, storage, use and confidentiality.

(8) Disclosure of ineligible individual or legal entity information to the Department of the Treasury (Treasury) for collection of outstanding debt per the Debt Collection Act of 1982, Debt Collection Improvement Act of 1996, and Federal Claims Collection Standards.

(9) Disclosure to the Department of Justice when: (a) USDA or any component thereof; or (b) any employee of USDA in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to the litigation or has an interest in such litigation, and by careful review, RMA determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by RMA to be for a purpose that is compatible with the purpose of the Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically, on computer printouts and in the file folders at the Kansas City Office.

RETRIEVABILITY:

Records may be indexed and retrieved by name of individual, tax identification number (including social security number and employer identification number), and policy number.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices that are lockedduring non-duty hours. File folders and other hard copy records are

stored in locked file cabinets. The electronic records are controlled by password protection and the computer network is protected by means of a firewall.

RETENTION AND DISPOSAL:

Electronic records are maintained indefinitely. Hard copy records are maintained until expiration of the records retention period established by the National Archivist.

SYSTEM MANAGER'S AND ADDRESS:

Chief, Underwriting Standards Branch, Risk Management Agency, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0812, Kansas City, Missouri 64113–4676. Telephone: (816) 926–7861.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the Kansas City Office. The request for information should contain the individual's name, address and tax identification number (including social security number). Before information about any record is released, the System Manager may require the individual to provide proof of identity or require the requester to furnish a notarized written authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system, which pertains to such individual, by submitting a written request to the Privacy Act Officer, Risk Management Agency, Program Support Staff, Room 6620–SB, AG Stop 0827, 1400 Independence Avenue, SW., Washington, DC 20250–0807. The envelope and letters should be marked ''Privacy Act Request.'' A request for information should contain: name, address, ZIP code, tax identification number (including social security number), name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Procedures for contesting records are the same as the procedures for record access. Include the reason for contesting the record and the proposed amendment to the information with supporting documentation to show how the record is inaccurate.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from private insurance companies due to their financial arrangement with FCIC or other Federal agencies. Private insurance companies operate under a reinsurance agreement with FCIC to deliver programs in accordance with policy and procedure issued by RMA. The reinsurance agreement is authorized by the Federal Crop Insurance Act and regulations of FCIC published at 7 CFR part 400, subpart L. Additionally, 7 CFR part 400, subpart Q provides general administrative regulations for SSN and EIN collection, storage, use and confidentiality to all holders of crop insurance policies sold by insurance providers, their contractors and subcontractors, including past and present officers and employees of such companies, their contractors and subcontractors.

[FR Doc. 06–9981 Filed 1–04–07; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0126]

Request for Information; Potential Sites for a Sterile Fruit Fly Production Facility or Potential Alternate Sources of Sterile Fruit Flies

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; extension of submission period.

SUMMARY: We are extending the submission period for our notice that requests information from interested persons regarding potential sites for the production of sterile fruit flies or alternates sources of those flies. This action will allow interested persons additional time to prepare and submit information.

DATES: We will consider all submissions of information that we receive on or before February 1, 2007.

ADDRESSES: Any information should be submitted, in writing, to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Director, Fruit Fly Exclusion and Detection Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1229; (301) 734–4387.

SUPPLEMENTARY INFORMATION: On December 1, 2006, we published in the **Federal Register** (71 FR 69530–69531, Docket No. APHIS–2006–0126) a notice [1] requesting the submission of information from interested persons regarding potential sites for the production of sterile fruit flies or alternate sources of those flies.

Submissions of information in response to the notice were required to be received on or before January 2, 2007. We are extending the submission period on Docket No. APHIS–2006–0126 for an additional 30 days. This action will allow interested persons additional time to prepare and submit information.

Done in Washington, DC this 28th day of December 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–22638 Filed 1–4–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger-Teton National Forest; Wyoming; Proposed Summer Designated Road and Motorized Trail System

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Bridger-Teton National Forest is preparing an Environmental Impact Statement for a proposed May 1st to December 1st designated road and motorized trail system for portions of the Buffalo, Jackson, and Big Piney Ranger Districts where cross-country motorized use is currently allowed. This scoping proposal complies with the 2005 National Off-Highway Vehicle (OHV) Rule which requires all wheeled motorized travel to occur on designated routes. The full text of the proposal plus maps showing the proposed designated road and motorized trail system are posted in the Bridger-Teton National Forest Web site at *http://www.fs.fed.us/r4/btnf.*

DATES: Comments concerning the scope of the analysis are requested by January 29, 2007. The draft environmental impact statement is expected in September 2007 and the final environmental impact statement is expected in January 2008.

[1] To view the notice, go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0126, then click on ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

ADDRESSES: Send written comments to ''North Zone Travel Management''; Bridger-Teton National Forest, PO Box 1689, Jackson, WY 83001. Comments may also be faxed to (307) 739–5450. E-mail comments can be submitted via a link for ''North Zone Travel Plan Revision'' on the Bridger-Teton National Forest Web site: *http://www.fs.fed.us/r4/btnf.*

FOR FURTHER INFORMATION CONTACT: David Wilkinson, North Zone Travel Project, Bridger-Teton National Forest, PO Box 1689, Jackson, WY 83001 (307–739–5544).

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Off-highway vehicle (OHV) use within portions of the Bridger-Teton National Forest is not being managed in a manner consistent with current Forest Plan direction and the National OHV Rule, nor in a manner that is consistent with land capability, public safety and enjoyment by all Forest users. The current travel plan for the north zone of the Bridger-Teton National Forest was developed in 1987 prior to technological advances that transformed all-terrain vehicle (ATV) and motorcycle use on public lands. Motorized use has a long history on the Forest and is a legitimate use in appropriate places. However, unmanaged OHV use has caused a proliferation of user-created trails that are not sustainable, has damaged wet meadows, soils, and stream channels, and results in wildlife disturbance. Additionally, unmanaged OHV use has caused social problems such as disrupting hunting opportunities, spooking horse riders creating potential safety concerns, and disrupting grazing operations. By providing clear direction on where motorized use is allowed via a designated OHV route system, the potential for resource damage and violations can be reduced while better serving public needs and improving the ability to maintain roads and trails. With this in mind, the goal for this project is to improve management of OHV use by identifying and analyzing changes needed to the current system of Forest roads and motorized trails within areas where motorized use is currently unrestricted. The resulting designated road and trail system must comply with Forest Plan direction and meet the following objectives: (1) Reduce resource impacts, (2) provide a viable road and trail system to meet public needs, and (3) improve the ability to enforce travel restictions and maintain routes.

Proposed Action

To meet the project goal and objectives, changes are being proposed to the current system of roads and motorized trails. No new roads or motorized trails are proposed to be constructed. However, the proposal does include adding some roads and motorized trails that exist on the ground but are not currently part of the Forest Service system. Likewise, some roads that currently are on the Forest Service system are proposed to be closed or changed to allow only vehicles 50″ or less in width. As the final designated road and trail system is implemented, sections of road or motorized trails will need to be re-constructed to improve sustainability and mitigate resource damage. The proposed designated road and motorized trail system totals 404 miles within the areas where motorized use is currently unrestricted. This is roughly equivalent to the mileage that is currently on the Forest Service system, however the proposal includes 37 more miles of motorized trail and 46 fewer miles of road.

Responsible Official

Districts Rangers for the three ranger districts will be making the decision about the designated road and motorized trail system on their respective districts. Elizabeth Brann, District Ranger, Buffalo Ranger District; PO Box 278; Moran, WY 83013. Nancy Hall, District Ranger, Jackson Ranger District, PO Box 1689, Jackson, WY 83001. Greg Clark, District Ranger, Big Piney Ranger District, PO Box 218, Big Piney, WY 83113.

Nature of Decision To Be Made

Based on the environmental analysis and public input, a decision will be made whether or not to implement the proposed changes to the road and motorized trail system or to implement an alternative. The decision for the designated road and motorized trail system will be displayed on a motor vehicle use map that conforms to a nationally consistent format and is updated annually.

Scoping Process

The purpose of scoping is to invite your comments on this proposal. Your comments will be used to identify significant issues so that alternative proposals can be developed and analyzed. This process is used to provide the best information possible to inform the public and decision-makers about trade-offs associated with alternative ways to meet the project purpose.

Preliminary Issues

The following preliminary issues have been identified. Other issues raised during the public scoping process will also be addressed in the EIS.

- Effects on wildlife including threatened, endangered, and sensitive species.
- Effects on opportunities for quiet, non-motorized recreation.
- Effects on hunting opportunities.
- Effects on opportunities for motorized recreation.
- Effects on roadless areas.
- Effects on wetlands, streambanks, and water quality.
- Effects on soils, cultural resources, and vegetation.
- Effects on management of the motorized system including maintenance, signing, and enforcement.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Information about the project is posted on the Bridger-Teton National Forest Web site at *http://www.fs.fed.us/r4/btnf*. Large maps showing the proposed designated road and motorized trail system are available at the Supervisor's Office, at Ranger District Offices, and at the Teton County Library in Jackson, Wyoming. Agency personnel are available to meet with any interested individuals or groups about this project.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be

waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: December 27, 2006.

Nancy Hall,

Jackson District Ranger.

[FR Doc. E6–22575 Filed 1–4–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Deemed Export Advisory Committee; Notice of Partially Closed Meeting

The Deemed Export Advisory Committee (DEAC) will meet in open sessions on January 22, 2007 from 8 a.m.–12 p.m. and January 23, 2007 from 8 a.m.–10 a.m. at the American Electronics Association, 5201 Great American Parkway, Suite 400, Santa Clara, CA 95054. The DEAC is a Federal Advisory Committee established in accordance with the requirements of the Federal Advisory Committee Act, as amended, 5 U.S.C. app.2. It advises the Secretary of Commerce on deemed export licensing policy. A tentative agenda of topics for discussion is listed below. While these topics will likely be discussed, this list is not exhaustive and there may be discussion of other related items during the public session.

January 22 and 23, 2007

Public Session

1. Introductory Remarks.
2. Current Deemed Export Control Policy Issues.
3. Technology Transfer Issues.
4. U.S. Industry Competitiveness.
5. U.S. Academic and Government Research Communities.
6. Industry, Academia and other Stakeholder Comments.

A limited number of seats will be available for the public session. Reservations will not be accepted. To the extent time permits, members of the general public may present oral statements to the DEAC. The general public may submit written statements at any time before or after the meeting. However, to facilitate distribution to DEAC members, BIS suggests that general public presentation materials or comments be forwarded before the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov* or (202) 482–2813.

January 23, 2007

Closed Session

7. The DEAC will also meet in a closed session on Tuesday, January 23, 2007, from 10 a.m.–12 p.m. During the closed session, there will be discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The Assistant Secretary for Administration formally determined on December 12, 2006, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to significantly frustrate implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). All other portions of the DEAC meeting will be open to the public.

This action also discusses recent leadership changes within the DEAC. Originally, the Committee was formed with two co-chairmen, Robert Gates, who was then President of Texas A&M, and Norm Augustine, retired Chairman & CEO of Lockheed Martin. Subsequently, Gates was nominated by President Bush to serve as Secretary of Defense. The Senate confirmed Gates as Secretary of Defense on December 6, 2006. Upon confirmation, Gates resigned his position as co-chair and member of the DEAC.

In accordance with the DEAC's charter, the Secretary of Commerce has appointed Sean O'Keefe, Chancellor, Louisiana State University, and Ruth David, President and CEO, Analytic Services, Inc., to serve as vice-chairpersons. In their new roles, O'Keefe and David will assist Augustine the chairman, in formulating a comprehensive review of deemed export policies. The DEAC leadership comprises a unique and diverse set of experiences from industry, government and academia, and BIS expects that O'Keefe and David will contribute significantly to the DEAC in its preparation of recommendations.

For more information, please call Yvette Springer at (202) 482–2813.

Dated: December 28, 2006.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 06–9983 Filed 1–4–07; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–807)

Initiation of Antidumping Duty Changed Circumstances Review: Polyethylene Terphthalate Film Sheet and Strip from Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b), DuPont Teijin Films (DuPont), Mitsubishi Polyester Film, Inc. (Mitsubishi), and Toray Plastics (America) (Toray), Inc. (collectively DuPont, Mitsubishi, and Toray are the Petitioners), filed a request for the Department to initiate a changed circumstances review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from Korea. Petitioners allege that Kolon Industries Inc. (Kolon), a Korean PET film producer previously revoked from the antidumping duty order, has resumed selling subject merchandise at prices below normal value (NV). Petitioners explain that Kolon has agreed in writing

to reinstatement in the antidumping duty order if Kolon were found to have resumed dumping. Petitioners contend that Kolon has violated its agreement not to sell PET film at prices below NV in the United States subsequent to Kolon's revocation from the order. Therefore, Petitioners request that the Department reinstate the antidumping duty order with respect to Kolon. Petitioners further request that the Department of Commerce (the Department) immediately order suspension of liquidation for all entries of Korean PET film manufactured and exported by Kolon.

The Department finds the information submitted by Petitioners is sufficient to warrant initiation of a changed circumstances review of the antidumping duty order on PET film from Korea. In this changed circumstances review, we will determine whether Kolon is selling PET film at less than NV subsequent to its revocation from the order. If we determine in this changed circumstances review that Kolon sold at less than NV and resumed dumping PET film, we will direct Customs and Border Protection (CBP) to suspend liquidation of all entries of Korean PET film manufactured and exported by Kolon.

EFFECTIVE DATE: January 5, 2007.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–4475 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1991, the Department published the antidumping duty order on PET film from Korea. *See Antidumping Duty Order: Polyethylene Terephthalate Film Sheet and Strip from Korea*, 56 FR 25660 (June 5, 1991) (*Order*). In June of 1995, in the course of the 1994 - 1995 administrative review, Kolon requested revocation of the *Order* with respect to its sales of subject merchandise. *See Polyethylene Terephthalate Film from Korea: Preliminary results of Antidumping Duty Administrative Review, Intent to Revoke the Order in Part, and Termination in Part*, 61 FR 36032, 36033 (July 9, 1996).

As part of its request for revocation, on June 28, 1996, Kolon agreed to immediate reinstatement in the *Order* pursuant to 19 CFR 353.25(b) of the regulations in effect at the time.[1] *See* Kolon's June 30, 1995 letter to the Department requesting revocation. In its revocation request, Kolon agreed to immediate reinstatement in the *Order* as long as any producer or reseller is subject to the order, should the Department determine that Kolon ''sold polyethylene terephthalate film, sheet, and strip from Korea at less than foreign market value.'' *Id.* On November 14, 1996, the Department revoked the antidumping duty order with respect to Kolon after having determined that Kolon sold the merchandise at not less than normal value for a period of at least three consecutive years.[2] *See Polyethylene Terephthalate Film Sheet and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Notice of Revocation in Part*, 61 FR 58374 (November 14, 1996) (*Revocation*).

On July 19, 2006, Petitioners submitted an allegation (accompanied by the supporting documentation summarized below) suggesting Kolon has resumed dumping PET film in the United States since revocation in part from of the *Order*, and requested a changed circumstances review. *See* Petitioners' July 19, 2006 letter to the Department. Petitioners requested that the Department reinstate the *Order* with respect to Kolon's exports to the United States of PET film produced by Kolon. Petitioners also requested that the Department immediately order suspension of liquidation for all entries of Korean PET film manufactured and exported by Kolon. *Id.*

On August 4, 2006, Kolon filed a letter contesting Petitioner's request for a changed circumstances review. *See* Kolon's August 4, 2006 comments. Kolon asserted that section 751(b) of the Act, the statutory provision governing changed circumstance reviews, does not cover an attempt to reinstate a revoked company into an antidumping duty order. Kolon further argued that the reinstatement provisions in effect when Kolon was revoked were impeached by *Asahi Chemical Industry Co., Ltd. v. United States*, 727 F. Supp. 625 (CIT 1989) (*Asahi*). Kolon asserted the Department's ''new'' regulations promulgated on May 19, 1997, codified at 19 CFR section 351, constituted a failed ''fix'' of the Department's invalid reinstatement procedures in response to *Asahi*. See Kolon's August 2006 Comments at 6. Kolon also noted the Department's current regulations governing revocation came into effect in 1997, which was subsequent to Kolon's revocation. Kolon thus argued that the Department cannot rely on these 1997 regulations to remedy the earlier flaws identified by the Court in *Asahi*. Finally, Kolon insisted that during the history of the antidumping duty order, the company had never itself been found to be dumping. Kolon asserted the 0.60 percent margin that the Department determined for Kolon in the first administrative review, the sole above *de minimis* margin found for Kolon, was based upon an incorrect method for adjusting for home market value added taxes. *See Polyethylene Terephthate Film, Sheet and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 60 FR 42835 (August 17, 1995), amended by *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review*, 61 FR 5375 (February 12, 1996) (finding a margin of 0.60 percent for Kolon for the period November 30, 1990 through May 31, 1992). Kolon noted the Department determined *de minimis* margins for the three subsequent reviews, and asserted the margin for the first administrative review would also have been *de minimis* had the Department completed a pending remand of this review. Kolon maintained that it agreed to dismiss its court action contesting the results of the first administrative review ''subject to the explicit condition that its agreement to withdraw the appeal not be deemed an admission that Kolon had been dumping in the first administrative review.'' *Id.* at 9.

On August 14, 2006, Petitioners filed rebuttal comments to Kolon's August 4, 2006 comments. Petitioners asserted that a changed circumstances request is the proper venue for considering whether a revoked company should be reinstated within the scope of an order.

---

[1] As described more fully below, 19 CFR 353.25(b) has subsequently been superceded by 19 CFR 351.222(b)(2)(i)(B). However, the language in 19 CFR 351.222(b)(2)(i)(B) is largely unchanged from 19 CFR 353.25(b).

[2] The three administrative reviews forming the basis of the revocation are the June 1,1992 through May 31, 1993 review; the June 1, 1993 through May 31, 1994 review; and the June 1, 1994 through May 31, 1995 review. The final results of the June 1992 through May 31, 1993 and the June 1993 through May 31, 1994 administrative reviews of Kolon were published on July 5, 1996. *See Polyethylene Terephthalate Film Sheet and Strip from Korea; Final Results of Antidumping Duty Administrative Review and Notice of Revocation in Part* 61 FR 35177, July 5, 1996 (second and third administrative reviews). The final results of the June 1,1994 through May 31,1995 administrative review of Kolon were published on November 14, 1996. *See Polyethylene Terephthalate Film Sheet and Strip from Korea; Final Results of Antidumping Duty Administrative Review and Notice of Revocation in Part* 61 FR 58374 (November 14, 1996) (fourth administrative review).

Petitioners argued that a reinstatement request is ''a review of a final affirmative determination that resulted in an antidumping order,'' and that the ''identities of the producers and exporters who are subject to the order is part and parcel of that affirmative determination.'' Petitioners' August 14, 2006 comments at 3. Additionally, Petitioners accused Kolon of ''misinterpreting'' *Asahi*, explaining that*Asahi* dealt with the Department's earlier 1980 regulations. *Id.* at 5. Petitioners argued that the March 1989 regulations in effect when Kolon signed its agreement to reinstatement fully addressed the concerns the Court expressed in *Asahi*. Petitioners asserted the Court's concerns are addressed because reinstatement will only occur if: 1) a producer or reseller is still subject to the order, 2) if a revoked respondent ''sold the merchandise at less than foreign market value'', and 3) where an order has been revoked in part. Petitioners thus maintained the revised March 1989 regulations applicable when the Department revoked the order with respect to Kolon cured the flaws identified in *Asahi* and are thus valid. Moreover, Petitioners insisted that the 1997 regulations adopted by the Department ''in connection with the Uruguay Round Agreements Act did not alter the revocation and reinstatement provisions of the March 1989 regulations in any material way.'' *Id.* at 7. Accordingly, Petitioners asserted Kolon's suggestion that the 1997 regulations somehow constitute a failed ''fix≥of the reinstatement procedures is misplaced. Finally, Petitioners characterized Kolon's argument concerning whether it was ever found to be dumping as a ''red herring.'' *Id.* at 10. Petitioners suggested Kolon's assertion that it did not dump PET film during the first administrative review is immaterial. Petitioners argued that the controlling issue is that Kolon signed a ''certification that contained a reinstatement agreement and that the Department revoked the order with respect to the company based on that certification.'' *Id.* Moreover, Petitioners asserted that even had the Department concluded that the margin for Kolon for the November 1, 1990 through March 31, 1992 review was *de minimis*, the reinstatement agreement is still legally binding because Kolon of its own volition signed the reinstatement agreement.

Allegation of Resumed Dumping

On September 20, 2006, we sent a letter to Petitioners requesting additional information concerning the U.S., home market and cost data provided by Petitioners in their July 19, 2006 submission. Petitioners provided their response on October 5, 2006. On November 1, 2006, we requested additional information from Petitioners concerning their submissions of July 19, 2006 and October 5, 2006. Petitioners submitted their response to our second request for additional information on November 9, 2006.

In their July 19, 2006, October 5, 2006 and November 9, 2006 submissions, Petitioners provided price quotes concerning Kolon's sales activity in the U.S. and home market and argued that Kolon had sold PET film at less than NV during the period July 1, 2005 through June 30, 2006. Petitioners also provided cost data in these submissions suggesting Kolon made home market sales at prices below the cost of production (COP). The allegation of resumed dumping upon which the Department has based its decision to initiate a changed circumstances review is detailed below. The sources of data for the deductions and adjustments relating to NV and U.S. price are discussed in greater detail in the *Changed Circumstances Review Initiation Checklist* dated concurrently with this notice. Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculation, if appropriate.

1. Export Price (EP)

Petitioners based their calculation of U.S. price upon price quotes they obtained for three types of PET film commonly sold in the United States. In their July 19, 2006 submission, Petitioners made a deduction to EP for international freight and insurance, U.S. duties, and U.S. inland freight. Petitioners also made a downward adjustment to U.S. price for slitting costs and material losses. Petitioners provided price quotes to end–users. To approximate a price to distributors, Petitioners made a deduction from EP to approximate the distributor's mark–up. In their November 9, 2006 submission, Petitioners provided first–person affidavits from the individuals who collected the price quotes referenced in Petitioners' July 19, 2006 submission. Also, Petitioners removed the deduction for slitting costs from their calculation of EP in their November 9, 2006 calculation of U.S. price.

2. Normal Value

To calculate NV, Petitioners provided in their July 19, 2006 submission information on Kolon's pricing of PET film in the Korean market. This information was obtained through a Korean manufacturer of PET film and covered sales of three types of PET film commonly offered for sale by Kolon in the Korean market. The Korean pricing information covered the same types of PET film as those serving as the basis for EP. In their July 19, 2006 submission, Petitioners made a circumstance of sale adjustment for differences in advertising expenses between the U.S. and the home market (*i.e.*, Korea). (Petitioners removed this adjustment for advertising from their November 9, 2006 calculation of NV.) In their November 9, 2006 letter, Petitioners provided first–person affidavits from the individuals who collected the pricing information. Petitioners made adjustments to NV for differences in U.S. and Korean credit expenses and for packing expenses.

3. Sales Below Cost of Production and Constructed Value

Petitioners also alleged that Kolon's sales of PET film in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a sales–below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacture (COM), selling, general and administrative (SG&A) expenses, and financial and packing expenses. Based upon a comparison of the gross price of the foreign like product in the home market to the COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a sales–below-cost investigation.

Because Petitioners alleged that Kolon sold PET film below the COP in the home market, Petitioners provided a comparison of EP to constructed value (CV). Petitioners based CV upon the sum of COM, SG&A expenses, financial expenses, profit and packing.

4. Alleged Margins of Dumping

Based upon the information summarized above, Petitioners suggest Kolon is dumping the subject merchandise. Depending upon the type of PET film, petitioners estimate margins of 29 to 62 percent for price to price comparisons, and margins of 43 to 72 percent for comparisons of EP to CV.

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip,

whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for customs purposes. The written description remains dispositive as to the scope of the product coverage.

This changed circumstances review covers Kolon and the period July 1, 2005 through June 30, 2006.

Initiation of Changed Circumstances Review

We find Petitioners have provided sufficient evidence to initiate a changed circumstances review in which we will determine whether Kolon should be reinstated within the order of PET film from Korea. Kolon has argued that in *Asahi* the CIT ruled the Department is not permitted by the statute to reinstate a revoked order without a new injury finding by the International Trade Commission (the Commission). Kolon also contends that under *Asahi* the Department has no authority to reinstate a revoked order, and has further argued that the statutory provision governing changed circumstance reviews does not cover an attempt to reinstate a revoked company into an antidumping duty order. Finally, Kolon insists it has never been found by the Department to be dumping. For the reasons, outlined below, we disagree with Kolon.

Pursuant to section 751(b) of the Act, the Department will conduct a changed circumstances review upon receipt of a request ''from an interested party for review of an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order.'' Petitioners' documented allegation that Kolon has resumed dumping PET film subsequent to its revocation from the order is an appropriate basis for a changed circumstances review.

The Department's authority to reinstate a revoked company into an antidumping duty order derives from sections 751(b) and (d) of the Act and 19 CFR 351.222(b) and (e). In particular, the Department's authority to partially revoke an order is expressed in section 751(d) of the Act. The statute, however, provides no detailed description of the criteria, procedures or conditions relating to the Department's exercise of this authority. Accordingly, the Department has issued regulations setting forth in detail how the Department will exercise the authority granted to it under the statute. In particular, the Department has reasonably interpreted the authority to partially revoke the antidumping duty order with respect to a particular company it finds to be no longer dumping to include authority to impose a condition that the partial revocation may be withdrawn (*i.e.*, the company may be reinstated) if dumping is resumed. To interpret the statute otherwise would permit the Department to abdicate its responsibility to ensure that injurious dumping is remedied by imposition of offsetting antidumping duties. Therefore, our determination to conduct this changed circumstances review to determine whether Kolon should be reinstated under the *Order* is supported by the statute and regulations. Additionally, as noted by both Kolon and the petitioner, conducting a changed circumstances review pursuant to section 751(b) of the Act to reinstate a company previously revoked from an antidumping duty order is consistent with the agency's practice. *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Reinstatement of the Antidumping Order* 70 FR 16218, March 30, 2005.

Moreover, we find Kolon's reliance on *Asahi* to support its assertion that the Department lacks legal authority to reinstate a company in an antidumping duty order is misplaced. The Court in *Asahi* was reviewing an earlier regulation (19 CFR 353.54(e)(1988)), which provided:

> Before the Secretary may tentatively revoke a Finding or an Order or terminate a suspended investigation pursuant to paragraph (a) of this section, the parties who are subject to the revocation or the termination must agree in writing to an immediate suspension of liquidation and reinstatement of the Finding or Order or continuation of the investigation, as appropriate, if circumstances which indicate that the merchandise thereafter imported into the United States is being sold at less than fair value. Opportunity for interested parties to present views with respect to the tentative revocation will be provided.

19 CFR 353.54(e)(1988).

The Court in *Asahi* acknowledged that the purpose of the 1988 regulation was to discourage the resumption of dumping after revocation, and that there were policy concerns about having to undertake an entirely new investigation. *See Asahi*, 727 F. Supp. at 628. The Court found the old regulation was so ambiguous as to make the standard of reinstatement conjectural. *Id.* However, the Court did not address whether reinstatement could be accomplished through an amendment to 19 CFR 353.54, or through a new regulatory provision. *Id.*

We find that our current regulation governing reinstatement (as did the earlier 1989 regulation in effect at the time of Kolon's revocation) addresses the concerns enumerated by the Court in *Asahi*. This regulation places exporters and producers which the Department has previously found to be dumping, on notice that they are subject to immediate reinstatement once they are revoked from an order, if the Secretary later concludes they have resumed dumping. 19 CFR 351.222(b)(2)(i)(B) and (e). Indeed, revoked companies agree in writing to immediate reinstatement upon a finding of resumed dumping. 19 CFR 351.222(b)(2)(i)(B) and 351.222(e)(1). The present regulation makes clear that reinstatement can only occur as long as any exporter or producer is subject to the order. Thus, the Commission's determination that subject merchandise sold at less than NV is injurious to the domestic industry continues to support application of antidumping duties to subject merchandise sold at less than NV.

Moreover, any guidance provided by *Asahi* must be read in light of general principles of administrative law. One such basic principle of administrative law is that an administering agency must abide by its own rules to safeguard expectations. Thus, section 351.222(b)(2)(i)(B) of the Department's regulations suggests that a partial revocation determination is not a dispositive administrative pronouncement. Such a conclusion logically follows from the terms of the regulation, which directs the Department to rescind its partial revocation determination and to reinstate the revoked company under the existing antidumping duty order. In the instant case, the order on PET film from Korea has not been revoked. The Department's partial revocation with respect to Kolon was expressly conditioned upon the possibility of reinstatement should dumping resume. The Department's regulation is reasonable because it imposes a reasonable condition upon partial revocation which is limited to circumstances under which the statute authorizes the Department to impose antidumping duties to remedy injurious

dumping of subject merchandise. Therefore, *Asahi* lends no support to Kolon's arguments.

Kolon's claim that the Department's reinstatement regulation has no statutory authority is without merit. Specifically, Kolon implies that the Act requires an injury determination by the Commission prior to the imposition of an order, and that, because the order on PET film from Korea has been partially revoked as to Kolon, a new petition must be filed with respect to Kolon, and separate affirmative determinations must be made by the Commission and the Department concerning injury and dumping. We find this argument unavailing. In the instant case, the Department made its final determination of dumping and the Commission made its final injury determination. *See Order*. Additionally, the antidumping duty order on PET film from Korea remains in place. Therefore, the Commission has found that dumping of PET film from Korea causes material injury to the domestic industry; that finding was undisturbed by the partial revocation of Kolon. Further, that revocation was premised on the absence of dumping rather than the absence of injury and was expressly conditioned on the possibility of reinstatement should dumping resume.

The partial revocation of the order with respect to Kolon did not nullify the validity of the underlying injury and less than fair value determinations that resulted in the issuance of an antidumping duty order which remains in force, particularly when the partial revocation is the result of behavior subsequent to those earlier determinations. The Commission's injury determination, furthermore, does not examine the injury caused by discrete companies, but rather the injury caused by all dumped exports originating in a particular exporting country. Even if one or more exporters in that country may have been revoked from the order on the basis of absence of dumping, all dumped exports of subject merchandise from that country continue to cause or threaten material injury, pursuant to the Commission's affirmative injury determination. Thus, unless all exporters are revoked from the order, the order continues to exist, as does the potential for reinstatement. Kolon itself agreed to such a reinstatement as a condition of its partial revocation, if the Department were to conclude that it has sold the merchandise at below NV. Thus, a new injury finding specific to Kolon is neither necessary nor appropriate for reinstatement pursuant to 19 CFR 351.222(h)(2)(i)(B).

In requesting revocation, Kolon filed a certification from a company official pursuant to the Department's regulations that it agree to the immediate reinstatement of the order, so long as any exporter or producer is subject to the order, if the Secretary concludes that it, subsequent to the revocation, sold PET film at less than NV. *See Revocation*. Several other companies remain subject to the antidumping duty order on PET film from Korea. The information submitted by Petitioners in their letters of July 19, 2006, September 20, 2006, and November 9, 2006 concerning Kolon's COP, and home market and U.S. sales activity, suggest Kolon might have resumed dumping subsequent to Kolon's revocation from the order. Petitioners allege underselling of PET film in the United States at prices between 29 percent and 72 percent below NV during the July 1, 2005, through June 30, 2006 period. Accordingly, the Department has properly determined to initiate a changed circumstances review to determine whether to reinstate Kolon in the order.

Moreover, Kolon's claim that it was never found by the Department to be dumping is also misplaced. First, Kolon dropped its court challenge to the first administrative review. Thus, Kolon's argument that the Department would have calculated a *de minimis* margin for Kolon for the first administrative review is speculation unsubstantiated by the record. More importantly, whether Kolon was or was not found to be dumping during the first administrative review is irrelevant to our basis for initiating a changed circumstances review. Petitioners have provided credible evidence that Kolon has resumed selling subject merchandise at prices below NV subsequent to its revocation from the Order. Moreover, Kolon voluntarily agreed to reinstatement in the order upon evidence that it had resumed dumping in the United States, provided that other companies remain subject to the *Order*. Presently, several companies remain subject to the *Order*. The standard for initiation of a changed circumstances review under section 751(b) of the Act is whether the request shows changed circumstances that warrant review. The Department finds that the Petitioners' changed circumstances review request, which suggests above *de minimis* dumping margins for Kolon, satisfies that standard.

Based on the foregoing, we find that Petitioners have provided sufficient evidence to initiate a changed circumstances review in which we will determine whether Kolon should be reinstated within the order of PET film from Korea. However, as the Department has yet to make a finding that Kolon did, in fact, sell subject merchandise at below NV, we will not order any border measures at this time.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b) of the Department's regulations.

Dated: December 27, 2006.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–22642 Filed 1–4–07; 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: Notice of Correction of Continuation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 5, 2007.

FOR FURTHER INFORMATION CONTACT: Michael Quigley or Juanita Chen, 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) 482–4047 or (202) 482–1904, respectively.

CORRECTION:

On December 21, 2006, the Department of Commerce (''Department'') published its continuation of the antidumping duty order on silicon metal from the People's Republic of China. *See Silicon Metal from the People's Republic of China: Continuation of Antidumping Duty Order*, 71 FR 76636 (December 21, 2006)

(''*Continuation Notice*''). Subsequent to the signature of the *Continuation Notice*, we identified an inadvertent error in the above–referenced notice.

Specifically, the ''Scope of the Order'' listed in the *Continuation Notice* was incorrect. It should read as follows:

Scope of the Order

The merchandise covered by this order is silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this antidumping order is silicon metal 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 of the United States (''HTSUS'') 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 HTSUS) is not subject to the order. Although the HTSUS item numbers are provided for convenience and for customs purposes, the written description remains dispositive.

Conclusion

This notice serves solely to correct the scope as it was detailed in the *Continuation Notice*. The Department's findings in the *Continuation Notice* remain unchanged. This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended.

Dated: December 27, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–22641 Filed 1–4–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 113006A]

Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

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

ACTION: Notice; proposed authorization for an incidental take authorization; request for comments.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for renewal of an authorization to take small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, by harassment, incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge (SF-OBB) in California. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to CALTRANS to incidentally take, by harassment, small numbers of these species of pinnipeds and cetaceans during the next 12 months.

DATES: Comments and information must be received no later than February 5, 2007.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The mailbox address for providing email comments is *PR1.113006A@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the 2001 application, the 2006 renewal request, the January 2005 Marine Mammal and Acoustic Monitoring report, and the August 2006 Hydroacoustic Measurements report may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Shane Guan, NMFS, (301) 713–2289, ext 137, or Monica DeAngelis, NMFS, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission shall be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 16, 2006, CALTRANS sumbitted a request to NOAA requesting renewal of an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), harbor porpoises (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) incidental to construction of a replacement bridge for the East Span of the SF-OBB, in San Francisco Bay (SFB or the Bay), California. An IHA was issued to CALTRANS for this activity on April 30, 2006 and it will expire on April 29, 2007 (71 FR 26750). A detailed description of the SF-OBB project and background information on the issuance of this IHA were provided in the November 14, 2003 (68 FR 64595) **Federal Register** notice and are not

repeated here. Please refer to that **Federal Register** notice.

Description of the Marine Mammals Potentially Affected by the Activity

General information on the marine mammal species found in California waters can be found in Caretta *et al.* (2006), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2005.pdf*. Refer to that document for information on these species.

The marine mammals most likely to be found in the SF-OBB area are the California sea lion, Pacific harbor seal, and harbor porpoise. From December through May gray whales may also be present in the SF-OBB area. Information on California sea lion, harbor seal, and gray whale was provided in the November 14, 2003 (68 FR 64595), **Federal Register** notice; information on harbor porpoise was provided in the January 26, 2006 (71 FR 4352), **Federal Register** notice.

Potential Effects on Marine Mammals and Their Habitat

CALTRANS and NMFS have determined that open-water pile driving, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving could potentially harass those few pinnipeds that are in the water close to the project site, whether their heads are above or below the surface.

Based on airborne noise levels measured and on-site monitoring conducted during 2004 under the previous IHA, noise levels from the East Span project did not result in the harassment of harbor seals hauled out on Yerba Buena Island (YBI). Also, noise levels from the East Span project are not expected to result in harassment of the sea lions hauled out at Pier 39 as airborne and waterborne sound pressure levels (SPLs) would attenuate to below harassment levels by the time they reach that haul-out site, 5.7 km (3.5 miles) from the project site.

For reasons provided in greater detail in NMFS' November 14, 2003 (68 FR 64595) **Federal Register** notice and in CALTRANS' June 2004, January 2005 annual monitoring reports, and marine mammal observation memoranda between February and September, 2006, the East Span Project was resulting in only small numbers of harbor seals. Therefore, it is not expected to result in more than a negligible impact on marine mammal stocks and will not have a significant impact on their habitat. No pile driving has been commenced since September 15, 2006. Short-term impacts to habitat may include minimal disturbance of the sediment where the channels are dredged for barge access and where individual bridge piers are constructed. Long-term impacts to marine mammal habitat will be limited to the footprint of the piles and the obstruction they will create following installation. However, this impact is not considered significant as the marine mammals can easily swim around the piles of the new bridge, as they currently swim around the existing bridge piers.

Mitigation

The following mitigation measures are currently required under the existing IHA to reduce impacts to marine mammals to the lowest extent practicable. NMFS proposes to continue these mitigation measures under a new IHA, if issued.

Barrier Systems

An air bubble curtain system is required to be used only when driving the permanent open-water piles. While the bubble curtain is required specifically as a method to reduce impacts to endangered and threatened fish species in SFB, it may also provide some benefit for marine mammals. The NMFS' Biological Opinion and the California Department of Fish and Game's (CDFG) 2001 Incidental Take Permit also allow for the use of other equally effective methods, such as cofferdams, as an alternative to the air bubble curtain system to attenuate the effects of sound pressure waves on fish during driving of permanent in-Bay piles (NMFS 2001; CDFG, 2001). Piers E–16 through E–7 for both the eastbound and westbound structures of the Skyway will be surrounded by sheet-pile cofferdams, which will be de-watered before the start of pile driving. De-watered cofferdams are generally effective sound attenuation devices. For Piers E3 through E6 of the Skyway and Pier 1 the Self-Anchored Suspension span, it is anticipated that cofferdams will not be used; therefore, a bubble curtain will surround the piles.

Sound Attenuation

As a result of the determinations made during the Pile Installation Demonstration Project (PIDP) restrike and the investigation at the Benicia-Martinez Bridge, NMFS determined in 2003 that CALTRANS must install an air bubble curtain for pile driving for the open-water piles without cofferdams located at the SF-OBB. This specification and configuration of the air bubble curtain system is described in pervious **Federal Register** notice (71 FR 4352, January 26, 2006), and is not repeated here.

Establishment of Safety/Buffer Zones

A safety zone is to be established and monitored to include all areas where the underwater SPLs are anticipated to equal or exceed 190 dB re 1 microPa rms (impulse) for pinnipeds. Also, a 180–dB re 1 microPa rms (impulse) safety zone for gray whales and harbor porpoises must be established for pile driving occurring during the gray whale migration season from December through May. Prior to commencement of any pile driving, a preliminary 500–m (1,640–ft) radius safety zone for pinnipeds (California sea lions and Pacific harbor seals) will be established around the pile driving site, as it was for the PIDP. Once pile driving begins, either new safety zones can be established for the 500 kJ and 1,700 kJ hammers or the 500 m (1,640 ft) safety zone can be retained. If new safety zones are established based on SPL measurements, NMFS requires that each new safety zone be based on the most conservative measurement (i.e., the largest safety zone configuration). SPLs will be recorded at the 500–m (1,640–ft) contour. The safety zone radius for pinnipeds will then be enlarged or reduced, depending on the actual recorded SPLs.

Observers on boats will survey the safety zone to ensure that no marine mammals are seen within the zone before pile driving of a pile segment begins. If marine mammals are found within the safety zone, pile driving of the segment will be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor will wait 15 minutes and if no marine mammals are seen by the observer in that time it will be assumed that the animal has moved beyond the safety zone. This 15–minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994), and the mean diving duration for harbor porpoises ranges from 44 to 103 seconds (Westgate et al., 1995). However, due to the limitations of monitoring from a boat, there can be no assurance that the zone will be devoid of all marine mammals at all times.

Once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying the Bay. If pile driving stops

and then resumes, it would potentially have to occur for a longer time and at increased energy levels. In sum, this would simply amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment lengths and wall thickness have been specially designed so that when work is stopped between segments (but not during a single segment), the pile tip is never resting in highly resistant sediment layers. Therefore, because of this operational situation, if seals, sea lions, or harbor porpoises enter the safety zone after pile driving of a segment has begun, pile driving will continue and marine mammal observers will monitor and record marine mammal numbers and behavior. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously in this document.

Soft Start

It should be recognized that although marine mammals will be protected from Level A harassment by establishment of an air-bubble curtain and marine mammal observers monitoring a 190–dB safety zone for pinipeds and 180–dB safety zone for cetaceans, mitigation may not be 100 percent effective at all times in locating marine mammals. Therefore, in order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, CALTRANS will also ''soft start'' the hammer prior to operating at full capacity. CALTRANS typically implements a ''soft start'' with several initial hammer strikes at less than full capacity (i.e., approximately 40–60 percent energy levels) with no less than a 1 minute interval between each strike. Similar levels of noise reduction are expected underwater. Therefore, the contractor will initiate hammering of both the 500–kJ and the 1,700–kJ hammers with this procedure in order to allow pinnipeds or cetaceans in the area to voluntarily move from the area, this should expose fewer animals to loud sounds both underwater and above water noise. This would also ensure that, although not expected, any pinnipeds and cetaceans that are missed during safety zone monitoring will not be injured.

Compliance with Equipment Noise Standards

To mitigate noise levels and, therefore, impacts to California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, all construction equipment will comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment will have noise control devices no less effective than those provided on the original equipment.

Monitoring

The following monitoring measures are currently required under the IHA to reduce impacts to marine mammals to the lowest extent practicable. Unless, as noted, the work has been completed, NMFS proposes to continue those monitoring measures under a new IHA (if issued).

Visual Observations

The area-wide baseline monitoring and the aerial photo survey to estimate the fraction of pinnipeds that might be missed by visual monitoring have been completed under the current IHA and do not need to be continued.

Safety zone monitoring will be conducted during driving of all open-water, permanent piles without cofferdams and with cofferdams when underwater SPLs reach 190 dB RMS or greater. Monitoring of the pinniped and cetacean safety zones will be conducted by a minimum of three qualified NMFS-approved observers for each safety zone. One three-observer team will be required for the safety zones around each pile driving site, so that multiple teams will be required if pile driving is occurring at multiple locations at the same time. The observers will begin monitoring at least 30 minutes prior to startup of the pile driving. Most likely observers will conduct the monitoring from small boats, as observations from a higher vantage point (such as the SF-OBB) is not practical. Pile driving will not begin until the safety zone is clear of marine mammals. However, as described in the Mitigation section, once pile driving of a segment begins, operations will continue uninterrupted until the segment has reached its predetermined depth. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously (see Mitigation). Monitoring will continue through the pile driving period and will end approximately 30 minutes after pile driving has been completed. Biological observations will be made using binoculars during daylight hours.

In addition to monitoring from boats, during open-water pile driving, monitoring at one control site (harbor seal haul-out sites and the waters surrounding such sites not impacted by the East Span Project's pile driving activities, i.e. Mowry Slough) will be designated and monitored for comparison. Monitoring will be conducted twice a week at the control site whenever open-water pile driving is being conducted. Data on all observations will be recorded and will include items such as species, numbers, behavior, details of any observed disturbances, time of observation, location, and weather. The reactions of marine mammals will be recorded based on the following classifications that are consistent with the Richmond Bridge Harbor Seal survey methodology (for information on the Richmond Bridge authorization, see 68 FR 66076, November 25, 2003): (1) No response, (2) head alert (looks toward the source of disturbance), (3) approach water (but not leave), and (4) flush (leaves haul-out site). The number of marine mammals under each disturbance reaction will be recorded, as well as the time when seal re-haul after a flush.

Acoustical Observations

Airborne noise level measurements have been completed and underwater environmental noise levels will continue to be measured as part of the East Span Project. The purpose of the underwater sound monitoring is to establish the safety zone of 190 dB re 1 micro-Pa RMS (impulse) for pinnipeds and the safety zone of 180 dB re 1 micro-Pa RMS (impulse) for cetaceans. Monitoring will be conducted during the driving of the last half (deepest pile segment) for any given open-water pile. One pile in every other pair of pier groups will be monitored. One reference location will be established at a distance of 100 m (328 ft) from the pile driving. Sound measurements will be taken at the reference location at two depths (a depth near the mid-water column and a depth near the bottom of the water column but at least 1 m (3 ft) above the bottom) during the driving of the last half (deepest pile segment) for any given pile. Two additional in-water spot measurements will be conducted at appropriate depths (near mid water column), generally 500 m (1,640 ft) in two directions either west, east, south or

north of the pile driving site will be conducted at the same two depths as the reference location measurements. In cases where such measurements cannot be obtained due to obstruction by land mass, structures or navigational hazards, measurements will be conducted at alternate spot measurement locations. Measurements will be made at other locations either nearer or farther as necessary to establish the approximate distance for the safety zones. Each measuring system shall consist of a hydrophone with an appropriate signal conditioning connected to a sound level meter and an instrument grade digital audiotape recorder (DAT). Overall SPLs shall be measured and reported in the field in dB re 1 micro-Pa rms (impulse). An infrared range finder will be used to determine distance from the monitoring location to the pile. The recorded data will be analyzed to determine the amplitude, time history and frequency content of the impulse.

Reporting

Under the current IHA, CALTRANS has submitted weekly marine mammal monitoring reports during when pile driving is commenced. In August 2006, CALTRANS submitted its Hydroacoustic Measurement at Piers T1 and E2 report. This report is available by contacting NMFS (see **ADDRESSES**) or on the Web at *http://biomitigation.org*.

Under the proposed IHA, coordination with NMFS will occur on a weekly basis, or more often as necessary. During periods with open-water pile driving activity, weekly monitoring reports will be made available to NMFS and the public at *http://biomitigation.org*. These weekly reports will include a summary of the previous week's monitoring activities and an estimate of the number of seals and sea lions that may have been disturbed as a result of pile driving activities.

In addition, CALTRANS proposes to provide NMFS' Southwest Regional Administrator with a draft final report within 90 days after completion of the westbound Skyway contract and 90 days after completion of the Suspension Span foundations contract. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If comments are received from the Regional Administrator on the draft final report, a final report must be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft final report will be considered to be the final report.

National Environmental Policy Act (NEPA)

NMFS has prepared an Environmental Assessment (EA) and made a Finding of No Significant Impact (FONSI). Therefore, preparation of an environmental impact statement on this action is not required by section 102(2) of the NEPA or its implementing regulations. A copy of the EA and FONSI are available upon request (see **ADDRESSES**).

Endangered Species Act (ESA)

On October 30, 2001, NMFS completed consultation under section 7 of the ESA with the Federal Highway Administration (FHWA) on the CALTRANS' construction of a replacement bridge for the East Span of the SF-OBB in California. The finding contained in the Biological Opinion was that the proposed action at the East Span of the SF-OBB is not likely to jeopardize the continued existence of listed anadromous salmonids, or result in the destruction or adverse modification of designated critical habitat for these species. Listed marine mammals are not expected to be in the area of the action and thus would not be affected. However, the proposed issuance of an IHA to CALTRANS constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. Moreover, as the effects of the activities on listed salmonids were analyzed during a formal consultation between the FHWA and NMFS, and as the underlying action has not changed from that considered in the consultation, the discussion of effects that are contained in the Biological Opinion issued to the FHWA on October 30, 2001, pertains also to this action. NMFS has determined that issuance of an IHA for this activity does not lead to any effects to listed species apart from those that were considered in the consultation on FHWA's action.

Preliminary Determinations

For the reasons discussed in this document and in previously identified supporting documents, NMFS has preliminarily determined that the impact of pile driving and other activities associated with construction of the East Span Project should result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and potentially gray whales that inhabit or visit SFB in general and the vicinity of the SF-OBB in particular. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to preliminarily determine that this action will have a negligible impact on California sea lion, Pacific harbor seal, harbor porpoises, and gray whale populations along the California coast.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Proposed Authorization

NMFS proposes to issue an IHA to CALTRANS for the potential harassment of small numbers of harbor seals, California sea lions, harbor porpoises, and gray whales incidental to construction of a replacement bridge for the East Span of the San Franciso-Oakland Bay Bridge in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals, California sea lions, harbor porpoises, and possibly gray whales and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**). Prior to submitting comments, NMFS recommends reviewers of this document read NMFS' November 14, 2003 (68 FR 64595) and May 8, 2006 (71 FR 26750) **Federal Register** notices on this action, especially responses to comments made previously, as NMFS does not intend to address these issues further without the submission of additional scientific information relevant to the comment.

Dated: December 28, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–22615 Filed 1–4–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110906A]

Taking of Marine Mammals Incidental to Specified Activities; Open Water Seismic Operations in Cook Inlet, Alaska

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

ACTION: Notice; proposed authorizations for two incidental take authorizations; request for comments.

SUMMARY: NMFS has received requests from ConocoPhillips Alaska, Inc. (CPAI) and from Union Oil Company of California (UOCC) for authorizations to take small numbers of five marine mammal species incidental to seismic operations in portions of Cook Inlet, Alaska. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue authorizations to CPAI and UOCC to incidentally take, by harassment, small numbers of these species between approximately mid-March and mid-June, 2007.

DATES: Comments and information must be received no later than February 5, 2007.

ADDRESSES: Comments on the applications and draft Environmental Assessment (EA) should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The mailboxes address for providing e-mail comments are *PR1.110906A@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. Copies of the applications, the application letters, draft EA, and other related documents may be obtained by writing to this address or by telephoning one of the contacts listed here (see **FOR FURTHER INFORMATION CONTACT**). The applications and draft EA are also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137, or Brad Smith, Alaska Region, NMFS, (907) 271–3023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 6 and on October 12, 2006, NMFS received applications from CPAI and UOCC, respectively, requesting Incidental Harassment Authorizations (IHAs) for the possible harassment of small numbers of the Cook Inlet beluga whale (*Delphinapterus leucas*), Steller lions (*Eumetopias jubatus*), Pacific harbor seals (*Phoca vitulina richardsi*), harbor porpoises (*Phocoena phocoena*), and killer whales (*Orcinus orca*) incidental to conducting open water seismic operations in portions of Cook Inlet, Alaska.

Both proposed operations use an ocean-bottom cable (OBC) system to conduct seismic surveys. OBC seismic surveys are used in waters that are too shallow for the data to be acquired using a marine-streamer vessel and/or too deep to have static ice in the winter. This type of seismic survey requires the use of multiple vessels for cable layout/pickup, recording, shooting, and possibly one or two vessels smaller than those used in streamer operations. The utility boats can be very small, in the range of 10 - 15 m (33 - 49 ft).

An OBC operation begins by laying cables off the back of the layout vessel. Cable length typically is 4 - 6 km (2.5 - 3.7 miles) but can be up to 12 km (7.4 miles). Groups of seismic survey receivers (usually a combination of both hydrophones and vertical-motion geophones) are attached to the cable in intervals of 25 - 70 m (82 - 246 ft). Multiple cables are laid on the seafloor parallel to each other using this layout method, with a cable spacing of less than 0.5 mile (0.8 km), depending on the geophysical objective of the survey. The sound source levels (zero to peak) associated with the OBC seismic survey are the same for most 2D and 3D marine seismic surveys (233 - 240 dB re 1 microPa at 1 m).

The proposed operations would be active 24 hours per day, but the airguns would only be active for 1 - 2 hours during each of the 3 - 4 daily slack tide periods. The source for the proposed OBC seismic surveys would be a 900–in^3 BOLT airgun array situated on the source vessel, the *Peregrine Falcon*. The array would be made up of 2 sub-arrays, each with 2 3–airgun clusters separated by 1.5 m (4.9 ft) off the stern of the vessel. One cluster will consist of 3 225–in^3 airguns and the second cluster will have 3 75–in^3 airguns. During seismic operations, the sub-arrays will fire at a rate of every 10 - 25 seconds and focus energy in the downward direction as the vessel travels at 4 - 5 knots (4.6 - 5.8 mph). Source level of the airgun array is 249 dB re 1 microPa at 1 m (0 - peak), and the dominant frequency range is 8 - 40 Hz.

A near-field hydrophone is mounted about 1 m (3.3 ft) above each airgun station (one hydrophone is used per cluster), one depth transducer per

position is mounted on the airgun's ultrabox, and a high pressure transducer is mounted at the aft end of the sub-array to monitor high pressure air supply. A single 200 CFM PRICE compressor would supply air for the array. The compressor would be run through a pressure regulated valve tree. Water separators and dehumidifiers are also part of the source system. The array would be located with the use of DGPS antennas located on top of the A-frames. The A-frame would be lowered and raised based on water depth before the firing of the airguns.

The geographic region for the seismic operation proposed by CPAI encompasses a 25 km^2 (9.7 square miles) area in northwestern Cook Inlet, paralleling the shoreline from just offshore of the Beluga River south for about 6 km (3.7 miles). The approximate boundaries of the region of the proposed project area are 61°09.473′ N, 151°11.987′ W; 61°16.638′ N, 151°02.198′ W; 61°12.538′ N, 150°49.979′ W; and 61°05.443′ N, 1517°00.165′ W. Water depths range from 0 to 24 m (80 ft). There will be a 1.6 km (1 mile) setback of operations from the mouth of the Beluga River to comply with Alaska Department of Fish and Game (ADFG) restrictions. The proposed seismic operations would occur from mid March depending on the time of ice breakup, and last until mid-May, 2007.

The geographic region for the activity proposed by UOCC encompasses a 28.2 km^2 (10.9 square miles) area in northwestern Cook Inlet, paralleling the shoreline offshore of Granite Point, and extending from shore into the inlet to an average of about 1.6 km (1 mile). The approximate boundaries of the region of the proposed project area are 61°00.827′ N, 151°24.071′ W; 61°02.420′ N, 151°15.375′ W; 61°00.862′ N, 150°15.313′ W; and 61°57.979′ N, 151°23.946′ W. There are no major rivers flowing into the open water seismic project area. Water depths range from 0 to 18 m (60 ft). The proposed seismic operations would begin as early as May 1 and end no later than June 15, 2007.

Description of the Marine Mammals Potentially Affected by the Activity

The marine mammals that are potentially found in Cook Inlet are the Cook Inlet beluga whales, Steller sea lions, Pacific harbor seals, harbor porpoises, and killer whales. Among these species, only the Steller sea lion is listed as endangered under the Endangered Species Act (ESA), and it is also designated as depleted under the MMPA. The Cook Inlet beluga whale is designated as depleted under the MMPA. General information for these species can be found in Angliss and Outlaw (2006), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2005.pdf*. Additional information on these species is presented below.

Cook Inlet beluga whale

In the U.S. waters, beluga whales comprise five distinct stocks: Beaufort Sea, Eastern Chukchi Sea, Eastern Bering Sea, Bristol Bay, and Cook Inlet (Angliss and Outlaw, 2005). For the proposed seismic operations, only the Cook Inlet beluga stock occurs in the project area. The Cook Inlet stock is the most isolated of the five stocks, based on the degree of genetic differentiation between this stock and the four others (O'Corry-Crowe *et al.*, 1997).

The Cook Inlet beluga whale population has declined significantly over the years (NMFS, 2005). NMFS systematic aerial surveys documented a decline in abundance of nearly 50 percent between 1994 and 1998, from an estimate of 653 whales to 347 whales (Hobbs *et al.*, 2000). The annual abundance surveys conducted each June from 1999 to 2005 have resulted in abundance estimates of 367, 435, 386, 313, 357, 366, and 278 whales for each year, respectively (Rugh *et al.*, 2006). The Cook Inlet beluga whale stock is considered below its Optimum Sustainable Population. There is considerable concern regarding its small population size.

Cook Inlet beluga whales demonstrate site fidelity to summer concentration areas, where they regularly occur in just a few areas each year (Seaman *et al.*, 1985), typically near river mouths and associated shallow, warm and low salinity waters (Moore *et al/*, 2000). While there is inter-annual variability in beluga use among areas, generally belugas occur in the Susitna and Chickaloon areas in May to July, Turnagain Arm in August, Knik Arm in September, and the mid-Cook Inlet between Point Possession and Kalgin Island in January through April (Hansen and Hubbard, 1999; Rugh *et al.*, 2000; 2004; 2005). These patterns are consistent with those recorded for 14 tagged beluga whales tracked by satellite from 2000 to 2003 (Hobbs *et al.*, 2005).

Within this distribution, NMFS has characterized the relative value of 4 habitats as part of the management and recovery strategy in its Draft Conservation Plan for the Cook Inlet Beluga Whale (Delphinapterus leucas) (NMFS, 2005). Type 1 habitat is termed ''High Value/High Sensitivity'' and includes what NMFS believes to be the most important and sensitive areas of the Inlet in terms of beluga whales. Type 2 is termed ''High Value,'' and include summer feeding areas and winter habitats in waters where whales typically occur in lesser densities or in deeper waters. Type 3 habitat occurs in the offshore areas of the mid and upper Inlet and also includes wintering habitat. Type 4 habitat describes the remaining portions of the range of these whales within Cook Inlet.

Beluga whale use and distribution within Cook Inlet is documented from a study using satellite tracking of tagged whales (Hobbs *et al.*, 2005). Among the 14 beluga whales monitored by satellite telemetry between July and March in 2000 - 2003, all remained in Cook Inlet the entire time they were tracked. During summer and fall, whales were concentrated in rivers and bays in Upper Cook Inlet; during winter, they were more dispersed and located farther offshore. From December through March, whales were located primarily offshore and ranged widely in upper and mid Cook Inlet. Based on this study, it can be inferred that at least some belugas can be found in the CPAI and UOCC proposed project vicinities most months of the year as they seasonally move between the upper and lower Inlet, and between inshore and offshore waters. It can also be inferred that beluga whale occurrence in or near the UOCC Granite Point project area during late spring and early summer is much infrequent as most belugas will be concentrated in rivers and bays farther north in the Upper Inlet (Rugh *et al.*, 2000; Hobbs *et al.*, 2005; Rugh *et al/*, 2005). Beluga River area is in the extreme southern edge of the area classified by NMFS as Type 2 habitat, which is a summer feeding site. The Granite Point project area is within Type 3 habitat, which is a wintering area and secondary summering site, and historic sites.

Sources of Cook Inlet beluga whale mortality include strandings (Vos and Shelden, 2005), predation by killer whales (Shelden *et al.*, 2003), and subsistence harvest (Mahoney and Shelden, 2000; NMFS, 2003; 2005).

Steller sea lion

The western U.S. stock of Steller sea lion is distributed throughout the Bering Sea, the North Pacific Ocean, and the Gulf of Alaska east to 144oW, which includes Cook Inlet (Loughlin, 1997). The most recent minimum estimate of this population was 38,513 animals, including pups (Angliss and Outlaw, 2005). No abundance estimate for Steller sea lions is available for Cook Inlet.

Steller sea lions are sighted in Lower Cook Inlet than in the upper Inlet (LGL, 2006). Steller sea lion critical habitat has been established at locations in the southern portion of Lower Cook Inlet (58 FR 45269, August 27, 1993). Haulouts in the lower Inlet are located near the mouth of Cook Inlet at Gore Point, Elizabeth Island, Perl Island, the Barren Islands, and Chugach Island. Steller sea lions gather on traditional rookeries from mid-May through mid-July to give birth and breed. No haulouts occur in Upper Cook Inlet, the geographic region in which the proposed seismic activities would occur, and animals are rarely sighted north of Nikiski (Rugh *et al.*, 2005; LGL, 2006).

Pacific harbor seal

Harbor seals are present in coastal waters throughout Cook Inlet. They are more abundant in lower Cook Inlet than in the upper Inlet (Rugh *et al/*, 2005). In the Upper Inlet, harbor seals occur in the Little Susitna River, Susitna River, Turnagain Arm, Chickaloon Bay, Knik Arm, and Beluga River from May through October (Rugh *et al.*, 2005). Typically, fewer than about 100 harbor seals have been recorded in any one of these locations with the majority in the Chickaloon Bay and the Susitna River areas and very few at the Beluga River (Rugh *et al.*, 2005). One to three harbor seals have been annually reported in or near the Beluga River area (Rugh *et al.*, 2005).

Major harbor seal haulout sites in the Cook Inlet region are found in the lower portion of the Inlet. The reproductive period (pupping and breeding) occurs at most major haulouts in the Inlet from May through July (NMFS, 2003). Harbor seals molt following the reproductive period. The peak season for molting in the Gulf of Alaska occurs from July to September (Pitcher and Calkins, 1979).

The population size of the Gulf of Alaska stock is estimated at 29,175 seals (Angliss and Outlaw, 2005). However, no abundance estimate is available for Cook Inlet. Harbor seals have declined in some areas of the northern Gulf of Alaska by 78 percent during the past two decades (Fadely *et al.*, 1997). Causes of this decline may include natural population fluctuations or cycles, reduced environmental carrying capacity and prey availability due to natural or human causes, predation, harvests, direct fisheries related mortality, entanglement in marine debris, pollution, and emigration (Hoover-Miller, 1994).

Harbor porpoise

Harbor porpoise occur throughout Alaska waters (Lowry *et al/*, 1982). The Gulf of Alaska stock of harbor porpoise, which includes Cook Inlet animals, is estimated at 30,506 animals (Angliss and Outlaw, 2005). Dahlheim *et al.* (2000) estimated the average density of harbor porpoises in Cook Inlet was 7.2 animals per 1,000 km2 (386 square miles), or 1 animal per 139 km2 (53 square miles), which indicates densities are very low in the Inlet. Harbor porpoises occur in Upper Cook Inlet throughout the year in small numbers but are more abundant in the lower Inlet (LGL, 2006).

Killer whale

The Eastern North Pacific stocks of killer whales includes transient and resident killer whales in the Gulf of Alaska and Cook Inlet (Angliss and Outlaw, 2005). The minimum abundance estimated for the Alaska Resident stock of killer is 1,123 animals; and for the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock of killer whale is 314 animals (Angliss and Outlaw, 2005).

Killer whales in Cook Inlet have not been well documented (Shelden *et al.*, 2003). However, their occurrence in the area is sporadic and not considered a daily or common event. Resident and transient killer whales have been observed. Most sightings of resident killer whales occur in the lower Inlet (Shelden *et al.*, 2003). Small groups of killer whales, believed to be transient whales, have been seen in upper Cook Inlet (NMFS, 2003). Rugh *et al/* (2005) reported observing no killer whales in the upper Inlet and only 23 in the lower Inlet during surveys from 1993 to 2004. Similarly, two recent marine mammal studies in the upper Inlet and Knik Arm did not observe any killer whales (Funk *et al.*, 2005; Ireland *et al.*, 2005). There are no records of killer whales in the Beluga River and Granite Point project areas.

Potential Effects on Marine Mammals and Their Habitat

Seismic surveys using acoustic energy may have the potential to adversely impact marine mammals in the vicinity of the activities (Gordon *et al.*, 2004). The sound source levels (zero to peak) associated with the OBC seismic survey can be as high as 233 - 240 dB re 1 microPa at 1 m. However, most energy is directed downward, and the short duration of each pulse limits the total energy. Received levels within several kilometers typically exceed 160 dB re 1 microPa (Richardson *et al/*, 1995), depending on water depth, bottom type, ice cover, etc. Intense acoustic signals from seismic surveys have been known to cause behavioral alteration such as reduced vocalization rates (Goold, 1996), avoidance (Malme *et al.*, 1986, 1988; Richardson *et al.*, 1995; Harris *et al.*, 2001), and changes in blow rates (Richardson *et al.*, 1995) in several marine mammal species.

The proposed surveys would use a 900–in^3 BOLT airgun array consisting of 3 225–in^3 airguns and 3 75–in^3 airguns. The source level of this array is expected to be considerably lower than the 1,200–in^3 BOLT airgun array used by the U.S. Coast Guard (USCG) vessel *Healy* (70 FR 47792, August 15, 2005). To conservatively assess the received levels from airgun pulses, the USCG's Healy modeled data were used to calculate the maximum distances where sound levels would be 190, 180, and 160 dB re 1 microPa rms. The maximum distances where sound levels were estimated at 190, 180, and 160 dB re 1 microPa rms from a single 1,200–in^3 BOLT airgun in the northern Beaufort Sea were 313 m (1,027 ft), 370 m (1,214 ft), and 1,527 m (5,010 ft), respectively. However, since the proposed seismic surveys would use a smaller 900–in^3 airgun array in an area with soft mud bottom that gradually slopes outward from shore, which is a poor condition for sound transmission (Richardson *et al.*, 1995), the received levels are expected to be significantly lower at these distances.

The seismic surveys would only introduce acoustic energy into the water column and no objects would be released into the environment. The survey vessels would travel at a speed of 4 5 knots and the two projects would be conducted in a small area of Cook Inlet for a short period.

There is a relative lack of knowledge about the potential impacts of seismic energy on marine fish and invertebrates. Available data suggest that there may be physical impacts on eggs and on larval, juvenile, and adult stages of fish at very close range (within meters) to seismic energy source. Considering typical source levels associated with seismic arrays, close proximity to the source would result in exposure to very high energy levels. Where eggs and larval stages are not able to escape such exposures, juvenile and adult fish most likely would avoid them. In the cases of eggs and larvae, it is likely that the numbers adversely affected by such exposure would be very small in relation to natural mortality. Studies on fish confined in cages that were exposed under intense sound for extended period showed physical or physiological impacts (Scholik and Yan, 2001; 2002;

McCauley *et al.*, 2003; Smith *et al.*, 2004). While limited data on seismic surveys regarding physiological effects on fish indicate that impacts are short-term and are most apparent after exposure at very close range (McCauley *et al.*, 2000a; 2000b; Dalen *et al.*, 1996), other studies have demonstrated that seismic guns had little effect on the day-to-day behavior of marine fish and invertebrates (Knudsen *et al.*, 1992; Wardle *et al.*, 2001). It is more likely that fish will swim away upon hearing the approaching seismic impulses (Engas *et al.*, 1996). Based on the foregoing, NMFS finds preliminarily that the proposed seismic surveys would not cause any permanent impact on the physical habitats and marine mammal prey species in the proposed project area.

Number of Marine Mammals Expected to Be Taken

NMFS estimates that approximately 6 - 57 Cook Inlet beluga whales (average 26 whales) out of a population of 278 whales and a maximum of 30 Pacific harbor seals out of a population of 29,175 seals would be harassed incidentally by the two proposed seismic operations from March to June, 2007. These numbers of take represent 2.2 - 20.5 percent (average 9.4 percent) Cook Inlet beluga whales and less than 0.1 percent of Alaska stock of Pacific harbor seals that could be taken by Level B harassment if no mitigation and monitoring measures are implemented. These numbers are based on the animal density, length of track planned, and the assumption that all animals will be harassed at distances where noise at received level is at and above 160 dB re 1 microPa rms. Beluga whale and harbor seal densities were calculated by dividing the daily counts of whales (ranges from 11 - 99, with an average of 46) and seals (75) by the approximate area (1,248 km^2, or 482 square miles) surveyed in the Susitna Delta (Beluga River to Pt. MacKenzie) during the most recently published survey for June 2004 (Rugh *et al/*, 2005). Although 20.5 percent of Cook Inlet beluga whales could subject to take by Level B harassment, this estimate was based on an unusually high count of whales on June 3, 2004 in Susitna Delta (from North Foreland to Pt. Mackenzie). Cook Inlet beluga aerial surveys conducted by NMFS in June, 2003 and 2004, provided median counts of whales between 0 - 99, with an average count of 29 whales in the same area. This estimate is conservative as it assumes that all animals exposed by seismic impulses over 160 dB re 1 microPa would be harassed and disturbed. As mentioned earlier that the majority acoustic energy of low frequency airgun impulses falls outside beluga whale's most sensitive hearing range (Richardson *et al.*, 1995), it is most likely that only a portion of whales within the 160 dB re 1 microPa isopleth would be disturbed. In addition, it is also possible that many of the animals would be habituated to this level of acoustic disturbances. Furthermore, mitigation measures, including the ramp-up requirement during the initiation of the seismic operations (see below) could eliminate most, if not all, startling behavior from animals near the proposed project area. Therefore, NMFS believes that the actual number of Level B harassment takes of Cook Inlet beluga whale would be much lower than the estimated average of 26 whales.

There are no similar population surveys for harbor porpoises, Steller sea lions, and killer whales conducted within the proposed project area. However, based on an abundance survey of harbor porpoises within the entire Cook Inlet (Dahlheim *et al.*, 2000), it is estimated that the population density of harbor porpoise in the entire Inlet is 0.0072 animal per km2. Based on this density data, NMFS estimates that about 6 harbor porpoises out of a population of 30,506 porpoises could be harassed incidentally by the two proposed seismic operations from March to June, 2007. This number of take represents less than 0.02 percent of harbor porpoises that could be taken by Level B harassment.

There is no density estimates available for Steller sea lions and killer whales with in Cook Inlet. However, their appearance in Upper Cook Inlet is rare and none of these species were sighted in the upper Inlet during the 2004 survey (Rugh *et al.*, 2005). Therefore, NMFS concludes that the harassment of these species is reasonably believed to be much lower than those of beluga whales and harbor seals.

Effects on Subsistence Needs

The proposed project areas are located 4 - 15 miles (6.4 - 24.1 km) from Tyonek, which is predominately a Dena'ina Athabaskan community. However, these areas are not important subsistence areas for Tyonek hunters. The Tyonek native community has been displaced from many traditional hunting (and trapping and fishing) areas north of Tyonek including Beluga River during the twentieth century. As more non-natives utilized and occupied traditional subsistence areas combined with harvest regulation restrictions, changes in the abundance and distribution of subsistence resources, and other factors, Tyonek native subsistence activities have focused closer to the village. While Tyonek natives may harvest one beluga whale per year and occasionally harbor seals (Huntington, 2000), their primary source of meat is moose (Foster, 1982). Therefore, NMFS believes that the proposed projects would not have an unmitigable adverse impact on the availability of marine mammal species or stocks for subsistence harvest.

Mitigation

The following mitigation measures are proposed be required under the proposed IHA to be issued to CPAI and UOCC for conducting seismic operations in northwestern Cook Inlet. NMFS believes that the implementation of these mitigation measures would result in the least practicable impact on marine mammal species or stocks and their habitat.

Time and Frequency

Seismic operations would be limited from mid-March to mid-June in portions of northwestern Cook Inlet. During the seismic operations, airguns would only be active for 1 - 2 hours during each of the 3 - 4 slack tide periods, with the vessel moving at a speed of 4 - 5 knots (4.6 - 5.8 mph).

There will be a 1.6 km (1 mile) set back of airguns from the mouth of the Beluga River to comply with ADFG restrictions.

Establishment of Safety Zones

The applicants propose to establish a 370–m (1,214–ft) radius safety zone for cetaceans and a 313–m (1,027–ft) radius safety zone for pinnipeds for the seismic operations. These safety zone radii were calculated from a model for a 1,200–in3 BOLT array used in the Beaufort Sea where the received sound pressure levels (SPL) attenuated to 180 dB and 190 dB re 1 microPa rms, respectively. Since the data used in calculating the size of safety zones were from a much larger array, while the proposed seismic operations would use a smaller array in an area with poor conditions for sound transmission, NMFS believes that these safety zone radii are conservative. Additional data will be acquired to verify the 190, 180, and 160 dB (rms) distances for the airgun configurations during the proposed seismic operations, and the disturbance could be modified if NMFS finds that the level of take is being exceeded and resulting in higher than a negligible impact on the species or stock in question. An independent marine acoustic firm, will be used to acquire the data. Scientifically valid

sampling design will be followed to collect data at the beginning of the seismic program. The data will be used to calibrate the acoustic model and adjust the safety radii to match the field values for the 190, 180, and 160 dB distances for each array, if different from these estimated values.

Safety zones would be surveyed and monitored prior to, during, and after the airgun seismic operations. A detailed description of marine mammal monitoring is described in the Monitoring and Reporting section below.

Speed and Course Alteration

If a marine mammal is detected outside the safety radius and based on its position and the relative course of travel is likely to enter the safety zone, the vessel's speed and/or direct course may, when practicable and safe, be changed to avoid the impacts to the animal. The marine mammal activities and movements relative to the seismic and support vessels must be closely monitored to ensure that the animal does not (1) approach the safety radius, or (2) enter the safety zone. If either of these scenarios occur, further mitigation measures must be taken (i.e., either further course alterations or power down or shut down of the airgun(s)).

Power-down Procedures

A power down involves decreasing the number of airguns in use such that the radius of the 180- or 190–dB zone is decreased to the extent that marine mammals are not in the safety zone. During a power-down, one airgun is operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic guns in the area.

If a marine mammal is detected outside the safety zone but is likely to enter the safety zone, and if the vessel's course and/or speed cannot be changed to avoid having the animal enter the safety radius, the airguns must be powered down before the animal is within the safety zone.

Shut-down Procedures

A shut-down occurs when all airgun activity is suspended. The operating airgun(s) must be shut down if a marine mammal approaches the applicable safety zone and a power down still would not likely to keep the animal outside the newly adjusted smaller safety zone. The operating airgun(s) must also be shut down completely if a marine mammal is found within the safety zone during the seismic operations. The shut-down procedure should be accomplished within several seconds (of a ''one shot'' period) of the determination that a marine mammal is within or about to enter the safety zone.

Following a shut-down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it is visually observed to have left the safety zone, or if it has not been seen within the safety zone for 15 minutes.

Ramp-up Procedures

Although marine mammals will be protected from Level A harassment by establishment of a safety zone at a SPL levels of 180 and 190 dB re 1 microPa rms for cetaceans and pinnipeds, respectively, mitigation may not be 100 percent effective at all times in locating marine mammals. In order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, and to further reduce Level B harassment by startling marine mammals with a sudden intensive sound, CPAI and UOCC will be required to implement ''ramp-up'' practice when starting up airgun arrays. Ramp-up will begin with the smallest airgun in the array that is being used for all subsets of the 6–gun array. Airguns will be added in a sequence such that the source level in the array will increase at a rate no greater than 6 dB per 5 minutes. During the ramp-up, the safety zone for the full 6–airgun system will be maintained.

Monitoring and Reporting

Monitoring would be conducted by qualified NMFS-approved marine mammal observers (MMOs). Reticle binoculars (e.g., 7 x 50 Bushnell or equivalent) and laser range finders (Leica LRF 1200 laser range finder or equivalent) would be standard equipment for the monitors.

Vessel-based MMOs will begin marine mammals monitoring at least 30 minutes prior to the planned start of airgun operations and during all periods of airgun operations. MMOs will survey the safety zone to ensure that no marine mammals are seen within the zone before a seismic survey begins. If marine mammals are found within the safety zone, seismic operations will be suspended until the marine mammal leaves the area. If a marine mammal is seen above the water and then dives below, the operator will wait 15 minutes, and if no marine mammals are seen by the MMOs in that time it will be assumed that the animal has moved beyond the safety zone. When feasible, observations will also be made during transits, moving cable, and other operations when airguns are inactive.

Data for each distinct marine mammal species observed in the proposed project area during the period of the seismic operations would be collected. Numbers of marine mammals observed, species identification if possible, frequency of observation, the time corresponding to the daily tidal cycle, and any behavioral changes due to the airgun operations will be recorded and entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Results from the vessel-based observations will provide: (1) Basis for real-time mitigation (airgun shut-down); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reports from CPAI and UOCC will be submitted to NMFS within 90 days after the end of the respective projects. The reports will describe the operations that were conducted, the marine mammals that were detected near the operations, and provide full documentation of methods, results, and interpretation pertaining to all monitoring. The reports will also include estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways.

National Environmental Policy Act (NEPA)

NMFS has prepared a draft EA for public review and comment (see **ADDRESSES**), that describes the impact on the human environment that would result from implementation of this action. NMFS has concluded, preliminarily, that no significant impact on the human environment would result.

Endangered Species Act (ESA)

Based on a review conducted by NMFS Alaska Regional Office biologists, it is not likely that any ESA-listed species would be taken due to the proposed seismic operations. Steller sea lions are recorded in these waters, but are considered uncommon in spring and early summer in the proposed project area. Therefore, NMFS has determined that a formal section 7 consultation is not necessary.

Preliminary Determinations

NMFS has determined preliminarily that small numbers of beluga whales, Pacific harbor seals, and harbor porpoises may be taken incidental to seismic surveys, by no more than Level B harassment and that such taking will result in no more than a negligible impact on such species or stocks. In addition, NMFS has determined preliminarily that Steller sea lions and killer whales, if present within the vicinity of the proposed activities could be taken incidentally, buy by no more than Level B harassment and that such taking would result in no more than a negligible impact on such species or stocks. At this time, NMFS is not able to determine whether any potential take would involve small numbers of Steller sea lions or killer whales due to data limitations and our inability to develop density estimates. Regardless, given the infrequent occurrence of these species (or none at all), NMFS believes that any take would be significantly lower than those of beluga whales or harbor seals.

While behavioral modifications, including temporarily vacating the area during the project period may be made by these species to avoid the resultant visual and acoustic disturbance, NMFS nonetheless finds that this action would result in no more than a negligible impact on these marine mammal species and/or stocks. NMFS also finds that the proposed action will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses.

In addition, no take by Level A harassment (injury) or death is anticipated or authorized, and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

Proposed Authorization

NMFS proposes to issue IHAs to CPAI and UOCC for the potential harassment of small numbers of Cook Inlet beluga whales, Pacific harbor seals and harbor porpoises incidental to conducting seismic operations in the northwestern Cook Inlet in Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Likewise, NMFS proposes to issue IHAs for potential harassment of Steller sea lions and killer whales incidental to conducting of seismic operations in the northwestern Cook Inlet in Alaska, provided that previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: December 28, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–22634 Filed 1–4–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122806C]

Gulf of Mexico Fishery Management Council (Council); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meeting will be held January 22 –26, 2007.

ADDRESSES: The meeting will be held at the Grand Hotel Marriott, 1 Grand Blvd., Point Clear AL 36564.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL, 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–348–1630.

SUPPLEMENTARY INFORMATION:

Council

Thursday, January 25, 2007—The Council will begin at 8:30 am to review the agenda and minutes. Public testimony on a regulatory amendment to address vermilion snapper management and exempted fishing permits (EFPs), if any, will be from 8:45 to 10 a.m. Persons wishing to testify on the regulatory amendment must register by filling out a public testimony card prior to the beginning of the testimony period. From 10 a.m. to 12 p.m. the Council will hold an Open Public Comment Period regarding any fishery issue or concern. People wishing to speak before the Council should complete a public comment card prior to the comment period. From 1:30–2 p.m. the Council will hear a presentation regarding Dolphin Depredation. The Council will then review and discuss reports from the previous three day's committee meetings as follows: 2–3:30 pm—Reef Fish Management; 3:30–4:15 pm—Joint Reef Fish/Shrimp Management Committees; 4:15–4:45 pm—Shrimp Management Committee; 4:45–5:00 pm—Mackerel Management Committee; 5–5:15 p.m.—Data Collection Committee; Budget/Personnel Committee from 5:15–5:30 p.m.

Friday, January 26, 2007—The Council will begin at 8:30 a.m. to continue reviewing and discussing reports from the previous three day's committee meetings as follows: 8:30 –8:45 am—Migratory Species Management Committee; 8:45 –9 a.m.—SSC Selection Committee; 9–9:30 a.m. Joint Reef Fish/Mackerel/Red Drum Committees. The Council will conclude its meeting by discussing Other Business items from 9:30 –10:30 a.m.

Committees

Monday, January 22, 2007, 1–5:30 p.m.—The Reef Fish Management Committee will meet to take final action on a Regulatory Amendment for Vermilion Snapper, review Reef Fish Amendment 30 (gag, amberjack, triggerfish, red grouper), and set scoping hearings. The Committee will also review the Ad Hoc Grouper IFQ Advisory Panel's (AP) recommendations for Reef Fish Amendment 29 (Grouper Individual Fishing Quota [IFQ]), as well as review a Florida Fish and Wildlife Conservation Commission study and Southeast Fisheries Science Center recommendations for a goliath grouper scientific harvest.

Tuesday, January 23, 2007, 8:30 a.m.–12 p.m. —The Joint Reef Fish/Shrimp Management Committee will meet to receive a presentation on red snapper juvenile densities off Texas. The Committee will also review the current Draft Joint Reef Fish Amendment 27/Shrimp Amendment 14 and additional potential shrimp actions; the Committee report from the August 2006 meeting; the NMFS' FEIS and Interim Rule; the Final Shrimp Effort Workgroup and the Ad Hoc Shrimp Effort Management AP Reports; and consider linked vs. delinked shrimp and reef fish mortality reduction scenarios for Reef Fish Amendment 27/Shrimp Amendment 14. The Committee may also select public hearing locations for Reef Fish Amendment 27/Shrimp Amendment 14

and review Reef Fish 31/Shrimp 15 options.

1:30–4 p.m.—The Joint Reef Fish/Shrimp Management Committee continues.

4–5 p.m.—The Shrimp Management Committee will meet to receive a report of the Texas shrimp closure analyses and the Shrimp AP recommendations.

5–5:30 p.m. (CLOSED COUNCIL SESSION) The Scientific and Statistical Committee (SSC) Selection Committee, which met prior to the meeting, will give their recommendations for Select SSC Subcommittee members to monitor NMFS' Design and Analysis Group.

Wednesday, January 24, 2007, 8:30–10:30 a.m. —The Data Collection Committee will meet to discuss the Committee's charge under the Council's Standard Operating Practices and Procedures's (SOPPS); consider action to require a recreational saltwater fishing license/permit in the Exclusive Economic Zone (EEZ); discuss reporting requirements for the recreational-for-hire sector; review the existing Gulf charter and head boat surveys; and discuss the Magnuson-Stevens Fishery Conservation and Management Act recreational data provision for a vessel registry along with state licensing and reporting requirements.

10:30–11:30 a.m.—The Mackerel Management Committee will meet to review an update on status criteria and acceptable biological catch (ABC) projections for king mackerel and to approve Amendment 18 to the Coastal Migratory Pelagics Fishery Management Plan (FMP) for public hearings.

1–3 p.m.—The Joint Reef Fish/Mackerel/Red Drum Committees will meet to discuss an Options Paper for an Aquaculture Amendment by possibly selecting preferred alternatives and scheduling public hearing locations.

3–3:45 p.m.—The Budget/Personnel Committee will meet to review the draft CY 2007 operating budget and consider increases in state liaison funding.

3:45–5:30 p.m.—The Migratory Species Management Committee will meet to discuss a proposed rule by NMFS to relax swordfish regulations and highly migratory species essential fish habitat.

The committee reports will be presented to the Council for consideration on Thursday January 25, and on Friday, January 26, 2007.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the M-SFCMA, those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the M-SFCMA, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 29, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–22597 Filed 1–4–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122806B]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Recreational Advisory Panel (Panel) in January, 2007 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Wednesday, January 24, 2007 at 9 a.m.

ADDRESSES: *Meeting address*: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7991.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Council has begun development of Amendment 16 to the Northeast Multispecies Fishery Management Plan (FMP). This amendment will adjust measures as necessary to continue the stock rebuilding programs adopted by Amendment 13 to the FMP on May 1, 2004. The amendment may also consider other adjustments to management measures or alternatives to the effort control system currently used to manage the multispecies fishery. On November 6, 2006, the Council published a Notice of Intent (NOI) to prepare a Supplementary Environmental Impact Statement (SEIS) to support this amendment (71 FR 64941) and announced a scoping period that ended on December 29, 2006. The Panel will meet to develop recommendations for management of the recreational fishery and the Panel may consider allocations to the recreational fishery, management measures or other issues. Recommendations of the Panel will be considered by the Council at future meetings.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: December 29, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–22598 Filed 1–4–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of a Final Regional Restoration Plan for Region 2, for the Louisiana Regional Restoration Program

Summary: Notice is hereby given that a document entitled ''Final Regional Restoration Plan for Region 2'' is available to the public. This document has been prepared by the state and federal natural resource trustee agencies (National Oceanic and Atmospheric Administration (NOAA); U.S. Department of the Interior (DOI); Louisiana Oil Spill Coordinator's Office (LOSCO); and Louisiana Departments of Environmental Quality (LDEQ); Natural Resources (LDNR); and Wildlife and Fisheries (LDWF)) to address natural resource injuries resulting from discharges of oil in Region 2 of the State of Louisiana.

The Final Regional Restoration Plan for Region 2 is the first of nine regional plans being prepared under the statewide Louisiana Regional Restoration Planning Program developed by NOAA, DOI, and the State of Louisiana.

For Further Information Contact: Requests for copies of the ''Final Regional Restoration Plan for Region 2'' or for further information, request or contact Tony Penn, Southeast Branch Chief, NOAA/Assessment and Restoration Division, 1305 East-West Highway, SSMC #4, 10th floor, Silver Spring, MD 20910; phone number 301–713–3038 x197; fax number 301–713–4387; e-mail address: *Tony.Penn@noaa.gov.* Or contact Charles Armbruster, RRP Program Manager, Louisiana Oil Spill Coordinator's Office, 150 Third Street, Suite 405, Baton Rouge, LA 70801; phone number 225–219–5800; fax number 225–219–5802; e-mail address: *Charles.Armbruster@losco.state.la.us.* When submitting a request, please indicate whether you would like the document on compact disk, a hardcopy, or the Internet address to download an electronic copy.

Supplementary Information: Louisiana's economy is based, in part, on the state's vast natural resources. Both renewable (hunting, fishing, forest products) and nonrenewable (cultural, oil, natural gas) resources are important, and the industries associated with each have coexisted for years. Although Louisiana's oil and gas industry tries to avoid adverse impacts on renewable natural resources, injuries do occur as a result of oil spill incidents. The impact of these incidents on fish, wildlife, and the environment can be significant and adversely affect the industries and communities depending on natural resources for commerce and recreation.

Federal and Louisiana natural resource trustees have developed a statewide Louisiana Regional Restoration Planning Program (RRP Program) to assist them in carrying out their Natural Resource Damage Assessment (NRDA) responsibilities for discharges or substantial threats of discharges of oil. Goals of the statewide Louisiana RRP Program are to: (1) Expedite and reduce the cost of the NRDA process; (2) Provide for consistency and predictability by describing in detail the NRDA process, thereby increasing understanding of the process by the public and industry; and (3) Increase restoration of lost trust resources and services injured by oil spills. The Louisiana RRP Program identifies the statewide program structure, decision-making process, and criteria that are used to select the restoration project(s) that may be implemented to restore the trust resources and services injured by an oil spill.

The Louisiana RRP Program divides the state into nine regions. For each region, a Regional Restoration Plan (RRP) will be developed that identifies: the affected environment and resources; potentially injured trust resources and services; appropriate restoration types for each of the potentially injured resources and services; and available restoration projects that have been identified to date. The Final RRP for Region 2 covers an area of southeast Louisiana, including all or part of the following parishes: Ascension, Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, and St. John the Baptist.

The natural resource trustees (NOAA, DOI, LOSCO, LDEQ, LDNR, LDWF) are designated pursuant to 33 U.S.C. 2706(c), Executive Order 12777, and the National Contingency Plan, 40 CFR 300.600 and 300.605. Pursuant to La. Rev. Stat. 30:2460, the State of Louisiana Oil Spill Contingency Plan (September 1995) describes the state trust resources to include the following: Vegetated wetlands, surface waters, ground waters, air, soil, wildlife, aquatic life, and the appropriate habitats on which they depend. DOI has been designated as trustee for the natural resources that it manages or controls. Examples of those resources are described in the National Contingency Plan, 40 CFR 300.600(b)(2) and (3), and include the following and their supporting ecosystems: migratory birds, anadromous fish, endangered species and marine mammals, federally owned minerals, certain federally managed water resources, and natural resources located on, over, or under land administered by DOI. NOAA's trust resources include, but are not limited to: commercial and recreational fish species, anadromous and catadromous fish species, marshes and other coastal habitats, marine mammals, and endangered and threatened marine species.

Pursuant to 15 CFR 990.56, the natural resource trustees are authorized to develop regional restoration plans as part of the Oil Pollution Act's mandate for the trustees to restore, rehabilitate, replace, or acquire the equivalent of natural resources and services injured by oil spill incidents and to compensate for interim losses of such resources and services.

The Administrative Record (AR) for the statewide RRP Program and RRP for Region 2 is being maintained at: (1) NOAA Assessment and Restoration Division, SSMC #4, 1305 East-West Highway, Silver Spring, Maryland 20910–3281; (2) Louisiana Oil Spill Coordinator's Office, Suite 405, 150 Third Street, Baton Rouge, LA 70801; and (3) *http://www.losco.state.la.us/admin/RRP/RRPprogram_view.asp.* The AR includes documents that the trustees relied upon during the development of the Final RRP for Region 2. Pursuant to 15 CFR 990.23 & 990.56, the trustees sought public involvement in developing the Final RRP for Region 2, through public review and comment of the documents contained in the AR, as well as through publication of the ''Louisiana Regional Restoration Planning Program Final Programmatic Environmental Impact Statement (FPEIS)''.

Dated: December 11, 2006.

Ken Barton,

Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E6–22484 Filed 1–4–07; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability for the Final Environmental Impact Statement/ Environmental Impact Report for the Proposed San Luis Obispo Creek Watershed Waterway Management Plan in the City and County of San Luis Obispo, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Regulatory Branch), in coordination with the San Luis Obispo County Flood Control & Water Conservation District (Zone 9) (District) and the City of San Luis Obispo, has completed a Final Environmental Impact Statement/ Environmental Impact Report (FEIS/ EIR) for the San Luis Obispo Creek Watershed Waterway Management Plan. The District and City require authorization pursuant to Section 404 of the Clean Water Act for activities anticipated necessary to implement a long-term stream maintenance and management program to address regional flooding and flood control along San Luis Obispo Creek and its tributaries. Historically, project planning for activities and development within and affecting the stream corridor has been managed or guided by the policies of various different agencies with no concerted effort at consistent management techniques. The Waterway Management Plan, the Stream Maintenance and Management Plan and the Drainage Design Manual, collectively referred to as the Program, represent a consolidated effort to provide a consistent management program for the waterway and its watershed.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the Final EIS/EIR should be directed to Mr. Bruce Henderson, Senior Project Manager, North Coast Section, Regulatory Branch, U.S. Army Corps of Engineers, 2151 Alessandro Drive, Suite 110, Ventura CA, 93001, (805) 585–2145.

SUPPLEMENTARY INFORMATION: None.

Dated: December 21, 2006.

David J. Castanon,

Chief, Regulatory Branch, Los Angeles District.

[FR Doc. E6–22599 Filed 1–4–07; 8:45 am]

BILLING CODE 3710–KF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On December 19, 2006, the Department of Education published a notice in the **Federal Register** (Page 75952, Column 3) for the information collection, ''Impact Evaluation of Upward Bound's Increased Focus on Higher-Risk Students—Baseline Data Collection Protocols''. This notice hereby corrects the number of responses to 10,890.

The Acting Leader, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: December 28, 2006.

James Hyler,

Acting Leader, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management.

[FR Doc. E6–22610 Filed 1–4–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[CA–06–01; FRL–8265–9]

Notice of Prevention of Significant Deterioration Final Determination for Knauf Insulation, GmbH, Shasta Lake, CA

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice of final action.

SUMMARY: This notice announces that on November 14, 2006, the Environmental Appeals Board (''EAB'') of EPA denied review of all petitions for review of a Prevention of Significant Deterioration (''PSD'') permit (''Permit'') that EPA Region 9 issued to Knauf Insulation, GmbH (''Knauf''). The Permit was issued pursuant to the PSD regulations under 40 CFR 52.21.

DATES: The effective date of the EAB's decision, and the Permit, is November 14, 2006. Pursuant to Section 307(b)(1) of the Clean Air Act (''CAA''), 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 Ninth Circuit within 60 days of January 5, 2007.

ADDRESSES: The relevant documents for the Permit are available for public inspection during normal business hours at the following address: EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. To arrange viewing of these documents, contact Shaheerah Kelly at (415) 947–4156 or *kelly.shaheerah@epa.gov.* The Permit is also available at *http://www.epa.gov/region09/air/permit/knauf.*

FOR FURTHER INFORMATION CONTACT: Shaheerah Kelly, EPA, Region 9, Air Division (AIR–3), 75 Hawthorne Street, San Francisco, CA 94105.

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

I. What Action Is EPA Taking?
II. What Is the Background Information?
III. What Did the EAB Decide?

I. What Action Is EPA Taking?

We are notifying the public of a final decision by the EAB on the Permit issued by EPA Region 9 pursuant to the PSD regulations found at 40 CFR 52.21.

II. What Is the Background Information?

Knauf is an existing fiberglass manufacturing facility located in Shasta Lake, Shasta County, California. The Shasta County Air Quality Management District (''AQMD'') issued Knauf's PSD permit on March 22, 2000 authorizing construction of the facility. The facility has been in operation since 2002.

In March 2003, EPA rescinded the PSD delegation for many California air pollution permitting agencies, including the Shasta County AQMD which is the air pollution permitting agency in Shasta County. Based on this action and since the Shasta County AQMD did not subsequently request PSD delegation, EPA is currently the PSD permitting authority within Shasta County, California.

Knauf submitted a PSD application to EPA Region 9 to revise the facility's Permit. After consideration of the PSD application, EPA Region 9 issued the draft revised Permit on January 31, 2006, for public review and comment. On May 11, 2006, after providing an opportunity for public comment and a public hearing, EPA issued the revised Permit. The revised Permit changed Knauf's previous Permit by (1) establishing nitrogen oxide (''NO_X'') emission limitations of 16.5 pounds per hour (''lb/hr'') and 1.76 pounds per ton of glass pulled (''lb/ton'') at the manufacturing line main stack, and (2) changing particulate matter less than 10 microns in diameter (''PM10'') emission limitations to 28.4 lb/hr and 3.03 lb/ton of at the manufacturing line main stack, and 0.67 lb/hr and 0.07 lb/ton at the

glass melting furnace stack. The revised Permit also included other changes related to the changes in the emission limitations.

Subsequent to the issuance of the revised Permit, the EAB received six petitions requesting review of the revised Permit. The EAB denied review of all six petitions.

III. What Did the EAB Decide?

Four of the petitions raised public health concerns and general concerns about the Knauf facility which were already addressed in EPA Region 9's response to comments for the revised Permit. The EAB denied review of these petitions because they failed to demonstrate why EPA Region 9's response was clearly erroneous or otherwise warranted review. For one of these petitions, which asserted that the original permit issued in 2000 violated the CAA by allowing the facility to be built, the EAB ruled that the assertion did not relate to any condition of the revised Permit issued by EPA Region 9 and was, therefore, beyond the scope of the EAB proceeding.

One petition related to two documents filed with the EAB titled ''Notice of Appeal'' and ''Request for Time Extension.'' The Notice of Appeal asked for permission to file an appeal with the EAB, but did not raise any specific objections to the revised Permit, and the Extension Request stated only that the petitioners were waiting to receive certain information from EPA Region 9. The EAB denied review because the petitioners did not articulate any specific objections to the revised Permit and did not establish good cause for extending the time to file an appeal.

One petition objected to the location of the Knauf facility and asked for reconsideration of the permitting decision. The EAB denied review since the petitioner did not file the petition in a timely manner and did not participate in the permitting process during the public comment period for the draft revised Permit.

Readers interested in more detail on the appeal issues raised by the petitioners and the reasons for the EAB's denial of review may download EAB's Order Denying Review from the EAB Web site at *http://www.epa.gov/eab.*

Pursuant to 40 CFR 124.19(f)(1), for purposes of judicial review, final agency action occurs when a final PSD permit is issued and agency review procedures are exhausted. This notice is being published pursuant to 40 CFR 124.19(f)(2), which requires notice of any final agency action regarding a PSD permit to be published in the **Federal Register**. This notice constitutes notice of the final agency action denying review of the revised Permit and, consequently, notice of the EPA Region 9's issuance of the Permit (PSD Permit No. Permit No. NSR 4–4–4, SAC 03–01) to Knauf. If available, judicial review of these determinations under section 307(b)(1) of the CAA may be sought only by the filing of a petition for review in the United States Court of Appeals for the Ninth Circuit, within 60 days from the date on which this notice is published in the **Federal Register**. Under section 307(b)(2) of the CAA, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: December 20, 2006.

Kerry J. Drake,

Acting Director, Air Division, Region 9.

[FR Doc. E6–22561 Filed 1–4–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FR1–6682–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 2006 (71 FR 17845).

Draft EISs

EIS No. 20060373, ERP No. D–BLM–K65319–CA, Sierra Resource Management Plan, Provide Direction for Managing Public Lands, Several Counties, CA.

Summary: EPA expressed environmental concern about impacts to water quality and aquatic habitat, and to public health from exposure to naturally occurring asbestos. Rating EC2.

EIS No. 20060418, ERP No. D–FHW–L40231–WA, East Lake Sammamish Master Plan Trail, Design and Construct an Alternative Non-Motorized Transportation and Multi-Use Recreational Trail, Funding and U.S. Army COE Section 404 Permit, King County, WA.

Summary: EPA does not object to the proposed project. EPA does recommend including additional information in the EIS regarding BMPs, a vegetation management plan, and water quality monitoring. Rating LO.

Final EISs

EIS No. 20060468, ERP No. F–NPS–K61159–CA, Sequoia and Kings Canyon National Parks, General Management Plan, Middle and South Forks of the Kings River and North Forks of the Kern River, General Management Plan, Tulare and Fresno Counties, CA.

Summary: EPA does not object to this project.

EIS No. 20060473, ERP No. F–FHW–H40189–MO, Interstate 29/35 Paseo Bridge Corridor, Reconstruct and Widen I–29/35, Missouri River, North Kansas City and Kansas City, Clay and Jackson Counties, MO.

Summary: EPA does not object to the proposed project. EPA does recommended that additional information be obtained about populations within the project area potentially sensitive to mobile source air toxics.

EIS No. 20060483, ERP No. F–UAF–K11021–GU, Andersen Air Force Base (AFB), Establish and Operate an Intelligence, Surveillance, Reconnaissance, and Strike (ISR/Strike) Capability, Guam.

Summary: EPA continues to have concerns about cumulative environmental impacts and direct impacts to endangered species.

EIS No. 20060484, ERP No. F–NAS–A12042–00, Mars Science Laboratory Mission (MSL), To Conduct Comprehensive Science on the Surface of Mars and Demonstrate Technological Advancements in the Exploration of Mars, Using a Radioisotope Power Source in 2009 from Cape Canaveral Air Force Station, FL.

Summary: EPA does not object to the proposed action.

Dated: December 29, 2006.

Clifford Rader,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E6–22618 Filed 1–4–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6682–7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 12/25/2006 through 12/29/2006 Pursuant to 40 CFR 1506.9.

EIS No. 20060539, Draft Supplement, AFS, 00, Northern Spotted Owl Management Plan, Removal or the Modification to the Survey and Manage Mitigation Measures, Standards and Guidelines (to the Northwest Forest Plan), Addresses the Effects of an Additional No-Action Alternative to the (July 2006) Draft Supplement and to the (2004) Final Supplemental EIS, Northwest Forest Plan, OR, WA, and CA, *Comment Period Ends:* 04/05/2007, *Contact:* Carol Hughes 503–808–2661.

EIS No. 20060540, Final EIS, NOA, LA, PROGRAMMATIC—The Louisiana Regional Restoration Planning Program, Establishing and Implementation of Natural Resource Trust Mandates, LA, *Wait Period Ends:* 02/20/2007, *Contact:* Tony Penn, 301–713–2990 Ext 197.

EIS No. 20060541, Draft EIS, BLM, ID, Pocatello Resource Management Plan, To Provide Direction for Managing Public Lands in the Idaho Falls Districts, Pocatello Field Office (PFO), Implementation, Several Counties, ID, *Comment Period Ends:* 04/04/2007, *Contact:* Terry Lee Smith, 208–478–6340.

EIS No. 20060542, Draft EIS, FRC, 00, Spokane River and Post Falls Hydroelectric Project, Applications for two New Licenses for Existing 14.75 (mw) Post Falls No. 12606 and 122.9 (mw) Spokane River No. 2545, Kootenai and Benewah Counties, ID and Spokane, Lincoln and Stevens Counties, WA, *Comment Period Ends:* 02/20/2007, *Contact:* John Blair, 202–502–6092.

EIS No. 20060543, Final EIS, COE, CA, San Juan Creek and Western San Mateo Creek Watershed Special Area Management Plan (SAMP), Proposed Watershed-Based SAMP to Balance Aquatic Resource Protection and Reasonable Economic Development, Southern Portion of Orange County, CA, *Wait Period Ends:* 02/05/2007, *Contact:* Jae Chung, 213–452–3292.

EIS No. 20060544, Final EIS, FRC, NY, Niagara Project, Hydroelectric Relicensing Application FERC No. 2216, Niagara River, Niagara County, NY, *Wait Period Ends:* 02/05/2007 *Contact:* Steven Kartalia, 202–502–6131.

EIS No. 20060545, Final EIS, FTA, TX, Southeast Corridor Project, Proposed Fixed-Guideway Transit System, Funding, Metropolitan Transit Authority (METRO) of Harris County, Houston, Harris County, TX, *Wait Period Ends:* 02/05/2007, *Contact:* John Sweek, 817–978–0550.

Amended Notices

EIS No. 20060480, Draft EIS, BIA, NY, Oneida Nation of New York Conveyance of Lands into Trust, Proposes to Transfer 17,370 Acre of Fee Land into Federal Trust Status, Oneida, Madison and New York Counties, NY, *Comment Period Ends:* 02/22/2007, *Contact:* Kurt G. Chandler, 615–564–6832.

Revision of FR Notice Published 11/24/2006: Extending Comment Period from 01/08/2007 to 02/22/2007.

EIS No. 20060518, Draft EIS, FHW, IN, I–69 Evansville to Indianapolis Project, I–69 Tier 2 Section 1: Evansville to Oakland City, from 1–64 to IN–64, Gibson and Warrick Counties, IN, *Comment Period Ends:* 02/20/2007, *Contact:* Anthony DeSimone, 317–226–5307.

Revision of FR Notice Published 12/22/2006: Correction to Title.

Dated: December 29, 2006.

Clifford Rader,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E6–22604 Filed 1–4–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8266–3]

El Monte Operable Unit of San Gabriel Valley Superfund Site; Notice of Proposed CERCLA Administrative Settlement Under Section 122(h)(1)

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(h)(1), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the El Monte Operable Unit of the San Gabriel Valley Superfund Site in El Monte, Los Angeles County, California with the City of El Monte, California. The settlement is entered into pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1) and it requires the City of El Monte to pay $160,000 to the United States Environmental Protection Agency (EPA). The settlement includes a covenant not to sue the City of El Monte pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. 6973. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before February 5, 2007.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region IX, 75 Hawthorne Street, San Francisco, California. A copy of the proposed settlement may be obtained from James Collins, EPA Region IX, 75 Hawthorne Street, ORC–3, San Francisco, CA 94105, telephone number 415–972–3894. Comments should reference the El Monte Operable Unit of the San Gabrile Valley Superfund Site in El Monte, California and EPA Docket No. 2006–24 and should be addressed to James Collins at the above address.

FOR FURTHER INFORMATION CONTACT: James Collins, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3894; fax: (415) 947–3570; e-mail: *collins.jim@epa.gov*.

Dated: December 21, 2006.

Keith Takata,

Director, Superfund Division, Region IX.

[FR Doc. E6–22636 Filed 1–4–07; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995.

SUPPLEMENTARY INFORMATION: This notice is soliciting comments from the public concerning the proposed collection of information to (1) evaluate whether the proposed collection is necessary for the paper 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 information collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of collection of information on those who are to respond, including through the use of appropriated automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Written comments should be received on or before February 5, 2007 to be assured of consideration.

ADDRESSES: Direct all comments to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB, Room 10202, Washington, DC 20503 (202) 395–3897.

Titles and Form Numbers: Export-Import Bank of the United States Application for Long-Term Loan or Guarantee, EIB 95–10.

OMB Number: 3048–0013.

Type of Review: Extension of a currently approved collection.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank, with the information necessary to determine eligibility for the loan and guarantee programs.

Affected Public: Business or other for-profit.

Respondents: Entities involved in the provision of financing or arranging of financing for foreign buyers of U.S. exports.

Estimated Annual Respondents: 86 (revised).

Estimated Time Per Respondent: 2.0 hours (revised).

Estimated Annual Burden: 172 hours.

Frequency of Response: When applying for a long-time preliminary or final commitment.

Dated: December 27, 2006.

Solomon Bush,

Agency Clearance Officer.

[FR Doc. 06–9978 Filed 1–4–07; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 2006–N–10]

Examination Rating System for the Federal Home Loan Banks and the Office of Finance

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting an examination rating system known as the Federal Home Loan Bank Rating System (Rating System).

DATES: The Finance Board will use the Rating System for all examinations that begin after December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Anthony Cornyn, Associate Director, Supervision and Examination, Office of Supervision, *cornyna@fhfb.gov* or 202–408–2522, or Kari Walter, Associate Director, Supervisory and Regulatory Policy, Office of Supervision, *walterk@fhfb.gov* or 202–408–2829. You can send regular mail to the Federal Housing Finance Board, 1625 Eye Street, NW., Washington DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

In September 2006, the Finance Board published a proposed Rating System for the Federal Home Loan Banks (Banks) and the Office of Finance (OF) in the **Federal Register** for public comment. *See* 71 FR 55181 (Sept. 21, 2006) (available at the Finance Board's Web site: *http://www.fhfb.gov/Default.aspx?Page=59&ListCategory=4#4*). The 30-day comment period closed on October 23, 2006. The Finance Board received 7 comments (the comments are available at the Finance Board's Web site: *http://www.fhfb.gov/Default.aspx?Page=93&Top=93*). Based on the comments, the Office of Supervision revised the Introduction and Overview to clarify that the composite rating will be based on the relative importance of each component as determined case-by-case within the parameters established by the Rating System. The proposal stated that the Finance Board would give special consideration to corporate governance in assigning a composite rating. Although the importance of corporate governance cannot be over-emphasized, our intent is not to weight the corporate governance component more heavily than other components. Rather than giving special consideration to any one component, examiners will use judgment and a case-by-case approach when assigning composite ratings. The Office of Supervision made no other significant changes to the Rating System as proposed.

II. The Federal Home Loan Bank Rating System

In 2005, the Office of Supervision began to provide an overall conclusion—Satisfactory, Fair, Marginal, or Unsatisfactory—as part of its Report of Examination. The Rating System, which is the next step in communicating exam results to the Banks, is a risk-focused system under which each Bank and the OF is assigned a composite rating from ''1'' to ''4'' based on an evaluation of various aspects of their operations. The composite rating of each Bank is based on an evaluation and rating of 5 key components: corporate governance, market risk, credit risk, operational risk, and financial condition and performance. The composite rating of the OF is based primarily on an evaluation of 2 components: corporate governance and operational risk. A ''1'' rating indicates the lowest degree of supervisory concern, while a ''4'' rating indicates the highest degree of supervisory concern. The composite rating is based on the ratings of the underlying components, which also are rated on a scale of ''1'' to ''4.'' The composite rating is not an arithmetic average of the component ratings. Instead, the relative importance of each component is determined case-by-case within the parameters established by the Rating System.

Under the Rating System, examiners take administration of a Bank's affordable housing and community investment activities into account in assigning component ratings for corporate governance and operational risk. Given the importance of affordable housing and community investment activities to the mission of the Bank System, the Office of Supervision may consider the need for a separate rating system or a separate ratings component to evaluate and rate the affordable housing and community investment programs of each Bank after gaining experience with the Rating System.

The Rating System is intended to serve 2 purposes. First, it is designed to reflect in a comprehensive, systematic, and consistent fashion the overall condition and performance of an

institution, taking into consideration all significant financial, operational, and compliance factors addressed in the Finance Board's examination. Second, the Rating System is meant to further enhance communication and transparency between the Office of Supervision and each Bank and the OF regarding the results of the examination process.

The ratings for individual Banks and the OF will not be made public or released to other Banks, but will be supplied to the individual Banks and the OF on a confidential basis as part of the examination and supervisory process.

The Federal Home Loan Bank Rating System is attached as an Exhibit to this Notice.

Dated: December 28, 2006.

By the Federal Housing Finance Board.

John P. Kennedy,

General Counsel.

BILLING CODE 6725–01–P

FEDERAL HOME LOAN BANK RATING SYSTEM

I. Introduction and Overview

The Federal Home Loan Bank Rating System (FHLBRS) is a risk-focused rating system under which each Federal Home Loan Bank (Bank) and the Office of Finance (OF) is assigned a composite rating based on an evaluation of various aspects of its operations. Specifically, the composite rating of each Bank is based on an evaluation and rating of five key components: corporate governance, market risk, credit risk, operational risk, and financial condition and performance. The composite rating of the OF is based primarily on an evaluation of two components: corporate governance and operational risk. The administration of a Bank's affordable housing and community investment activities is taken into account under the corporate governance and operational risk components of the rating system.

Under the rating system, each Bank and the OF is assigned a composite rating from "1" to "4." A "1" rating indicates the lowest degree of supervisory concern, while a "4" rating indicates the highest degree of supervisory concern. The composite rating of each institution is based on the ratings of the underlying components, which are also rated on a scale of "1" to "4." The composite rating assigned to an institution is not an arithmetic average of the component ratings. Instead, the relative importance of each component is determined case-by-case within the parameters established by this rating system.

The ratings assigned under the FHLBRS are to be viewed within the context of the risk profiles of the Federal Home Loan Banks. For example, the rating system employs three risk categories "Low Risk," "Moderate Risk," and "High Risk" to designate the level of risk exposure of a Bank's market risk, credit risk, and operational risk. These risk levels are intended to measure risk within the context of the Federal Home Loan Banks. They are not intended to measure risk relative to risk levels of other financial institutions. In this regard, the ratings assigned under the FHLBRS should not be viewed as comparable to the ratings used by any other rating system or rating agency.

II. Composite Ratings

Composite ratings are based on a careful evaluation of an institution's corporate governance, market, credit, and operational risk, and its overall financial condition and performance. An institution will be assigned a composite rating of "1" to "4" as described below.

Composite 1 – An institution that is rated "1" is considered to be operating in a safe and sound manner in every respect. It exhibits no material deficiencies in corporate governance, risk management, or financial condition, performance, and prospects. It is in substantial compliance with laws, regulations, and supervisory guidance.

Composite 2 – An institution that is rated "2" is considered to be operating in a satisfactory or acceptable manner. It may exhibit some moderate deficiencies in corporate governance, risk management, or financial condition and performance. The institution's board of directors and senior management have demonstrated the ability and willingness to address deficiencies in a timely manner. It is in substantial compliance with laws, regulations, and supervisory guidance. ***The general policy is that examiners will monitor the correction of identified deficiencies or weaknesses through the normal supervisory process.***

Composite 3 – An institution that is rated "3" raises supervisory concern due to deficiencies in its corporate governance, risk management, or its financial condition or performance. Taken alone or in combination, these deficiencies are moderate to severe. The organization may be in substantial noncompliance with laws, regulations, or supervisory guidance. The institution's board of directors or management do not demonstrate the ability or willingness to address deficiencies. A composite "3" rated institution requires more than normal supervision. ***The general policy is that supervisory action will be taken to address identified deficiencies or weaknesses.***

Composite 4 – An institution that is rated "4" is operating in an unacceptable manner. It may exhibit serious deficiencies in corporate governance, risk management, or financial condition and performance. It may be in substantial noncompliance with laws, regulations, or supervisory guidance. It requires close supervisory attention. Institutions in this group are considered to be operating in an unsafe or unsound condition or with unsafe and unsound practices. ***The general policy is that a formal enforcement action will be taken to address identified deficiencies or weaknesses.***

III. Component Ratings

The composite rating is derived from the five component ratings that are described below. Each of the component rating descriptions provides a list of the principal evaluative factors that relate to that component. The listing of evaluative factors for each component rating is not exhaustive and is not in order of importance.

Corporate Governance

Good corporate governance requires the board of directors and senior management to take an active role in formulating strategy; setting goals and objectives; adopting sound risk management policies and practices; conforming to laws, regulations, and supervisory guidance; and ensuring compliance with high standards of ethics and professional conduct.

Although the board of directors is not actively involved in day-to-day operations, it must provide clear guidance to management regarding acceptable risk exposures and ensure that management has developed and implemented appropriate policies, procedures, and practices. The board, in conjunction with senior management, is expected to set risk and return objectives that are consistent with the institution's strategy and mission.

Senior management is responsible for developing and implementing policies, procedures, and practices that translate the board's goals, objectives, and risk limits into prudent operating standards.

An institution's corporate governance is rated based upon, but not limited to, an assessment of the following factors:

Board of Directors and Senior Management

- Whether the board is actively engaged in carrying out its duties and responsibilities, including monitoring senior management performance, providing strategic direction, establishing risk parameters, and governing the institution's affordable housing and community investment activities.
- The effectiveness of the board of directors.
- The quality, expertise, and effectiveness of management.
- Whether the board and senior management have established an operating structure that facilitates a sound risk management program.
- Management depth and the adequacy of management succession plans.
- The quality of strategic planning and the ability of management to integrate strategy with risk and return objectives.
- The overall "tone at the top," including the quality of the risk management culture and the existence of high ethical standards.
- The institution's responsiveness to supervisory criticism.

Risk Management and Controls

- The quality of risk management oversight and the soundness of risk management policies, practices, and procedures.
- The accuracy, timeliness, and effectiveness of management information and risk monitoring systems.
- The quality of internal controls and the effectiveness of the internal audit and control unit(s) in identifying and communicating internal control deficiencies to management and the board.

Compliance

- Compliance with laws, regulations, supervisory guidance, and Bank policies.
- The responsiveness of the board and management to internal audit and independent auditors.
- The responsiveness of the board and management to supervisory authorities.

Assessing the Quality of Corporate Governance

The quality of corporate governance will be rated in accordance with the definitions outlined below. It is not necessary to exhibit every characteristic to be accorded a specific rating.

1. A rating of "**1**" indicates that the quality of corporate governance is strong and there are no supervisory concerns. The board and senior management are actively engaged in carrying out their duties and responsibilities, and possess and demonstrate the experience and expertise to manage the institution effectively. Strategic and operational plans have been developed with full participation by the board and serve as effective guides to management. Such plans fully incorporate the institution's affordable housing and community investment activities. Management succession is well-developed and comprehensive.

   The board and management effectively promote compliance with laws, regulations, supervisory guidance, and internal policies. Risk management policies and procedures are comprehensive and highly effective. Risk monitoring, internal control, and management information systems are comprehensive and sound. Management information reports provided to the board and senior management are timely, accurate, and comprehensive.

   Risk limits are prudent and address all significant risk exposures. The board and senior management review compliance with risk limits. Limit breaches are identified, evaluated, and corrected in a timely manner.

   Audit programs are effective. Mission-critical functions are supported by appropriate technological and human resources and contain no material control weaknesses. Any risk management and control deficiencies are minor and supervisory recommendations are addressed in a timely manner. Affordable housing and community investment activities are well-administered and exhibit no significant governance deficiencies.

2. A rating of **"2"** indicates that the quality of corporate governance is satisfactory. Risk exposures are identified and controlled in a manner that does not require more than normal supervisory attention. The board and senior management are generally effective in carrying out their duties. Strategic and operational plans have been developed with the involvement of members of the board. Such plans incorporate the institution's affordable housing and community investment activities. Management succession planning is adequately developed and comprehensive.

   The board and management promote compliance with laws, regulations, supervisory guidance, and internal policies, although some minor compliance exceptions may be noted. Risk management policies and procedures are adequate and generally effective. Risk management, internal control, and management information systems are adequate. Management information reports provided to the board and senior management are timely, accurate, and informative but some deficiencies may exist.

   Risk limits are prudent. In general, limit breaches are identified, evaluated, and corrected in a timely manner.

Audit programs are effective but may exhibit minor weaknesses. With few exceptions, mission-critical functions are fully automated and contain few control weaknesses. Risk management and control deficiencies and supervisory recommendations are generally addressed in a timely manner. Affordable housing and community investment activities are well-administered and exhibit only minor governance deficiencies.

3. A rating of **"3"** indicates that the quality of corporate governance is of supervisory concern. Risk management deficiencies are a cause for more than normal supervisory attention. The board of directors and management are not fully engaged in carrying out their duties and responsibilities and have not demonstrated the experience or expertise to manage the institution effectively. Strategic and operational plans may have been developed with little participation by the board (other than plan approval), and may be deficient in some material respect. Management succession planning is only partially developed and is not fully comprehensive.

   The board and management are not fully effective in promoting compliance with laws, regulations, supervisory guidance, and internal policies. Risk management policies and procedures contain some deficiencies. Risk management, internal control, or management information systems are deficient in some material respect. Management information reports provided to the board and senior management are untimely, inaccurate, or misleading.

   Risk limits may be imprudent. Breaches to limits are not always reported, reviewed, or properly addressed.

   Audit programs exhibit weaknesses or deficiencies. Mission-critical functions of the institution are ineffective and exhibit weaknesses. Risk management and internal control deficiencies or supervisory recommendations are not being addressed in a timely manner and could adversely affect the institution's safety and soundness. Governance of affordable housing activities is deficient in some material respect.

4. A rating of **"4"** indicates that the quality of governance is unacceptable. Risk management practices warrant a high degree of supervisory attention. The board and senior management are not carrying out their duties and responsibilities or may not possess the experience or expertise to manage the institution effectively. Strategic and operational plans may have been developed without the participation of the board and may be deficient in some material respect. Management succession planning is inadequate.

   The board and management are ineffective in promoting compliance with laws, regulations, supervisory guidance, and internal policies. Risk management policies and procedures may contain serious deficiencies. Risk management, internal control, and management information systems may contain serious deficiencies. Management information reports provided to the board and senior management are frequently untimely, inaccurate, misleading, or less that fully informative.

Risk limits have not been established or are not reported, reviewed, and evaluated by board and senior management committees.

Audit programs exhibit serious weaknesses or deficiencies. Mission-critical functions of the institution rely on manual processes and exhibit significant weaknesses. Material risk management and internal control deficiencies or supervisory recommendations are not addressed in a timely manner. Unless immediate corrective action is taken, deficiencies could seriously affect the institution's safety and soundness. Governance of affordable housing and community investment activities is seriously deficient in one or more material respects.

Market Risk

Market risk is the degree to which changes in interest rates and other market risk factors can adversely affect an institution's economic capital (market value of equity) or earnings. The market risk component of the FHLBRS reflects both the level of an institution's market risk exposure and the quality of its market risk management. For Banks, the primary component of market risk is interest rate risk – the risk to the market value of equity and earnings as a result of changes in interest rates.

The market risk rating of an institution is based upon, but not limited to, an assessment of the following factors:

Level of Market Risk Exposure

- The sensitivity of the institution's earnings and market value of equity to changes in interest rates and other market risk factors.
- The sensitivity of the institution's earnings and market value of equity to changes in interest rates and other market risk factors in relation to its retained earnings and capital.

Quality of Market Risk Management

- The quality of board and senior management oversight of market risk.
- The effectiveness of risk management policies, procedures, and internal controls.
- The effectiveness of risk measurement, monitoring, and reporting systems.
- The effectiveness of the institution's hedging activities.

Assessing the Level of Market Risk Exposure

Based on the factors outlined above, examiners will assess the level of market risk of an institution, within the context of a government sponsored enterprise, as **Low**, **Moderate,** or **High** as defined below:

Low Risk – The sensitivity of the institution's market value of equity to changes in interest rates and other market risk factors is low in relation to its level of market value of equity; and the sensitivity of the institution's earnings to changes in interest rates and

other market risk factors is low in relation to its retained earnings and capital. Exposure to repricing risk, basis risk, and yield curve risk is minimal. Options positions are clearly identified and well-managed.

Moderate Risk – The sensitivity of the institution's market value of equity to changes in interest rates and other market risk factors is moderate in relation to its level of market value of equity; and the sensitivity of the institution's earnings to changes in interest rates and other market risk factors is moderate in relation to retained earnings and capital. Repricing risk, basis risk, yield curve risk, and options risk are maintained at manageable levels.

High Risk – The sensitivity of the institution's market value of equity to changes in interest rates and other market risk factors is substantial in relation to its level of market value of equity; or the sensitivity of the institution's earnings to changes in interest rates and other market risk factors is substantial in relation to retained earnings and capital. Exposure may reflect substantial repricing risk, basis risk, or yield curve risk.

Assessing the Quality of Market Risk Management

Based on the factors outlined above examiners will assess the quality of market risk management as **Strong**, **Adequate,** or **Weak** generally as defined below. It is not necessary to exhibit every characteristic to be accorded a specific rating.

Strong – Market risk limits are comprehensive and prudent in relation to the risk to earnings and the market value of equity under a variety of plausible scenarios. Management and the board of directors have a strong understanding of the market risk exposures and their implications for the institution's earnings and capital. The risk management process is effective. Measurement tools and methods enhance decision making by providing meaningful and timely information under a variety of plausible scenarios. The quality of market risk modeling is high. Market risk models are properly documented and validated. Few, if any, risk management deficiencies exist. Management information at various levels of the organization is timely, accurate, and complete. Staff responsible for monitoring risk limits and measuring exposures is effective and independent from staff executing risk taking decisions. Risk limits are rarely breached and breaches are addressed promptly.

Adequate – Market risk limits are prudent in relation to the risk to earnings and market value of equity under a variety of plausible scenarios. Management and the board of directors have a good understanding of the key market risk exposures of the institution. The market risk management process is adequate. Measurement tools and methods may have minor deficiencies. The quality of market risk modeling is adequate. Market risk models are properly documented and validated, although some deficiencies may exist. Management information at various levels in the organization is, for the most part, timely, accurate, and complete. Staff responsible for monitoring risk limits and measuring exposures is generally effective and is independent from staff executing risk-taking decisions. Risk limits are occasionally breached but limit breaches are not serious.

Weak – Market risk limits are not prudent in relation to the risks to earnings and the market value of equity. Management and the board of directors do not understand, or have chosen to ignore, key aspects of the institution's market risk. Management does not anticipate or take timely and appropriate actions in response to market conditions. Knowledge of market risk may be concentrated in too few individuals in the organization. The market risk management process is deficient in light of the size and complexity of the institution's exposures. The quality of market risk modeling is deficient. Market risk models are not properly documented and validated. Management information at various levels in the organization exhibits significant deficiencies. Staff responsible for monitoring risk limits and measuring exposures is ineffective or is not independent from staff executing risk-taking decisions. Risk limits are not adhered to or limit breaches are not addressed promptly.

Market Risk Ratings

An institution's market risk rating is based upon an assessment of both the level of its market risk exposure and the quality of its market risk management. The following matrix will be used to combine these two factors to derive a market risk component rating.

	LEVEL OF MARKET RISK		
QUALITY OF MARKET RISK MANAGEMENT	LOW RISK	MODERATE RISK	HIGH RISK
Strong	1	1-2	2-3
Adequate	1-2	2-3	3-4
Weak	2-3	3-4	4

1. A rating of **"1"** indicates the level of market risk exposure is low and the quality of market risk management is strong. A "1" rating may be accorded in other situations where the combination of market risk and the quality of market risk management is of minimal supervisory concern. The level of earnings, capital, and retained earnings provide substantial support for the degree of market risk of the institution. Market risk is not increasing at an unacceptable or unmanageable pace.

2. A rating of **"2"** indicates the level of market risk exposure and the quality of risk management is satisfactory or acceptable. A "2" rating may be accorded in other situations where the market risk exposure of the institution is offset by strong market risk management or when the level of market risk exposure is not excessive in relation to the quality of market risk management. The level of earnings, capital, and retained earnings provide adequate support for the market risk of the institution. Market risk is not increasing at an unacceptable or unmanageable pace.

3. A rating of **"3"** indicates the level of market risk exposure is of supervisory concern and is not mitigated by the quality of market risk management. Risk management practices may need to be improved or risk exposures may need to be reduced. The level of earnings, capital, and retained earnings may be marginal in relation to market risk exposures.

4. A rating of **"4"** indicates the combination of the level of market risk exposure and the quality of market risk management is unacceptable. A rating of "4" may be accorded in other situations where the market risk of the institution is a significant supervisory concern. Market risk management practices must be significantly improved, or market risk exposure must be significantly reduced, or both. The level of earnings, capital, and retained earnings do not adequately support market risk exposures.

Credit Risk

The credit risk rating reflects the level and direction of credit risk exposures and the quality of credit risk management. Investments, acquired member assets, derivatives, off-balance sheet items, and other assets are primary sources of credit risk. The credit risk rating of an institution is based upon, but not limited to, an assessment of the following factors:

Level of Credit Risk Exposure

- The level and trend of nonperforming and non-accrual assets.
- The overall quality and diversification of the advance, investment and acquired member assets portfolios.
- The volume and nature of credit documentation exceptions.

Quality of Credit Risk Management

- The quality of credit review performed by the board of directors and senior management.
- The quality and effectiveness of credit risk management policies and procedures.
- The quality and effectiveness of credit underwriting policies and procedures.
- The quality, timeliness, and effectiveness of collateral valuation and testing procedures.
- The quality of the methodologies for evaluating and maintaining reserves for credit losses.
- The quality of the institution's credit risk self-assessment and internal risk rating processes.
- The quality of credit information systems.

Assessing the Level of Credit Risk Exposure

Based on the factors outlined above, examiners will assess the level of credit risk of an institution, within the context of a government sponsored enterprise, as **Low**, **Moderate,** or **High** as defined below. It is not necessary to exhibit every characteristic to be accorded a specific rating.

Low Risk – Exposure to loss of earnings or capital is minimal. Credit exposures reflect conservative underwriting policies and practices. Exceptions or overrides to sound underwriting standards pose minimal risk. Portfolio diversification is sound and risk of loss from concentrations is minimal. Portfolio growth presents no concerns. The volume of troubled credits is low relative to capital and can be resolved in the normal course of business.

Moderate Risk – Exposure to loss of earnings or capital does not materially affect financial condition. Credit exposures reflect acceptable underwriting policies and practices. Exceptions or overrides to sound underwriting standards may exist, but do not pose significant risk. Exposure does not reflect significant concentrations. The volume of troubled credits does not pose undue risk relative to capital.

High Risk – Exposure to loss of earnings or capital is material. Credit exposures reflect aggressive underwriting policies and practices. A large volume of substantive exceptions or overrides to sound underwriting standards exists. Exposure reflects significant concentrations. Portfolio growth, including products or sectors within the portfolio, is aggressive. The volume of troubled credits may be large relative to capital.

Assessing the Quality of Credit Risk Management

Based on the factors outlined above examiners will assess the quality of credit risk management as **Strong, Adequate,** or **Weak** generally as defined below:

Strong – The credit policy function comprehensively defines risk tolerances, concentrations, responsibilities, and accountabilities. All credit policies are communicated effectively throughout the organization. The credit culture, including compensation, strikes an appropriate balance between marketing and credit considerations. The credit granting process is extensively defined, well understood, and adhered to consistently. Credit analysis is thorough and timely. Credit risk measurement and monitoring systems are comprehensive and allow management to implement appropriate actions in response to changes in asset quality and market conditions. The quality of credit risk modeling is high. Credit risk models are properly documented and validated.

Information processes are appropriate for the volume and complexity of activity and any weaknesses are minor, with little potential for any adverse impact to earnings or capital. Credit administration is effective. Management identifies and actively manages portfolio risk. The loss reserve methodology is well-defined, objective, and clearly supports adequacy of current reserve levels. Credit personnel possess extensive technical and managerial expertise. Internal controls are comprehensive and effective. The stature, quality, and independence of the credit risk review function are appropriate and highly effective.

Adequate – The credit policy function satisfactorily defines risk tolerances, concentrations, responsibilities, and accountabilities. In general, credit policies are communicated effectively throughout the organization. Credit analysis is adequate. Credit risk measurement and monitoring systems are satisfactory. The quality of credit risk modeling is adequate. Credit risk models are documented and validated, although some deficiencies may exist.

Credit information processes are adequate for the volume and complexity of activity. Credit reports may contain minor weaknesses. Weaknesses in information processes are not so significant that they lead to poor credit decisions. The internal credit-grading system accurately stratifies portfolio quality. Credit administration is adequate. Management identifies and monitors portfolio risk. Credit risk diversification is adequate. The loss reserve methodology is satisfactory and the loss reserve is sufficient to cover inherent losses. Credit personnel possess requisite technical and managerial expertise. Key internal controls are effective. The stature, quality, and independence of the credit risk review function are appropriate and effective.

Weak – The credit policy function may not effectively define risk tolerances, concentrations, responsibilities, and/or accountabilities. Credit policies are not effectively communicated. The credit culture, including compensation, overemphasizes marketing relative to credit considerations. The credit granting process is not well-defined or not well understood. Credit analysis is insufficient relative to the risk. Credit risk measurement and monitoring systems may not permit management to implement timely and appropriate actions in response to changes in asset quality or market conditions. The quality of credit risk modeling is deficient. Credit risk models are not properly documented and validated.

Credit information processes are inappropriate for the volume and complexity of activity. Credit reports are inaccurate, untimely, or incomplete. Weaknesses in information processes can lead management to poor credit decisions. The internal credit-grading system does not accurately stratify the portfolio's quality. Credit administration is ineffective. Management is unable to identify and monitor portfolio risk. Credit risk diversification is inadequate. The loss reserve methodology is flawed or the loss reserve is insufficient to cover inherent credit losses. Credit personnel lack requisite technical and managerial expertise. Key internal controls may be absent or ineffective. The stature, quality, or independence of the credit risk review function is inappropriate or ineffective.

Credit Risk Ratings

An institution's credit risk rating is based upon an assessment of both the level of credit risk exposure and the quality of its credit risk management. The following matrix will be used to combine these two factors to derive a credit risk component rating.

	LEVEL OF CREDIT RISK		
QUALITY OF CREDIT RISK MANAGEMENT	LOW RISK	MODERATE RISK	HIGH RISK
Strong	1	1-2	2-3
Adequate	1-2	2-3	3-4
Weak	2-3	3-4	4

1. A rating of **"1"** indicates the level of credit risk exposure is low and the quality of credit risk management is strong. A "1" rating may be accorded in other situations where the combination of credit risk and credit risk management is of minimal supervisory concern. The level of earnings, capital, and retained earnings provide substantial support for the degree of credit risk of the institution. Credit risk is not increasing at an unacceptable or unmanageable pace.

2. A rating of **"2"** indicates the level of credit risk exposure and the quality of risk management is satisfactory or acceptable. A "2" rating may be accorded in other situations where the credit risk exposure of the institution is offset by strong credit risk management or when the level of credit risk exposure is not excessive in relation to the quality of credit risk management. The level of earnings, capital, and retained earnings provide adequate support for the credit risk of the institution. Credit risk is not increasing at an unacceptable or unmanageable pace.

3. A rating of **"3"** indicates the level of credit risk exposure is of supervisory concern and is not mitigated by the quality of credit risk management. Risk management practices may need to be improved or risk exposures may need to be reduced. The level of earnings, capital, and retained earnings may be marginal in relation to credit risk exposures.

4. A rating of **"4"** indicates the combination of the level of credit risk exposure and the quality of credit risk management is unacceptable. A rating of "4" may be accorded in other situations where the credit risk of the institution is a significant supervisory concern. Credit risk management practices must be significantly improved, or credit risk exposure must be significantly reduced, or both. The level of earnings, capital, and retained earnings do not adequately support credit risk exposures.

Operational Risk

Operational risk is the risk of possible losses resulting from inadequate or failed internal processes, people, and systems or from external events. Operational risk includes possible losses from internal or external fraud, improper employment practices, inadequate workplace safety, improper business and accounting practices, fiduciary breaches, misrepresentations, unauthorized trading activities, damage to physical assets, business disruption and system failures, and execution, delivery, and process management failures. The assessment of operational risk includes evaluating reputation risks. The operational risk component rating of the FHLBRS reflects both the level of an institution's operational risk exposure and the quality of its operational risk management.

The operational risk of an institution is rated based upon, but not limited to, an assessment of the following factors:

Level of Operational Risk Exposure

- The level and frequency of losses resulting from inadequate or failed internal processes or systems, fraud or human error, or from external events.

- The severity and frequency of accounting, financial, and regulatory reporting errors.
- Whether the institution's operational risk losses are increasing, decreasing, or stable.
- The degree to which processes are automated to minimize error.
- The level of operational risk arising from the administration of the institution's principal lines of business and its affordable housing and community investment activities.

Quality of Operational Risk Management

- Whether appropriate policies, procedures, and systems are in place to measure, manage, and control operational risk.
- Whether operational risks are being effectively measured, monitored, and controlled.
- The quality of policies and procedures in place to ensure secure, efficient, and effective information and data processing.
- The quality of contingency and business continuity planning.
- The quality of the institution's operational risk reports.
- The effectiveness of processes for identifying and controlling risk to business activities.
- The quality of the institution's operational risk self-assessment including whether key operational risks in all products, activities, processes, and systems have been clearly identified.
- The quality of operational risk management in the administration of the institution's affordable housing and community investment activities.

Assessing the Level of Operational Risk Exposure

Based on the factors outlined above, examiners will assess the level of operational risk of an institution, within the context of a government sponsored enterprise, as **Low**, **Moderate**, or **High** generally as defined below:

Low Risk – The institution has no history or only a limited history of operational losses. The number or magnitude of loss events is low. Operational control weaknesses (*e.g.,* violations of law, regulations, or Bank policy) are identified in a timely manner, usually by management, and typically are detected during the phase of developing or refining a process. Control systems are well documented and an adequate audit trail exists for testing of controls. The internal audit department, outside auditors/consultants, and/or examiners do not routinely identify substantive operational risks that are not adequately controlled. The internal audit function at a minimum is considered acceptable. The risk to earnings and capital is low.

Moderate Risk – The institution has had operational losses but the number or magnitude of losses is not considered substantial. Operational control weaknesses are sometimes not identified in a timely manner and management may not typically identify the control weaknesses. Control systems may be inadequately documented. There may be some issues with regard to adequate testing of controls. The internal audit department may sometimes identify substantive operational risks that are not adequately controlled. The internal audit function, at a minimum, is considered acceptable. The risk to earnings and

capital is low, but there is increased concern that a material loss event could occur due to operational risk.

High Risk – The institution has experienced significant operational losses or material control deficiencies. The number or magnitude of loss events may be high. Operational control weaknesses are often not identified in a timely manner and management rarely may identify the control weaknesses. Control systems may not be adequately documented. There are concerns regarding adequate testing of controls. The internal audit department may often identify substantive operational risks that are not adequately controlled or timely addressed. The internal audit function may not be adequate. The risk to earnings and capital may be low to moderate, but there is significant concern that a material loss event could occur due to operational risk.

Assessing the Quality of Operational Risk Management

Based on the factors outlined above, examiners will assess the quality of operational risk management as **Strong**, **Adequate,** or **Weak** as defined below. It is not necessary to exhibit every characteristic to be accorded a specific rating.

Strong – Operational risk controls are comprehensive and highly effective. Systems are automated and managed to minimize errors. Management has considered unusual events and abnormal control failures in developing the internal control framework. There is a strong understanding of operational risks within and across various functions or departments. The risk management process is effective and proactive. Management routinely works to identify possible control weaknesses and implement controls. Management periodically tests key controls. Internal audit rarely finds deficiencies in operational controls. Information security systems allow for the identification of control breaches; adequately protect mission-critical data; and may use industry best practices in doing so. Internal audit is effective.

Adequate – Operational risk controls are adequate and generally effective. There is a good understanding of operational risks within and across various functions or departments. The risk management process is adequate. Some control weaknesses may occasionally be identified. Information security systems monitor control breaches and adequately protect mission-critical data. Internal audit is at least adequate.

Weak – Operational risk controls are inadequate or ineffective. Responsible officials do not appear to have a good understanding of the operational risks that impact their areas. The risk management process is ineffective. Management may rely too heavily on internal audit to identify control weaknesses and to implement controls. Management rarely tests key controls. Material control weaknesses may exist. Information security systems may be deficient and may not notify management of control breakdowns or protect mission-critical data. Internal audit may be inadequate.

Operational Risk Ratings

An institution's operational risk rating is a combination of the level of its operational risk exposure and the quality of its operational risk management. The following matrix will be used to combine these two factors to derive an operational risk rating.

	LEVEL OF OPERATIONAL RISK		
QUALITY OF OPERATIONAL RISK MANAGEMENT	LOW RISK	MODERATE RISK	HIGH RISK
Strong	1	1-2	2-3
Adequate	1-2	2-3	3-4
Weak	2-3	3-4	4

1. A rating of **"1"** indicates the level of operational risk exposure is low and the quality of operational risk management is strong. A "1" rating may be accorded in other situations where the combination of operational risk and operational risk management is of minimal supervisory concern. The level of earnings, capital, and retained earnings provide substantial support for the degree of operational risk of the institution. Operational risk is not increasing at an unacceptable or unmanageable pace.

2. A rating of **"2"** indicates the level of operational risk exposure and the quality of risk management are satisfactory or acceptable. A "2" rating may be accorded in other situations where the operational risk exposure of the institution is offset by strong operational risk management or when the level of operational risk exposure is not excessive in relation to the quality of operational risk management. The level of earnings, capital, and retained earnings provide adequate support for the operational risk of the institution. Operational risk is not increasing at an unacceptable or unmanageable pace.

3. A rating of **"3"** is accorded when the level of operational risk exposure is a supervisory concern and is not mitigated by the quality of operational risk management. Risk management practices may need to be improved or risk exposures may need to be reduced given the quality of risk management. The level of earnings, capital, or retained earnings may be marginal in relation to operational risk exposures.

4. A rating of **"4"** indicates the combination of the level of operational risk exposure and the quality of operational risk management is unacceptable. A rating of "4" may be accorded in other situations where the operational risk of the institution is a significant supervisory concern. Operational risk management practices must be significantly improved, or operational risk exposure must be significantly reduced, or both. The level of earnings, capital, and retained earnings do not adequately support operational risk exposures.

Condition and Performance

An institution's condition and performance rating is based upon an assessment of key financial condition and performance factors that are not directly addressed under the market, credit, and operational risk components of the rating system. Because an institution's financial condition and performance is inextricably linked to its market, credit, and operational risk exposures, there is necessarily some overlap between an institution's condition and performance rating and its ratings for market, credit, and operational risk. An institution's condition and performance should be assessed relative to both its historic condition and performance and that of other Banks. An assessment of a Bank's earnings and profitability takes into account the cooperative ownership structure of the Banks and the interplay in a cooperative between product pricing and dividends. The financial condition and performance of an institution is rated based upon, but not limited to, an assessment of the following factors:

Earnings and Profitability

- The level, trend, and stability of earnings.
- Risk-adjusted returns on assets and equity.
- Net interest margins and spreads.
- The quality of earnings.

Operating Efficiency

- Non-interest operating expenses in relation to average assets.
- The extent to which the institution is taking advantage of technological advances.

Capital and Retained Earnings

- The risk-based capital and leverage ratios.
- The relative stability of capital.
- The level of retained earnings in relation to the institution's earnings stability and future prospects.

Liquidity

- The level of liquidity instruments relative to risk exposures.
- Compliance with regulatory liquidity requirements.

Assessing Financial Condition and Performance Rating

The financial condition and performance of an institution will be rated generally in accordance with the definitions outlined below. It is not necessary to exhibit every characteristic to be accorded a specific rating.

1. A rating of **"1"** indicates that financial condition and performance of the institution is strong. Current earnings and future earnings prospects are more than sufficient to support

operations and maintain the Bank's capital, retained earnings, and dividend paying capacity. Trends of most key measures are positive.

2. A rating of **"2"** indicates that financial condition and performance of the institution is satisfactory or acceptable. Current earnings and future earnings prospects are sufficient to support operations and maintain adequate capital, retained earnings, and reasonable dividends.

3. A rating of **"3"** indicates that financial condition and performance of the institution is of supervisory concern. Earnings may not fully support operations and provide for the necessary buildup of retained earnings. Liquidity may be in violation of regulatory requirements.

4. A rating of **"4"** indicates that financial condition and performance of the institution is unacceptable. Earnings are insufficient to support operations and maintain appropriate capital and retained earnings. Institutions rated "4" may be characterized by erratic fluctuations in net income or net interest spread, the development of significant negative trends, nominal or unsustainable earnings, intermittent losses, or a substantial drop in earnings from previous years. Liquidity may be inadequate. Trends in key measures are negative.

Principal Finance Board Contacts:

Comments and questions are welcome and should be directed to:

Anthony G. Cornyn, Associate Director, at 202- 408-2522 or cornyna@fhfb.gov, or

Karen Walter, Associate Director, at 202-408-2829 or walterk@fhfb.gov.

[FR Doc. 06–9984 Filed 1–4–07; 8:45 am]
BILLING CODE 6725–01–C

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 18, 2007.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. David A. Eickhoff, Adrian, Minnesota, to acquire control of Adrian Building Corporation and its subsidiary, Adrian State Bank, both of Adrian, Minnesota.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. David E. Pfrang, Goff, Kansas, *and Judy L. Georg,* Sabetha, Kansas, acting in concert to acquire control of Farmers State Bankshares, Inc., and The Farmers State Bank, both of Circleville, Kansas.

Board of Governors of the Federal Reserve System, December 29, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–22590 Filed 1–4–07; 8:45 am]

BILLING CODE 6210–01–S

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 29, 2007.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. CenterState Banks of Florida, Inc., Winter Haven, Florida, to merge with Valrico Bancorp, Inc., and thereby indirectly acquire Valrico State Bank, both of Valrico, Florida.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Frontier Management, LLC, and Frontier Holdings, LLC, both of Omaha, Nebraska; to acquire 100 percent of the voting shares of Pender State Bank, Pender, Nebraska.

Board of Governors of the Federal Reserve System, December 29, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–22589 Filed 1–4–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-07–425X]

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

The National Centers for Autism and Developmental Disabilities Research and Epidemiology (CADDRE) Study—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Children's Health Act of 2000 mandated CDC to establish autism surveillance and research programs to address the number, incidence, correlates, and causes of autism and related disabilities. Under the provisions of this act, CDC funded 5 CADDRE centers: California Department of Health and Human Services, Colorado Department of Public Health and Environment, Johns Hopkins University, the University of Pennsylvania, and the University of North Carolina at Chapel Hill. CDC National Center on Birth Defects and Developmental Disabilities will participate as the 6th site.

The purpose of this program is to establish a multi-site, collaborative epidemiological investigation of possible causes of autism spectrum disorders. Children with autism spectrum disorders will be compared to children with other developmental problems, referred to as the neurodevelopmentally impaired group (NIC), as well as children who do not have developmental problems, referred to as the subcohort.

Data collection methods will consist of the following: (1) Medical record review of the child participant and biological mother; (2) self-administered

Questionnaires; (3) buccal cell collection; (4) a telephone interview of the biological mother and/or primary caregiver; (5) a child development evaluation (more comprehensive for case participants than for the control group participants); (6) parent-child development interview (for case participants only); (7) a physical exam of the child; (8) biological sampling of the child (blood and hair); and (9) biological sampling of the biological parents (blood only).

There are no costs to respondents other than their time. The total estimated annualized burden is 30,103 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (In hrs)	Total burden hours
Contact by Mail	17,610	1	10/60	2,935
Telephone Contact	8,922	1	20/60	2,974
Parent Questionnaires and biologic sample	3,456	1	235/60 (3h 55m)	13,548
Caregiver Interview	3,282	1	30/60	1,641
Clinic Visit (Child Development Evaluation, physical exam, and biosamples):				
• Case	810	1	355/60 (5h 55m)	4,793
• NIC	1,170	1	110/60 (1h 50m)	2,145
• Subcohort	1,134	1	110/60 (1h 50m)	2,079
TOTAL				30,103

Dated: December 26, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–22579 Filed 1–4–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–05CG]

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

Morbidity Monitoring Project (MMP)—New—National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Morbidity Monitoring Project (MMP) is a new project. The purpose of MMP is to supplement the HIV/AIDS surveillance programs in 26 selected state and local health departments, which collect information on persons diagnosed with, living with, and dying from HIV infection and AIDS and will incorporate data elements from two data collections: Supplement to HIV/AIDS Surveillance (SHAS) project (0920–0262) and the Adult/Adolescent Spectrum of HIV Disease (ASD).

MMP will collect data on behaviors and clinical outcomes from a probability sample of HIV-infected adults receiving care in the U.S. Collection of data from interviews with HIV-infected patients will provide information on patient demographics, and the current levels of behaviors that may facilitate HIV transmission: sexual and drug use behaviors; patients' access to, use of and barriers to HIV-related secondary prevention services; utilization of HIV-related medical services; and adherence to drug regimens. Collection of data from patient medical records will provide information on: demographics and insurance status; the prevalence and incidence of AIDS-defining opportunistic illnesses and co-morbidities related to HIV disease; the receipt of prophylactic and antiretroviral medications; and whether patients are receiving screening and treatment according to Public Health Service guidelines. No other Federal agency collects national population-based behavioral and clinical information from HIV-infected adults in care.

The data will have significant implications for policy, program development, and resource allocation at the state/local and national levels. Users of MMP data include, but are not limited to, Federal agencies, state and local health departments, clinicians, researchers, and HIV prevention and care planning groups. There are no costs to the respondents other than their time. The total estimated annualized burden hours are 6,101.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (In hours)
Persons interviewed with standard interview	7,988	1	45/60
Persons interviewed with short interview	166	1	20/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (In hours)
Persons interviewed with proxy interview	166	1	20/60

Dated: December 26, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–22600 Filed 1–4–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Health Department Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health (NCEH)/Agency for Toxic Substances and Disease Registry (ATSDR): Teleconference Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention, NCEH/ATSDR announces the following teleconference meeting of the aforementioned subcommittee:

Times and Dates: 12:30 p.m.–2 p.m., February 12, 2007.

Place: Century Center, 1825 Century Boulevard, Atlanta, Georgia 30345.

Status: Open to the public, teleconference access limited only by availability of telephone ports.

Purpose: Under the charge of the BSC, NCEH/ATSDR, the Health Department Subcommittee will provide the Board with advice and recommendations on local and state health department issues and concerns that pertain to the mandates and mission of NCEH/ATSDR.

Matters to be Discussed: The meeting agenda will include a review of agenda items and approval of minutes; bridging NCEH/ATSDR programs; public comment; and the next steps for the Health Department Subcommittee.

Items are subject to change as priorities dictate.

Supplementary Information: This teleconference meeting is scheduled to begin at 12:30 p.m. Eastern Standard Time. To participate, dial (877) 315–6535 and enter conference code 383520. The public comment period will be held from 1:50 p.m.–2 p.m.

For Further Information Contact: Please contact Shirley D. Little, Committee Management Specialist, NCEH/ATSDR, 1600 Clifton Road, Mail Stop E–28, Atlanta, GA 30303; telephone 404/498–0003, fax 404/498–0059; e-mail: *slittle@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

Dated: December 28, 2006.

Elaine Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–22585 Filed 1–4–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–193]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections 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.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Important Message from MedicareUse: Requirements that hospitals notify beneficiaries in inpatient hospital settings of their rights as a hospital patient including their discharge appeal rights are referenced in Section 1866(a)(1)(M) of the Social Security Act. The authority for the right to an expedited determination is set forth at Section 1869(c)(3)(C)(iii)(III) of the Act. Under sections 42 CFR 405.1205 and 422.620, the hospital must deliver valid, written notice, the Important Message from Medicare (IM), of a patient's rights as a hospital patient including the discharge appeal rights, within 2 calendar days of admission. A follow-up copy of the signed IM is given again as far as possible in advance of discharge, but no more than 2 calendar days before. Follow-up notice is not required if the provision of the admission IM, falls within 2 calendar days of discharge. *Form Number:* CMS–R–193 (OMB #: 0938–0692); *Frequency:* Reporting: Yearly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 6,000; *Total Annual Responses:* 13,000,000; *Total Annual Hours:* 2,990,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on March 6, 2007.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—C, Attention: Bonnie L Harkless, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 27, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–22570 Filed 1–4–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–301]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections 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 function; (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.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Certification of Medicaid Eligibility Control (MEQC) Payment Error Rates and Supporting Regulations at 42 CFR 431.800–431.865; *Use:* Medicaid Eligibility Quality Control (MEQC) is operated by Title XIX agencies to monitor and improve the administration of its Medicaid program. The traditional MEQC program is based on State reviews of Medicaid beneficiaries identified through a statistically reliable statewide sample of cases selected from the eligibility files. These reviews are conducted to determine whether the sampled cases meet applicable Title XIX eligibility requirements. State agencies are required to submit the Payment Error Rate form to their respective CMS Regional Office. Regional Office staff will review these forms for completeness and will forward these forms to central office for compilation of error rate charts for projected quarterly withholdings and/or fiscal disallowances. *Form Number:* CMS–301 (OMB#: 0938–0246); *Frequency:* Recordkeeping and Reporting—Semi-annually; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 102; *Total Annual Hours:* 22,515.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503. Fax Number: (202) 395–6974.

Dated: December 27, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–22571 Filed 1–4–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1488–CN2]

RIN 0938–A012

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2007 Rates; Final Fiscal Year 2007 Wage Indices and Payment Rates After Application of Revised Occupational Mix Adjustment to the Wage Index; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of notice.

SUMMARY: This document corrects wage index and technical errors that appeared in the notice published in the **Federal Register** on October 11, 2006 entitled ''Medicare Program; Hospital Inpatient Prospective Payment Systems and Fiscal Year 2007 Rates.

DATES: *Effective Date:* Corrections listed in items 10 through 12 of section III. of this notice are effective as of October 1, 2006. The corrections to the wage index listed in items 2a, 3 through 8a, and 9a of section III. of this notice are effective as of November 3, 2006. The corrections to the wage index listed in items 1, 2b, 8b, and 9b of section III. of this notice are effective as of November 21, 2006.

FOR FURTHER INFORMATION CONTACT: Marc Hartstein, (410) 786–4548.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 06–8471 of October 11, 2006 (71 FR 59886), the notice entitled ''Hospital Inpatient Prospective Payment Systems and Fiscal Year 2007 Rates: Final Fiscal Year 2007 Wage Indices and Payment Rates After Application of Revised Occupational Mix Adjustment to Wage Index'' (hereinafter referred to as the ''FY 2007 IPPS notice''), there were a number of technical errors that are identified and corrected in the Correction of Errors section (items 10 through 12 of section III. of this notice). These technical corrections are effective October 1, 2006.

In addition, in October 2006, we became aware of an error in the calculation of the FY 2007 wage index for a number of rural areas and several hospitals that are reclassified to those areas. The error also affected some hospitals in urban areas that are assigned the statewide rural wage index floor. Section 412.64(k)(1) of the regulations requires that wage index corrections made after October 1 are effective prospectively for the remainder of the fiscal year from the date the fiscal intermediaries are informed of the correction. We recalculated the wage indices for the affected hospitals, and on November 3, 2006, sent a Joint Signature Memorandum to the fiscal intermediaries informing them to pay hospitals using the corrected wage indices. Subsequent to the November 3, 2006 Joint Signature Memorandum, additional errors in the wage indices were brought to our attention and were corrected through a November 21, 2006 Joint Signature Memorandum. Therefore, the corrected FY 2007 wage indices are effective beginning November 3, 2006 or November 21, 2006. Accordingly, the wage index provisions of this correction notice are corrections to the tabulation of the rates paid to hospitals. We note that the

corrections to the impact analysis (item 1 of section III. of this notice) are effective as of November 3, 2006 since the additional corrections made based on the November 21, 2006 Joint Signature Memorandum had no significant effect on the impact analysis.

II. Summary of the Corrections to the FY 2007 IPPS Notice

We made corrections to wage index values and geographic adjustment factors (GAFs) that were published in Tables 2, 4A–1, 4A–2, 4B–1, 4B–2, 4C–1, and 4C–2. In addition, we are making technical corrections to— (1) the out-migration adjustments and qualifying counties that were published in Table 4J; and (2) the list of diagnosis-related groups (DRGs), relative weighting factors, and geometric and arithmetic mean length of stay (LOS) that were published in Table 5.

III. Correction of Errors

In FR Doc. 06–8471 of October 11, 2006 (71 FR 59886), make the following corrections:

1. On pages 59893 and 59894, in Table I.—Impact Analysis of Changes for FY 2007, the figures in the last column (All FY 2007 changes [8]) are corrected to read as follows:

IMPACT ANALYSIS OF FINAL CHANGES FOR FY 2007 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent changes in payments per case]

	All FY 2007 changes (4)
All Hospitals	3.5
By Geographic Location:	
Urban hospitals	3.5
Large urban areas (populations over 1 million)	3.5
Other urban areas (populations of 1 million or fewer)	3.4
Rural hospitals	4
Bed Size (Urban):	
0–99 beds	3.5
100–199 beds	3.8
200–299 beds	3.6
300–499 beds	3.4
500 or more beds	3.2
Bed Size (Rural):	
0–49 beds	4.7
50–99 beds	4.9
100–149 beds	3.7
150–199 beds	3.3
200 or more beds	3.0
Urban by Region:	
New England	3.9
Middle Atlantic	3.9
South Atlantic	3.2
East North Central	3.4
East South Central	2.7
West North Central	2.8
West South Central	3.4

IMPACT ANALYSIS OF FINAL CHANGES FOR FY 2007 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	All FY 2007 changes (4)
Mountain	3.7
Pacific	3.7
Puerto Rico	2.0
Rural by Region:	
New England	6.3
Middle Atlantic	5.2
South Atlantic	3.9
East North Central	3.8
East South Central	3.5
West North Central	4.3
West South Central	4.1
Mountain	2.7
Pacific	3.3
By Payment Classification:	
Urban hospitals	3.4
Large urban areas (populations over 1 million)	3.5
Other urban areas (populations of 1 million or fewer)	3.4
Rural areas	4.0
Teaching Status:	
Non-teaching	3.8
Fewer than 100 Residents	3.4
100 or more Residents	3.2
Urban DSH:	
Non-DSH	3.6
100 or more beds	3.4
Less than 100 beds	3.6
Rural DSH:	
SCH	4.6
RRC	3.5
Other Rural:	
100 or more beds	3.5
Less than 100 beds	3.9
Urban teaching and DSH:	
Both teaching and DSH	3.3
Teaching and no DSH	3.3
No teaching and DSH	3.7
No teaching and no DSH	3.6
Rural Hospital Types:	
RRC	3.5
SCH	3.6
MDH	9.0
SCH and RRC	3.1
MDH and RRC	14.1
Unknown.	
Type of Ownership:	
Voluntary	3.5
Proprietary	3.5
Government	3.4
Unknown	7.6
Medicare Utilization as a Percent of Inpatient Days:	
0–25	3.6
25–50	3.3
50–65	3.7
Over 65	3.8
Unknown	4.4
Hospitals Reclassified by the Medicare Geographic Classification Review Board:	
FY 2005 Reclassifications.	

IMPACT ANALYSIS OF FINAL CHANGES FOR FY 2007 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	All FY 2007 changes (4)
Urban Hospitals Reclassified by the Medicare Geographic Classification Review Board: First Half FY 2007 Reclassifications	3.7
Urban Nonreclassified, First Half FY 2007	3.4
All Urban Hospitals Reclassified Second Half FY 2007	3.5
Urban Nonreclassified Hospitals Second Half FY 2007	3.4
All Rural Hospitals Reclassified Second Half FY 2007	3.6
Rural Nonreclassified Hospitals Second Half FY 2007	4.5
All Section 401 Reclassified Hospitals	5.4
Other Reclassified Hospitals (Section 1886(d)(8)(B))	4.5
Section 508 Hospitals	2
Specialty Hospitals	—
Cardiac Specialty Hospitals	1.2

2. On pages 59903 through to 59968, in Table 2.—Hospital Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2005; Hospital Wage Indexes for Federal Fiscal Year 2007; Hospital Average Hourly Wages for Federal Fiscal Years 2005 (2001 Wage Data), 2006 (2002 Wage Data), and 2007 (2003 Wage Data); Wage Indexes and 3–Year Average of Hospital Average Hourly Wages, for the listed providers, the wage indexes are corrected to read as follows:

a. Effective November 3, 2006

Provider No.	FY 2007 wage index
040039	0.8341
040047	0.8431
070002	1.2452
070003	1.2461
070004	1.2452
070007	1.2452
070008	1.2452
070009	1.2452
070011	1.2452
070012	1.2452
070015	1.2452
070020	1.2525
070021	1.2461
070024	1.2452
070025	1.2452
070027	1.2452
070029	1.2452
070035	1.2452

Provider No.	FY 2007 wage index
070038	1.2452
100025	0.8847
100026	0.8847
100027	0.8847
100048	0.8847
100054	0.8847
100062	0.8907
100081	0.8847
100093	0.8847
100102	0.8972
100106	0.8847
100108	0.8847
100118	0.9245
100122	0.8847
100124	0.8847
100134	0.8847
100142	0.8847
100156	0.8972
100160	0.8847
100175	0.9078
100212	0.8907
100223	0.8847
100231	0.8847
100242	0.8847
100266	0.8847
100290	0.9429
100292	0.8847
230254	1.0381
230257	1.0381
230264	1.0381
230269	1.0381
230277	1.0381
260004	0.8341
260006	0.8341
260015	0.8345
260022	0.8615
260024	0.8341
260047	0.8348
260059	0.8341
260061	0.8341
260070	0.8341
260074	0.8499
260078	0.8341
260080	0.8341
260097	0.8766
260113	0.8341
260116	0.8341
260119	0.8345
260142	0.8341
260147	0.8341
260160	0.8341
260163	0.8341
260195	0.8341
280061	0.9048
340073	0.9828
380002	1.0282
380040	1.0152
380052	1.0152
380081	1.0152
390044	1.1196
390096	1.1196
430094	0.9048
470001	1.0770
470005	1.0383
470012	1.0383
470024	1.0383
500002	1.0390
500007	1.0598
500012	1.0390
500019	1.0603
500031	1.0390
500033	1.0390
500036	1.0390
500037	1.0390
500049	1.0390
500053	1.0390
500058	1.0390
500148	1.0390
530002	0.9128
530006	0.9128
530008	0.9128
530009	0.9128
530010	0.9128
530011	0.9128
530014	0.9128
530017	0.9128
530032	0.9128
530008	0.9057
530009	0.9057
530010	0.9057
530011	0.9057
530014	0.9057
530017	0.9057
530032	0.9057

b. Effective November 21, 2006.

Provider No.	FY 2007 wage index
230013	1.0381
230019	1.0381
230029	1.0381
230047	1.0381
230071	1.0381
230130	1.0381
230151	1.0381
230195	1.0381
230204	1.0381
230207	1.0381
230223	1.0381
230227	1.0381
230254	1.0381
230257	1.0381
230264	1.0381
230269	1.0381
230277	1.0381
390065	1.0977
390138	1.0977
490005	1.0977

3. On page 59968 in Table 2.—Hospital Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2005; Hospital Wage Indexes for Federal Fiscal Year 2007; Hospital Average Hourly Wages for Federal Fiscal Years 2005 (2001 Wage Data), 2006 (2002 Wage Data), and 2007 (2003 Wage Data); Wage Indexes and 3-Year Average of Hospital Average Hourly Wages, the table is corrected by adding a note to the end of the table to read as follows:

Note: Due to the expiration of section 508 of the MMA, the wage index values for some hospitals will change in the second half of the fiscal year. The wage index values in this table reflect an average of the first half of FY 2007 (October 1, 2006–March 31, 2007) and second half of FY 2007 (April 1–September 30, 2007).

4. On pages 59975 through to 59998, in Table 4A–1.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas by CBSA, for the listed CBSAs, the wage indexes and GAFs are corrected to read as follows:

CBSA code	Urban area (constituent counties)	Wage index	GAF
15540	Burlington-South Burlington, VT	1.0383	1.0261
	Chittenden County, VT [2]		
	Franklin County, VT		
	Grand Isle County, VT		
23020	Fort Walton Beach-Crestview-Destin, FL [2]	0.8847	0.9195
	Okaloosa County, FL		
25540	Hartford-West Hartford-East Hartford, CT [1 2]	1.2452	1.1620
	Hartford County, CT		
	Litchfield County, CT		
	Middlesex County, CT		
	Tolland County, CT		
28420	Kennewick-Richland-Pasco, WA [2]	1.0390	1.0265
	Benton County, WA		
	Franklin County, WA		
30300	Lewiston, ID–WA (WA Hospitals) [2]	1.0390	1.0265
	Nez Perce County, ID		
	Asotin County, WA		

CBSA code	Urban area (constituent counties)	Wage index	GAF
31020	Longview, WA Cowlitz County, WA	1.0390	1.0265
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0390	1.0265
35300	New Haven-Milford, CT[3] New Haven County, CT	1.2452	1.1620
35980	Norwich-New London, CT New London County, CT	1.2452	1.1620
36100	Ocala, FL[2] Marion County, FL	0.8847	0.9195
37460	Panama City-Lynn Haven, FL Bay County, Fl	0.8847	0.9195
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8847	0.9195
48300	Wenatchee, WA Chelan County, WA Douglas County, WA	1.0390	1.0265
49420	Yakima, WA Yakima County, WA	1.0390	1.0265

[1] Large urban area.
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2007.
[3] For this area, the wage index and GAF on this table are only effective from October 1, 2006 through March 31, 2007. See Table 4A–2 for the values that are effective from April 1 through September 30, 2007.

5. On page 59998, in Table 4A–2.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Certain Urban Areas by CBSA for the Period April 1 Through September 30, 2007, for the listed CBSAs, the wage indexes and GAFs are corrected to read as follows:

CBSA code	Urban area (constituent counties)	Wage index	GAF
16940	Cheyenne, WY	0.9057	0.9344
35300	New Haven-Milford, CT	1.2452	1.1620

6. On pages 59998 and 59999, in Table 4B–1.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas by CBSA—FY 2007, for the listed CBSAs, the wage indexes and GAFs are corrected to read as follows:

CBSA code	Nonurban area	Wage index	GAF
07	Connecticut	1.2452	1.1620
10	Florida	0.8847	0.9195
26	Missouri	0.8341	0.8832
38	Oregon[2]	1.0152	1.0104
47	Vermont	1.0383	1.0261
50	Washington	1.0390	1.0265

7. On page 59999, in Table 4B–2.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Certain Rural Areas by CBSA for the Period April 1 Through September 30, 2007, for the listed CBSA, the wage index and GAF is corrected to read as follows:

CBSA code	Nonurban area	Wage index	GAF
53	Wyoming	0.9057	0.9344

8. On pages 59999 through to 60003, in Table 4C–1.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified by CBSA, for the listed CBSAs, the wage indexes and GAFs are corrected to read as follows:

a. Effective November 3, 2006.

CBSA code	Area	Wage index	GAF
23020	Fort Walton Beach-Crestview-Destin, FL	0.8847	0.9195
25540	Hartford-West Hartford-East Hartford, CT (CT Hospitals)	1.2452	1.1620
27860	Jonesboro, AR (MO Hospitals)	0.8345	0.8835
28420	Kennewick-Richland-Pasco, WA	1.0390	1.0265
38340	Pittsfield, MA	1.0383	1.0261

CBSA code	Area	Wage index	GAF
07	Connecticut	1.2452	1.1620
10	Florida (FL Hospitals)	0.8847	0.9195
14	Illinois (MO Hospitals)	0.8341	0.8832
16	Iowa	0.8615	0.9029
26	Missouri	0.8341	0.8832
30	New Hampshire	1.0770	1.0521
38	Oregon	1.0152	1.0104
50	Washington (WA Hospitals)	1.0390	1.0265
53	Wyoming	0.9048	0.9338

b. Effective November 21, 2006.

CBSA code	Area	Wage index	GAF
47894	Washington-Arlington-Alexandria, DC–VA–MD–WV	1.0977	1.0659

9. On page 60003, in Table 4C–2.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Certain Hospitals That Are Reclassified by CBSA for the Period April 1 Through September 30, 2007*, CBSAs 35300 and 19804 are corrected and CBSA 47894 is added. The wage indexes and GAFs are corrected to read as follows:

a. Effective November 3, 2006.

CBSA code	Area	Wage index	GAF
19804	Detroit-Livonia-Dearborn, MI	1.0381	1.0192
35300	New Haven-Milford, CT	1.2452	1.1620

b. Effective November 21, 2006.

CBSA code	Area	Wage index	GAF
47894	Washington–Arlington–Alexandria, DC–VA–MD–WV	1.0977	1.0659

10. On pages 60004 through to 60012, in Table 4J.—Out-Migration Adjustment—FY 2007, provider number 010009 is corrected and provider number 010010 is added to read as follows:

a. Effective October 1, 2006.

Provider No.	Reclassified between 10/1/06 and 3/31/07	Reclassified between 4/1/07 and 9/30/07	Out-migration adjustment	Qualifying county name
010009	*	*	0.0092	MORGAN.
010010	*	*	0.0259	MARSHALL.

11. On pages 60013 through to 60025, in Table 5.—List of Diagnosis-Related Groups (DRGS), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay (LOS), DRGs 525, 544, and 572 are corrected to read as follows:

a. Effective October 1, 2006.

DRG	FY 07 final rule post-acute care DRG	FY 07 final rule special pay DRG	MDC	Type	DRG title	Weights	Geometric mean LOS	Arithmetic mean LOS
525	No	No	05	SURG	Other Heart Assist System Implant	2.2268	7.7	14.3
544	Yes	Yes	08	SURG	Major Joint Replacement or Re-attachment of Lower Extremity.	1.9878	4.0	4.4
572	Yes	No	06	MED	Major Gastrointestinal Disorders and Peritoneal Infections.	1.3378	5.6	7.1

12. On page 60025 in Table 5.—List of Diagnosis-Related Groups (DRGs), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay (LOS), the table is corrected by adding the following notes to the end of the table:

a. Effective October 1, 2006.

Note: If there is an asterisk in the ''Type'' column this means that data is unavailable to calculate weights for these low volume DRGs. Therefore, last year's weights have been updated based on the percent change in

normalization factors between FY 2006 and FY 2007.

Note: If there is no value or dashes (that is, ''----'') in either the geometric mean LOS or the arithmetic mean LOS columns, the volume of cases is insufficient to determine a meaningful computation of these statistics.

IV. Discussion of Effective Date and Notice and Comment Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). In addition, a final rule would ordinarily require a 30-day delay in effective date after the date of publication in the **Federal Register**. This correction of the rates published in the FY 2007 IPPS notice does not constitute a rule under the Administrative Procedure Act, because, in our FY 2007 IPPS final rule (71 FR 47870, August 18, 2006), we already published the methodologies and formulas we use for determining the wage index, geographic adjustment factors, and other rates. This notice does not change our methodology or formulas, but merely ensures that our rules are implemented correctly. As this notice is not a rule under the Administrative Procedure Act, no notice of proposed rulemaking or delay in effective date is necessary.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: December 28, 2006.

Ashley Files Flory,

Deputy Executive Secretary to the Department.

[FR Doc. 06–9976 Filed 12–29–06; 1:29 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0525]

Supplements and Other Changes to an Approved Application; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to solicit comments on issues that FDA should consider when developing revisions to its regulations regarding chemistry, manufacturing, and controls (CMC) supplements and other changes to approved marketing applications for human drugs. FDA is evaluating how it could revise its regulations to allow for consideration of risk-based approaches based on manufacturing process understanding, including prior knowledge of similar products, and overall quality systems to provide an enhanced risk-based approach to the CMC regulatory process, which would reduce the number of supplements. We will consider the input from the public meeting and comments on the issues presented in this document as we consider whether to revise our regulations.

DATES: The public meeting will be held on February 7, 2007, from 8:30 a.m. to 3:30 p.m. Anyone who wishes to speak at the meeting must register and submit a summary of the presentation by January 24, 2007, and submit an electronic copy of the presentation by January 31, 2007. See section III of the **SUPPLEMENTARY INFORMATION** section of this document for details on how to register. Submit written or electronic comments by March 7, 2007.

ADDRESSES: The public meeting will be held at the Food and Drug Administration, Center for Drug Evaluation and Research Conference Room, 7519 Standish Pl., third floor, rm. A, Rockville, MD 20855. There is parking near the building. Photo identification is required to clear building security.

Submit written comments 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*.

FOR FURTHER INFORMATION CONTACT: David J. Cummings, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, rm. 3525, Rockville, MD 20993–0002, 301–796–2400, e-mail: *David.Cummings@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 28, 1999 (64 FR 34608), FDA published a proposed rule to implement section 116 of the Food and Drug Administration Modernization Act (FDAMA)[1] by amending certain regulations including § 314.70 (21 CFR 314.70) regarding supplements and other changes to approved human new drug and abbreviated new drug marketing applications. In the **Federal Register** of April 8, 2004 (69 FR 18728), FDA published the final rule (final rule) implementing these changes. Section 314.70, as amended, requires manufacturers to assess the effects of manufacturing changes on the identity, strength, quality, purity, and potency of a drug as those factors relate to the safety or effectiveness of the product, and categorizes all changes beyond the established variations in an approved NDA or ANDA into one of three groups—major, moderate, or minor. Major changes require an applicant to submit and receive FDA approval of a supplement before distribution of the product made with the manufacturing change. Moderate changes require an applicant to submit a supplement at least 30 days before distribution of the product or, in some cases, submit a supplement at the time of distribution. Minor changes require an applicant to notify FDA of the changes in an annual report.

In August 2002, FDA introduced the Pharmaceutical Current Good Manufacturing Practices (CGMPs) for the 21st Century Initiative (CGMP Initiative, available on the Internet at *http://www.fda.gov/cder/gmp/index.htm*) to enhance and modernize the regulation of pharmaceutical manufacturing and product quality. In September 2004 (after publication of the final rule), FDA published a final report on ''Pharmaceutical CGMPs for the 21st Century—A Risk-Based Approach'' (*http://www.fda.gov/cder/gmp/gmp2004/GMP_finalreport2004.htm*). As explained in the report, FDA regulates pharmaceutical manufacturing to ensure that the drug supply in the United States is of consistently high quality. Because of critical public health implications of drug manufacturing, FDA traditionally has exercised extensive control over virtually every aspect of the manufacturing process. This regulatory approach has contributed to pharmaceutical companies being reluctant to change their manufacturing processes and equipment. In recent years, significant advances in pharmaceutical manufacturing science, modern quality management systems, and risk management approaches have taken place. This has yielded new tools that

[1] Section 116 of FDAMA (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (FDCA) by adding section 506A (21 U.S.C. 356a), which describes requirements and procedures for making and reporting manufacturing changes to certain approved marketing applications, including new drug applications (NDAs) and abbreviated new drug applications (ANDAs).

can be used to help ensure manufacturing quality. The new tools enable manufacturers to detect, analyze, correct, and prevent problems and continuously improve their manufacturing processes. It has been the goal of the CGMP Initiative to create a regulatory paradigm that will encourage pharmaceutical manufacturers to use these new tools to facilitate their decision making and implementation of manufacturing processes to reliably produce pharmaceuticals of high quality. Under the new paradigm, as under the current scheme, pharmaceutical manufacturers are ultimately responsible for ensuring the quality of their products subject to FDA regulatory oversight.

The current § 314.70 categorizes postapproval CMC changes and their associated reporting requirements without consideration of the applicant's risk management activities or internal quality systems and practices; therefore, § 314.70 reflects a rules-based, or prescriptive, approach to regulating postapproval manufacturing changes. The current § 314.70 may create regulatory burdens and costs that discourage beneficial manufacturing changes and may not support a desirable level of innovation, modernization, and flexibility for the industry as described in the CGMP Initiative.

Consistent with the agency's risk-based approach to regulating pharmaceutical manufacturing described in the CGMP Initiative, FDA is considering possible revisions to § 314.70. In particular, FDA is evaluating how it could revise § 314.70 to allow for more manufacturing changes to be made without prior FDA approval using a firm's internal change control system. FDA also is evaluating how it could revise § 314.70 to allow for consideration of risk-based approaches based on manufacturing process understanding, including prior knowledge of similar products, and overall quality systems to provide an enhanced risk-based approach to the CMC regulatory process. To accomplish this objective, FDA is considering redefining what FDA considers to be a major manufacturing change, reducing the reporting burden for certain changes, and creating a new reporting category of manufacturing changes that do not require notification to FDA. FDA anticipates that these revisions would reduce the number of postapproval supplements that are required to be submitted. We emphasize that under a new regulatory scheme, although the reporting burdens for certain manufacturing changes would be reduced, manufacturers will continue to be responsible for ensuring product quality. FDA also is considering an approach that would retain aspects of the current regulatory scheme to accommodate those manufacturers who choose to continue operating within the current regulatory framework. FDA is announcing this public meeting to solicit comments on issues that should be considered if FDA decides to propose revisions to § 314.70.

II. Questions for Discussion and Comment

FDA has prepared the following questions to help focus the comments that will be presented at the public meeting or otherwise communicated to the agency. Those who comment are invited to address any or all of these questions, or raise other issues.

1. Is it valuable for the agency to move toward a more risk-based and quality systems oriented strategy for regulating postapproval CMC changes outside of the formal application review process? What are the advantages and/or disadvantages?

2. Would revising § 314.70 as described in this notice provide the same level of protection to the public as the current regulatory scheme with respect to ensuring the safety and efficacy of human drugs? What inspectional approaches might the agency consider to evaluate manufacturing changes while ensuring public safety?

3. Would revising § 314.70 as described in this notice change the regulatory burden on the pharmaceutical industry? If so, how would the burden change?

4. Would reducing the prescriptiveness of § 314.70 provide manufacturers with greater regulatory flexibility? Would it encourage manufacturers to adopt CMC-related risk management strategies? Would there be disadvantages?

III. Registration, Agenda, and Transcript

Seating is limited and will be available on a first-come, first-served basis. If you need special accommodations because of a disability, please inform David J. Cummings.

Registration for Speaking Attendees: If you wish to make an oral presentation at the meeting, you must register and submit a summary of your presentation to David J. Cummings by January 24, 2007, via e-mail to: *David.Cummings@fda.hhs.gov*. When registering, you must provide the following information: (1) The specific topic or issue to be addressed; (2) your name, title, company or organization, address, phone number, and e-mail address; and (3) the approximate time requested to speak. FDA encourages persons and groups having similar interests to consolidate their information for presentation through a single representative. After reviewing the requests to present, we will notify each participant by e-mail or telephone of the amount of time allotted and the approximate time the participant's presentation is scheduled to begin. Presenters must send electronic copies of their presentations in Microsoft PowerPoint, Microsoft Word, or Adobe Portable Document Format (PDF) to David J. Cummings by noon on January 31, 2007.

Agenda and Transcript: The agenda for the public meeting will be available February 2, 2006, on FDA's Center for Drug Evaluation and Research (CDER) Web site at: *http://www.fda.gov/cder/meeting/OPS_20070207.htm*. After the meeting, the agenda, presentations, and transcript will be placed on file in the Division of Dockets Management (see **ADDRESSES**) under the docket number found in the heading of this document and on CDER's Web site identified previously.

You may examine the meeting transcript Monday through Friday between 9 a.m. and 4 p.m. in the Division of Dockets Management Public Reading Room (see **ADDRESSES**) and on the Internet at *http://www.fda.gov/ohrms/dockets/default.htm*. You may also request a copy of the transcript from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 20 working days after the meeting at a cost of 10 cents per page or on compact disc at a cost of $14.25 each.

IV. Comments

Regardless of attendance at the meeting, interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments related to the questions and the focus of this public meeting by March 7, 2007. All relevant data and information should be submitted with the written comments. Submit a single copy of electronic comments or 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. The received comments are available for public examination in the Division of Dockets Management

between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 26, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–22588 Filed 1–4–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

United States Visitor and Immigrant Status Indicator Technology (US–VISIT)

AGENCY: US–VISIT, Department of Homeland Security.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Homeland Security, US–VISIT Program, has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling Steve Yonkers, 202–298–5200 (this is not a toll free number).

DATES: Comments are encouraged and will be accepted until March 6, 2007. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Comments and questions about this Information Collection Request should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Homeland Security, Office of Management and Budget, Room 10235, Washington, DC 20503.

The Office of Management and Budget 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 submissions of responses.

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, 202–298–5200 (this is not a toll free number).

Analysis

Agency: Department of Homeland Security, US–VISIT Program.

Title: US–VISIT Program.

OMB Number: 1600–0006.

Frequency: One-time collection.

Affected Public: Foreign visitors into the U.S.

Number of Respondents: 156,732,442.

Estimated Time Per Respondent: 15 seconds.

Total Burden Hours: 658,276 hours.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Description: The United States Visitor and Immigrant Status Indicator Technology (US–VISIT) is a program established by the Department of Homeland Security (DHS) to meet specific legislative mandates intended to strengthen border security, address critical needs in terms of providing decision makers with critical information, and demonstrate progress toward performance goals for national security, facilitation of trade and travel, and supporting immigration system improvements. US–VISIT represents a major achievement in creating an integrated border screening system that enhances our nation's security and efforts to reform our immigration and border management systems. Through US–VISIT, DHS is increasing our ability to manage the information collected about foreign visitors during the pre-entry, entry, status management, and departure processes, which allows us to conduct better analysis of that information, thereby strengthening the integrity of our immigration system.

Chase Garwood,

Chief Information Officer.

[FR Doc. 06–9987 Filed 12–29–06; 11:32 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Approval From OMB of One New Public Collection of Information: Department of Homeland Security Traveler Redress Inquiry Program (DHS TRIP)

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: The Transportation Security Administration (TSA), as lead for DHS, invites public comment on a new information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act.

DATES: Send your comments by March 6, 2007.

ADDRESSES: Comments may be mailed or delivered to Katrina Kletzly, Attorney-Advisor, Office of the Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Kletzly at the above address, or by telephone (571) 227–1995 or facsimile (571) 227–1381.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA, on behalf of DHS, 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.

Information Collection Requirement

Purpose of Data Collection

The Rice-Chertoff Initiative (RCI) Department of Homeland Security Traveler Redress Inquiry Program (DHS TRIP) was developed as a voluntary program by DHS to provide a one-stop mechanism for individuals to request redress who believe they have been: (1) Denied or delayed boarding; (2) denied or delayed entry into or departure from the United States at a port of entry; or (3) identified for additional (secondary) screening at our Nation's transportation

hubs, including airports, seaports, train stations and land borders. The DHS TRIP office will be located at, and managed by, TSA. In order for individuals to request redress, they are asked to provide identifying information, as well as details of the travel experience.

Description of Data Collection

The Traveler Inquiry Form (TIF) is an online form used to collect requests for redress by the DHS TRIP office, which will serve as a centralized intake office for traveler requests to have their personal information reviewed. DHS TRIP then passes the information to the relevant DHS component to process the request, as appropriate (e.g., DHS TRIP passes the form to DHS to initiate the Watch List Clearance Procedure). This collection serves to distinguish individuals from an actual individual on any watch list used by DHS, and it helps streamline and expedite future check-in or border crossing experiences.

DHS estimates completing the form, and gathering and submitting the information will take approximately one hour. The annual respondent population was derived from data compiled across all participating components (TSA, U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), US–VISIT, DHS Office of Civil Rights and Civil Liberties (CRCL), and the DHS Privacy Office). Thus, the total estimated annual number of burden hours for passengers seeking redress, based on an estimated 31,980 annual respondents, is 31,980 hours (31,980 × 1).

Use of Results

The DHS TRIP office will use this information to conduct redress procedures for individuals who believe they have been (1) denied or delayed boarding, (2) denied or delayed entry into or departure from the United States at a port of entry, or (3) identified for additional screening at our Nation's transportation hubs, including airports, seaports, train stations and land borders.

Issued in Arlington, Virginia, on December 28, 2006.

Lisa S. Dean,

Privacy Officer.

[FR Doc. E6–22611 Filed 1–4–07; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125–N–01]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless

DATES: *Effective Date:* January 5, 2007.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.C.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 28, 2006.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 06–9973 Filed 1–4–07; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–320–1610 DP–050D]

Notice of Availability for the Draft Pocatello Resource Management Plan and Environmental Impact Statement, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.) and the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 et seq.), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan/Environmental Impact Statement (Draft RMP/EIS) for the Pocatello Field Office and by this notice is announcing the opening of the public comment period.

DATES: To assure that they will be considered, BLM must receive written comments on the Draft RMP/EIS within 90 days following the date the Environmental Protection Agency publishes a notice of availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: You may submit comments on the Draft RMP/EIS by any of the following methods:

- *Mail:* Pocatello RMP Planning Team, Pocatello Field Office, Bureau of Land, Management, 4350 Cliffs Drive, Pocatello, Idaho 83204.
- *E-mail: ID_Pocatello_RMP@blm.gov.*
- *Fax:* 208–478–6376.

FOR FURTHER INFORMATION CONTACT: Terry Lee Smith, RMP Project Manager, 4350 Cliffs Drive, Pocatello, Idaho 83204, phone 208–478–6340, e-mail *Terry_Lee_Smith@blm.gov.*

SUPPLEMENTARY INFORMATION: The Draft RMP/EIS was developed with broad public participation through a collaborative planning process. This Draft RMP/EIS addresses management on approximately 613,800 acres of public land in the BLM Pocatello Field Office of the Idaho Falls District, in southeastern Idaho. The new RMP will replace the Malad Management Framework Plan (MFP), approved in 1981, and will revise the Pocatello RMP, approved in 1988.

The purpose of the RMP is to:

- Provide a single, comprehensive land use plan that will guide future management of the public lands and interests,
- Provide objectives, land use allocations, and management direction to maintain, improve, or restore resource conditions and provide for the economic needs of the local region,
- Address land use conflicts and new issues, and
- Provide management direction that identifies where and under what circumstances particular activities will be allowed on public lands while incorporating the mandate of multiple uses in accordance with FLPMA.

Four alternatives are analyzed in the draft RMP/EIS. Alternative A, the No Action Alternative, reflects the continuation of present management based upon existing land use plans and plan amendments. Alternative B emphasizes a moderate level of protection, restoration, enhancement, and use of resources and services to meet land use objectives by utilizing an array of adaptive and prescriptive measures that would be implemented to protect vegetation, and habitat, and promote the continuation of multiple resource management. Alternative C reflects management strategies to preserve and protect ecosystem health which emphasize active and specific measures to protect and enhance vegetation and habitat for special status species, fish, and wildlife. This alternative reflects a reduction in resource production goals for food, fiber, and minerals; and emphasizes restoring the sagebrush steppe, forest vegetation and riparian areas. Alternative D emphasizes management strategies to produce goods and services while maintaining or improving the production of, and providing protection for the sagebrush steppe, forest vegetation and riparian areas. Alternatives B and C include a 400-acre Area of Critical Environmental Concern (ACEC) designation known as Petticoat Peak to provide special protective management for native plants. Management constraints associated with this ACEC would include the following:

- The Off Highway Vehicle designation would be ''Closed.''
- Wildland fire would be suppressed.
- Public lands would be retained.
- The area would be identified as an ''Exclusion'' area for Right of Ways.
- Fluid minerals would be leased with a ''No Surface Occupancy'' stipulation.
- If necessary, livestock grazing would be adjusted to maintain the values of the ACEC.
- A withdrawal for locatable minerals would be pursued.
- The area would be a priority for weed control.

The preferred alternative is Alternative B.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Pocatello Field Office, in Pocatello, Idaho, during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the final EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Copies of the Draft RMP/EIS are available upon request from the Pocatello Field Office, Bureau of Land Management, 4350 Cliffs Drive, Pocatello, Idaho 83204, phone 208–478–6340, or at *http://www.id.blm.gov/planning/fmda/index.htm* via the Internet.

Dated: August 22, 2006.

Bud C. Cribley,

Bureau of Land Management, Acting Idaho State Director.

Editorial Note: This document was received at the Office of the Federal Register on December 28, 2006.

[FR Doc. E6–22569 Filed 1–4–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

National Park Service

[ID 231 1610 DR 051D]

Notice of Availability of Record of Decision (ROD) for the Craters of the Moon National Monument and Preserve Monument Management Plan (MMP)/Environmental Impact Statement (EIS)

AGENCIES: Bureau of Land Management, National Park Service, Interior.

ACTION: Notice of availability of a record of decision (ROD).

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976, the National Park and Recreation Act of 1978, and the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) and the National Park Service (NPS) announce the availability of the Record of Decision for the Monument Management Plan (MMP) for the Craters of the Moon National Monument and Preserve, located in southeastern Idaho. The Idaho State Director, BLM, and the Pacific West Regional Director, NPS, have signed the ROD, effective upon signing.

ADDRESSES: Copies of the Craters of the Moon National Monument and Preserve ROD are available upon request from the Monument Manager, Shoshone Field Office, Bureau of Land Management, 400 West F Street, Shoshone, ID 83352 or the Superintendent, National Park Service, P.O. Box 29, Arco, ID 83213. The document may also be viewed on the following Web sites: *http://www.nps.gov/crmo* or *http://www.id.blm.gov/shoshone/plans/crmo/index.htm.*

FOR FURTHER INFORMATION CONTACT: Holly Hampton, Monument Manager, Shoshone Field Office, Bureau of Land Management, 400 West F Street, Shoshone, ID 83352, phone (208) 732–7200 (*Holly_Hampton@blm.gov*), or Doug Neighbor, Superintendent, National Park Service, Craters of the Moon National Monument and Preserve, P.O. Box 29, Arco, ID 83213, phone (208) 527–3257 (*Doug_Neighbor@nps.gov*).

SUPPLEMENTARY INFORMATION: Established in 1924, the Craters of the Moon National Monument was expanded by Presidential Proclamation 7373 on November 9, 2000, for the purpose of protecting ''the entire Great Rift volcanic zone and associated lava features, all objects of scientific interest.'' On August 21, 2002, Public Law 107–213 re-designated the NPS portion of the expanded Monument as a National Preserve. The BLM and the NPS were directed to prepare a management plan for the Monument and Preserve to be jointly implemented by both agencies. The Craters of the Moon National Monument and Preserve MMP was developed with broad public participation through a three-year collaborative planning process. This MMP addresses management on approximately 739,682 acres of federal land in the planning area. The MMP is designed to achieve or maintain desired future conditions developed through the planning process. It includes a series of management actions to meet the desired resource conditions for natural resources, cultural resources, Native American rights and interests, land use and transportation, visitor experience, and social and economic conditions.

The approved Craters of the Moon Monument Management Plan is essentially the same as Alternative D in the Proposed Craters of the Moon National Monument and Preserve Management Plan/Final Environmental Impact Statement, published in August 2005. BLM received three protests to the proposed plan, all of which have been withdrawn or resolved. No inconsistencies with State or local plans, policies, or programs were identified during the Governor's

consistency review of the proposed plan.

Dated: September 7, 2006.

Bud C. Cribley,

Bureau of Land Management, Acting Idaho State Director.

Dated: September 12, 2006.

Jonathan B. Jarvis,

National Park Service, Regional Director, Pacific West Region.

Editorial Note: This document was received at the Office of the Federal Register on December 28, 2006.

[FR Doc. 06–9974 Filed 1–4–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 16, 2006.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 22, 2007.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

ALASKA

Bristol Bay Borough-Census Area

DIL–161 Site, Address Restricted, Alagnak Wild River, 06001306

ARIZONA

Maricopa County

North Encanto Historic District, Roughly bounded by 15th and 18th Aves., Thomas to Osborn Rds., Phoenix, 06001262

ARKANSAS

Arkansas County

Immanuel High School—AR0280, 68 Immanuel Rd., Almyra, 06001282

Ashley County

Parkdale Baptist Church—AS0051, 127 Bride St., Parkdale, 06001285

Baxter County

Cotter Water Tower, (New Deal Recovery Efforts in Arkansas MPS) NE of jct. of NE U.S. 62B and State St., Cotter, 06001280

Benton County

Coon Creek Bridge, (Historic Bridges of Arkansas MPS) Cty Rd. 24, Cherokee City, 06001264

Boone County

Harrison High School, 124 S. Cherry St., Harrison, 06001284

Zinc Swinging Bridge—BO0162, 8039 Washington St., Zinc, 06001286

Bradley County

Warren Brick Streets, (Arkansas Highway History and Architecture MPS) Portions of Cedar, Myrtle, Chestnut, 1st, Walnut, Elm and Cypress Sts., Warren, 06001277

Calhoun County

Tinsman School, SW corner of AR 274 and CR 38, Tinsman, 06001265

Clark County

US 67 Bridge over Little Missouri River, US 67, Prescott, 06001271

Crawford County

Mulberry River Bridge, (Historic Bridges of Arkansas MPS) Cty Rd. 67, Pleasant Hill, 06001272

Faulkner County

Washburn House, 40 Battles Loop, Guy, 06001279

Franklin County

Mulberry River Bridge, (Historic Bridges of Arkansas MPS) AR 23, Turner's Bend, 06001275

Jefferson County

St. Louis Southwestern Railway (Cotton Belt Route) Steam Locomotive #336, 1700 Port Rd., Pine Bluff, 06001276

United States Army Snow Plow #SN–87, 1700 Port Rd., Pine Bluff, 06001273

Johnson County

Bunch—Walton Post #22 American Legion Hut, (New Deal Recovery Efforts in Arkansas MPS) 201 Legion St., Clarksville, 06001269

Clarksville National Guard Armory, 309 College St., Clarksville, 06001270

Lee County

Marianna National Guard Armory, 45 W. Mississippi St., Marianna, 06001267

Marianna Waterworks, (New Deal Recovery Efforts in Arkansas MPS) 252 US 79, Marianna, 06001281

Mississippi County

Delta Valley & Southern Railway Locomotive #50, US 61 at the Delta Valley & Southern Railway Crossing, Delpro, 06001263

Keiser Water Tower, (New Deal Recovery Efforts in Arkansas MPS) Jct. of the Water and E. Main Sts., Keiser, 06001283

Phillips County

Helena National Guard Armory, (New Deal Recovery Efforts in Arkansas MPS) 511 Miller St., Helena—West Helena, 06001266

Phillips County Penal Farm Historic District, (New Deal Recovery Efforts in Arkansas MPS) Cty Rd. 353 S of U.S. 49, Poplar Grove, 06001268

St. Mary's Catholic Church, 123 Columbia, Helena—West Helena, 06001278

Saline County

Old Benton—Sardis Road Bridge, (Historic Bridges of Arkansas MPS) N of AR 183, approx 1.25 mi. E of Pine Haven Rd., Bauxite, 06001274

COLORADO

Denver County

Chateau, The, 900 Sherman St., Denver, 06001288

El Paso County

Monument Valley Park, Approx. bounded by Monroe, Culebra, Westview, Bijou Sts, BN&SF, and Wedge of main N/S trail, N. of Del Norte, Colorado Springs, 06001287

INDIANA

Adams County

Ceylon Covered Bridge, CR 900 S over Wabash R in Limberlost County Park, Ceylon, 06001289

Hendricks County

Amo THI & E Interurban Depot/Substation, 4985 Railroad St., Amo, 06001294

Jennings County

Annadale, 502 Jennings St., North Vernon, 06001292

State Street Historic District, Roughly bounded by Chestnut, Jackson, Jefferson, State Sts., North Vernon, 06001290

Marshall County

Jacoby Church and Cemetery, W side of N. King Rd., S of 8A Rd., Plymouth, 06001291

Porter County

Dune Acres Clubhouse, Clubhouse Dr., Dune Acres, 06001295

McCallum, William, House, 507 E. Lincolnway, Valparaiso, 06001293

MONTANA

Deer Lodge County

Anaconda Saddle Club, (Anaconda MPS) 2704 MT 1 W, Anaconda, 06001296

NEW JERSEY

Monmouth County

Romer Shoal Light Station, (Light Stations of the United States MPS) In Lower New York Bay, 3.8 mi. N of Sandy Hook, Highlands Borough, 06001304

NEW MEXICO

Dona Ana County

Summerford Mountain Archeological District, Address Restricted, Summerford Mountain, 06001302

NEW YORK

Chemung County

Everett, Dr. Hovey, House, 1594 Cty Rte 60, Lowman, 06001299

Livingston County

Sliker Cobblestone House, (Cobblestone Architecture of New York State MPS) 6050 Sliker Rd., Conesus, 06001300

New York County

West Street Building, 90 West St., New York, 06001303

Niagara County

First Unitarian Universalist Church of Niagara, 639 Main St., Niagara Falls, 06001301

Onondaga County

Christ Church and Manlius Village Cemeteries, East Seneca St., Manlius, 06001298

Queens County

Saint Benedict Joseph Labre Parish, 94–40 118th St., Richmond Hill, 06001297

RHODE ISLAND

Washington County

Weekapaug Inn, 25 Spray Rock Rd., Westerly, 06001305

SOUTH DAKOTA

Aurora County

Hofmeister House, 209 E. First St., White Lake, 06001307

Clay County

Yusten House, 30831 SD 19, Vermillion, 06001310

Davison County

Whittier School, 410 W. Second Ave., Mitchell, 06001309

Pennington County

Quinn Methodist Church, jct. of Elm and Main Sts., Quinn, 06001308

[FR Doc. E6–22568 Filed 1–4–07; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: United States International Trade Commission.

ACTION: Notice of determination.

DATES: *Effective Date:* December 28, 2006.

SUMMARY: Section 7 of the Steel Trade Liberalization Program Implementation Act of 1989 (''the Act''), as amended (19 U.S.C. 2703 note), which concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBERA-beneficiary countries, requires the Commission to determine annually the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market determination made by the Commission is to be used to establish the ''base quantity'' of imports that can be imported with a zero percent local feedstock requirement. The base quantity to be used by the U.S. Customs Service in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as determined by the Commission. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBERA-beneficiary countries. For the 12-month period ending September 30, 2006, the Commission has determined the level of U.S. consumption of fuel ethyl alcohol to be 5.03 billion gallons. Seven percent of this amount is 351.8 million gallons (these figures have been rounded). Therefore, the base quantity for 2007 should be 351.8 million gallons.

FOR FURTHER INFORMATION CONTACT: Douglas Newman, (202) 205–3328, *douglas.newman@usitc.gov*, in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart, *william.gearhart@usitc.gov*, of the Commission's Office of the General Counsel at (202) 205–3091.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Background: For purposes of making determinations of the U.S. market for fuel ethyl alcohol as required by section 7 of the Act, the Commission instituted Investigation No. 332–288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Department of Energy to make these determinations as well as the PIERS database of the Journal of Commerce, which is based on U.S. export declarations.

Section 225 of the Customs and Trade Act of 1990 (Pub. L. 101–382, August 20, 1990) amended the original language set forth in the Steel Trade Liberalization Program Implementation Act of 1989. The amendment requires the Commission to make a determination of the U.S. domestic market for fuel ethyl alcohol for each year after 1989.

By order of the Commission.

Issued: December 29, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–22637 Filed 1–4–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0004]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Interstate Firearms Shipment Report of Theft/Loss.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with 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 for ''sixty days'' until March 6, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ben Hayes, ATF National Tracing Center, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Interstate Firearms Shipment Report of Theft/Loss.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3310.6. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The form is part of a voluntary program in which the common carrier and/or shipper report losses or thefts of firearms from interstate shipments. ATF uses this information to ensure that the firearms are entered into the National Crime Information Center to initiate investigations and to perfect criminal cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 550 respondents will complete a 20 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 182 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 29, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E6–22601 Filed 1–4–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0065]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Requisition For Forms or Publications and Requisition For Firearms/Explosives Forms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with 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 for ''sixty days'' until March 6, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gregory Carroll, Document Services Branch, Room 3110, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Requisition for Forms or Publications and Requisition for Firearms/Explosives Forms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 1370.3 and ATF F 1370.2. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individual or households. The forms are used by the general public to request or order forms or publications from the ATF Distribution Center. The forms also notify ATF of the quantity required by the respondent and provide a guide as to annual usage of ATF forms and publications by the general public.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 30,000 respondents will complete each 3 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,500 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 29, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E6–22602 Filed 1–4–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0088]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Advanced

Explosives Destruction Techniques (AEDT) Training Course Follow-up Evaluation Form.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with 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 for ''sixty days'' until March 6, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact, Joanne Bailey, Learning Systems Management Division, 800 K Street, NW., Suite 600, Washington, DC 20001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Advanced Explosives Destruction Techniques (AEDT) Training Course Follow-up Evaluation Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: State, Local, or Tribal Government. Other: None. The information collected on the survey will provide ATF with data on how the training participants have transferred the knowledge and skills learned to their jobs. The Kirkpatrick 4–Level Model is used to evaluate ATF training programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 354 respondents will complete a 12 minute survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 71 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 29, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E6–22603 Filed 1–4–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0009]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Revision of a currently approved collection, Analysis of Law Enforcement Officers Killed and 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 March 6, 2007.

This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional 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, WV 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:* Analysis of Law Enforcement Officers Killed and Assaulted.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form 1–701; 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 report will gather specific incident data obtained from law enforcement agencies in which an officer was feloniously or accidentally killed in the line of duty; information is

also collected on this form when any officer sustains injury from a firearm or knife or other cutting instrument. Officer killed data are published annually in the publication Law Enforcement Officers Killed and Assaulted. Serious assault data are presented as separate topic papers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 275 law enforcement agency respondents; calculated estimates indicate 1 hour per report.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 275 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 28, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6–22562 Filed 1–4–07; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0147 (2007)]

National Recognized Testing Laboratories (29 CFR 1910.7); Extension of the Office of Management and Budget's Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment concerning its request for an extension of the information-collection requirements specified by its Regulation on National Recognized Testing Laboratory (29 CFR 1910.7). The Regulation specifies procedures that organizations must follow to apply for, and to maintain, OSHA's recognition to test and certify equipment, products, or material for workplace safety purposes.

DATES: Comments must be submitted (postmarked, sent or received) by March 6, 2007.

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

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Fax: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. ICR–1218–0147(2007), U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and the Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for this ICR (OSHA Docket No. ICR–1218–0147(2007)). All comments, including any personal information you provide, are placed in the public docket without change and may be made available onfnlline at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read or download comments or other material in the docket, 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. You may also contact Todd Owen at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Todd Owen or Theda Kenney, Directorate of Standards and Guidance, OSHA, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimized, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct. The Occupational Safety and Health Act of the 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

A number of standards issued by the Occupational Safety and Health Administration (OSHA) contain requirements for equipment, products, or materials. These standards often specify that employers use only equipment, products, or material tested or approved by a nationally recognized testing laboratory (NRTL); this requirement ensures that employers use safe and efficacious equipment, products, or materials in complying with the standards. Accordingly, OSHA promulgated the regulation titled ''Definition and Requirements for a Nationally Recognized Testing Laboratory'' (the Regulation). The Regulation specifies procedures that organizations must follow to apply for, and to maintain, OSHA's recognition to test and certify equipment, products, or material for this purpose.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions to protect employees, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the information-collection requirements specified by the Standard on Nationally Recognized Testing

Laboratory. There is an 80 burden hour increase as a result of the Agency performing additional annual on-site reviews at NRTL facilities. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently-approved information-collection requirements.

Title: Nationally Recognized Testing Laboratory (29 CFR 1910.7).

OMB Number: 1218–0147.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or tribal government; Federal Government.

Number of Respondents: 67.

Frequency of Recordkeeping: On occasion.

Total Responses: 67.

Average Time per Response: 160 hours for organization to prepare initial recognition applications to 16 hours for an annual site visit.

Estimated Total Burden Hours: 1,340.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Sumissions

You may submit comments in response to this document (1) electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments and other material must identify the Agency name and the OSHA docket number for ICR (OSHA Docket No. ICR–1218–0147 (2007)). You may supplement electronic submissions by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit them to the OSHA Docket Office (see **ADDRESSES** section). The additional materials must clearly identify your electronic comments by name, date, and docket number so OSHA can attach them to your comments.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date 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 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 are available at OSHA's Web page at *http://www.osha.gov*.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on December 29, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. E6–22619 Filed 1–4–07; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2007–1 CRB DTRA–BE]

Determination of Rates and Terms for Business Establishment Services

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges, on behalf of the Copyright Royalty Board of the Library of Congress, are announcing the commencement of the proceeding to determine the reasonable rates and terms for the making of an ephemeral recording of a sound recording for a later transmission by entities that transmit performances of a sound recording to business establishments. The Judges are also announcing the date by which a party who wishes to participate in this rate proceeding must file its Petition to Participate and the accompanying $150 filing fee.

DATES: Petitions to Participate and the filing fee are due no later than February 5, 2007.

ADDRESSES: An original, five paper copies, and one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD–ROM, CD–R or CD–RW) or floppy diskette of a Petition to Participate, along with the $150 filing fee, must be delivered to the Copyright Royalty Board in one of the following ways: If hand delivered by a private party, these items should be brought to the Copyright Office Public Information Office in the James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services), these items must be delivered to the Congressional Courier Acceptance Site (CCAS) located at 2nd and D Street, NE., Monday through Friday, between 8:30 a.m. and 4 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20559–6000. If these items are sent by mail (including overnight delivery using United States Postal Service Express Mail), the envelope must be addressed to: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Petitions to Participate and the $150 filing fee may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: Gina Giuffreda, Attorney Advisor. Telephone: (202) 707–7658. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

This Notice is issued pursuant to 17 U.S.C. 804(b)(2), which requires the commencement of proceedings ''in the year 2007 to determine reasonable terms and rates of royalty payments for the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv), to become effective on January 1, 2009.'' Section 112(e)(1) allows entities that transmit performances of sound recordings to business establishments, pursuant to the limitations set forth in section 114(d)(1)(C)(iv), to make an ephemeral recording of a sound recording for purposes of a later transmission. Section 803(b)(1)(A)(II) requires the Copyright Royalty Judges to publish a notice in the **Federal Register** no later than January 5, 2007, commencing this proceeding.

Petitions to Participate

Any party who wishes to participate in this proceeding must submit to the Copyright Royalty Board a Petition to Participate by no later than February 5, 2007. 17 U.S.C. 803(b)(1)(A)(ii). The single or joint Petition to Participate must provide all of the information required by 37 CFR 351.1(b)(1). The Petition to Participate must be accompanied by a $150 filing fee. Cash will not be accepted; therefore, parties must pay the filing fee with a check or money order made payable to ''Copyright Royalty Board.'' If a check received in payment of the filing fee is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed. Note that in accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states and in good standing will be allowed to represent parties before the Copyright Royalty Judges if a party does not solely represent him or herself.

Dated: December 27, 2006.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E6–22499 Filed 1–4–07; 8:45 am]

BILLING CODE 1410–72–P

NATIONAL TRANSPORTATION SAFETY BOARD

Notice of Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, January 9, 2007.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED: 7695B, *Aircraft Accident Report*—Crash of Pinnacle Airlines Flight 3701, Bombardier CL–600–2B19, N8396A, Jefferson City, Missouri, October 14, 2004.

NEWS MEDIA CONTACT: Terry Williams: (202) 314–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, January 5, 2007.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: December 29, 2006.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 06–9990 Filed 12–29–06; 12:31 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information Pertaining to the Requirement To Be Submitted

1. *The title of the information collection:* Policy Statement for the ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof By States Through Agreement,'' Maintenance of Existing Agreement State Programs, Request for Information Through the Integrated Materials Performance Evaluation Program (IMPEP) Questionnaire, and Agreement State Participation in IMPEP.

2. *Current OMB approval number:* OMB 3150–0183.

3. *How often the collection is required:* There are four activities that occur under this collection: Information collection activities required by the IMPEP questionnaire in preparation for an IMPEP review conducted no less frequently than every four years; while the following activities are all collected on an annual basis—policy statement addressing requirements for new Agreement States; participation by Agreement States in the IMPEP reviews; and annual requirements for Agreement States to maintain their programs.

4. *Who is required or asked to report:* 34 Agreement States who have signed Section 274b. Agreements with NRC.

5. *The number of annual respondents:* 34.

6. *The number of hours needed annually to complete the requirement or request:* For States interested in becoming Agreement States: Approximately 4,300 hours. For Agreement State participation in 10 IMPEP reviews (7 Agreement States, 1 NRC Regional Office and 2 Follow-up reviews): 360 hours (an average of 36 hours per review). For maintenance of existing Agreement State programs: 255,600 hours (an average of approximately 7,517 hours per State for 34 Agreement States). For Agreement State response to 7 IMPEP questionnaires annually: 371 hours (an average of 53 hours per program). The total number of hours expended annually is 260,631 hours.

7. *Abstract:* States wishing to become Agreement States are requested to provide certain information to the NRC as specified by the Commission's Policy Statement, ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof By States Through Agreement.'' Agreement States need to ensure that the Radiation Control Program under the Agreement remains adequate and compatible with the requirements of Section 274 of the Atomic Energy Act (Act) and must maintain certain information. NRC conducts periodic evaluations through IMPEP to ensure that these programs are compatible with the NRC's program, meet the applicable parts of the Act, and are adequate to protect public health and safety.

Submit, by March 6, 2007, comments that address the following questions;

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo Shelton (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 27th day of December 2006.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–22584 Filed 1–4–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8964]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for the Addition of the Reynolds Ranch Area to Power Resources, Inc's Smith Ranch/Highlands Uranium Project, Converse County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: James Park, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–5835; Fax number: (301) 415–5397; E-mail: *jrp@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated January 14, 2005, Power Resources, Inc. (PRI) submitted a request to amend its U.S. Nuclear Regulatory Commission (NRC) Source Material License SUA–1548 for the Smith Ranch-Highland Uranium Project (SR–HUP), located in Converse County, Wyoming. PRI requested that the SR–HUP permit area be modified to include the Reynolds Ranch area, which encompasses approximately 8700 acres (3521 hectares) and is contiguous with the current northern boundary of the SR–HUP permit area. PRI desires to conduct in-situ leach uranium mining in the Reynolds Ranch area. PRI modified its amendment application by letter dated April 7, 2005.

The NRC staff has prepared an Environmental Assessment (EA) in support of its review of PRI's application in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

Background

PRI's SR–HUP is a commercial in-situ leach (ISL) uranium mining facility located in the South Powder River Basin, Converse County, Wyoming. The main office and Central Processing Plant complex is located at Smith Ranch, about 17 air miles (22 road miles) (27 air/35 road kilometers (km)) northeast of Glenrock, Wyoming, and 23 air miles (25 road miles) (37 air/40 road km) northwest of Douglas, Wyoming. NRC issued PRI's current NRC license for the SR–HUP (Source Material License SUA–1548) on August 18, 2003, as part of a license renewal process. Commercial ISL uranium production began at the Highland site in January 1988 and at the Smith Ranch site in June 1997.

Under SUA–1548, PRI is authorized, through its ISL process, to produce up to 5.5 million pounds (2.5 million kilograms) per year of tri-uranium octoxide (U_3O_8), also known as ''yellowcake.'' PRI's current annual production is less than half of this limit.

Review Scope

The NRC staff has reviewed PRI's request in accordance with the NRC's environmental protection regulations in 10 CFR part 51. Those regulations implement section 102(2) of the National Environmental Policy Act of 1969, as amended. The EA provides the results of the NRC staff's environmental review; the NRC staff's radiation safety review of PRI's request will be documented separately in a Safety Evaluation Report.

The NRC staff has prepared the EA in accordance with NRC requirements in 10 CFR 51.21 and 51.30, and with the associated guidance in NRC report NUREG–1748, ''Environmental Review Guidance for Licensing Actions Associated with Nuclear Material Safety and Safeguards Programs'' (NRC, 2003). In 40 CFR 1508.9, the Council on Environmental Quality defines an EA as a concise public document that briefly provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a FONSI.

The NRC staff's review addressed the environmental impacts of PRI's currently-approved mining operations at the SR–HUP only insofar as such operations would be modified by the proposed mining at the Reynolds Ranch amendment area.

Proposed Action

PRI is proposing to modify its permit area boundary to accommodate the Reynolds Ranch area, and to conduct ISL operations within that area. As part of such operations, PRI would construct eight wellfields and a satellite ion-exchange facility for the recovery of uranium and for wellfield restoration following mining operations, and operate a deep disposal well for the disposal of liquid wastes. The ore deposits in the SR–HUP and Reynolds Ranch amendment area generally occur at depths of 450 feet (137 meters (m)) to 1000 feet (305 m) below the surface in long narrow trends varying from a few hundred to several thousand feet long and 20 to 300 feet (6 to 91 m) wide. The depth depends on the local topography, the dip of the formation, and the stratigraphic horizon. At the Reynolds Ranch amendment area, the shallower ore deposits are contained within the U/S-Sand, with the mineable ore in this sand occurring at approximate depths of 380 to 525 feet (116 to 160 m). Most of the remaining uranium mineralization at the Smith Ranch and Reynolds Ranch areas occurs in the O-Sand formation at depths of 700 to 900 feet (213 to 274 m).

Following uranium recovery in each mining unit, PRI would restore ground-water conditions in the wellfield. Restoration techniques would involve ground-water sweep, clean water injection, and geochemical stabilization of the aquifer with a reductant. The goal of groundwater restoration is to return the aquifer to the baseline conditions that existed prior to the start of uranium recovery; or, if approved, to a secondary standard of pre-mining ''class of use.''

Purpose and Need for the Proposed Action

PRI currently conducts commercial-scale ISL uranium mining at the SR–HUP permit area. PRI is proposing to expand its mining operations and to conduct ISL mining in the Reynolds Ranch amendment area. This would

enable PRI to continue to meet the current and future needs of its customers for U_3O_8 that would be made eventually into fuel for commercially-operated nuclear power reactors.

Alternatives to the Proposed Action

No Action Alternative

Under the ''no action'' alternative, PRI would continue to conduct ISL mining operations within the existing boundaries of the SR–HUP, but it would not be authorized to conduct such mining operations in the Reynolds Ranch area.

Other Alternative

In the southern Powder River Basin, where the SR–HUP facility is located, uranium ore has been mined via open pits and underground mining in the past. This activity occurred from 1970 to 1984 at the Exxon Highland facility, which is adjacent to the eastern edge of the SR–HUP permit area, and from the mid-1970s to 1986 at Union Pacific Resources—Bear Creek site, which is approximately 15 miles (24 km) northeast of the SR–HUP permit area.

The environmental impacts associated with the recovery and processing of uranium ore obtained via open pit or underground mining are generally recognized as being considerably greater than those associated with in-situ leach mining. This is due predominantly to the need to access the uranium ore via open pits several hundred feet deep or via extensive underground mine workings, and to the conventional milling process, which generates a significant amount of waste relative to the amount of ore processed (roughly 95% of the ore is disposed as waste). Extensive mill tailings ponds are needed to dispose of these wastes. Therefore, although both open pit and underground mining of uranium has occurred near the Reynolds Ranch amendment area, these alternatives were not be considered further in this analysis.

Environmental Impacts

No-Action Alternative

Under the no-action alternative, PRI would not be authorized to conduct ISL mining operations in the Reynolds Ranch area. PRI would continue to conduct such operations within the SR–HUP permit area. The Reynolds Ranch area would remain open to its current uses: Livestock grazing and wildlife use.

Proposed Action

The major potential environmental impacts associated with ISL uranium recovery are impacts to groundwater quality, air quality, and land use, radiological impacts, and impacts from waste disposal.

ISL operations in the Reynolds Ranch area are not expected to impact local uses of surface or ground water. To the extent possible, PRI will use existing access roads in the area; however, it is expected that PRI will need to construct additional roads for its operations. Ephemeral drainages may be affected by this road construction, as well as by the construction of wells for production and monitoring. PRI would consider and implement erosion measures appropriate for the situation, potentially including crossing drainages at right angles; contouring and re-vegetation to stabilize soils; placement of hay bales; the use of diversion ditches, engineered culverts, and energy dissipaters to control runoff; and limiting travel within the drainage bottoms to necessary well construction and maintenance activities.

With respect to ground water, while it is common to dramatically degrade the water quality within the mineralized zone during uranium recovery activities, this impact is localized and temporary (*i.e.*, extending over the life of mining operations). Following mining, PRI is required to restore the affected groundwater to its pre-mining quality or if approved, to its pre-mining class-of-use. PRI submits the results of its restoration activities to the NRC and the State of Wyoming Department of Environmental Quality (WDEQ) for final approval, prior to the termination of such activities. To date, the NRC staff has approved groundwater restoration activities at the SR–HUP site in 1987 for the R&D operations and in 2004 for the A-Wellfield during commercial operations.

In addition, PRI's operations in the Reynolds Ranch area are not expected to affect local stock and domestic wells as these wells are completed in stratigraphic horizons above the zones planned for ISL mining. Pre-mining aquifer testing by PRI would ensure that confining layers are present to restrict the vertical movement of ISL leaching solutions and to restrict the influence of pumping in the deeper mining zones on water levels in the stratigraphically higher non-mining aquifers.

The primary source of radiological impact to the environment from site operations is gaseous radon-222, which is released from the satellite facility and from the wellfields. The highest radon-222 concentration estimated was 1.1E–03 working level at a distance of 0.9 mi (1.5 km) ENE of the proposed satellite facility. This concentration is 4% of the 100 mrem/yr effluent concentration limit in 10 CFR part 20. The total annual effective dose was 27 mrem/yr at the unoccupied Mason House, and 4 mrem/yr at the Reynolds Ranch. Both of these dose values are well below the 10 CFR part 20 limit of 100 mrem/yr to members of the public. These concentrations and doses are from the mining operations anticipated during year 8 at the Reynolds Ranch area, which is when the highest doses would be expected, since in that year, PRI plans to have four of its anticipated eight wellfields in production and three other wellfields in restoration.

Uranium recovered at Reynolds Ranch would be processed at the Smith Ranch central processing plant (CPP). For final yellowcake processing at the CPP, PRI employs a vacuum dryer that collects in a liquid condenser the dust and gas generated from drying. As a result, no particulates will be released to the environment. The main non-radiologic gaseous effluents that would be released from the operation of processing equipment in the CPP include gases such as CO_2 and hydrogen chloride. At the CPP, these gases are vented directly to the atmosphere where they are readily dispersed.

With respect to land use, the primary impact would be the fencing off of approximately 325 acres (131 ha) of the 8704 acres (3521 ha) to exclude livestock until the completion of groundwater restoration and surface reclamation. These effects, however, would be limited, temporary, and reversible as the land would be returned to its former grazing use following post-recovery surface reclamation.

Air quality would be impacted by the release of diesel emissions from drilling and construction equipment and from fugitive dust from construction activities and vehicle traffic. Diesel emissions would be minor and of short duration, and would be readily dispersed in the atmosphere. Fugitive dust generated from construction and drilling activity, as well as vehicle traffic on unpaved roads, would be localized and of short duration. Localized areas affected by the laying of pipelines and drilling of wells would be reclaimed, topsoiled, and re-seeded.

PRI is required under license condition 9.6 of SUA–1548 to dispose of 11e.(2) byproduct materials generated by project operations at a licensed byproduct waste disposal site. Currently, PRI disposes of its radioactively-contaminated solid wastes at Pathfinder Mine Corp.'s Shirley Basin uranium mill site in eastern Wyoming. PRI will also send liquid wastes from its process down a planned deep disposal well permitted by WDEQ.

Conclusion

The NRC has reviewed the environmental impacts of the proposed action in accordance with the requirements of 10 CFR part 51. The NRC staff has determined that the addition of the Reynolds Ranch area to the SR–HUP operational area for the purpose of constructing and operating in-situ leach uranium mining units and supporting infrastructure, would not significantly affect the quality of the human environment. Therefore, an environmental impact statement (EIS) is not warranted for the proposed action, and pursuant to 10 CFR Part 51.31, a FONSI is appropriate.

Agencies and Persons Consulted

The NRC staff consulted with other Federal and State agencies regarding the proposed action. These consultations were intended to afford these agencies the opportunity to comment on the proposed action, and to ensure that the requirements of Section 106 of the National Historic Preservation Act (NHPA) and Section 7 of the Endangered Species Act (ESA) were met with respect to the proposed action.

By letter dated April 10, 2006, the NRC staff provided a draft copy of the EA to the Casper, WY field office of the U.S. Bureau of Land Management (USBLM) for its review and comment. By electronic mail on April 24, 2006 and July 5, 2006, the USBLM provided comments on the draft EA. In its comments, the USBLM focused on land use and hydrology issues. The NRC staff revised the EA to address the USBLM's comments.

The NRC staff also consulted with the WDEQ and the Wyoming Department of Transportation (WDOT). By letter dated April 10, 2006, the NRC staff provided a draft copy of the EA to the WDEQ for its review and comment. By phone conversation on August 15, 2006, the WDEQ provided its comments, requesting clarification of the post-mining groundwater restoration standards and of the groundwater transfer restoration process and provided some editorial comments. The NRC staff revised the EA to address the WDEQ's comments. In response to November 2005 information requests from the NRC staff, the WDOT provided traffic counts and accident data and analyses for the stretch of county road that borders the western boundary of the Reynolds Ranch area.

With respect to the requirements of Section 7 of the ESA, the NRC staff consulted with the U.S. Fish and Wildlife Service, Mountain-Prairie Region (USFWS/MPR). By letter dated September 28, 2005, the USFWS/MPR provided a list of endangered and threatened species, as well as comments on migratory birds and wetlands and associated riparian areas. Based on the NRC staff's review, there are no endangered or threatened species, either plant or animal, nor is there critical habitat, in the Reynolds Ranch area. There is not expected to be an effect on any endangered or threatened species or critical habitat from ISL mining operations in the Reynolds Ranch area.

Pursuant to the requirements of Section 106 of the NHPA, the NRC staff consulted with the Wyoming State Historic Preservation Office (WSHPO). By letter dated August 11, 2005, the NRC staff requested information from the WSHPO regarding cultural and historic properties that may be affected the proposed addition of the Reynolds Ranch area to the SR–HUP operational area. By return letter dated August 24, 2005, the WSHPO provided its concurrence that no historic properties would be adversely affected by the proposed action.

III. Finding of No Significant Impact

On the basis of the EA, the NRC staff has concluded that there are no significant environmental impacts from the addition of the Reynolds Ranch area to the SR–HUP operational area for the purpose of conducting ISL uranium mining. Therefore, the NRC staff has determined not to prepare an EIS.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, will be available electronically at the NRC's Electronic Reading Room at: *http://www.NRC.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Document date	Description	ADAMS accession No.
1/14/2005	PRI's license amendment request	ML050390076
4/7/2005	PRI's response to NRC staff request for additional information	ML51150034
8/11/2005	WSHPO concurrence on NRC staff determination of no adverse affect	ML052200552
4/10/2006	NRC staff's transmittal of pre-decisional draft EA to USBLM and WDEQ	ML060600176 ML060600191
4/24/2006 7/5/2006	USBLM comments on draft EA	ML062580462 ML062610249 ML062610250
9/30/2006	NRC staff final EA for addition of the Reynolds Ranch amendment area	ML062690386

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 15th day of December 2006.

For the Nuclear Regulatory Commission.

Scott C. Flanders,

Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E6–22583 Filed 1–4–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27644; 812–13212]

Deutsche Bank Trust Company Americas; Notice of Application

December 28, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the

''Act'') granting an exemption to issuers of asset-backed securities from certain requirements of Rule 3a–7(a)(4)(i) under the Act to enable the Applicant to act as trustee to those issuers and the issuers to rely on Rule 3a–7.

SUMMARY OF APPLICATION: Applicant requests an order that would permit an issuer of asset-backed securities that is not registered as an investment company under the Act in reliance on Rule 3a–7 under the Act (an ''Issuer'') to appoint Applicant to act as a trustee to the Issuer when Applicant is affiliated with an underwriter for the Issuer's securities.

APPLICANT: Deutsche Bank Trust Company Americas.

FILING DATES: The application was filed on July 7, 2005, and amended on December 21, 2006.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant 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 22, 2007, and should be accompanied by proof of service on Applicant, 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, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Applicant: 60 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Susan I. Gault-Brown, Senior Counsel, at (202) 551–6869, or David W. Grim, Branch Chief, at (202) 551–6867 (Division of Investment Management, Office of Chief Counsel).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, Room 1580, 100 F Street, NE., Washington, DC 20549 (tel. 202–551–5850).

Applicant's Representations

1. Applicant is a subsidiary of Deutsche Bank AG.[1] Deutsche Bank AG is a global financial services organization that engages in consumer finance, worldwide corporate banking, investment banking, corporate trust services, and asset management. Applicant is frequently selected to act as trustee to Issuers.

2. An asset-backed securities transaction typically involves the transfer of assets by a seller, usually by a ''sponsor,'' to a special purpose corporate or trust entity that is established for the sole purpose of acting as the Issuer and is structured to be bankruptcy remote and the subsequent issuance of asset-backed securities (''ABS'') to investors by the Issuer (an ''ABS Transaction'').

3. The parties to an ABS transaction enter into several transaction agreements that provide for the holding of the assets by the Issuer and define the rights and responsibilities of the parties to the transaction (''Transaction Documents''). The operative Transaction Document governing the trustee is referred to herein as the ''Agreement.''

4. The sponsor of an ABS Transaction assembles the pool of assets by purchasing or funding them, describes them in the offering materials, and sells interests in the assets to investors. The sponsor determines the structure, drafts the documents, and prices the ABS Transaction. The sponsor selects the other parties to the ABS Transaction, including the underwriter, the servicer, and the trustee.

5. The servicer, either directly or through subservicers, manages the assets held by the Issuer. The servicer pays the income from the assets held by the Issuer over to the trustee, and the trustee uses the income, as instructed by the servicer and provided by the Agreement, to pay interest and principal on the ABS, to fund reserve accounts and purchases of additional assets, and to make other payments including fees owed to the trustee and other parties to the ABS Transaction.

6. The sponsor of an ABS Transaction selects the trustee. In selecting a trustee, the sponsor seeks to obtain customary trust administrative and related services for the Issuer at minimal cost. In some instances, other parties to an ABS Transaction may provide recommendations to a sponsor about potential trustees. Ratings agencies may influence the selection of a trustee. An underwriter for an ABS Transaction also may provide advice to the sponsor about trustee selection based on the underwriter's knowledge of the pricing and expertise offered by a particular trustee in light of the contemplated transaction.

7. If an underwriter affiliated with the Applicant recommends a trustee to a sponsor, both the underwriter's recommendation and any selection of the Applicant by the sponsor will be based upon customary market considerations of pricing and expertise, and the selection will result from an arms-length negotiation between the sponsor and the Applicant. Applicant will not price its services as trustee in a manner designed to facilitate its affiliate being named underwriter.

8. The trustee's role in an ABS Transaction is specifically defined by the Agreement, and under the Agreement the trustee is not expected or required to perform discretionary functions. The responsibilities of the trustee as set forth in the Agreement are narrowly circumscribed and limited to those expressly accepted by the trustee. The trustee negotiates the provisions applicable to it directly with the sponsor and is then appointed by and enters into the Agreement with the Issuer.

9. The trustee usually becomes involved in an ABS Transaction after the substantive economic terms have been negotiated between the sponsor and the underwriters. The trustee does not monitor any service performed by, or obligation of, an underwriter, whether or not the underwriter is affiliated with the trustee. In the unlikely event that the Applicant, in acting as trustee to an Issuer for which an affiliate acts as underwriter, becomes obligated to enforce any of the affiliated underwriter's obligations to the Issuer, the Applicant will resign as trustee for the Issuer consistent with the requirements of Rule 3a–7(a)(4)(i). In such an event, the Applicant will incur the costs associated with the Issuer's procurement of a successor trustee.

10. The sponsor selects one or more underwriters to purchase the Issuer's securities and resell them or to privately place them with buyers obtained by the underwriter. The sponsor enters into an underwriting agreement with the underwriter that sets forth the responsibilities of the underwriter with respect to the distribution of the ABS and includes representations and warranties regarding, among other things, the underwriter and the quality of the Issuer's assets. The obligations of the underwriter under the underwriting agreement are enforceable against the underwriter only by the sponsor.

[1] Applicant also requests that the order apply to an Issuer's appointment, now or in the future, of any other entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with Applicant as a trustee for an Issuer. Applicant represents that any other entity relying on this relief now or in the future will comply with the terms and conditions of the application.

11. The underwriter may assist the sponsor in the organization of an Issuer by providing advice, based on its expertise in ABS Transactions, on the structuring and marketing of the ABS. This advice may relate to the risk tolerance of investors, the type of collateral, the predictability of the payment stream, the process by which payments are allocated and down-streamed to investors, the way that credit losses may affect the trust and the return to investors, whether the collateral represents a fixed set of specific assets or accounts, and the use of forms of credit enhancements to transform the risk-return profile of the underlying collateral. Any involvement of an underwriter in the organization of an Issuer that occurs is limited to helping determine the assets to be pooled, helping establish the terms of the ABS to be underwritten, and providing the sponsor with a warehouse line of credit with which to purchase the pool assets.

12. As noted above, an underwriter may provide advice to a sponsor regarding the sponsor's selection of a trustee for the Issuer; however, an underwriter's role in structuring a transaction would not extend to determining the obligations of a trustee, and the underwriter is not a party to the Agreement.

13. The underwriter is not a party to any of the Transaction Documents and, except for arrangements involving credit or credit enhancement for an Issuer or remarketing agent activities, typically has no role in the operation of the Issuer after its issuance of securities. The Applicant represents that although an underwriter typically may provide credit or credit enhancement for an Issuer or engage in remarketing agent activities, an underwriter affiliated with the Applicant will not so provide or so engage.

Applicant's Legal Analysis

1. Applicant requests an order under Section 6(c) of the Act granting an exemption from certain requirements of Rule 3a–7 under the Act.

2. Section 6(c) of the Act gives the Commission the authority to exempt any person or transaction or any class of persons or transactions from any provision of the Act, or from any rule thereunder, if and to the extent such exemption is necessary or appropriate in the public interest; is consistent with the protection of investors; and the purposes fairly intended by the policy and provisions of the Act.

3. Rule 3a–7 provides Issuers that would otherwise fall within the definition of investment company under Section 3(a) of the Act with an exclusion from the definition of investment company. In adopting Rule 3a–7, the Commission stated that it intended to ''remove an unnecessary barrier to the use and development of structured financings.'' [2]

4. Under Rule 3a–7, an Issuer that meets certain conditions is deemed not to be an investment company under Section 3(a) of the Act. One of Rule 3a–7's conditions, set forth in paragraph (a)(4)(i), requires, among other things, that the Issuer appoint a trustee that is not affiliated with the Issuer or with any person involved in the organization or operation of the Issuer (the ''Independent Trustee Requirement''). Applicant states that the phrase ''person involved in the organization or operation of the Issuer'' includes an underwriter, and Rule 3a–7(a)(4)(i) therefore prohibits an Issuer from appointing a trustee that is affiliated with an underwriter.

5. Applicant requests exemptive relief from Rule 3a–7(a)(4)(i) to the extent necessary to permit an Issuer to appoint the Applicant as a trustee to the Issuer when the Applicant is affiliated with an underwriter involved in the organization of the Issuer.

6. Applicant submits that the requested exemptive relief from the Independent Trustee Requirement is necessary and appropriate in the public interest; is consistent with the protection of investors; and the purposes fairly intended by the policy and provisions of the Act for the following three reasons: (1) Due to changes in the banking industry; (2) due to the timing and nature of the roles of the trustee and the underwriter; and (3) because the requested relief is consistent with the policies and purposes underlying the Independent Trustee Requirement and Rule 3a–7.

Changes in the Banking Industry

7. Applicant states that consolidation within the financial industry that occurred throughout the 1990's as a result of bank mergers and sales and related acquisitions of trustee servicing businesses by banks has resulted in a significant decrease in recent years in the number of bank trustees providing services to Issuers. Applicant states that economic and other business factors have also contributed to the trend toward fewer banks offering corporate trust services. Applicant states that bank consolidation has been accompanied by the expansion of banks into investment banking. Applicant states that banks and bank affiliates are now significant participants in securities underwriting, particularly for ABS Transactions.

8. Applicant states that due to these banking industry changes, most trustees that provide services to Issuers, including the Applicant, have affiliations with underwriters to Issuers. Applicant states that, as a result, when, as is frequently the case, an affiliate of Applicant is selected to underwrite ABS in an ABS Transaction, Rule 3a–7(a)(4)(i)'s Independent Trustee Requirement generally prevents Applicant from serving as trustee for the Issuer.

9. Applicant states that the Independent Trustee Requirement therefore imposes an unnecessary regulatory limitation on trustee selection and causes market distortions by leading to the selection of trustees for reasons other than customary market considerations of pricing and expertise. Applicant states that this result is disadvantageous to the ABS market and to ABS investors and that exemptive relief therefore is necessary and appropriate in the public interest.

Timing and Nature of the Roles of the Trustee and the Underwriter

10. Applicant submits that due to the nature and timing of the roles of the trustee and the underwriter, Applicant's affiliation with an underwriter would not result in a conflict of interest or possibility of overreaching that could harm investors.

11. Applicant states that the trustee's role begins with the Issuer's issuance of its securities, and the trustee performs its role over the life of the Issuer. Applicant states that, in contrast, the underwriter is chosen early in the ABS Transaction process, may help to structure the ABS Transaction, distributes the Issuer's securities to investors, and generally has no further role subsequent to the distribution of the Issuer's securities. Applicant submits that, consequently, given the nature and timing of their respective roles in an ABS Transaction, an ABS trustee does not monitor the distribution of securities or any other activity performed by underwriters and there is no opportunity for a trustee and an affiliated underwriter to act in concert to benefit themselves at the expense of holders of the ABS either prior to or after the closing of the ABS Transaction.

12. Applicant states that the trustee is neither expected nor required to exercise discretion or judgment. Applicant states that the trustee of the Issuer has virtually no discretion to

[2] Exclusion from the Definition of Investment Company for Structured Financings, Investment Company Act Release No. 19105, 52 SEC Docket 2573 (November 19, 1992) (the ''Adopting Release'') at 2573.

pursue anyone in any regard other than preserving and realizing on the assets. Applicant states that trustees are not required to pursue securities law or fraud claims on behalf of debt holders and may often be foreclosed from such enforcement because debt holders may have different and conflicting rights.

13. For all of these reasons, Applicant submits that exemptive relief is therefore appropriate and consistent with the protection of investors.

Consistent With Policies and Purposes Underlying the Independent Trustee Requirement and the Rule

14. Applicant submits that the concerns underlying the Independent Trustee Requirement are not implicated if the trustee for an Issuer is independent of the sponsor, servicer, and credit enhancer for the Issuer, but is affiliated with an underwriter for the Issuer, because, in that situation, no single entity would act in all capacities in the issuance of the ABS and the operation of an Issuer. Applicant states that Applicant would continue to act as an independent party safeguarding the assets of an Issuer regardless of an affiliation with an underwriter of the ABS. Applicant submits that, in addition, the concern that affiliation could lead to a trustee monitoring the activities of an affiliate also is not implicated by a trustee's affiliation with an underwriter, because, in practice, a trustee for an Issuer does not monitor the distribution of securities or any other activity performed by underwriters.

15. Applicant submits that exemptive relief permitting the participation of the Applicant and an affiliated underwriter in an ABS Transaction would be consistent with the broader purposes of Rule 3a–7, because in adopting Rule 3a–7, the Commission intended that, consistent with investor protection, the Rule not hamper the growth and development of the structured finance market. Applicant submits that the requested exemption would allow the selection of a trustee for an ABS Transaction based on the trustee's qualification, rather than technical regulatory restriction, and therefore would alleviate unnecessary market distortions that result from the current Independent Trustee Requirement.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

(1) Applicant will not be affiliated with any person involved in the organization or operation of the Issuer in an ABS Transaction other than the underwriter.

(2) Applicant's relationship to an affiliated underwriter will be disclosed in writing to all parties involved in an ABS Transaction, including the rating agencies and the ABS securities holders.

(3) An underwriter affiliated with Applicant will not be involved in the operation of an Issuer, and its involvement in the organization of an Issuer will extend only to determining the assets to be pooled, assisting in establishing the terms of the ABS to be underwritten, and providing the sponsor with a warehouse line of credit with which to purchase the pool assets.

(4) An affiliated person of Applicant, including an affiliated underwriter, will not provide credit or credit enhancement to an Issuer if Applicant serves as trustee to the Issuer.

(5) An underwriter affiliated with Applicant will not engage in any remarketing agent activities, including involvement in any auction process in which ABS interest rates, yields, or dividends are reset at designated intervals in any ABS Transaction for which Applicant serves as trustee to the Issuer.

(6) All of an affiliated underwriter's contractual obligations pursuant to the underwriting agreement will be enforceable by the sponsor.

(7) Consistent with the requirements of Rule 3a–7(a)(4)(i), Applicant will resign as trustee for the Issuer if Applicant becomes obligated to enforce any of an affiliated underwriter's obligations to the Issuer.

(8) Applicant will not price its services as trustee in a manner designed to facilitate its affiliate being named underwriter.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–22609 Filed 1–4–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27612; 813–356]

Opal Private Equity Fund, L.P. et al.; Notice of Application

December 27, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

SUMMARY OF THE APPLICATION: Applicants request an order to exempt certain investment funds formed for the benefit of eligible current and former employees of Schottenstein, Zox & Dunn Co., L.P.A., and its affiliates from certain provisions of the Act. Each fund will be an ''employees' securities company'' as defined in section 2(a)(13) of the Act.

APPLICANTS: Opal Private Equity Fund, LP (the ''Investment Fund'') and Schottenstein, Zox & Dunn Co., L.P.A. (together with any business organization that results from a reorganization of Schottenstein, Zox & Dunn Co., L.P.A., into a different type of business organization or into an entity organized under the laws of another jurisdiction, ''SZD'').

FILING DATES: The application was filed on December 30, 2004 and amended on December 22, 2006.

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 22, 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, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–9303. Applicants, 250 West St., Columbus, Ohio 43215–5020.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 551–6813, or Mary Kay Frech, Branch Chief, 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 Commission's Public Reference Branch,

100 F St., NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. SZD is a law firm incorporated under the laws of the State of Ohio as a legal professional association. SZD and its ''affiliates,'' as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the ''Exchange Act''), are referred to collectively as the ''SZD Group'' and individually as a ''SZD entity.'' The shareholders of SZD are referred to as ''Principals.''

2. The Investment Fund is a Delaware limited partnership. The applicants may in the future offer additional pooled investment vehicles identical in all material respects to the Investment Fund (other than investment objectives and strategies) (the ''Subsequent Funds'') (together, the Investment Fund and the Subsequent Funds are referred to as the ''Funds''). The applicants anticipate that each Subsequent Fund will also be structured as a limited partnership, although a Subsequent Fund could be structured as a limited liability company, corporation, trust or other business organization formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act. The Funds will operate as non-diversified, closed-end management investment companies. The Funds will be established to enable the Principals and certain attorney employees of SZD Group to participate in certain investment opportunities that come to the attention of SZD Group. Participation as investors in the Funds will allow the Eligible Investors, as defined below, to diversify their investments and to have the opportunity to participate in investments that might not otherwise be available to them or that might be beyond their individual means.

3. Opal Private Equity, Inc., a wholly-owned subsidiary of SZD, will serve as the general partner (the ''General Partner'') of each Fund. The Funds will have one or more investment committees (''Investment Committees''), each member of which shall be a Principal. The General Partner or SZD shall appoint the members of each Investment Committee. The General Partner or any person involved in the operation of the Funds will register as an investment adviser if required under the Investment Advisers Act of 1940, or the rules under that Act.

4. Interests in the Funds (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act''), Regulation D under the Securities Act or rule 701 under the Securities Act, or any successor rule, and will be sold solely to Eligible Investors. Eligible Investors consist of ''Eligible Employees,'' ''Qualified Investment Vehicles,'' each as defined below, and SZD entities. The term ''Fund Investors'' refers to Eligible Investors who invest in the Funds. Prior to offering Interests in a Fund to an individual, the General Partner must reasonably believe that the individual is a sophisticated investor capable of understanding and evaluating the risks of participating in the Fund without the benefit of regulatory safeguards. An ''Eligible Employee'' is a person who is, at the time of investment, a current Principal of SZD or lawyer employed by SZD who (a) meets the standards of an ''accredited investor'' set forth in rule 501(a)(5) or rule 501(a)(6) of Regulation D under the Securities Act, (b) is one of 35 or fewer lawyers employed by SZD who meets certain requirements (''Category 2 investors''), or (c) is a lawyer employed by SZD who purchases Interests pursuant to an offering under rule 701 under the Securities Act (''rule 701'') (''Category 3 investors'').

5. Each Category 2 investor will be a lawyer employed by SZD, who meets the sophistication requirements set forth in rule 506(b)(2)(ii) of Regulation D under the Securities Act [1] and who (a) has a minimum of 3 years of business and/or professional experience, has had compensation of at least $150,000 in the preceding 12 month period, and has a reasonable expectation of compensation of at least $150,000 in each of the 2 immediately succeeding 12 month periods, or (b) is a ''knowledgeable employee,'' as defined in rule 3c–5 under the Act, of the Fund (with the Fund treated as though it were a ''Covered Company'' for purposes of the rule). In addition, a Category 2 investor qualifying under (a) above will not be permitted to invest in any calendar or fiscal year (as determined by SZD) more than 10% of his or her income from all sources for the immediately preceding calendar or fiscal year in one or more Funds.

6. Each Category 3 investor will be a lawyer employed by SZD who reasonably expects to have compensation of at least $120,000 in the next 12 months and who has a reasonable expectation of compensation of at least $150,000 in each of the 2 immediately succeeding 12 month periods. In addition, any Category 3 investor who is not a Principal will not be permitted to invest in any calendar or fiscal year (as determined by SZD) more than 10% (or 5%, if he or she has been employed as a lawyer for less than 3 years) of his or her reasonably expected income from all sources for that year in one or more Funds. Category 3 investors will purchase Interests pursuant to an offering under rule 701. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, SZD will make available at no charge to potential Fund Investors the services of an independent third party (''Financial Consultant'') qualified to provide advice concerning the appropriateness of investing in a Fund.

7. A Qualified Investment Vehicle is a trust or other entity the sole beneficiaries of which are Eligible Employees or their Immediate Family Members or the settlors and trustees of which consist of Eligible Employees or Eligible Employees together with Immediate Family Members.[2] Immediate Family Members include any parent, child, spouse of a child, spouse, brother or sister, and includes any step and adoptive relationships. A Qualified Investment Vehicle must be either (a) an accredited investor as defined in rule 501(a) of Regulation D or (b) an entity for which an Eligible Employee is a settlor and principal investment decision-maker.[3]

8. Each Fund may issue its Interests in series (each, a ''Series' and collectively, the ''Series'') with new Series of Interests being offered from time to time. Each Series may be further divided into two or more separate classes (each, a ''Class''), having such terms and conditions as the General Partner may establish. Each Series will represent an interest in some or all of those Fund investments made by the Fund during a specified period of time (the ''Investment Period''). Following the end of a Series' Investment Period, no new investments will be made for that Series, although following a Series' Investment Period additional money may be contributed to an existing investment.

9. In order to comply with the requirements of rule 701, at the beginning of each Investment Period,

[1] Some or all Category 2 investors may purchase their Interests in an offering under rule 701 rather than under Regulation D.

[2] A Qualified Investment Vehicle is not permitted to participate in a rule 701 offering. SZD or the General Partner may, however, in their discretion and in compliance with rule 701, permit an Eligible Employee who purchases Interests in the Fund in a rule 701 offering to transfer some or all of those Interests to a Qualified Investment Vehicle.

[3] If a Qualified Investment Vehicle is an entity other than a trust, the reference to ''settlor'' shall be construed to mean a person who created the vehicle, alone or together with others, and who contributed funds or other assets to the vehicle.

the Fund will accept capital contributions or irrevocable commitments for the relevant Series from those Eligible Investors investing pursuant to Regulation D (the ''Regulation D Investors''), and then prepare a balance sheet as required by rule 701. The Fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments for that Series from those Eligible Investors investing pursuant to rule 701 (the ''Rule 701 Investors''). The capital contributions and commitments of the Rule 701 Investors, in the aggregate, will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from the Regulation D Investors. Because the capital commitments of the Rule 701 Investors may be funded, in whole or in part, through periodic payroll deductions, the Rule 701 Investors may from time to time contribute money prior to the time the Fund is able to invest that money. It currently is anticipated that any such amounts will be placed in a separate bank or escrow account, pending the delivery of the money to the Fund for investment or other authorized purposes. No more than approximately 13% (*i.e.*, 15% of the total amount of capital contributions and irrevocable commitments received from the Regulation D Investors) of all Fund investments and other authorized expenditures for each Series will at any time be paid for out of money contributed to the Fund by Rule 701 Investors.

10. The terms of a Fund will be fully disclosed in the private placement memorandum of the Fund, and each Eligible Investor will receive a private placement memorandum and the Fund's limited partnership agreement (or other organizational documents) prior to his or her investment in the Fund. Each Fund will send its Fund Investors annual reports, which will contain audited financial statements with respect to those Series in which the Fund Investor has Interests, as soon as practicable after the end of each fiscal year. In addition, as soon as practicable after the end of each fiscal year, the Funds will send a report to each Fund Investor setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state tax returns.

11. Fund Investors will be permitted to transfer their Interests only by operation of law, to a receiver or trustee in bankruptcy for that Fund Investor, to the Fund Investor's estate in the event of his or her death, or with the express consent of the General Partner. The General Partner does not anticipate giving such consent. No person may become a transferee or substitute Fund Investor unless that person is a member of one of the classes of persons listed in section 2(a)(13) of the Act, except that a legal representative or executor may hold an Interest in order to settle the estate of a decedent or bankrupt or for similar purposes. No fee of any kind will be charged in connection with the sale of Interests.

12. A Fund Investor's Interests may be subject to repurchase or cancellation if: (a) The Fund Investor ceases to be an Eligible Investor; (b) the Fund Investor is no longer deemed to be able to bear the economic risk of investment in a Fund; (c) adverse tax consequences were to inure to the Fund were a particular Fund Investor to remain; or (d) the continued membership of the Fund Investor would violate applicable law or regulations. In addition, SZD reserves the right to impose vesting provisions on a Fund Investor's investments in a Fund. In an investment program that provides for vesting provisions, all or a portion of a Fund Investor's Interests will be treated as unvested, and vesting will occur through the passage of a specified period of time. To the extent a Fund Investor's Interests become ''vested,'' the termination of such Fund Investor's association or employment with SZD will not affect the Fund Investor's rights with respect to the vested Interests. If a Fund Investor's employment with SZD terminates because of (a) death, (b) total and permanent disability as defined by SZD's group insurance policy or (c) retirement from the practice of law upon or after such Fund Investor attaining the age of fifty-five (each a ''Qualifying Termination''), then such Fund Investor shall be fully vested in his or her Interests in the Fund. If a Fund Investor's employment with SZD terminates for reasons other than a Qualifying Termination, then such Fund Investor's Interests that are unvested shall be subject to repurchase or cancellation. Upon any repurchase or cancellation of all or a portion of a Fund Investor's Interests, a Fund will at a minimum pay to the Fund Investor the lesser of (a) the amount actually paid by the Fund Investor to acquire the Interests less the amount of any distributions received by that Fund Investor from the Fund (plus interest at or above the prime rate, as determined by the General Partner) and (b) the fair market value of the Interests determined at the time of repurchase or cancellation, as determined in good faith by the General Partner. Any interest owed to a Fund Investor pursuant to (a) above will begin to accrue at the end of the Investment Period.

13. With respect to any Interests that have vested, the terminated Fund Investor will have the right to elect (a) to continue as a Fund Investor, or (b) to have the fair market value, as determined in good faith by the General Partner, of such terminated Fund Investor's Interests determined as of the date of termination. If the election described in (b) of the preceding sentence is made, the value of the vested Interests of the terminated Fund Investor shall be deemed to have been repurchased by the relevant Series of the Fund and payment shall be made to the terminated Fund Investor in five consecutive annual payments, with interest at or above the prime rate, as determined by the General Partner, unless the General Partner determines to postpone payment until a liquidity event takes place allowing the Fund to make payment of the terminated Fund Investor. In no event will the terminated Fund Investor be paid later than the date that all Fund Investors in the Series receive their liquidating distribution. The General Partner may accelerate any payments due to a terminated Fund Investor. The General Partner has the right to amend the limited partnership agreement to allow for less restrictive vesting terms.

14. SZD may be reimbursed by a Fund for reasonable and necessary out-of-pocket costs directly associated with the organization and operation of the Funds. There will be no allocation of any of SZD's operating expenses to a Fund. In addition, SZD may allocate to a Series any out-of-pocket expenses specifically attributable to the organization and operation of that Series. No separate management fee will be charged to a Fund by the General Partner, and no compensation will be paid by a Fund or by Fund Investors to the General Partner for its services.

15. SZD may in its discretion advance funds to Eligible Investors for the purpose of making their capital contributions. SZD currently expects that no interest will be charged on such loans, but SZD reserves the right to charge interest on such loans in the future. The interest rate charged on such loans will not exceed the prime rate.

16. The Funds may borrow from SZD Group, Principals, or a bank or other financial institution, provided that a Fund will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Fund (other than short-term paper).

Any borrowings by a Fund will be non-recourse other than to SZD or an SZD entity. If SZD or an SZD entity or a Principal makes a loan to the Funds, the interest rate on the loan will be no less favorable to the Funds than the rate that could be obtained on an arm's length basis.

17. No Fund will acquire any security issued by a registered investment company if immediately after the acquisition the Fund would own more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit a Fund to: (a) Purchase, from SZD or any affiliated person thereof, securities or interests in properties previously acquired for the account of SZD or any affiliated person thereof; (b) sell, to SZD or any affiliated person thereof, securities or interests in properties previously acquired by the Funds; and (c) purchase interests in any company or other investment vehicle (i) in which SZD owns 5% or more of the voting securities, or (ii) that otherwise is an affiliated person of the Fund (or an affiliated person of such a person) or an affiliated person of SZD.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Act. Applicants state that the Fund Investors will be informed in the Fund's private placement memorandum of the possible extent of the Fund's dealings with SZD or any affiliated person thereof. Applicants also state that, as financially sophisticated professionals, Fund Investors will be able to evaluate the attendant risks. Applicants assert that the community of interest among the Fund Investors and SZD will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief to permit affiliated persons of each Fund, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Fund is a participant. Joint transactions in which a Fund may participate could include the following: (a) an investment by one or more Funds in a security in which SZD or its affiliated person, or another Fund, is a participant, or with respect to which SZD or an affiliated person is entitled to receive fees (including, but not limited to, legal fees, placement fees, investment banking fees, brokerage commissions, or other economic benefits or interests); and (b) an investment by one or more Funds in a security in which an affiliate is or may become a participant.

6. Applicants state that strict compliance with section 17(d) would cause the Funds to forego investment opportunities simply because a Fund Investor, SZD or other affiliates of the Fund also had made or contemplated making a similar investment. In addition, because investment opportunities of the types considered by the Funds often require that each participant make available funds in an amount that may be substantially greater than that available to the investor alone, there may be certain attractive opportunities of which a Fund may be unable to take advantage except as a co-participant with other persons, including affiliates. Applicants note that, in light of SZD's purpose of establishing the Funds so as to reward Eligible Investors and to attract highly qualified personnel to SZD, the possibility is minimal that an affiliated party investor will enter into a transaction with a Fund with the intent of disadvantaging the Fund. Finally, applicants contend that the possibility that a Fund may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 4 below. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

7. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–2 allows an investment company to act as self-custodian, subject to certain requirements. Applicants request an exemption from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Fund's investments may be kept in the locked files of SZD or of a Principal; (b) for purposes of paragraph (d) of the rule, (i) employees of SZD will be deemed employees of the Funds, (ii) officers of the General Partner and the General Partner of a Fund will be deemed to be officers of the Fund, and (iii) the General Partner of a Fund will be deemed to be the board of directors of the Fund; and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of SZD. Applicants assert that the securities held by the Funds are most suitably kept in SZD's files, where they can be referred to as necessary.

8. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons (''disinterested directors'') take certain

actions and give certain approvals relating to fidelity bonding. Paragraph (g) of rule 17g–1 sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company's board of directors. Paragraph (h) of rule 17g–1 provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g). Paragraph (j) of rule 17g–1 exempts a joint insured bond provided and maintained by an investment company and one or more other parties from section 17(d) of the Act and the rules thereunder. Rule 17g–1(j)(3) requires that the board of directors of an investment company satisfy the fund governance standards defined in rule 0–1(a)(7). Applicants request an exemption from section 17(g) and rule 17g–1 to the extent necessary to permit each Fund to comply with rule 17g–1 without the necessity of having a majority of the disinterested directors take such action and make such approvals as are set forth in the rule. Specifically, each Fund will comply with rule 17g–1 by having the General Partner take such actions and make such approvals as are set forth in rule 17g–1. Applicants state that, because the General Partner will be an interested person of the Fund, a Fund could not comply with rule 17g–1 without the requested relief. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and from the requirements of rule 17g–1(j)(3). Applicants believe the filing requirements are burdensome and unnecessary as applied to the Funds. The General Partner will maintain the materials otherwise required to be filed with the Commission by rule 17g–1(g) and agree that all such material will be subject to examination by the Commission and its staff. The General Partner will designate a person to maintain the records otherwise required to be filed with the Commission under paragraph (g) of the rule. Applicants also state that the notices otherwise required to be given to the board of directors would be unnecessary as the Funds will not have boards of directors. The Funds will comply with all other requirements of rule 17g–1.

9. Section 17(j) and paragraph (b) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the requirements of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Funds.

10. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Funds and would entail administrative and legal costs that outweigh any benefit to the Fund Investors. Applicants request exemptive relief to the extent necessary to permit each Fund to report annually to its Fund Investors. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Fund and any other persons who may be deemed members of an advisory board of a Fund from filing Forms 3, 4 and 5 under section 16 of the Exchange Act with respect to their ownership of Interests in the Fund. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

11. Rule 38a–1 requires investment companies to adopt, implement and periodically review written policies and procedures reasonably designed to prevent violation of the federal securities laws and to appoint a chief compliance officer. The Funds will comply with rule 38a–1(a), (c) and (d), except that (a) since the Funds do not have boards of directors, the board of directors of the General Partner will fulfill the responsibilities assigned to a Fund's board of directors under the rule, and (b) since the board of directors of the General Partner does not have any disinterested members, approval by a majority of the disinterested board members required by rule 38a–1 will not be obtained.

Applicants' Conditions

The applicants agree that any order granting the requested relief will be subject to the following conditions:

Fund Operations

1. Each proposed transaction to which a Fund is a party otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (each, a ''Section 17 Transaction'') will be effected only if the General Partner determines that: (a) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Fund Investors of the participating Fund and do not involve overreaching of the Fund or its Fund Investors on the part of any person concerned; and (b) the Section 17 Transaction is consistent with the interests of the Fund Investors of the participating Fund, the Fund's organizational documents and the Fund's reports to its Fund Investors.

In addition, the General Partner will record and preserve a description of such Section 17 Transactions, its findings, the information or materials upon which its findings are based and the basis therefor. All such records will be maintained for the life of a Fund and at least five years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. If purchases or sales are made by a Fund from or to an entity affiliated with the Fund by reason of a Principal or employee of the SZD Group (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

3. The General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Funds, or any affiliated person of such a person, promoter, or principal underwriter.

4. The General Partner will not make on behalf of a Fund any investment in which a Co-Investor, as defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Fund and the Co-Investor are

participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the participating Fund holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a *pro rata* basis with the Co-Investor. The term ''Co-Investor'' with respect to any Fund means any person who is (a) an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Fund; (b) the SZD Group; (c) a Principal, lawyer, or employee of the SZD Group; (d) an investment vehicle offered, sponsored, or managed by SZD or an affiliated person of SZD; or (e) an entity in which an SZD entity acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to Immediate Family Members of the Co-Investor or a trust established for any such Immediate Family Member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder.

5. The General Partner of each Fund will send to each person who was a Fund Investor in such Fund at any time during the fiscal year then ended audited financial statements with respect to those Series in which the Fund Investor held Interests. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Fund as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, as soon as practicable after the end of each fiscal year of each Fund, the General Partner of the Fund shall send a report to each person who was a Fund Investor at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state income tax returns and a report of the investment activities of such Fund during such year.

6. Each Fund and the General Partner will maintain and preserve, for the life of each Series of that Fund and at least five years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements and annual reports of such Series to be provided to its Fund Investors, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

Compliance With Rule 701

7. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, SZD will make available at no charge to potential Fund Investors the services of a Financial Consultant qualified to provide advice concerning the appropriateness of investing in a Fund. Specifically, the Financial Consultant will hold one or more group meetings with potential Fund Investors at which the Financial Consultant will discuss the risks and other considerations relevant to determining whether to invest in a Fund. The Financial Consultant also will be available to the group of potential Fund Investors to answer general questions regarding an investment in the Fund. In addition, potential Fund Investors will be given the opportunity to submit relevant questions and issues to the Financial Consultant in advance of the group meetings, so that the Financial Consultant can address those questions and issues at the meetings. SZD will not need to reveal the specific investments made by any Fund to the Financial Consultant, as long as the investment objectives, risk characteristics and other material information about the Fund of the type that would be disclosed in the offering documents for the Fund is made available to the Financial Consultant.

8. SZD will at all times control each Fund, within the meaning of rule 405 under the Securities Act. In this regard, SZD will, either directly or through a wholly-owned subsidiary, be the General Partner of the Fund, own at least 95% of the voting Interests of the Fund, and make all investment and other operational decisions for the Fund.

9. SZD or a wholly-owned subsidiary will own not less than 5% of the economic Interests issued each year by the Fund, and (as discussed above) at least 95% of the voting Interests of the Fund. In addition, SZD and its Principals, directly or through Qualified Investment Vehicles, together will own at least 80% of the economic Interests of each Series.

10. SZD prepares its financial statements on a modified cash basis, and does not consolidate the Fund's financial statements with its own. If, however, SZD prepared its financial statements in accordance with GAAP, it would consolidate the Fund's financial statements with its own.

11. SZD, when offering Interests pursuant to rule 701 under the Securities Act, will issue Interests in each Series in compliance with rule 701(d)(2),[4] and will comply with all applicable requirements of rule 701(e).[5]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–22605 Filed 1–4–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Cosmetic Center, Inc., Impax Laboratories, Inc., Phoenix Waste Services Company, Inc., and Telynx, Inc.; Order of Suspension of Trading

December 29, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cosmetic Center, Inc., because it has not filed any periodic reports since the period ended September 26, 1998.

It appears to the Securities and Exchange Commission that there is a

[4] If SZD relies on rule 701(d)(2)(ii), it will not sell pursuant to rule 701, during any consecutive 12-month period, Interests in the Fund if the sales price of those Interests exceeds 15% of the total assets of the Fund.

[5] In order to comply with the requirements of rule 701, at the beginning of each Investment Period the Fund will accept capital contributions or irrevocable commitments from Regulation D Investors for the relevant Series, and then prepare a balance sheet as required by rule 701. The Fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments, from Rule 701 Investors for that Series, which in the aggregate will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from Regulation D Investors.

lack of current and accurate information concerning the securities of Impax Laboratories, Inc., because it has not filed any periodic reports since the period ended September 30, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Phoenix Waste Services Company, Inc., because it has not filed any periodic reports since the period ended October 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Telynx, Inc., because it has not filed any periodic reports since the period ended October 31, 2004.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in securities of the above-listed companies is suspended for the period from 9:30 a.m. est on December 29, 2006, through 11:59 p.m. est on January 16, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 06–9986 Filed 12–29–06; 11:32 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55008; File No. SR–Amex–2006–98]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change Relating to the Codification of Exchange Policy Regarding Specialist Commissions

December 22, 2006.

I. Introduction

On October 4, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 154 to codify policies regarding specialist commissions. The proposed rule change was published for comment in the **Federal Register** on October 25, 2006.[3] The Commission received two comment letters regarding the proposal.[4] On November 28, 2006, the Exchange submitted a response to the comments.[5] On December 5, 2006, one of the initial commenters submitted a response to the Amex Response.[6] This order approves the proposed rule change.

II. Description

The Exchange proposes to codify in new subparagraph (b) to Amex Rule 154 its policies regarding situations where specialists may charge a commission for trades that are executed in whole or in part. Specifically, proposed Amex Rule 154(b) would prohibit a specialist from: (i) Charging a commission on an off-floor order in equities that is electronically delivered to the specialist unless the order requires special handling by the specialist or the specialist provides a service, and (ii) billing for electronically delivered orders in equities that are executed automatically by the Exchange's order processing facilities upon receipt. In addition, proposed Amex Rule 154(b) would reference Amex Rule 152(c), which prohibits specialists from charging a commission where they act as principal in the execution of an order entrusted to them as agent. Lastly, proposed Amex Rule 154(b) sets forth the types of orders specialists would be allowed to bill a commission. In particular, these orders would include limit orders that remain on the book for more than two minutes, market on close or limit on close orders, tick sensitive orders, orders for non-regular way settlement, stop or stop limit orders, orders stopped at one price and executed at a better price, fill-or-kill, and immediate-or-cancel orders, and orders for the account of a competing market maker.

III. Summary of Comments

The Commission received three comment letters regarding the proposed rule change from two specialists. Two of these comment letters, submitted by Streicher, opposed the proposed rule change for the three reasons discussed below.[7] The third comment letter, submitted by Weiskopf, supported the proposed rule change, because ''the specialist's commission charges, if not competitive, have the potential to drive business away from the exchange and eliminate an important competitor from the market place.'' [8] Weiskopf also stated its view that the proposed rule change is ''a very constructive step towards fostering greater competition in The National Market System.'' [9]

Streicher argued that the proposed rule change would ''adversely impact investors by reducing the qualify [sic] of markets offered by the Amex.'' In particular, Streicher argued that Amex's proposed elimination of certain specialist commissions would harm investors by putting pressure on specialists to increase spreads to offset the lost commissions. Streicher stated that ''[w]hile an increase in spreads may not be practical in highly competitive markets, many of the securities listed on the Amex are thinly traded with most of their trading volume taking place primarily on the Amex.'' According to Streicher, ''there is often little effective competition from other markets'' for these securities, and, thus, the resulting increased spreads will ''have an adverse impact investors * * *.'' [10]

In its response, the Exchange stated that the purpose of the proposed rule change ''is to attract and maintain order flow to Amex specialists by providing transparency, clarity and consistency to the costs of doing business on the Exchange.'' The Exchange argued that Streicher's position that the elimination of certain specialist commissions would lead to specialists seeking higher spreads is flawed, because ''it is against each specialist's own economic interest to widen its spreads and thereby risk losing order flow.'' Furthermore, the Exchange disagreed with Streicher's assertion that ''there is often little effective competition from other markets'' and noted that ''[a]ll Amex listed securities trade in at least one additional market center'' and that ''[t]he large majority of Amex issues trade on multiple venues.'' The Exchange concluded that ''[w]idening of the spreads in these securities will likely result in further market share erosion as order flow providers mindful of their best execution responsibilities direct their orders elsewhere.'' [11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54618 (October 18, 2006), 71 FR 62492.

[4] *See* letter from Jonathan Q. Frey, Managing Partner, J. Streicher & Co. L.L.C., to Nancy M. Morris, Secretary, Commission, dated November 13, 2006 (''Streicher Letter I''), and Web comment from William Silver, Managing Partner, Weiskopf, Silver Co, dated November 6, 2006 (''Weiskopf Letter'').

[5] *See* letter from Neal L. Wolkoff, Chairman & Chief Executive Officer, Amex, to Nancy M. Morris, Secretary, Commission, dated November 28, 2006 (''Amex Response'').

[6] *See* letter from Jonathan Q. Frey, Managing Partner, J. Streicher & Co. L.L.C., to Nancy M. Morris, Secretary, Commission, dated December 5, 2006 (''Streicher Letter II'').

[7] *See* Streicher Letter I and Streicher Letter II.

[8] *See* Weiskopf Letter.

[9] *Id.*

[10] Streicher Letter I at 2–3.

[11] Amex Response at 3–4.

Streicher responded by taking issue with Exchange's assertion regarding competition from other markets, by stating that many of the other markets for Amex-listed securities ''frequently offer little more than a means to internalize order flow using the quote established by the Amex as the dominant marketplace for the security in question.'' Streicher also disagreed with Exchange's statement that ''it is against each specialist's own economic interest to widen its spreads and thereby risk losing order flow,'' by stating that there might be circumstances in which ''a greater return on fewer orders might very well make sense and be in [the commenter's] best economic interest.'' [12]

Second, Streicher noted that Amex's purpose for this proposal is to strengthen Amex's competitive position. However, Streicher asserted that Amex's concerns regarding its competitive position would be better addressed by current Amex Rules 26 and 27.[13] The Exchange, however, disagreed with Streicher, arguing that, while Amex Rules 26 and 27 are ''useful to the Exchange in its efforts to be competitive,'' the two rules do not create the ''transparency and clarity'' that the current proposal would provide.[14]

Third, Streicher expressed concerns that the rule change would ''result in significant implementation costs'' that are ''difficult to justify'' given the proposed rule change's temporary nature.[15] The Exchange, however, disputed Streicher's argument, indicating that the implementation costs would be minimal since ''most if not all specialist units'' have already complied with the proposed limitations on specialist commissions.[16] The Exchange also noted that it does not intend for the proposed rule to remain in effect for a short period; rather, the Exchange intends to expand the rule to apply to equities and ETFs traded on the Exchange's Auction and Electronic Market Integration Platform (''AEMI'') system.[17] In response, Streicher suggested that implementation costs would be saved if the Exchange defers this proposed rule change and has one proposed rule change when the Exchange ''is ready to finalize and allowable commission schedule under AEMI.'' [18]

IV. Discussion

The Commission has carefully reviewed the proposed rule change, the comment letters received, and Amex's response, and the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [19] and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[21] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposed rule change is consistent with Section 11(A)(a)(1)(C) of the Act [22] which states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, economically efficient execution of securities transactions, and fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

The Commission notes that the Exchange's proposed rule change codifies the Exchange's policy regarding specialist commissions by specifying the particular types of orders in which a specialist may charge a commission and the types of orders in which a specialist may not charge a commission. The Commission notes that the Streicher Letters' concern expressed about the possibility of specialists attempting to widen spreads to compensate for lost commissions. In this regard, the Commission believes that competition for order flow among competing markets should continue to provide an incentive for specialists not to widen spreads.

In addition, the Commission finds that the proposal is consistent with Section 6(e)(1) of the Act,[23] because it is not designed to permit unfair discrimination between customers, issuers, brokers and dealers, or to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members. Section 6(e) of the Act [24] was adopted by Congress in 1975 to statutorily prohibit the fixed minimum commission rate system. As noted on a report of the House of Representatives one of the purposes of the legislation was to ''reverse the industry practice of charging fixed rates of commission for transaction on the securities exchanges.'' [25] The fixed minimum commission rate system allowed exchanges to set minimum commission rates that their members had to charge their customers, but allowed members to charge more. Amex's proposal, by contrast, does not establish a minimum commission rate, but instead prohibits the Exchange's specialists from charging a commission for handling an order in equities that is executed on an opening or reopening or an order in equities (or portion thereof) that is executed against the specialist as principal, or for the execution of an off-floor equities order delivered to the specialist through the Exchange's electronic order routing systems, subject to certain exceptions. Accordingly, the Commission does not believe that the Amex's proposal constitutes fixing commissions, allowances, discounts, or other fees for purposes of Section 6(e)(1) of the Act.[26] The Commission also notes that Amex's limits on fees that specialists may charge applies only to members who choose to be specialists on Amex. By limiting fees, the Amex is merely imposing a condition, which is consistent with the Act, on a member's appointment as a specialist.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular,

[12] Streicher Letter II at 3.

[13] Streicher Letter I at 3. Amex Rules 26 and 27 provide the Exchange with the ability to: (1) limit or prohibit the awarding of new allocations to specialists who fail to respond to competition by offering competitive markets and competitively priced services, and (2) remove allocations from specialists who fail to meet certain levels of performance in handling of those securities.

[14] Amex Response at 4.

[15] Streicher Letter I at 3.

[16] Amex Response at 4.

[17] *Id.*

[18] Streicher Letter II at 3.

[19] 15 U.S.C. 78f.

[20] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). The Commission notes that it previously approved a similar proposed rule change relating to commissions on options orders, filed by the Chicago Board Options Exchange, Inc. *See* Securities Exchange Act Release No. 51235 (February 22, 2005), 70 FR 9687 (February 28, 2005) (Approval of CBOE Rule 8.85(b)(iv)). In addition, the New York Stock Exchange, Inc. (''NYSE'') recently adopted a rule prohibiting specialists from charging commissions on orders in their speciality securities. *See* Securities Exchange Act Release No. 54850 (November 30, 2006), 71 FR 71217 (December 8, 2006) (Notice of Filing and Immediate Effectiveness of Amendments to NYSE Rule 123B and Adoption of NYSE Rule 104B).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1(a)(1)(C).

[23] 15 U.S.C. 78f(e)(1).

[24] 15 U.S.C. 78f(e).

[25] H.R. Rep. No. 94–123, 94th Cong., 1st Sess. 42 (1975).

[26] 15 U.S.C. 78f(e)(1).

with Sections 6(b)(5) and 6(e)(1) of the Act.[27]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–Amex–2006–98) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–22592 Filed 1–4–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55006; File No. SR–Amex–2006–57]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change Relating To Stop Orders for Exchange Traded Funds and Trust Issued Receipts

December 22, 2006.

On August 18, 2006, the American Stock Exchange LLC (''Amex'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the rules applicable to stop orders for exchange traded funds and trust issued receipts. The proposed rule change was published for comment in the **Federal Register** on October 17, 2006.[3] The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission believes that the rule change, to amend Commentary .04(b) to Amex Rule 154 to provide that a specialist who elects a stop order on his book by selling stock to the existing bid or buying stock at the existing offer for his own account is not required to obtain floor official approval if the transaction is 0.10 point or less away from the prior transaction,[6] will benefit investors by facilitating a more efficient and orderly marketplace. The Commission notes that Amex will continue to conduct its existing surveillances to monitor specialists' compliance with the specific requirements of Commentary .04 to Amex Rule 154 (*i.e.*, obtaining floor official approval when required and executing the stop order at the same price as the electing trade) as well as their agency obligations to the impacted stop orders.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–2006–57) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–22594 Filed 1–4–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55012; File No. SR–CBOE–2006–109]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Regarding Complex Trades

December 27, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The 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 CBOE proposes to amend CBOE Rule 6.80 to revise the definition of ''Complex Trade,'' a term that applies to trades through the Intermarket Linkage (''Linkage''). The text of the proposed rule change appears below, with additions *italicized* and deletions in [brackets]: Rule 6.80. Definitions

(1)–(3) No change.

(4) ''Complex Trade'' means the execution of an order in an option series in conjunction with the execution of one or more related order(s) in different options series in the same underlying security occurring at or near the same time [for the equivalent number of contracts and for the purpose of executing a particular investment strategy] *for the purpose of executing a particular investment strategy and for an equivalent number of contracts, provided that the number of contracts of the legs of a spread, straddle, or combination order may differ by a permissible ratio. The permissible ratio for this purpose is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00).*

(5)–(21) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes to amend the definition of ''Complex Trade,'' which is a term that the CBOE uses for Linkage purposes. A Complex Trade is an execution of an order in an options series in conjunction with one or more

---

[27] 15 U.S.C. 78f(b)(5) and 78f(e)(1).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54584 (October 6, 2006), 71 FR 61111.

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] This exception would only apply to transactions in Exchange-Traded Fund Shares and Trust Issued Receipts.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

other orders in different series with the same underlying security ''for the equivalent number of contracts.'' [3] A Complex Trade is exempt from the trade-through rule.[4]

In contrast to the Linkage term, Complex Trade, CBOE Rule 6.53C(a) defines the term ''Complex Order'' for purposes other than Linkage. According to that definition, one type of Complex Order is a ''Ratio Order,'' which need not have an equivalent number of contracts.[5] Specifically, a Ratio Order may have a ratio ranging from one-to-three (.333) to three-to-one (3.00). The Exchange applies modified priority rules to Complex Orders.[6]

This proposal will make the Linkage term, Complex Trade, consistent with the general term, Complex Order. According to the CBOE, the other five options exchanges are adopting a similar definition of Complex Trade, which will result in uniform application of the term across all options exchanges. The CBOE believes that such uniformity will facilitate the rapid execution of complex trades in all markets.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE neither solicited nor received comments on the proposal.

[3] *See* CBOE Rule 6.80(4).

[4] *See* CBOE Rule 6.83(b)(7).

[5] *See* CBOE Rule 6.53C(a)(5).

[6] *See* CBOE Rule 6.45.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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 such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2006–109 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2006–109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–109 and should be submitted on or before January 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–22595 Filed 1–4–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55007; File No. SR–NASDAQ–2006–053]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Assess Previously-Approved Fees to Former INET Data Recipients

December 22, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2006, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. 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

Nasdaq is proposing to, beginning February 1, 2007, assess the Commission-approved fee for its TotalView data entitlement to former INET subscribers and market data vendors that previously received only the INET ITCH 1.0 and/or INET ITCH 2.0 data feeds which were free of charge and are now receiving TotalView data from the Nasdaq Market Center execution system which is fee-liable.

Commission-approved Nasdaq Rule 7023(a) describes TotalView as follows:

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The TotalView entitlement allows a subscriber to see all individual Nasdaq Market Center participant orders and quotes displayed in the system as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center, including the NQDS feed and the Brut System Book Feed.

Nasdaq Rule 7023 states that ''for the TotalView entitlement there shall be a $70 monthly charge'' and ''a charge of $6 per month per controlled device for OpenView.'' As described in detail below, as a result of the Commission's July 14, 2006, approval of Nasdaq's new Market Center execution system (''NMC Approval Order''),[3] the INET ECN no longer exists for the trading of Nasdaq stocks and, therefore, the INET System Book Feed is no longer available for those stocks.[4]

There is no new rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

Background

In January of 2001, the Commission approved Nasdaq's proposal to unify its two existing execution systems—SelectNet and SOES—into a single execution system [5] originally known as ''SuperMontage'' and later re-named the ''Nasdaq Market Center.'' [6] The order approving SuperMontage also approved the dissemination of quote and order data emanating from SuperMontage.

In November of 2002, Nasdaq received Commission approval to disseminate a SuperMontage ''depth of book'' product for Nasdaq stocks called TotalView.[7] TotalView originally contained data representing all quotes and orders in Nasdaq stocks trading on Nasdaq's SuperMontage system. The Commission approved an initial TotalView fee of $150 per user per month, and later approved Nasdaq's proposal to reduce the fee to $70 per month for professional users and $14 per month for non-professional users.[8] The Commission later approved Nasdaq's proposal to disseminate an equivalent full depth of book product for NYSE/Amex stocks.[9] That product, called ''OpenView,'' contained all quotes and orders for NYSE/Amex-listed stocks in Nasdaq's execution system. The Commission-approved fee for OpenView was $6 per user per month.

In September of 2004, Nasdaq completed its acquisition of Brut, Inc., a registered broker-dealer operating the Brut electronic communications network (''ECN''). Nasdaq operated the Brut ECN side-by-side with the Nasdaq Market Center. Prior to Nasdaq's acquisition, Brut disseminated a depth of book data feed containing order information from the Brut execution system—the Brut System Book Feed—free of charge to its subscribers and to market data vendors. Following Nasdaq's acquisition, Brut continued to disseminate the Brut System Book Feed free of charge. In March of 2005, the Commission approved Nasdaq's proposal to integrate the Brut System Book Feed into the TotalView data entitlement thereby rendering the Brut System Book Feed fee-liable at the same $70 and $14 monthly rates as TotalView. Nasdaq did not, however, integrate the Brut and Nasdaq Market Center execution systems; those two systems continued to operate independently and to disseminate separate data from their separate execution systems.

On December 7, 2005, Nasdaq acquired INET ATS, Inc., a registered broker-dealer and member of the NASD, and operator of the INET ATS (''INET''), and the Commission approved Nasdaq's proposed rule change to establish rules governing the operation of the INET facility.[10] Prior to Nasdaq's acquisition, INET disseminated a depth of book data feed containing order information from the INET execution system—the INET System Book Feed—free of charge to its subscribers and to market data vendors. Following Nasdaq's acquisition, INET continued to disseminate the INET System Book Feed free of charge. Unlike Brut, Nasdaq did not propose to integrate the INET System Book Feed into the TotalView data entitlement. Nasdaq continued to operate INET independently and to disseminate the INET System Book Feed free of charge to INET subscribers and market data vendors.

On February 5, 2006, Nasdaq filed a proposal to integrate Nasdaq's three execution systems—the Nasdaq Market Center, the Brut ECN, and the INET ECN—into a single execution system commonly known as the Nasdaq Single Book.[11] That proposal was designed to establish the Single Book as the new Nasdaq Market Center execution system to replace the existing Nasdaq Market Center execution system formerly known as SuperMontage. Like its predecessor, the new Nasdaq Market Center execution system would have three parts: (1) An execution service, (2) a trade-reporting service, and (3) a data feed service that ''can be used to display with attribution to Participants'' MPIDs all Quotes and Displayed Orders on both the bid and offer side of the market for all price levels then within the Nasdaq Market Center.'' [12]

The Elimination of INET and Brut

On July 14, 2006, following a lengthy and contentious comment period, the Commission approved Nasdaq's Single Book Proposal.[13] As a result of that approval order, two of Nasdaq's three execution facilities—Brut and INET—ceased to operate and Nasdaq emerged with a single, unified execution system, the new Nasdaq Market Center execution system. When Brut and INET ceased operating as separate execution facilities, they consequentially lost the ability to offer separate data feeds. In the Single Book Approval Order, the Commission itself noted that the Brut and INET facilities would cease to exist:

[3] Securities Exchange Act Release No. 54155 (Jul. 14, 2006), 71 FR 41291 (Jul. 20, 2006) (SR–NASDAQ–2006–001) (''NMC Approval Order'').

[4] Nasdaq has separately proposed to modify Rule 7023 governing the user fees for TotalView and OpenView as well as Rule 7019 governing the distributor fees for that data. *See* SR–NASDAQ–2006–048 and –049.

[5] Securities Exchange Act Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001) (SR–NASD–99–53).

[6] Securities Exchange Act Release No. 50074 (Jul. 23, 2004), 69 FR 45866 (Jul. 30, 2004) (SR–NASD–2004–076).

[7] Securities Exchange Act Release No. 46843 (Nov. 18, 2002), 67 FR 70471 (Nov. 22, 2002) (SR–NASD–2002–33).

[8] Securities Exchange Act Release No. 48581 (Oct. 1, 2003), 68 FR 57945 (Oct. 7, 2003) (SR–NASD–2003–111).

[9] Securities Exchange Act Release No. 49349 (Mar. 2, 2004), 69 FR 10775 (Mar. 8, 2004) (SR–NASD–2003–149).

[10] Securities Exchange Act Release No. 52902 (Dec. 7, 2005), 70 FR 73810 (Dec. 13, 2005) (SR–NASD–2005–128).

[11] Securities Exchange Act Release No. 53583 (Mar. 31, 2006), 71 FR 19573 (Apr. 14, 2006) (SR–NASDAQ–2006–001) (''Single Book Proposal'').

[12] Compare new Nasdaq Rule 4751(a) with previous NASD Rule 4701(a).

[13] *See* NMC Approval Order, *supra* note 3.

* * * under this proposal Nasdaq would integrate the Brut and INET execution systems with the Nasdaq Market Center, utilizing the INET platform; only Brut's broker-dealer routing functionality would continue upon the unification of the three trading platforms. Thus, this proposal could not advantage Nasdaq-affiliated ECNs over other ECNs because Nasdaq affiliated ECNs would not exist. In addition, the Commission notes that Nasdaq's acquisitions of Brut and INET were reviewed and approved by the Commission as positive developments in the ever-changing, dynamic market environment.[14]

Thus, the proposal and the Commission order approving it clearly contemplated that the Brut and INET facilities were to be eliminated along with their corresponding data feeds.

In fact, the Commission contemplated the elimination of the Brut and INET facilities as early as December 2005 when it approved Nasdaq's rules for operating INET as a subsidiary, as well as in the Commission's order approving Nasdaq's application to operate as a national securities exchange:

In the Commission's approval of Nasdaq's exchange application in January 2006, the Commission emphasized that Nasdaq's approval was based on a set of rules with price/time priority. In addition, the Commission noted in the Exchange Application Order that the two ECNs that Nasdaq had recently acquired—Brut and INET—both applied rules that required their orders to be executed in price/time priority. As discussed above, the Single Book concept of integrating the three Nasdaq Facilities was discussed by the Commission in the Exchange Application Order and the Commission believed that such an integration would be beneficial, though the Commission permitted the three Nasdaq Facilities to operate separately for a temporary period, until September 30, 2006, because the Brut and INET facilities had only been recently acquired by Nasdaq (citations omitted).[15]

To reduce the impact to former Brut and INET users, the new Nasdaq Market Center system was designed to provide the same depth of book data that the previous system provided, namely all Nasdaq Market Center participants' quotes and orders displayed within the system. Like its predecessor, the new system will disseminate depth of book data in multiple formats using multiple data feeds.[16] Because the Nasdaq Market Center system will provide the same quote and order data in multiple formats, all Nasdaq, Brut, and INET users can continue to receive depth of book data in the format that they historically use.

Reasonableness of the TotalView Fee

Nasdaq is required by Section 6(b)(4) of the Act to ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons'' using its facilities, and by Section 11A(c)(1)(D) to make market information available on terms that are ''not unreasonably discriminatory.'' In light of this statutory mandate, Nasdaq is required to assess the same fee to all recipients of the same data, in this case TotalView data. Former recipients of INET ITCH 1.0 and/or INET ITCH 2.0 data feed that choose to receive Nasdaq TotalView data must pay the same fee for that data as every other recipient on an equitable and non-discriminatory basis.

In 2002, the Commission determined that Nasdaq's TotalView fee was fair and reasonable and Nasdaq is simply proposing to assess that fee to a group of new users. TotalView is a comprehensive source of Nasdaq order and quote information, and provides the greatest level of transparency into the Nasdaq stock market. Nasdaq states that today, TotalView provides 23 times the liquidity displayed and nearly 5 times the orders disseminated by the Nasdaq Quotation Dissemination Service (''NQDS''). Nasdaq's full depth in NYSE- and Amex-listed stocks (OpenView) also provides access to 40% more liquidity than the top-of-file quotes provided via the Consolidated Quotation System feed from the Securities Information Automation Corporation.

Since the Commission first approved the fee for TotalView, Nasdaq has lowered that fee from $150 per month to $70 per month for professional users or $14 per month for non-professional users. In addition, Nasdaq has augmented the TotalView product many times while holding the Commission-approved fees constant. In 2004 and 2005, Nasdaq added to TotalView all data from Nasdaq's opening and closing crosses. In March of 2005, Nasdaq added to the TotalView entitlement a separate data feed disseminating depth of book data in an unprocessed, order-by-order format. Also in 2005, Nasdaq added a separate data feed containing depth of book data from its Brut Facility. By 2006, Nasdaq was disseminating via TotalView, depth of book data from the Nasdaq Market Center (formerly, SuperMontage) and the Brut Facility using multiple formats and multiple data feeds.

Integrating the Brut, INET and Nasdaq Market Center systems and liquidity into a unified whole will further enhance the data available via TotalView, again with no fee increase to recipients. This integration came at significant cost to Nasdaq, as the Commission is aware:

In addition, Nasdaq endured significant cost in 2005 to acquire INET and, through the Single Book Proposal, Nasdaq seeks to use the INET platform as the basis for its Integrated System going forward in order to provide a faster and more efficient system with greater capacity. As competition increases both in the United States and globally, and with the Commission's approval of Regulation NMS, nearly all national securities exchanges are in the process of transforming their systems to better compete. Through implementation of its Single Book Proposal, Nasdaq seeks to maximize the advantages of the INET trading platform—faster executions and increased certainty (citations omitted).[17]

In assessing its Commission-approved fee for TotalView, Nasdaq is seeking to recover on a reasonable, equitable and non-discriminatory basis some of the ''significant cost'' it endured to acquire INET.

Application of the Fee

This proposal seeks to impose the Commission-approved TotalView fee to all new TotalView distributors that: (1) distributed INET ITCH 1.0 and/or INET ITCH 2.0 data feed free of charge, and (2) did not previously distribute TotalView data. Prior to completing the integration of its execution systems, Nasdaq identified 63 distributors that meet this test. Of those, 45 chose to execute TotalView distributor agreements indicating their intentions to distribute TotalView data at the prevailing TotalView fee schedule and 18 chose not to execute such agreements. Therefore, Nasdaq believes this proposal will impact 45 TotalView distributors and their customers.

Distributors that previously received either TotalView only or both TotalView and either INET ITCH 1.0 or INET ITCH

[14] NMC Approval Order, *supra* note 3 at 41301.

[15] *Id.* at 41303.

[16] Prior to the integration, the Nasdaq Market Center issued the following data: TotalView legacy, which contains depth of book data for Nasdaq stocks aggregated by price level using the format developed by Nasdaq; OrderView, which contains depth of book data for Nasdaq stock on an order-by-order basis; NQDS, which contains each market participant's best quote in Nasdaq stocks; and OpenView, which contains each market participant's best quote in NYSE and Amex stocks. Following the integration, the Nasdaq Market Center also issues the following feeds: TotalView ITCH, which contains depth of book data on an attributed and order-by-order basis for Nasdaq, NYSE, and Amex stocks on a single feed using the ITCH format that was developed by INET; a separate TotalView ITCH feed containing depth of book data on an unattributed and order-by-order basis for Nasdaq, NYSE, and Amex stocks; and another separate TotalView ITCH feed containing depth of book data aggregated by price level and attributed for Nasdaq, NYSE, and Amex stocks.

[17] NMC Approval Order, *supra* note 3 at 41302.

2.0 data (or both), would continue to pay TotalView rates at the TotalView fee schedule. For those firms this in this category who had previously provided only the INET ITCH 1.0 and/or INET ITCH 2.0 data to certain customers, and who are able to separately identify these users from those users as receiving TotalView data via the INET ITCH 1.0 and/or INET ITCH 2.0 data feed, these users also would be afforded the same period (until February 1, 2007) to begin their TotalView fee liability.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act [18] in general, and Section 6(b)(4) of the Act [19] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data, and it makes TotalView data available on a non-discriminatory basis to similarly situated recipients.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As a general matter, the Commission has long held the view that ''competition and innovation are essential to the health of the securities markets. Indeed, competition is one of the hallmarks of the national market system.'' [20] The Commission has also stated ''that the notion of competition is inextricably tied with the notion of economic efficiency, and the Act seeks to encourage market behavior that promotes such efficiency, lower costs, and better service in the interest of investors and the general public.'' [21]

The Commission goes on to state its belief ''that the appropriate analysis to determine a proposal's competitive impact is to weigh the proposal's overall benefits and costs to competition based on the particular facts involved, such as examining whether the proposal would promote economically efficient execution of securities and fair competition between and among exchange markets and other market centers, as well as fair competition between the participants of a particular market.'' [22] The current proposal is designed to increase transparency and the efficiency of executions by enabling vendors to provide additional market data in a cost efficient manner.

There is significant competition for the provision of market data to broker-dealers and other market data consumers, as well as competition for the orders that generate the data. Nasdaq fully expects its competitors to quickly respond to this proposal as they have responded to other Nasdaq data products in the past. Moreover, market forces have shaped the market data fees that Nasdaq has charged for this product in the past and will continue to shape those fees in the future. As noted above, the Commission originally approved a fee of $150 for TotalView. Nasdaq lowered that fee to $70 and $14 in response to the lack of demand by vendors and users. Furthermore, NASDAQ introduced both professional and non-professional Enterprise License pricing to accommodate firms interest in paying a fixed fee for unlimited distribution of TotalView data. Vendors simply will only utilize the service unless and until they conclude that it is economically beneficial to them and to their users.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2006–053 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–NASDAQ–2006–053. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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–NASDAQ–2006–053 and should be submitted on or before January 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–22593 Filed 1–4–07; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4).

[20] Securities Exchange Act Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001) (SR–NASD–99–53) at 8049.

[21] NMC Approval order, *supra* note 3 at 41298.

[22] *Id.*

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before February 5, 2007. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–I), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov*, fax number 202–395–7285, Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, *Jacqueline.white@sba.gov* (202–205–7044).

SUPPLEMENTARY INFORMATION:

Title: Gulf Cost Relief Financing Pilot.

Form No.: 2276 (Parts A, B, and C), 2281, 2282.

Frequency: On Occasion.

Description of Respondents: Small Businesses Devastated by Hurricanes Katrina/Rita.

Annual Responses: 250.

Annual Burden: 188.

Title: Statement of Personal History.

Form No.: 1081.

Frequency: On Occasion.

Description of Respondents: Small Business Lending Companies.

Responses: 200.

Annual Burden: 100.

Title: Application for Section 504 Loan.

Form No.: 1244.

Frequency: On Occasion.

Description of Respondents: Loan Applicants.

Annual Responses: 10,000.

Annual Burden: 10,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E6–22587 Filed 1–4–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration National Small Business Development Center (SBDC) Advisory Board will be hosting a conference call to discuss such matters that may be presented by members, and the staff of the U.S. Small Business Administration. The conference call will be held on Tuesday, January 16, 2007 at 1 p.m. Eastern Standard Time.

The purpose of the meeting is to welcome new board member, discuss internal board matters such as the status of proposed new Board members, administrative issues, the Spring Meeting agenda, the Chair's Dialogue with the State Directors' aftermath, and the marketing of the SBDC Program.

Anyone wishing to make an oral presentation to the Board must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20024–3212, telephone (202) 205–7045 or fax (202) 481–0681.

Matthew Teague,

Committee Management Officer.

[FR Doc. E6–22625 Filed 1–4–07; 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 Re-refining Used Petroleum Lubricating Oils (MIL–PRF–2104, Type 10W; Type 15W40; Type 30W; and Type 40W).

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a request for a waiver of the Nonmanufacturer Rule for Re-refining Used Petroleum Lubricating Oils (MIL–PRF–2104, Type 10W; Type 15W40; Type 30W; and Type 40W). 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 January 22, 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 INFORMATI0N 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 Re-refining Used Petroleum Lubricating Oils (MIL–PRF–2104, Type 10W; Type 15W40; Type 30W; and Type 40W). North American Industry Classification System (NAICS) code 324191.

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. E6–22624 Filed 1–4–07; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2006–0111]

Rate for Assessment on Direct Payment Fees to Representatives in 2007

AGENCY: Social Security Administration (SSA).

ACTION: Notice

SUMMARY: SSA is announcing that the assessment percentage rate under sections 206(d) and 1631(d)(2)(C) of the Social Security Act (the Act), 42 U.S.C. 406 (d), and 1383(d)(2)(C) is 6.3 percent for 2007.

FOR FURTHER INFORMATION CONTACT: Gwen Jones Kelley, Acting Associate General Counsel for Program Law, Office of the General Counsel, SSA. Phone: (410) 965–0495, e-mail *Gwen.Jones.Kelley@ssa.gov.*

SUPPLEMENTARY INFORMATION: Section 406 of Public Law No. 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, established an assessment for the services required to determine and certify payments to attorneys from the benefits due claimants under Title II of the Act. This provision is codified in section 206 of the Act (42 U.S.C. 406). That legislation set the assessment for the calendar year 2000 at 6.3 percent of the amount that would be required to be certified for direct payment to the attorney under section 206(a)(4) or 206(b)(1) before the application of the assessment. For subsequent years, the legislation requires the Commissioner of Social Security to determine the percentage rate necessary to achieve full recovery of the costs of determining and certifying fees to attorneys, but not in excess of 6.3 percent. Beginning in 2005, sections 302 and 303 of Public Law 108–203, the Social Security Protection Act of 2004 (SSPA), extended the direct payment of fees to attorneys in cases under Title XVI of the Act and to eligible non-attorney representatives in cases under Title II and/or Title XVI of the Act. Fees directly paid under these provisions are subject to the same assessment. In addition, sections 301 and 302 of the SSPA imposed a dollar cap on the amount of the assessment so that the assessment may not exceed the lesser of that dollar cap or the amount determined using the assessment percentage rate.

The Commissioner of Social Security has determined, based on the best available data, that the current rate of 6.3 percent will continue for 2007. We will continue to review our costs on a yearly basis.

Dated: December 28, 2006.

Dale W. Sopper,

Deputy Commissioner for Budget, Finance, and Management.

[FR Doc. E6–22591 Filed 1–4–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5659]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Greek and Roman Galleries''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Greek and Roman Galleries'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about April 10, 2007, until on or about April 10, 2008, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: December 20, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–22622 Filed 1–4–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5629]

Announcement of Meetings of the International Telecommunication Advisory Committee

Summary: This notice announces meetings of the International Telecommunication Advisory Committee (ITAC) to prepare advice on U.S. positions for the ITU Telecommunication Standardization Advisory Group (TSAG), and Telecommunication Development Advisory Group.

In addition to the previously announced meeting to prepare advice on U.S. positions to be taken at the March meeting of the Telecommunication Sector Advisory Group (TSAG) on January 18, 2007, the ITAC will also meet on February 1 and February 13, 2007, all meetings from 9:30–noon. Locations of these meetings may be obtained by calling the secretariat below.

The ITAC will meet to prepare advice on U.S. positions to be taken at the Telecommunication Development Advisor Group (TDAG) on January 25 and February 1, 2007 in Room 2533A of the Harry S Truman building (Main State) from 2–4 p.m. People desiring to attend these meetings should send pre-clearance information to *minardje@state.gov*. Access to the Department of State is through the doors at 2201 C Street, have picture ID and proof of citizenship available. We strongly suggest arriving at least 30 minutes before the start of the meeting.

These meetings are open to the public. Further information may be obtained from the secretariat *minardje@state.gov*, telephone 202–647–3234.

Dated: December 28, 2006.

Douglas R. Spalt,

Electronics Engineer, International Communications & Information Policy, Multilateral Affairs, Department of State.

[FR Doc. E6–22621 Filed 1–4–07; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5660]

Bureau of International Security and Nonproliferation; Imposition of Nonproliferation Measures Against Foreign Persons, Including a Ban on U.S. Government Procurement

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that twenty-four foreign persons have engaged in activities that warrant the imposition of measures pursuant to Section 3 of the Iran and Syria Nonproliferation Act, which provides for penalties on entities and individuals for the transfer to or acquisition from Iran since January 1, 1999 or the transfer to or acquisition from Syria since January 1, 2005, of equipment and technology controlled under multilateral export control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems. The latter category includes (a) items of the same kind as those on multilateral lists, but falling below the control list parameters, when it is determined that such items have the potential of making a material contribution to WMD or cruise or ballistic missile systems, (b) other items with the potential of making such a material contribution, when added through case-by-case decisions, and (c) items on U.S. national control lists for WMD/missile reasons that are not on multilateral lists.

DATES: *Effective Date:* December 28, 2006.

FOR FURTHER INFORMATION CONTACT: On general issues: Pamela K. Durham, Office of Missile Threat Reduction, Bureau of International Security and Nonproliferation, Department of State (202–647–4931). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to Sections 2 and 3 of the Iran and Syria Nonproliferation Act (Pub. L. 109–112), the U.S. Government determined on December 22, 2006 that the measures authorized in Section 3 of the Act shall apply to the following foreign persons identified in the report submitted pursuant to Section 2(a) of the Act:

China National Electronic Import-Export Company (CEIEC) (China) and any successor, sub-unit, or subsidiary thereof;

China National Aero-Technology Import and Export Company (CATIC) (China) and any successor, sub-unit, or subsidiary thereof;

Zibo Chemet Equipment Company (China) and any successor, sub-unit, or subsidiary thereof;

Defense Industries Organization (DIO) (Iran) and any successor, sub-unit, or subsidiary thereof;

Iran Electronics Industries (IEI) (Iran) and any successor, sub-unit, or subsidiary thereof;

Sanam Industrial Group (SIG) (Iran) and any successor, sub-unit, or subsidiary thereof;

NAB Export Company (Iran) and any successor, sub-unit, or subsidiary thereof;

Abu Hamadi (Iraq) and any successor, sub-unit, or subsidiary thereof;

Kal Al-Zuhiry (Iraq);

Korea Mining Development Corporation (KOMID) (North Korea) and any successor, sub-unit, or subsidiary thereof;

Target Airfreight (Malaysia) and any successor, sub-unit, or subsidiary thereof;

Aerospace Logistics Services (Mexico) and any successor, sub-unit, or subsidiary thereof;

Arif Durrani (Pakistan);

Rosoboronexport (Russia) and any successor, sub-unit, or subsidiary thereof;

Kolomna Design Bureau of Machine-Building (KBM) (Russia) and any successor, sub-unit, or subsidiary thereof;

Tula Design Bureau of Instrument Building (KBP) (Russia) and any successor, sub-unit, or subsidiary thereof;

Alexey Safonov (Russia);

Al Zarga Optical and Electronics Co. (Sudan) and any successor, sub-unit, or subsidiary thereof;

Giad Industrial Complex (Sudan) and any successor, sub-unit, or subsidiary thereof;

Yarmouk Industrial Complex (Sudan) and any successor, sub-unit, or subsidiary thereof;

Army Supply Bureau (Syria) and any successor, sub-unit, or subsidiary thereof;

Industrial Establishment of Defense (IED) (Syria) and any successor, sub-unit, or subsidiary thereof;

Ministry of Defense (Syria) and any successor, sub-unit, or subsidiary thereof; and

Scientific Studies and Research Center (SSRC) (Syria) and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to the provisions of the Act, the following measures are imposed on these entities and individuals:

1. No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods, technology, or services from these foreign persons;

2. No department or agency of the United States Government may provide any assistance to the foreign persons, and these persons shall not be eligible to participate in any assistance program of the United States Government;

3. No United States Government sales to the foreign persons of any item on the United States Munitions List (as in effect on August 8, 1995) are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and,

4. No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for two years from the effective date, except to the extent that the Secretary of State may subsequently determine otherwise. A new determination will be made in the event that circumstances change in such a manner as to warrant a change in the duration of sanctions.

Dated: December 28, 2006.

Andrew K. Semmel,

Acting Assistant Secretary of State for International Security and Nonproliferation, Department of State.

[FR Doc. E6–22630 Filed 1–4–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending December 22, 2006

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures goving proceeding to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2006–26662.

Date Filed: December 18, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC3 Japan-Korea, Expedited Resolution 002kk, (Memo 1011), *Intended effective date:* 15 January 2007.

Docket Number: OST–2006–26663.
Date Filed: December 18, 2006.
Parties: Members of the International Air Transport Association.

Subject: TC3 Within South East Asia, except between Malaysia and Guam, Expedited Resolutions, (Memo 1017), *Intended effective date:* 15 January 2007.

Docket Number: OST–2006–26664.
Date Filed: December 18, 2006.
Parties: Members of the International Air Transport Association.

Subject: TC3 South East Asia—South Asian Subcontinent, Expedited Resolution 002ma, (Memo 1018), *Intended effective date:* 15 January 2007.

Docket Number: OST–2006–26665.
Date Filed: December 18, 2006.
Parties: Members of the International Air Transport Association.

Subject: TC3 Within South West Pacific, except between French Polynesia, New Caledonia and, American Samoa, Expedited Resolutions, (Memo 1019), *Intended effective date:* 15 January 2007.

Docket Number: OST–2006–26666.
Date Filed: December 18, 2006.
Parties: Members of the International Air Transport Association.

Subject: TC3 Japan, Korea-South East Asia, except between Korea and Guam, Northern Mariana Islands, Expedited Resolution 002bb, (Memo 1020), *Intended effective date:* 15 January 2007.

Docket Number: OST–2006–26667.
Date Filed: December 18, 2006.
Parties: Members of the International Air Transport Association.

Subject: TC3 Areawide, Expedited Resolution 250m, (Memo 1021), *Intended effective date:* 15 January 2007.

Docket Number: OST–2006–26668.
Date Filed: December 18, 2006.
Parties: Members of the International Air Transport Association.

Subject: TC23 Europe-South East Asia, Expedited Resolutions, (Memo 0244), *Intended effective date:* 7 January 2007.

Docket Number: OST–2006–26699.
Date Filed: December 20, 2006.
Parties: Members of the International Air Transport Association.

Subject: Mail Vote 524—Resolution 010h, TC2 Special Passenger Amending Resolution, From Israel (IL) to Europe, (Memo 0234), *Intended effective date:* 1 January 2007.

Docket Number: OST–2006–26700.
Date Filed: December 20, 2006.
Parties: Members of the International Air Transport Association.

Subject: Mail Vote 522—Resolution 010aa, CTC COMP Special, Cargo Amending Resolution—Bulgaria and Romania, (Memo 0585), *Intended effective date:* 1 January 2007.

Docket Number: OST–2006–26701.
Date Filed: December 20, 2006.
Parties: Members of the International Air Transport Association.

Subject: Minutes: TC31/TC123 Passenger Tariff Coordinating Conference, Bangkok, 23 October–28 October 2006, TC31 North and Central Pacific Minutes, TC123 Minutes, (Memo 0398), *Agreement:* Mail Vote 523—Resolution 010g, TC31 North & Central Pacific, Special Passenger Amending Resolution, from Korea (Rep. of) to Canada, Mexico, Caribbean, (Memo 0399), *Intended effective date:* 15 January 2007.

Barbara J. Hairston,

Supervisory Docket Officer, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. E6–22608 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 22, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2006–26670.
Date Filed: December 18, 2006.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 2007.

Description: Application of Spirit Airlines, Inc. (''Spirit'') requesting an exemption and a certificate of public convenience and necessity that would authorize Spirit to engage in scheduled foreign air transportation of persons, property and mail between points in the United States, on the one hand, and St. Maarten, on the other hand.

Docket Number: OST–2006–26702.
Date Filed: December 20, 2006.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 10, 2007.

Description: Application of Flying Service N.V. requesting a foreign air carrier permit to engage in (i) charter foreign air transportation of persons and property between Belgium and the United States, either directly or via intermediate points in other countries, with or without stopovers, coextensive with the rights provided under the ''open skies'' U.S.-Belgium Air Transport Agreement, and (ii) fifth freedom charter service.

Docket Number: OST–2006–26720.
Date Filed: December 21, 2006.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 11, 2007.

Description: Application of Air Midwest Inc. requesting the Department to disclaim jurisdiction over the transfer of its operating authority to Air Midwest, LLC, a newly formed Nevada corporation.

Docket Number: OST–2006–24629.
Date Filed: December 22, 2006.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 12, 2007.

Description: Application of Yangtze River Express Airlines Co., Ltd. requesting a foreign air carrier permit to operate scheduled cargo-only air services between Shanghai, People's Republic of China and Los Angeles, CA, United States of America, via Anchorage, AK, USA (technical stop only).

Barbara J. Hairston,

Supervisory Docket Officer, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. E6–22607 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(*l*)(1). These actions relate to a proposed highway project. U.S. Route 101 Willits Bypass Project between kilo post R69.4 and R78.9 (post mile R43.1 to 49.0) in Mendocino County, State of California. These actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 5, 2007. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Maiser Khaled, Director, Project Development & Environment, Federal Highway Administration, 650 Capitol Mall, Suite 4–100, Sacramento, CA 95814, weekdays between 7 a.m. and 4 p.m., telephone 916–498–5020, *maiser.khaled@fhwa.dot.gov*. For U.S. Fish and Wildlife Service, Ray Bosch, Wildlife Biologist, Endangered Species Program, Arcata Fish and Wildlife Office, telephone 707–822–7201, *ray_bosch@fws.gov*.

For National Oceanic and Atmospheric Administration—National Marine Fisheries Service, Thomas Daugherty, Fisheries Biologist, Ukiah Office, Telephone 707–468–4057, *Tom.Daugherty@noaa.gov.* For California Department of Transportation, Jeremy Ketchum, Senior Environmental Planner, 2389 Gateway Oaks Dr., Sacramento, CA 95833, weekdays between 8 a.m. and 5 p.m., (916) 274–0621, *jeremy_ketchum@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing approvals for the following highway project in the State of California: U.S. Route 101 Willits Bypass Project between kilo post R69.4 and R78.9 (post mile R43.1 to 49.0) in Mendocino County. This project would reduce delays, improve safety, and provide at least a Level of Service C for interregional traffic on U.S. 101 in the vicinity of the City of Willits, Mendocino County, California. This would be accomplished by constructing a four-lane freeway around the city of Willits, in Mendocino County, from 0.8 mile south of the Haehl Overhead to 2.9 miles south of Reynolds Highway. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on November 25, 2006, in the Record of Decision (ROD) issued on December 18, 2006, and in other documents in the FHWA project files. The FEIS, ROD, and other project records are available by contacting the FHWA or the California Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site *http://www.dot.ca.gov/dist1/d1projects/willits/reports.htm* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Coastal Barrier Resources Act, 16 U.S.C. 3501–3510; Coastal Zone Management Act, 16 U.S.C. 1451–1465; Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; 42 U.S.C. 300(f)–300(j)(6); Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to his program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: December 28, 2006.

Gene K. Fong,

Division Administrator, Federal Highway Administration.

[FR Doc. E6–22596 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2005–23281, Notice No. 3]

Safety of Private Highway-Rail Grade Crossings; Notice of Safety Inquiry

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of safety inquiry.

SUMMARY: On July 27, 2006, the FRA published a notice announcing its intent to conduct a series of open meetings throughout the United States, in cooperation with appropriate State agencies, to consider issues related to the safety of private highway-rail grade crossings. This notice indicated that the first of these meetings would be held August 30, 2006, in Fort Snelling, Minnesota. On September 22, 2006, the FRA published a second notice, which announced that FRA had scheduled subsequent meetings, to be held on September 27, 2006, in Raleigh, North

Carolina; October 26, 2006, in San Francisco, California; and December 6, 2006, in New Orleans, Louisiana. This Notice No. 3 announces that the FRA has scheduled an additional meeting, to be held on February 15, 2007, in Syracuse, New York.

At the meeting, FRA intends to solicit oral statements from private crossing owners, railroads and other interested parties on issues related to the safety of private highway-rail grade crossings, which will include, but not be limited to, current practices concerning responsibility for safety at private grade crossings, the adequacy of warning devices at private crossings, and the relative merits of a more uniform approach to improving safety at private crossings. FRA has also opened a public docket on these issues, so that interested parties may submit written comments for public review and consideration.

DATES: The public meeting will be held in Syracuse, New York on February 15, 2007, at the Doubletree Hotel, 6301 State Route 298, Syracuse, New York, 13057, beginning at 9:30 a.m.

Persons wishing to participate are requested to provide their names, organizational affiliation and contact information to Michelle Silva, Docket Clerk, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6030). Persons needing sign language interpretation or other reasonable accommodation for disability are also encouraged to contact Ms. Silva. Additional public meetings will be announced as they are scheduled.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6299); Miriam Kloeppel, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6299); or Kathryn Shelton, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6038).

SUPPLEMENTARY INFORMATION: For additional information, please see the initial notice, published July 27 in the **Federal Register** (citation: 71 FR 42713) and available at *http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06–6501.pdf*

Request for Comments

While FRA solicits discussion and comments on all areas of safety at private highway-rail grade crossings, we particularly encourage comments on the following topics:

❑ At-grade highway-rail crossings present inherent risks to users, including the railroad and its employees, and to other persons in the vicinity should a train derail into an occupied area or release hazardous materials. When passenger trains are involved, the risks are heightened. From the standpoint of public policy, how do we determine whether creation or continuation of a private crossing is justified?

❑ Is the current assignment of responsibility for safety at private crossings effective? To what extent do risk management practices associated with insurance arrangements result in ''regulation'' of safety at private crossings?

❑ How should improvement and/or maintenance costs associated with private crossing be allocated?

❑ Is there a need for alternative dispute resolution mechanisms to handle disputes that may arise between private crossing owners and the railroads?

❑ Should the State or Federal government assume greater responsibility for safety at private crossings?

❑ Should there be Nationwide standards for warning devices at private crossings, or for intersection design of new private grade crossings?

❑ How do we determine when a private crossing has a ''public purpose'' and is subject to public use?

❑ Should some crossings be categorized as ''commercial crossings'', rather than as ''private crossings''?

❑ Are there innovative traffic control treatments that could improve safety at private crossings on major rail corridors, including those on which passenger service is provided?

❑ Should the Department of Transportation request enactment of legislation to address private crossings? If so, what should it include?

Issued in Washington, DC, on December 29, 2006.

Jo Strang,

Associate Administrator for Safety.

[FR Doc. E6–22606 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[RITA–2006–26758]

Statement Regarding a Coordinated Framework for Regulation of a Hydrogen Economy

AGENCY: Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice of inquiry and request for public comment.

SUMMARY: The purpose of this **Federal Register** notice is to inform the public of current U.S. statutes and regulations that may be applicable to a hydrogen economy and to request comments on their interface . This notice describes and indexes several statutory and regulatory provisions of each major Federal agency and discusses possible applications of these provisions to aspects of a hydrogen economy, including construction and certification of transportation/ports infrastructure, the use of fuel cells to power automobiles and generate electricity for homes and businesses, and effects on public safety and health. The notice also describes the regulatory jurisdictions of each Federal agency in the context of a hydrogen economy. In addition, public comments are invited on a Web site that was created to depict the regulatory framework of a hydrogen economy. The Web site is located at *http://hydrogen.gov/regulations.html.* Comments will be used to improve the Web site.

DATES: Comments must be received on or before March 6, 2007.

Public Participation: The Ad Hoc Committee on a Regulatory Framework for a Hydrogen Economy (Ad Hoc Committee) of the Interagency Working Group on Hydrogen and Fuel Cells (IWG), which is part of the Executive Office of the President's National Science and Technology Council (NSTC), is seeking comments and advice from individuals, public interest groups, industry and academia on this statement regarding the framework for regulation of a hydrogen economy.

The Ad Hoc Committee members include the Office of Science and Technology Policy (OSTP), Department of State (DOS), U.S. Department of Transportation (DOT) (including the Federal Aviation Administration (FAA), Federal Highways Administration (FHWA), Federal Railroad Administration (FRA), National Highway Traffic Safety Administration (NHTSA), Federal Transit Administration (FTA), the Maritime Administration (MARAD), Federal Motor Carrier Administration (FMCSA), Pipeline and Hazardous Materials Safety Administration (PHMSA) and Research and Innovative Technology Administration (RITA)), Department of Agriculture (USDA), Department of Labor's (DOL's) Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA), National Aeronautics and Space Administration (NASA) and Federal

Energy Regulatory Commission (FERC). It is the intent of the Ad Hoc Committee that comments be received in a common docket. Thereafter, participating agencies with relevant statutory authority may review the comments or the comments may be read and considered by the Ad Hoc Committee.

ADDRESSES: If you wish to file comments using the Internet, you may use the DOT DMS Web site at *http://dms.dot.gov.* Please follow the online instructions for submitting an electronic comment. You can also review comments on-line at the DMS Web site at *http://dms.dot.gov.*

Please note that anyone is able to electronically search all comments received into our docket management system 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 review the Privacy Act Statement at *http://dms.dot.gov.*

You can also mail or hand-deliver comments to the U.S. Department of Transportation (DOT), Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, Docket No. RITA–2006–26758, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001. Comments should identify the docket number; paper comments should be submitted in duplicate. Do not submit information that you consider to be proprietary or confidential business information to the Docket. Instead, send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket RITA–2006–26758.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: William Chernicoff, Office of Research, Development and Technology, Research and Innovative Technology Administration, Department of Transportation, Room 2440, 400 Seventh Street, SW., Washington, DC 20590 or *hydrogenregs@dot.gov* or 202–366–4999 or 800–853–1351.

SUPPLEMENTARY INORMATION:

Table of Contents

1.0 Introduction
2.0 Regulatory Matrix
3.0 Statements of Agency/Department Regulations Applicable to a Hydrogen Economy
 3.1 U. S. Department of Labor/Occupational Safety and Health Administration (OSHA)
 3.2 U.S. DOT/Federal Aviation Administration (FAA)
 3.3 U.S. DOT/Federal Railroad Administration (FRA)
 3.4 U.S. DOT/National Highway Transportation Safety Administration (NHTSA)
 3.5 U.S. DOT/Federal Motor Carriers Safety Administration (FMCSA)
 3.6 U.S. DOT/Pipeline and Hazardous Materials Safety Administration (PHMSA)
 3.7 Environmental Protection Agency (EPA)
 3.8 Federal Energy Regulatory Commission (FERC)
 3.9 U.S. Coast Guard (USCG)
4.0 Statement of Consensus Regulatory Statements in Specific Areas
 4.1 Hydrogen Transportation and Port Regulatory Framework
 4.2 Hydrogen Vehicle Regulatory Framework
 4.3 Hydrogen Stationary Fuel Cells Regulatory Framework
5.0 General Comments on State and Local Jurisdiction

1.0 Introduction

As a result of the promise of hydrogen as a clean and renewable energy resource, the Hydrogen Fuel Initiative was launched shortly after the President's 2003 State of the Union address.

> ''With a new national commitment * * * the first car driven by a child born today could be powered by hydrogen, and pollution-free. Join me in this important innovation to make our air significantly cleaner, and our country much less dependent on foreign sources of energy.''

Section 806 of the Energy Policy Act of 2005 (EPAct) (Pub. L. 109–58) directs the establishment of a Hydrogen and Fuel Cell Technical Task Force, which is to include representatives from OSTP, DOT, DOD, DOC (including NIST), DOS, EPA, NASA and any other federal agencies as the Secretary of Energy determines appropriate. The NSTC IWG, which is co-chaired by DOE and OSTP, carries out the duties specified in EPAct Section 806. Sec. 806(b)(1)(D)–(E) calls for the Task Force to work toward ''uniform hydrogen codes, standards and safety protocols;'' and ''vehicle hydrogen fuel system integrity safety performance.'' Therefore, the IWG has created the Ad Hoc Committee to examine existing authorities related to these issues in order to minimize uncertainties and inefficiencies in the commercial sector that can stifle innovation and impair the competitiveness of U.S. industry. Members of the Ad Hoc Committee were from the chief legal office of each participating agency or department, paired with a technical representative from the same agency or department. This arrangement represents a new model for examining the current regulatory framework at the same time that the emerging technology is being researched and developed.

The Ad Hoc Committee is chaired by the Chief Counsel of the Research and Innovative Technology Administration (RITA) of the U.S. Department of Transportation. The Committee includes representation from the Department of Transportation (DOT) which includes air (Federal Aviation Administration), motor vehicles, e.g., cars, trucks and buses (National Highway Traffic Safety Administration), motor carriers (Federal Motor Carriers Safety Administration), rail (Federal Rail Administration), mass transit systems (Federal Transit Administration) and pipelines (Pipeline and Hazardous Materials Safety Administration); and the Department of State (DOS), U.S. Department of Agriculture (USDA), the United States Coast Guard (USCG), the National Aeronautics and Space Administration (NASA), the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA) and the Federal Energy Regulatory Commission staff (FERC). The Ad Hoc Committee met on March 9, May 11, May 25, June 5, June 22, July 13 and July 20, 2006.

The purpose of the Ad Hoc Committee is to identify existing regulatory and statutory authorities and the lead agency (or instances in which shared authorities exist) that will govern these hydrogen technologies and

applications as they move from development into the marketplace, focusing specifically on issues of safety, economic utility, and environmental soundness. In so doing, the Ad Hoc committee recognizes the value in consistent and comprehensive communications about the regulatory framework for a hydrogen economy between government, industry, and academia.

2.0 Regulatory Matrix

BILLING CODE 4810–HY–P

AREA OF REGULATION	DOT							EPA	USCG	OSHA	NIST	USDA	FERC	OTHER-NON FEDERAL			
	NHTSA	FMCSA	PHMSA	FAA	FRA	MARAD	FTA	EPA	Coast Guard	OSHA	NIST	USDA	FERC	State Fire Marshal	Local Fire Marshal	Port-Tunnel Authority	State (Police or other)
Light-duty Vehicle	X							X									X
Commercial Truck	X	X						X									X
Commercial Truck-HAZMAT	X	X	X					X									X
Bus	X	X						X									X
Transit Bus	X						X	X									
Passenger Rail					X			X									
Freight Rail			X		X			X									
Passenger Plane				X				X									
Cargo Plane			X	X				X									
Marine Vessel - Cargo			X					X	X								
Marine Vessel - Passenger								X	X								
Pipeline			X											X			
Bridge																X	
Tunnel																X	
Portable Fuel Container			X							X							
Stationary Fuel Cell										X				X	X		X
Private stationary fuel cell														X	X		
Fueling Station								X		X	X			X	X		
High V Power Line										X			X				
Hydrogen Plant								X		X				X	X		
Safety Training for Operators State Fire Marshal Training		X	X	X	X	X	X			X				X			

3.0 Statements of Agency/Department Regulations Applicable to a Hydrogen Economy

3.1 U. S. Department of Labor/ Occupational Safety and Health Administration (OSHA)

The Occupational Safety Health Administration's (OSHA's) mission is to assure the safety and health of America's workers by setting and enforcing standards; providing training, outreach, and education; establishing partnerships; and encouraging continual improvement in workplace safety and health. OSHA receives its authority to fulfill this mission through the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, et seq. OSHA standards are contained in 29 CFR part 1910 for General Industry, in part 1926 for Construction Industry, and in parts 1915, 1917, and 1918 for Maritime Industry. In the absence of specific OSHA standards, employers are obligated under Section 5(a)(1)—''the General Duty Clause'' of the OSHA Act to protect employees from serious recognized hazards.

Note: OSHA standards apply to private sector employers, and to agencies of the United States Government. OSHA standards do not apply to particular working conditions for which other federal agencies have issued worker safety or health regulations. States and their political subdivisions are required to comply with OSHA standards only in the 26 states and territories that administer OSHA-approved state plans.

This **Federal Register** notice is limited to providing information on OSHA standards which may be applicable to, or might be considered useful sources for information pertaining to, hazards related to workplace use of hydrogen. The worksites involving hydrogen operations may contain additional occupational hazards which may be covered by other OSHA standards. The omission of such standards from this **Federal Register** notice in no way limits their applicability.

The following standards, as noted above, may be applicable to, or might be considered useful sources for information pertaining to hazards related to workplace use of hydrogen:

29 CFR 1910.38, Emergency action plans, specifies the required content of an emergency action plan when an emergency action plan is required by another standard.

29 CFR 1910.101, Compressed gases (general requirements), contains requirements for compressed gases in containers including cylinders, portable tanks, rail tankcars, or motor vehicle cargo tanks. The inspection requirements of compressed gas cylinders are contained under 1910.101(a); the in-plant handling, storage, and utilization of all compressed gases in cylinders, portable tanks, rail tankcars, or motor vehicle cargo tanks under paragraph (b); and the safety relief device requirements for compressed gas containers in paragraph 1910.101(c).

29 CFR 1910.103, Hydrogen, contains requirements for hydrogen systems. Paragraph (b) of this section applies to gaseous hydrogen systems on consumer premises where the hydrogen supply originates outside the consumer premises and is delivered by mobile equipment. It does not apply to gaseous hydrogen systems having a total hydrogen content of less than 400 cubic feet, nor to hydrogen manufacturing plants or other establishments operated by the hydrogen supplier or his agent for the purpose of storing hydrogen and refilling portable containers, trailers, mobile supply trucks, or tank cars.

Paragraph (c) under § 1910.103 applies to liquefied hydrogen systems on consumer premises. The standard excludes liquefied hydrogen portable containers of less than 150 liters (39.63 gallons) capacity and liquefied hydrogen manufacturing plants or other establishments operated by the hydrogen supplier or his agent for the sole purpose of storing liquefied hydrogen and refilling portable containers, trailers, mobile supply trucks, or tank cars.

29 CFR 1910.119, Process safety management of highly hazardous chemicals, covers processes containing a threshold quantity of a highly hazardous chemical. A process is defined as ''* * * any activity involving a highly hazardous chemical including any use, storage, manufacturing, handling or on-site movement of such chemicals, or combination of these activities.'' The standard applies to flammable liquids and gases at a threshold quantity of 10,000 pounds or more, specified quantities of chemicals listed in Appendix A of the standard, and to the manufacture of explosives. Because hydrogen would be covered as a flammable gas, the PSM standard would apply to processes containing hydrogen in quantities of 10,000 pounds or more, with some exceptions.

29 CFR 1910.120, Hazardous waste operations and emergency response, contains requirements for emergency response operations. When there is more than an incidental release of hydrogen, or a substantial threat of a release, then emergency response operations must comply with § 1910.120(q)., ''Emergency response to hazardous substance releases.''

29 CFR 1910.132(a), Personal protective equipment, requires that protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever necessary.

29 CFR 1910.156, Fire brigades, contains requirements for the organization, training, and personal protective equipment of fire brigades whenever they are established by an employer. The requirements under 1910.156 apply to fire brigades, industrial fire departments and private or contractual type fire departments. Personal protective equipment requirements contained in this section apply only to members of fire brigades performing interior structural fire fighting.

29 CFR 1910.307, Hazardous (Classified) locations, contains requirements for electrical installations in hazardous locations. Locations where flammable concentrations of hydrogen may exist under normal or abnormal conditions may be classified as Class I, Division 1 or 2 locations. Electric equipment in these locations must be: (1) Approved as intrinsically safe for locations, (2) approved for installation in locations classified due to the presence of hydrogen, or (3) of a type and design which the employer demonstrates will provide protection from the hazards arising from the combustibility and flammability of hydrogen.

29 CFR 1910.1200, Hazard communication requires that hazards associated with hydrogen must be conveyed to employees. In addition, the standard requires that the information be transmitted through a comprehensive hazard communication program, including, but not limited to, container labeling, material safety data sheets, and employee training on the hazards associated with handling hydrogen.

3.2 U.S. DOT/ Federal Aviation Administration (FAA)

I. Statutory Authority Safety Regulation; General Requirements (49 U.S.C. 44701(a)(5))

The Federal Aviation Administration has the statutory authority to regulate hydrogen under its safety regulations. The Administrator is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices

and methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

II. Current Regulatory Framework

FAA regulations directly impact the use of hydrogen in 14 CFR part 420, License to Operate a Launch Site. This part applies to any person seeking a license to operate a launch site or to a person licensed to operate a launch site for rockets. The FAA included these safety regulations to the keep public a safe distance from the storage and handling of liquid hydrogen, used as rocket fuel (14 CFR 420.67, 420.69 and Part 420 Appendix E).

The FAA regulates the use of hydrogen in airships. For instance, 14 CFR 21.1(b) governs the airworthiness of airships. It points an applicant seeking an airworthiness certificate for an airship to various other aircraft certification provisions. The FAA also published an advisory circular, AC 21.17–1A, which advises that hydrogen is not an acceptable lifting gas for use in airships.

The FAA also regulates hydrogen, if it is used in a manned free balloon. For example, airworthiness standards for manned free balloons appear in 14 CFR part 31, with mention of lighter than-air gas in 14 CFR 31.1(c)(1).

There is nothing in the FAA regulations that would explicitly prohibit the use of new technologies utilizing hydrogen. However, many FAA regulations in parts 21, 23, 25, 27, 29, 31, 33, 34 and 36 provide aircraft and aircraft part certification requirements. To the extent an applicant were to seek approval of an aircraft that utilizes hydrogen, as a fuel or in some other way, the applicant would have to comply with the applicable aircraft certificate requirements, just like any other applicant. Likewise, an operator of an aircraft with new technologies using hydrogen would have to comply with operational requirements in parts 91, 119, 121, 125, or 135, just like any other operator.

The FAA currently has not received funding to conduct research on the use of hydrogen as an alternative fuel for aircraft.

3.3 U.S. DOT/ Federal Railroad Administration (FRA)

FRA has broad statutory authority to regulate all areas of railroad safety. *See* 49 U.S.C. 20101 et seq. Pursuant to its statutory authority, FRA promulgates and enforces a comprehensive regulatory program that addresses the three major elements of the railroad system: the rolling equipment, the track and signal system over which the rolling equipment operates, and the rules for conducting such operations. *See e.g.*, 49 CFR parts 209–236. FRA is also responsible for enforcing the hazardous materials regulations (HMR) promulgated by PHMSA (49 CFR parts 171–180). The HMR classify hydrogen, in its various forms, as a hazardous material, and specifically as a flammable gas. *See* 49 CFR 172.101 (column 3 of Hazardous Materials Table). Accordingly, the transportation of hydrogen would be subject to the packaging and hazard communication requirements of the HMR. Specific to the transportation of hydrogen by rail, Part 174 of the HMR contains general operating, handling, loading, and unloading requirements specific to the rail transportation of hazardous materials and detailed requirements for the handling and transportation of flammable gases such as hydrogen. *See* 49 CFR 174.200–174.204 for provisions specific to flammable gases. Although under the HMR, hydrogen may be transported as a compressed gas or a cryogenic liquid (*see* 49 CFR 172.101, 173.302, .304, .314, .316, .318, and .319), as a practical matter, because of cost considerations and the limited number of specialized rail tank cars capable of safely transporting hydrogen in its gaseous form, most hydrogen transported by rail would have to be in a cryogenic liquid form. *See* 49 CFR 173.314(c) and 173.319 (authorizing DOT class 107 tank cars for transportation of hydrogen as a compressed gas and DOT class 113 tank cars for transportation of hydrogen as a cryogenic liquid).

3.4 U.S. DOT/National Highway Traffic Safety Administration (NHTSA)

Motor Vehicle Safety: Research, Standards and Compliance; Defects, Recall, and Enforcement (49 U.S.C. 30101 *et seq.*, 49 CFR 501–596)

NHTSA has the authority to regulate the safety of all motor vehicles (e.g., passenger vehicles, multipurpose passenger vehicles, trucks and buses), and to that end, conducts basic research, develops and issues motor vehicle safety standards and regulations, issues interpretations of and exemptions to the standards based on technical knowledge, enforces compliance with the standards, makes determinations regarding safety related defects in vehicles and equipment, and mandates safety recalls of non-compliant and defective vehicles and equipment.

- NHTSA currently regulates fuel system integrity of vehicles, including gasoline, diesel, compressed natural gas (CNG) and electric powered vehicles (Federal Motor Vehicle Safety Standards 301, 303, 304 and 305). The existing standards ensure safety either by simply regulating full vehicle crash performance or in the case of CNG vehicles, by also regulating the safety of components and on-board fuel storage systems. NHTSA enforces compliance with these standards and conducts safety defects investigations on fuel leaks and fires.
- NHTSA has established an agencywide hydrogen project team to (1) study existing technologies in coordination with other agencies of the U.S. government and industry, and (2) devise a plan of action identifying the research and testing needed to establish a performance oriented safety standard that does not limit innovation or slow down the development of and marketing of hydrogen vehicles. Vehicles fueled by gasoline or diesel fuel are currently subject to performance requirements based on crash testing. It is important that occupants of hydrogen vehicles are provided with a level of safety comparable to that provided for occupants of vehicles fueled by gasoline or diesel fuel. Such a standard will, among other things, help build consumer confidence in the technology. For details about NHTSA's four year research plan, see *http://www-nrd.nhtsa.dot.gov/departments/nrd-11/H2-4yr-plan.pdf*.
- The team is focusing on component performance testing for leak prevention and detection and safety effectiveness for powertrain, tanks, regulator valves, and connecting lines. In addition, the team is evaluating how to test the performance of these vehicles in a crash in order to limit fire exposure and prevent catastrophic events.
- In the international arena, NHTSA leads the United States delegation to the United Nations Economic Commission for Europe (UN/ECE) World Forum for the Harmonization of Vehicle Regulations (WP.29). In that forum, NHTSA represents the U.S. on issues related to the safety of all types of vehicle fuel systems. NHTSA identifies best practices and seeks to harmonize its regulations with foreign regulations in order to improve safety and reduce costs.
- In the area of hydrogen-powered vehicles, NHTSA has been representing the U.S. in a WP.29 Working Group on Hydrogen since 2002. The purpose of the group is to develop a global technical regulation for hydrogen-powered vehicles under the 1998 Global Agreement. NHTSA is promoting the development of a performance standard for hydrogen vehicles, which is science-based and data driven.

• NHTSA, along with counterparts in Germany and Japan are currently leading this effort under WP.29. To facilitate and guide the process of developing such a GTR, NHTSA is working with the co-sponsors, Germany and Japan, to develop a work plan that can be accepted by all signatories to the 1998 Agreement for the Harmonization of Vehicle Regulations.

• NHTSA expects consideration and adoption of the work plan at the March 2007 session. Work on development of the GTR should commence shortly thereafter.

Consumer Information (49 U.S.C. 32301 *et seq.*); and *Fuel Economy* (49 U.S.C. 32901 *et seq.*; 49 CFR 523–538)

• NHTSA generates and provides consumer information to the public regarding the crashworthiness and other safety characteristics of vehicles in order to assist consumers in making sound decisions regarding the purchase of safe vehicles.

• NHTSA has the authority to regulate fuel economy of hydrogen-powered vehicles. Hydrogen is an alternative fuel for the purposes of the Corporate Average Fuel Economy (CAFE) program. Vehicles that use hydrogen as their only source of fuel (dedicated vehicles) or can alternately use hydrogen and petroleum fuel (dual-fuel vehicles) qualify for special calculation of their fuel economy performance under regulations administered by NHTSA. These special calculation procedures provide manufacturers with powerful incentives to develop and produce these vehicles, which could contribute to our efforts to reduce our dependence on foreign energy supply.

3.5 U.S. DOT/Federal Motor Carriers Safety Administration (FMCSA)

There are certain citations and regulatory authorities FMCSA believes are applicable in various uses of hydrogen. They are as follows:

49 U.S.C. 5121—General Authority.—To carry out this chapter, the Secretary of Transportation may investigate, make reports, issue subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities. After notice and an opportunity for a hearing, the Secretary may issue an order requiring compliance with this chapter or a regulation prescribed under this chapter.

For example, hydrogen is a flammable gas that may be transported by a motor carrier and there are regulations that govern the safe transportation of hydrogen. Under this statutory authority, FMCSA has the ability to enforce the hazardous materials regulations and cite shippers and carriers of hazardous materials.

49 U.S.C. 31136 and 31502(b)—Minimum Safety Standards.—Subject to section 30103(a) of this title, the Secretary of Transportation shall 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. 31502(b).—Requirements for qualifications, hours of service, safety, and *equipment standards*

(b) Motor Carrier and Private Motor Carrier Requirements.—The Secretary of Transportation may prescribe requirements for—

(1) Qualifications and maximum hours of service of employees of, and *safety of operation and equipment* of, a motor carrier; and

(2) Qualifications and maximum hours of service of employees of, and *standards of equipment* of, a motor private carrier, when needed to promote safety of operation.

For example, if a commercial motor vehicle will use hydrogen as a fuel source, the specific regulations regarding fuel systems of a commercial motor vehicle are found in 49 CFR subpart E.

3.6 U.S. DOT/Pipeline and Hazardous Materials Safety Administration (PHMSA)

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is the Federal agency charged with the safe and secure movement of hazardous materials to industry and consumers by all transportation modes, including the nation's pipelines.

Pipeline Safety

PHMSA is responsible for prescribing and enforcing regulations to promote the safety of interstate and intrastate pipelines transporting hazardous liquids, natural gas, and other flammable, corrosive and toxic gases. PHMSA regulates pipeline safety pursuant to the Federal Pipeline Safety Law, codified in 49 U.S.C. 60101, *et seq.* and implementing regulations, Pipeline Safety Regulations (PSR), 49 CFR parts 190–199.

Part 192 of the PSR regulates the transportation of natural gas and other gases in pipelines, including hydrogen, which is transported as a compressed flammable gas. Section 192.3 defines the ''transportation of gas'' as the ''gathering, transmission, or distribution of gas by pipeline or the storage of gas in, or affecting interstate or foreign commerce.'' States may enforce safety standards on intrastate pipelines if the State has been certified by PHMSA under 49 U.S.C. 60105.

Hazardous Materials Safety

PHMSA also prescribes the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180, implementing the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101 *et seq.*, to promote the safe transportation of hazardous materials in commerce. PHMSA shares authority for enforcement of the HMR with the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, and the U.S. Coast Guard.

In addition to packaging and hazard communication requirements, the HMR prescribe requirements for training employees, registration and security plans. Hydrogen, a hazardous material, is classified as a flammable gas in the Hazardous Materials Table (49 CFR 172.101) and is subject to all applicable requirements in the HMR, including packaging and hazard communication requirements. Hydrogen may be transported as a compressed gas in cylinders or as a cryogenic liquid in portable tanks, cargo tank motor vehicles, or rail tank cars.

3.7 Environmental Protection Agency (EPA)

Solid Waste

1. Fuel cell production and hydrogen fuel production may use toxic or hazardous process inputs and process catalysts, and may produce solid waste streams that require management under RCRA.

2. End-of-life disposal of fuel cells and fuel cell-powered vehicles will require effective management of hazardous materials, and may produce significant quantities of these materials. Hazardous materials found in existing

fuel cells include corrosive electrolytes, flouride-containing plastics, and heavy metal catalysts.

3. Hydrogen fuel production, distribution, and storage operations required to support the hydrogen economy (stationary and portable fuel cell applications) may present risks associated with accidental releases or spills of hazardous and explosive materials.

Authority	Rule	Category	Regulation
42 U.S.C. 6921	40 CFR Part 261.	Waste	Identification and Listing of Hazardous Waste.
42 U.S.C. 6922	40 CFR Part 262.	Waste	Standards Applicable to Generators of Hazardous Waste.
42 U.S.C. 6924	40 CFR Part 264.	Waste	Standards For Owners and Operators of Treatment, Storage and Disposal Facilities.

CERCLA/EPCRA—Reportable Quantities (RQs)

1. By definition, any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (42 USCA § 6921) is a CERCLA ''hazardous substance.'' (see CERCLA § 101(14)(C))

2. Reportable Quantity (RQ) is that quantity of a hazardous substance, the release of which requires notification to the National Response Center. Reportable Quantities are established by regulation and the levels are based on an evaluation of the intrinsic physical, chemical, and toxicological properties of each substance. Upon proposal to list under RCRA (above), the RQ will be proposed for CERCLA and EPCRA notification requirements.

3. CERCLA adopts the same definition for the purposes of the notification requirements as its ''source'' statute (in this case section 3001 of SWDA). EPCRA uses the CERCLA hazardous substance list for its emergency reporting.

Authority	Rule	Category	Regulation
42 U.S.C. 9602, 9603 and 9604; 33 U.S.C. 1321 and 1361.	CERCLA—40 CFR Part 302.	Waste/Hazardous Substance	Identification and Listing of Hazardous Waste.
42 U.S.C. 9604, 9605; 33 U.S.C. 1321 and 1361.	CERCLA—40 CFR Part 300.	Waste/Hazardous Substance	National Oil and Hazardous Substances Pollution Contingency Plan (NCP).
42 U.S.C. 11002, 11004, and 11048.	EPCRA—40 CFR Part 355	Waste/Hazardous Substance	Emergency Planning and Notification.

Mobile Sources

The role of EPA with regard to vehicle regulations is multiple. The EPA establishes emission standards for vehicles, regulates fuels and fuel additives, specifies the procedures for testing and certification, conducts basic research, provides guidance to the state programs, and performs compliance enforcement. The table below lists regulations that are, or may be, applicable to a hydrogen economy. Both exhaust and evaporative emissions that result from the conversion or combustion of hydrogen-based fuels (e.g. fuel cells, H_2 internal combustion engine) are areas that would require management under the CAA.

Authority	Rule	Category	Regulation
42 U.S.C. 7521–7554 and 7601	40 CFR Parts 85 and 86	Passenger vehicles and light-duty trucks and heavy-duty highway engines (trucks and buses).	Control of Air Pollution from New and In-Use Motor Vehicles and Engines.
42 U.S.C. 7521–7554 and 7601	40 CFR Parts 85, 89–92, 94, 1048, 1051, 1065, 1068.	Nonroad engines and vehicles, including locomotives and marine engines.	Control of Emissions from New and In-Use Nonroad Engines.
42 U.S.C. 7571–7574 and 7601	40 CFR Part 87	Aircraft engines	Control of Air Pollution From Aircraft and Aircraft Engines; Emission Standards and Test Procedures.
42 U.S.C. 7581–7590 and 7601	40 CFR Part 88	Clean Fuel Vehicles	Emission Standards for Clean-Fuel Vehicles.
42 U.S.C. 7545 and 7601	40 CFR Part 80	Fuels Used in Mobile Sources	Regulations of Fuels and Fuel Additives.
15 U.S.C. 2001–2006, and 2013	40 CFR Part 600	Fuel Economy	Fuel Economy Regulations.

Note: EPA performed fuel economy tests on hydrogen fuel cell vehicles in November 2002 and again in September 2003. The results of EPA's preliminary efforts have been documented.[1] Currently, the EPA is also participating with the Society of Automotive Engineers on developing SAE J2572: Recommended Practice for Measuring the Fuel Consumption and Range of Fuel Cell Powered Electric Vehicles Using Compressed Gaseous Hydrogen. It would be the intent of SAE J2572 to provide standardized tests that allow for determination of fuel consumption and range based on the Federal Emission Test Procedure. The SAE practice would be expected to cover fuel cell powered vehicles which use compressed hydrogen gas onboard.

[1] C. Paulina, Hydrogen fuel cell vehicle fuel economy testing at the U.S. EPA National Vehicle and Fuel Emissions Laboratory, Society of Automotive Engineers, Powertrain & Fluid Systems Conference and Exhibition, 01–2900, 2004; and E.W. Lemmon, M.L. Huber, D.G. Friend, and C. Paulina, Standardized Equation for Hydrogen Gas Densities for Fuel Consumption Applications, National Institute of Standards and Technology, 01–0434, 2006.

Stationary Sources

The number of stationary power applications using hydrogen as a fuel is expected to grow in the future. For example, potential hydrogen fuel cell applications include both distributed and baseload power generation, utility and residential power sources, auxiliary or emergency power generation, and off-grid power supplies. Such facilities, as well as facilities that produce hydrogen (e.g. regeneration of natural gas or coal to hydrogen) may be covered by EPA rules under the Clean Air Act. The following are a list of certain regulations that may be applicable to hydrogen-related applications. Other regulations may also apply.

Authority	Rule	Category	Regulation
42 U.S.C. 7412	40 CFR part 63	Boilers and Heater Emission Standards (Boiler MACT).	National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.
		Combustion Turbines (Turbine MACT).	National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.
		Internal Combustion Engines (Engine MACT).	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.
42 U.S.C. 7411	40 CFR part 60	Steam Generating Units (Boiler NSPS).	Standards of Performance for Steam Generating Units.
		Combustion Turbines (Turbine NSPS).	Standards of Performance for Stationary Combustion Turbines.
		Internal Combustion Engines (Engine NSPS).	Standards of Performance for Stationary Spark-Ignited and Compression Ignition Internal Combustion Engines.
42 U.S.C. 7470—7479	40 CFR 52.21 40 CFR 51.166	New Source Review: Major Stationary Sources in Attainment Area.	Prevention of significant deterioration of air quality—Covers the construction of new major stationary sources or any project to an existing source.
	40 CFR 51.165	New Source Review: Major Stationary Sources in Non-attainment Area.	Permit Requirements.
	40 CFR part 51 subpart I	New Source Review: Minor Stationary Sources.	Review of New Sources and Modifications.

3.8 Federal Energy Regulatory Commission (FERC)

Electricity Jurisdiction

The rates, terms, and conditions applicable to the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale (i.e., for resale) in interstate commerce by public utilities are subject to FERC's authority pursuant to Parts II and III of the Federal Power Act (FPA), 16 U.S.C. 824 et seq. Part II of the FPA is neutral as to the type of fuel used to generate electricity.

Natural Gas Jurisdiction

Under Congressional authorization in the Natural Gas Act of 1938, FERC regulates the transportation and storage of natural gas in interstate commerce and the construction and operation of pipeline facilities that a natural gas company uses to transport natural gas in interstate commerce (15 U.S.C. 717, et seq.; 18 CFR 157.1–157.22 and 18 CFR 157.201–157.218). FERC does not have jurisdiction over the transportation of hydrogen in interstate commerce or over the construction of facilities related to hydrogen transportation (i.e., pipeline, compression, import/export).

3.9 State and Local Utility Regulations

States are developing programs to promote the hydrogen economy, e.g., Florida's One-Stop Uniform Hydrogen Siting Program and California's 2010 Hydrogen Highway Network for fueling stations and the use of hydrogen as a transportation fuel. Under California's Highway Network, an energy station would be classified as distributed generation if the energy station's electrical power is not consumed solely on site and is interconnected to the grid.

3.9 U.S. Coast Guard (USCG)

Summary of U.S. Coast Guard Jurisdiction on Hydrogen (H2) Issues

The Coast Guard (CG), based on current practice and regulatory authority, would have two roles relating to transportation of H2. One concerns the licensing and operation of hypothetical H2 deepwater ports, and the second concerns safety standard setting and enforcement authority for vessels that might carry H2 as bulk cargo, such as hypothetical H2 tank vessels.

The first role would arise only if there develops a need to ship hydrogen to the U.S. in vessels that would offload the cargo at deepwater ports, as is currently being done with liquefied natural gas. Assuming Congress amends the Deepwater Ports Act to encompass H2, the CG's Deepwater Ports Standards Division would likely be responsible for developing and maintaining regulations and standards for H2 deepwater ports and for assisting the Maritime Administration in processing H2 deepwater port license applications. The CG's regulations for deepwater ports in 33 Code of Federal Regulations Subchapter NN are based on delegated authority, and contain design, construction, equipment, and operational requirements for deepwater ports. The CG also manages the development of Environmental Impact Statements for deepwater port license approval. The CG coordinates interagency review of and public comment on license applications, and develops guidance for oversight of post-licensing activities associated with the development of deepwater ports, including the design, construction, and activation phases, environmental monitoring programs, operational procedures, risk assessments, security plans, safety and inspections.

In its second role, the Coast Guard has regulatory authority to ensure safe design and operation of vessels that could carry hydrogen. This authority derives from 46 U.S.C. 3703 and 33 U.S.C. 1903(b). The CG has determined

that hydrogen is hazardous when transported in bulk by vessel, either in gaseous or liquid form. The relevant regulations are in 46 CFR Subchapter O, Certain Dangerous Bulk Cargoes, and specify cargo compatibility and aspects of vessel design, construction, materials, and operations. Which particular standards would apply depend on the form in which the hydrogen is transported (compressed gas or liquefied), and what kind of vessel is being employed. To enhance transportation safety, hydrogen is most likely to be transported as a metallic hydride, adsorbed onto metal particles. Assuming the metal particles would be a hazardous bulk solid, they would be regulated under CG regulations in 46 CFR Part 148, Carriage of Solid Hazardous Materials in Bulk.

Although these regulations have some special provisions for transporting certain gases, there are currently no requirements specifically for hydrogen. Should the need for marine transportation of hydrogen materialize, these regulations would need to be modified to include special hydrogen requirements, due to hydrogen's metal embrittlement properties. Absent such modifications, 46 CFR 150.140 would prohibit the bulk transportation by vessel of hydrogen, without special permission from the CG Commandant. The shipment of unlisted hazardous bulk solids (metallic hydride) would also require express permission of the Commandant.

4.0 Statement of Consensus Regulatory Statements in Specific Areas

4.1 Hydrogen Transportation and Port Regulatory Framework

Agency Jurisdictional Consensus Statement for Hydrogen Transportation*

A transition from America's current hydrocarbon-based energy economy to a hydrogen economy will require a suitable water and land-based transportation infrastructure. In the future, cryogenic hydrogen-carrying vessels powered by fuel cells may be able to unload their shipments of liquid hydrogen at ports located in Federal (so-called ''deepwater ports'') and state waters or at land-based terminals. Currently, pipelines (interstate and intrastate) transport hydrogen gas to specialized industrial markets. Hydrogen is also currently transported to industrial customers in cylinders, portable tanks, cargo tank motor vehicles, or rail tank cars.

For the hydrogen economy to develop, hydrogen must either be shipped to market-area fuel cells to generate electricity for near-by users or be used to power supply-area fuel cells to generate electricity for market areas. A hydrogen economy will require reliable and safe interconnections between distributed generators using hydrogen fuel cells and electric utilities, as well as between electric utilities, to allow for the delivery of hydrogen-generated electricity for retail consumption.

The statement includes regulatory analyses by the members of the Hydrogen Port Subcommittee and is not a statement of policy of the participating federal agencies.

This consensus statement identifies the respective current authorities, if any, of the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Maritime Administration (MARAD) of the U.S. Department of Transportation (DOT), the Federal Energy Regulatory Commission (FERC), and the U.S. Coast Guard, Department of Homeland Security (CG) with respect to the transportation of hydrogen. The statement also includes the authority of the Minerals Management Service (MMS) of the U.S. Department of the Interior on the issue of storage and withdrawal of sequestered carbon dioxide. Certain jurisdictional responsibilities of the various agencies as to hydrogen are clearly set forth in statutes and regulations.

The consensus statement concludes: (1) Currently no Federal agency has the statutory authority to approve the construction or siting of interstate hydrogen pipelines or hydrogen deepwater ports; (2) PHMSA and CG currently have regulations in place regulating the transportation of hydrogen as a hazardous material; and (3) MARAD has the authority to provide loan guarantees for hydrogen-carrying vessels.

The statement recognizes that the Surface Transportation Board (STB), the Federal economic regulator of railroads, also regulates economic aspects of interstate hydrogen pipelines. The STB provides limited regulation of the transportation rates and common carrier terms of service of such pipelines. Under the STB's hydrogen pipeline authority, hydrogen pipeline rates must be just and reasonable, but the STB may not on its own initiative investigate and alter rates charged by a hydrogen pipeline and has no authority over hydrogen pipeline construction.

A functioning hydrogen economy will be subject to the regulatory oversight of certain Federal (as well as state and local) agencies, but not others.

- PHMSA. PHMSA's current pipeline safety regulations apply to the safe transportation of hydrogen gas in interstate and intrastate pipelines, including pipeline transportation facilities within the limits of the Outer Continental Shelf (OCS) (generally from 3 to 200 miles off-shore). Numerous provisions of PHMSA's Hazardous Materials Regulations apply to the transportation of hydrogen by non-pipeline modes.
- MMS. To the extent that carbon dioxide (CO2) sequestered from hydrogen production is injected into and withdrawn from storage in the OCS, MMS would be required to grant pipeline rights-of-way through and a lease of submerged portions of the OCS.
- FERC. FERC currently has jurisdiction over the transportation of natural gas (methane) in interstate commerce and over the facilities (on and off-shore) used for such transportation. FERC also has exclusive authority to approve the siting, construction, or operation of natural gas import facilities, including LNG terminals on-shore and in state waters. FERC has no jurisdiction regarding the construction of facilities for, or the storage or transportation of, gaseous or liquefied hydrogen, or the importation of hydrogen.
- MARAD. MARAD is responsible for issuing licenses for deepwater ports in Federal waters for natural gas, LNG, and oil, but has no current authority over prospective hydrogen deepwater ports. MARAD's current authority to make loan guarantees for vessels would apply to the construction of hydrogen-carrying vessels.
- CG. The CG has primary safety and security authority over port areas and navigable waterways and is responsible for matters relating to navigation safety, vessel engineering, and safety standards for vessels carrying hazardous materials, including hydrogen. The CG processes applications for deepwater ports for natural gas and oil, but has no current authority over prospective hydrogen deepwater port applications.

I. PHMSA

A. Pipeline Safety

PHMSA is responsible for prescribing and enforcing regulations to promote public and environmental safety for over 2 million miles of pipelines for hazardous liquids, natural gas, and other flammable, corrosive and toxic gases, including hydrogen. PHMSA regulates pipeline safety pursuant to the Federal Pipeline Safety Laws, codified in 49 U.S.C. 60101, et seq., and implementing regulations, 49 CFR parts 190–199.

Currently, the pipeline safety regulations apply to the transportation

of hydrogen gas by pipeline, but would not apply to the transportation of liquefied hydrogen by pipeline. Specifically, PHMSA regulations at 49 CFR part 192 prescribe the minimum safety requirements for pipeline facilities and the transportation of gas, including natural gas, flammable gas, or gas that is toxic or corrosive. Because hydrogen is flammable, current pipeline safety regulations apply to the transportation of hydrogen gas by pipeline. Section 192.3 defines the ''transportation of gas'' as the ''gathering, transmission, or distribution of gas by pipeline or the storage of gas in or affecting interstate or foreign commerce.'' PHMSA's pipeline safety authority extends to pipeline facilities and the transportation of gas on-shore and offshore within the limits of the OCS. PHMSA's regulations apply to transmission lines serving deepwater ports.

The pipeline safety regulations in 49 CFR part 195 prescribe safety standards for pipeline facilities used in the transportation of hazardous liquids (petroleum, petroleum products, or anhydrous ammonia) or carbon dioxide. Hydrogen is not included in the definition of hazardous liquid and, therefore, liquefied hydrogen is not subject to Part 195. The Secretary of Transportation is authorized, pursuant to 49 U.S.C. 60101(a)(4)(B), to designate as hazardous a substance that ''may pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state (except for liquefied natural gas).'' Pursuant to 49 CFR 1.53, the Secretary has delegated that authority to the Administrator of PHMSA. PHMSA has not revised the pipeline safety regulations to designate hydrogen as a hazardous liquid. If so designated, liquefied hydrogen would be subject to PHMSA's pipeline safety regulations.

B. Hazardous Materials Safety

PHMSA is responsible for issuing the regulations to implement the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101 et seq., to promote the safe transportation of hazardous materials in commerce. PHMSA's Hazardous Materials Regulations (HMR) are found at 49 CFR parts 171–180. PHMSA shares authority for enforcement of the HMR with the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, and the U.S. Coast Guard. In addition to packaging and hazard communication requirements, the HMR prescribe requirements for training employees, registration and security plans.

Hydrogen, a hazardous material, is classified as a flammable gas in the Hazardous Materials Table (49 CFR 172.101) and is subject to all applicable requirements in the HMR, including packaging and hazard communication requirements. Hydrogen may be transported as a compressed gas in cylinders or as a cryogenic liquid in portable tanks, cargo tank motor vehicles, or rail tank cars. The HMR include design, manufacturing, and maintenance standards for packaging used for the transportation of hydrogen.

C. International Effect

By its terms, the Federal Hazardous Materials Transportation Law applies to the transportation of hazardous materials in intrastate, interstate, and foreign commerce. 49 U.S.C. 5101. As a matter of longstanding practice, however, PHMSA asserts jurisdiction over a hazardous materials shipment only when those materials are affecting transportation in the United States. Shippers and carriers of hazardous materials coming into or leaving the United States must comply with U.S. law while that product is being shipped within the United States. Shipments of hazardous materials into or within other countries must comply with the laws of those countries.

PHMSA is actively involved in international efforts to establish uniform and effective safety standards for hazardous materials transportation. PHMSA participates in United Nations committees and other international working groups and has taken steps to harmonize its regulations with UN Recommendations, the International Maritime Organization's International Maritime Dangerous Goods Code (IMDG), and the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO). Under certain conditions, PHMSA's regulations allow the use of the IMDG Code and ICAO Technical instructions for transportation into, within, or out of the U.S.

D. Carbon Dioxide Sequestration

Carbon dioxide results from producing hydrogen from natural gas or LNG. The hydrogen economy would require capturing, separation, and storage or reuse of carbon dioxide. One plan is to transport captured carbon dioxide by pipeline for injection and storage in subsea strata. Carbon dioxide is not a ''gas'' within pipeline safety regulations, but when transported as a liquid, compressed carbon dioxide is subject to Part 195 of the pipeline safety regulations. Carbon dioxide is classified as a non-flammable gas (non-flammable gas includes both liquefied and non-liquefied compressed gases) under the HMR, 49 CFR 172.101. Carbon dioxide may be transported as liquefied or non-liquefied compressed gas in cylinders, portable tanks, cargo tanks, or rail tank cars, in accordance with 49 CFR parts 171–180.

Other Federal agencies may have a future role to play with respect to carbon dioxide sequestration. MMS oversees facility permitting, grants pipeline rights-of-way through submerged portions of the OCS, and performs facility inspections, including safety related items as the CG authorizes. A producer of hydrogen seeking to store carbon dioxide in the ocean floor on the OCS within the Federal domain must obtain permission from the MMS. In addition, existing laws, regulations, and treaties that apply to minerals mining and oil and gas production potentially apply to the injection of carbon dioxide into the geological sub-seabed of the ocean.

II. FERC

The FERC regulates under the Natural Gas Act of 1938 (15 U.S.C. 717, *et seq.*): (1) The rates, terms, and conditions applicable to the transportation of natural gas by natural gas companies in interstate commerce within the United States (Sections 4 and 5 and Part 154 regulations); (2) the construction (with the right of eminent domain), operation, acquisition, and abandonment of natural gas pipeline facilities operating in interstate commerce (Section 7 and Part 157 regulations); and (3) the place of entry or exit, siting, and the construction and operation of LNG terminal facilities, onshore or in State waters, operating in foreign commerce (Section 3 and Part 153 regulations). The FERC has no authority to regulate the transportation, or facilities associated with the transportation, of hydrogen in interstate commerce or the importation of hydrogen.

FERC regulates the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce by public utilities, pursuant to Parts II and III of the Federal Power Act (16 U.S.C. 824, *et seq.*). The statute does not differentiate between electric energy produced from one source as opposed to another.

III. MARAD

By its authority delegated from the Secretary of Transportation, MARAD is the lead Federal agency for the licensing

of deepwater ports. The Deepwater Port Act of 1974, as amended by the Maritime Security Act of 2002, 33 U.S.C. 1501, *et seq.* (DWPA), and related regulations at 33 CFR parts 148, 149, and 150, establish a licensing system for the ownership, construction, and operation of deepwater port structures located seaward of State territorial waters. Deepwater ports are fixed or floating manmade facilities which are used as ports or terminals to offload and transfer oil and natural gas from ships and may also include storage facilities for oil or natural gas, and vaporization facilities for LNG.

MARAD is responsible for determining the financial responsibility of potential licensees, rendering citizenship determinations for ownership, and securing operational and decommissioning guarantees for deepwater port projects. Additionally, MARAD is responsible for issuing records of decision to grant or deny approval of project applications and issuing licenses to construct, operate, and decommission deepwater ports.

The DWPA defines ''natural gas'' in section 3(13) as ''either natural gas unmixed, or any mixture of natural or artificial gas, including compressed or liquefied natural gas.'' Therefore, MARAD has no current jurisdiction over prospective hydrogen gas importation through deepwater ports. However, the operation of a hydrogen deepwater port would be similar to a natural gas deepwater port. Because liquefied hydrogen shares similar properties to LNG (*i.e.*, it can be liquefied, transported, and re-vaporized), an amendment to the DWPA would allow for the importation of liquefied hydrogen via deepwater ports.

MARAD also has loan guarantee authority to finance hydrogen-carrying ships constructed in the United States. See the Merchant Marine Act of 1936, as amended, 46 App. U.S.C. 1271, *et seq.*, and related regulations at 46 CFR part 298.

IV. CG

A. Deepwater Ports

The CG's Deepwater Ports Standards Division, within the Office of Operating and Environmental Standards, is responsible for developing and maintaining regulations and standards for deepwater ports and for processing deepwater port license applications for oil and natural gas (not hydrogen). The CG's main functions as stated in delegated authority are:

- Develop and update the regulations for deepwater ports, 33 Code of Federal Regulations Subchapter NN. These regulations contain general requirements, design, construction and equipment requirements, and operational requirements.
- Develop Interagency Memorandums of Understanding, Memorandums of Agreement, and Cooperating Agreements among Federal and State Agencies for licensing.
- Manage the development of Environmental Impact Statements for compliance with the National Environmental Policy Act of 1969 (NEPA) for license approval.
- Coordinate interagency review of and public comment to license applications within the statutory timeframe of 330 days from the time a complete application is received.
- Develop guidance for oversight of post-licensing activities associated with the development of deepwater ports including the design, construction, and activation phases, environmental monitoring programs, operational procedures, risk assessments, security plans, safety and inspections.

B. Vessel Standards

The Coast Guard regulates vessel construction and operating standards, including standards for vessels that could carry hydrogen. This authority derives from 46 U.S.C. 3703 and 33 U.S.C. 1903(b). The standards that would apply depend on the form in which the hydrogen is transported, and what kind of vessel is being employed.

a. Carriage as a Compressed or Liquefied Gas

PHMSA lists compressed and liquefied hydrogen in the hazardous materials table at 49 CFR 172.101. This causes it to be subject to CG regulation under the Hazardous Materials Transportation Act, 49 U.S.C. 5100, et seq., if carried in packaged or containerized form.

The CG has made the determination that hydrogen is hazardous when transported in bulk by vessel, either in gaseous or liquid form. This determination was made in 46 CFR 153.40(f)(1), pursuant to delegated authority from the Secretary of Transportation. The Secretary's authority derives from 49 U.S.C. 5103 and was originally delegated in 49 CFR 1.46(t). The CG function was preserved after the CG was transferred into the Department of Homeland Security, by operation of §§ 888(b and c) and 1512(d) of the Homeland Security Act of 2002, Public Law 107–296.

If carried as a bulk liquid, hydrogen would be regulated under 46 U.S.C. Chapter 37. Bulk gas tank vessel cargoes (such as hydrogen) are regulated under CG regulations at 46 CFR part 153, Ships Carrying Bulk Liquid, Liquefied Gas, or Compressed Gas Hazardous Materials. This Part consists mainly of design and operational standards including general vessel requirements, cargo containment systems, cargo tanks, piping systems and cargo handling equipment, cargo venting, pumprooms, gauging, temperature control systems, and certain special requirements. If hydrogen were transported as a liquefied gas, it would also be regulated under 46 CFR part 154, Safety Standards for Self-Propelled Vessels Carrying Bulk Liquefied Gases. This Part regulates design and construction of hull structure, cargo tank location and survival capability, ship arrangements, cargo containment systems, special requirements for different types of tanks, piping, hoses, materials, construction, pressure and temperature control, venting and ventilation, atmospheric control, electrical, instrumentation, firefighting equipment, and special operational requirements. If hydrogen were to be shipped in a tank barge, it would be regulated under 46 CFR parts 38, Liquefied Flammable Gases, and under part 151, Barges Carrying Bulk Liquid Hazardous Material Cargoes, which include compressed gases.

Although all these regulations have some special provisions for transporting certain gases, there are no requirements specifically for hydrogen. Should the need for marine transportation of hydrogen materialize, these regulations would need to be modified to include special hydrogen requirements, due to hydrogen's metal embrittlement properties. Absent such modifications, 46 CFR 150.140 would prohibit the bulk transportation by vessel of hydrogen, without special permission from the CG Commandant.

b. Carriage as Metallic Hydride

An unpublished USCG study concluded that hydrogen is most likely to be transported as a metallic hydride, adsorbed onto metal particles that could then be transported more safely. The hydrogen would be stripped off at the destination and the metal shipped back for reuse. The metal particles would then presumably be treated like any other hazardous bulk solid, which would be regulated under 46 CFR part 148, Carriage of Solid Hazardous Materials in Bulk. These regulations contain manifesting, reporting, loading, transporting, and stowage requirements. There is a list of certain hazardous bulk cargoes that can be transported pursuant to the regulations, including ferrous metal borings, shavings, turnings, and

cuttings. The shipment of unlisted hazardous bulk solids (metallic hydride) would require express permission of the CG Commandant after filing a special petition for a special permit.

C. Additional Resources

C. Additional Resources

HOTLINKS TO LAWS & REGULATIONS APPLICABLE TO THE DEEPWATER PORTS STANDARDS DIVISION

Maritime Transportation Security Act of 2002	National Environmental Policy Act of 1969.
Deepwater Port Act of 1974:	
Title 14 (US Code) Coast Guard	Code of Federal Regulations.
Title 33 (US Code) Navigation and Navigable Waters	CFR 33 Ch I (Parts 1–199).
Title 46 (US Code) Shipping	CFR 46 Ch I (Parts 1–199).
Title 49 (US Code) Transportation	CFR 49 Vol 1&2 (Parts 1–185); 190–195.

4.2 Hydrogen Vehicle Regulatory Framework

Federal Regulations Governing Introduction of Hydrogen Motor Vehicles Into Commerce

Manufacturers of hydrogen fueled motor vehicles will have to meet certain federal requirements prior to introducing their vehicles into commerce in the United States. This statement identifies requirements applicable to manufacturers under the Clean Air Act, the National Traffic and Motor Vehicle Safety Act (Vehicle Safety Act), and Motor Vehicle Information and Cost Savings Act (Cost Savings Act), and the regulations promulgated pursuant to those statutes. This statement highlights the more major provisions for manufacturers, but manufacturers and others should consult the specific statutes, regulations and standards to determine the full and precise substantive and procedural requirements. Manufacturers of hydrogen fueled vehicles may also be subject to other federal, state or local regulations.

Under the Clean Air Act, motor vehicles or engines must generally be certified by EPA as conforming to applicable regulations before the vehicle or engine can be sold or otherwise introduced into commerce in the United States. Under the Vehicle Safety Act, motor vehicles and motor vehicle equipment must be certified by the manufacturer as meeting all applicable Federal motor vehicle safety standards. Under the Cost Savings Act, manufacturers must meet specified corporate average fuel economy (CAFE) standards for passenger cars and light trucks, and bumper standards for passenger cars.

I. Requirements Under the Clean Air Act

Section 203(a) of the Clean Air Act (42 U.S.C. 7522(a)) prohibits manufacturers from introducing into commerce (including sale, importation, etc.) any new motor vehicle or new motor vehicle engine subject to emissions standards under the Act unless that vehicle or engine is covered by a certificate of conformity issued by EPA. EPA has promulgated standards applicable to all motor vehicles and motor vehicle engines under section 202 of the Act (42 U.S.C. 7521), so this means that, unless a motor vehicle or engine is covered by an exemption, discussed below, a manufacturer may not introduce a motor vehicle into commerce in the United States without an EPA certificate.[2]

The regulatory provisions applicable to motor vehicles and engines are found in 40 CFR parts 85 and 86. These regulations detail the specific standards and other requirements that must be met and provide the mechanism that manufacturers must use to receive certifications of conformity for their vehicles and engines. In general, manufacturers must test vehicles or engines that represent the highest emitters (the ''worst-case'' vehicle or engine) within a group of similar type vehicles or engines (called the ''test group'' or the ''engine family''). The manufacture must show that the vehicles or engines in the group or family meet all requirements. The manufacture must also provide information indicating that the vehicles or engines will meet such requirements for the full useful life of the vehicle or engine. The useful life is usually 8–10 years or a certain number of miles, depending on the type of vehicle. If EPA finds that the manufacturer has met the requirements of the regulations, EPA will grant a certificate of conformity for all vehicles in the test group or engines in the engine family. The manufacturer then must label the vehicles or engines to identify them as meeting EPA requirements for the model year of the vehicle or engine. The vehicle or engine can then be introduced into commerce. Manufacturers must receive separate certificates of conformity for all test groups and engine families and must receive new certificates every year. Manufacturers who introduce only small volumes of vehicles into commerce in the United States are often subject to special provisions that allow some flexibility in meeting the requirements in part 86. See, e.g., 40 CFR 86.1838–01 (Small Volume Manufacturer Certification Procedures).

There are certain exemptions from the requirement to certify motor vehicles and engines. These exemptions are specified under 40 CFR part 85, subpart R. Of particular importance for the purposes of hydrogen powered vehicles, there are exemptions for test programs, pre-certification vehicles, and display vehicles.

The standards applicable to motor vehicles are generally fuel neutral, but standards applicable to engines (in particular, engines used in heavy-duty vehicles like 18-wheelers) are often broken into provisions for diesel engines and spark-ignited engines. It is unclear how hydrogen-powered vehicles would be categorized. The provisions applicable to motor vehicles in general will likely be directly applicable to hydrogen-powered motor vehicles. The testing provisions are designed so that vehicles are tested, generally on vehicle dynamometers. The testing provisions simulate normal driving and pollutants are measured by unit of distance (e.g. grams per mile).

One concern for hydrogen-powered vehicles is that for engine-certified

[2] The Clean Air Act defines motor vehicles as ''any self-propelled vehicle designed for transporting persons or property on a street or highway'' (42 U.S.C. 7550(2)). This definition is further clarified in 40 CFR 85.1703. Although motor vehicles generally do not include vehicles designed for use off roads, like tractors or construction equipment, such ''nonroad vehicles'' and ''nonroad engines'' powered by internal combustion engines would be covered by similar restrictions under the Act ((see 42 U.S.C. 7550(10) and (11) and 42 U.S.C. 7547). Standards and other requirements applicable to various types of nonroad engines (e.g., diesel nonroad engines, locomotives, marine engines), including requirements to certify nonroad engines and vehicles prior to introduction into commerce, can be found in 40 CFR Parts 89–92, 94, 1039, 1048 and 1051.

vehicles, the testing is done using engine dynamometers and pollutants are measured by unit of power consumption (e.g. grams per brake horse-power hour). These tests have generally been designed for standard internal combustion engines, so engines powered by fuel cells or hybrid-fuel cells might need to use special testing provisions (see, e,g, 40 CFR 86.090–27), which may involve substantial complexity and questions regarding proper representation of actual driving conditions. In addition, even for vehicles certified on vehicle dynamometers, there are likely to be complexities concerning the testing of hybrid engines and fuel cells, and the use of a non-carbon-based fuel for measurement of fuel consumption.

Therefore, especially as hydrogen-powered (particularly fuel-cell powered and hybrid) vehicles are first introduced into the market, and particularly for heavy-duty engines, it is recommended that manufacturers come to EPA well before the traditional period for certification to discuss any complications that might result from a manufacturer's intention to request certification of a hydrogen-powered motor vehicle or engine.

II. Requirements Under the Vehicle Safety Act (Codified at 49 U.S.C. Chapter 301)

Federal Motor Vehicle Safety Standards

Title 49, United States Code (U.S.C.), section 30101, et seq. (the Act) authorizes NHTSA to issue safety standards for new motor vehicles and new items of motor vehicle equipment. All motor vehicles and items of motor vehicle equipment manufactured or imported for sale in the United States must comply with all applicable safety standards set forth in 49 CFR part 571. Manufacturers of motor vehicles must self-certify compliance of their products in accordance with part 567, *Certification.*

Persons altering a new vehicle prior to its first retail sale to a consumer are considered vehicle alterers under NHTSA's certification regulation. Part 567.7, *Requirements For Persons Who Alter Certified Vehicles*, requires alterers to certify that the vehicle, as altered, complies with all applicable safety standards.

Manufacturers, distributors, dealers, or motor vehicle repair businesses modifying a new or used vehicle are prohibited by 49 U.S.C. 30122 from knowingly making inoperative any device or element of design installed on or in a motor vehicle or item of motor vehicle equipment in compliance with an applicable Federal motor vehicle safety standard.

The Act provides NHTSA limited grounds on which to grant a motor vehicle manufacturer a temporary exemption from one or more of the safety standards. The procedures for a temporary exemption are found at 49 CFR part 555. The Act does not authorize the agency to grant temporary exemptions to manufacturers of motor vehicle equipment.

Several of the existing Federal motor vehicle safety standards address fuel system integrity, electrical isolation, and flammability. A research plan for hydrogen, fuel cell and alternative fuel vehicle safety was published July 14, 2004 (69 FR 42126). The plan and comments are contained in docket 18039 and can be accessed through the Department of Transportation's Document Management System at *http://dms.dot.gov/*.

International Harmonization

NHTSA, along with counterparts in Germany and Japan are currently leading an effort under the United Nations' World Forum for the Harmonization of Vehicle regulations to develop safety performance requirements under a comprehensive Global Technical Regulation (GTR) that would apply to hydrogen vehicles. To facilitate and guide the process of developing such a GTR, NHTSA is working with the co-sponsors, Germany and Japan, to develop a work plan that can be accepted by all signatories to the 1998 Agreement for the Harmonization of Vehicle Regulations. NHTSA expects consideration and adoption of the work plan at the March 2007 session. Work on development of the GTR should commence shortly thereafter.

Safety-Related Defects and Noncompliances

The Act prohibits the sale or lease of defective or noncompliant vehicles or equipment except under certain circumstances. It requires manufacturers to notify consumers that a motor vehicle or item of equipment they purchased contains a safety-related defect or failed to comply with the standards, and requires manufacturers to remedy such defects and noncompliances without charge. The following regulations relate to the defect and noncompliance notification and remedy campaigns and prohibitions: Part 556, *Exemption for Inconsequential Defect or Noncompliance; Part 573, Defect and Noncompliance Responsibility and Reports*; Part 577, *Defect and Noncompliance Notification*; and Part 576, *Record Retention*, sets forth requirements for manufacturers' retention of complaints, reports and other records concerning defects and malfunctions that may be related to motor vehicle safety. In addition, Part 579, *Reporting of Information and Communications About Potential Defects*, sets forth requirements for manufacturers' reporting certain information that may help identify defects and noncompliances, including reports of foreign recalls and safety campaigns, and early warning information.

Vehicle Identification Number

49 CFR part 565 requires that each motor vehicle have a vehicle identification number (VIN), and specifies the content requirements for the VIN.

Manufacturer Identification

Under 49 CFR Part 566, *Manufacturer Identification*, a manufacturer of motor vehicles or motor vehicle equipment to which a motor vehicle safety standard applies, must submit information identifying itself and its products to NHTSA not later than 30 days after it begins manufacture.

Designation of Agent for Foreign Manufacturers

Under 49 CFR part 551, *Procedural Rules*, all manufacturers headquartered outside of the United States must designate a permanent resident of the United States as the manufacturer's agent for service of all process, notices, orders and decisions.

III. Requirements Under the Cost Savings Act

Fuel Economy

49 U.S.C. Chapter 329 requires each motor vehicle manufacturer to achieve at least a minimum Corporate Average Fuel Economy (CAFE). NHTSA has established standards for passenger cars (49 CFR part 531, *Passenger Automobile Average Fuel Economy Standard*), and light trucks (part 533, *Light Truck Fuel Economy Standards*). Manufacturers are required to file CAFE reports under part 537, *Automotive Fuel Economy Reports*.

Manufacturers of hydrogen-powered vehicles should be familiar with Part 538, Manufacturing Incentives for Alternative Fuel Vehicles. In 1996, NHTSA issued a final rule entitled ''Manufacturing Incentives for Alternative Fuel Vehicles,'' which established gasoline gallon equivalent (GGE) factors for gaseous fuels in CAFE calculations, including hydrogen and Hythane®, when used in internal combustion engine (ICE) vehicles. The GGE factors are set forth in section

538.8. For hydrogen, the GGE factor is 0.259, meaning that 100 standard cubic feet of hydrogen at a standard pressure of 14.6 psi and at 60 degrees Fahrenheit is equivalent on an energy content basis to 0.259 gallons of unleaded gasoline. A GGE for hydrogen fuel cells remains to be established.

Several regulations provide procedures under which manufacturers may apply for exemptions from or for flexibility in achieving compliance with the CAFE standards. *See* Part 525, *Exemptions from Average Fuel Economy Standards* (for low-volume manufacturers); Part 526, *Petitions and Plans for Relief under the Automotive Fuel Efficiency Act of 1980*; and Part 535, *Three-year Carryforward and Carryback of Credits for Light Trucks.* Credits may also be available for a manufacturer of passenger cars under 49 U.S.C. 32903. Manufacturers should also be aware of Part 529, *Manufacturers of Multistage Automobiles.*

Bumpers

49 U.S.C. Chapter 325 directs NHTSA to issue and enforce bumper standards for passenger cars to reduce the economic loss resulting from damage to cars involved in motor vehicle accidents. Part 581, *Bumper Standard*, sets forth the requirements for the impact resistance of passenger cars in low speed front and rear collisions.

4.3 Hydrogen Stationary Fuel Cells Regulatory Framework

I. Occupational Safety and Health Administration

Disclaimer: This guidance is limited to OSHA standards which may be applicable to, or might be considered useful sources for information pertaining to, occupational hazards related to workplace stationary fuel cells. The omission of any OSHA standards from this notice in no way limits their applicability to any other workplace hazards. In addition, any potential application of the standards referenced below may be dependent on specific factual situations at individual worksites.

Background

Stationary fuel cells can be used for backup power, power for remote locations, stand-alone power plants for towns and cities, distributed generation for buildings, and co-generation (in which excess thermal energy from electricity generation is used for heat). When these fuel cells are used at a workplace, then employers are required to comply with OSHA requirements.

Potentially Applicable Standards

The two primary potential hazards associated with stationary fuel cells are: (1) electrical hazards; and (2) fire and explosion hazards from flammable gases (such as hydrogen, liquefied petroleum gases (LPG), etc.) associated with the operation of stationary fuel cells.

A. OSHA Standards That May Apply to Electrical Hazards Associated With Stationary Fuel Cells

Because stationary fuel cells generate electric power, OSHA's electrical standards contained in 29 CFR part 1910 for general industry; part 1926 for construction industry; and parts 1915, 1917, and 1918 for Maritime Industry may be applicable. Typically, electric power generators (such as Stationary Fuel Cells) are covered by OSHA Subpart S standards in part 1910, if they are not connected to distribution systems (i.e., a system that is supplying power to two or more buildings) or if they are only emergency or standby in nature. If a Stationary Fuel Cell supplies power to a distribution system, then the provisions contained in 29 CFR 1910.269, Electric Power Generation, Transmission, and Distribution, may apply.

B. OSHA Standards That May Apply to Fire and Explosion Hazards Associated With Fuel Sources to Stationary Fuel Cells

In addition to the potential electrical hazards, the materials used to fuel the reactions within stationary fuel cells may present explosion hazards due to their composition and amounts present in the workplace. Several OSHA standards may have some application to these hazards. For example, if hydrogen is fed directly into the stationary fuel cell, OSHA's hydrogen standard at 29 CFR 1910.103 may apply to stationary fuel cells, depending upon their location and use. Likewise, if a liquefied petroleum gas is used as a fuel source, then OSHA's liquefied petroleum gas standard at 29 CFR 1910.110 may apply. In addition, if 10,000 pounds or more of a flammable liquid or gas such as hydrogen is present at the worksite and is involved in a process, then OSHA's Process Safety Management Standard may apply. Additionally, other OSHA standards, such as, 1910.38, 1910.101, 1910.120, and 1910.156 may apply.

Electric equipment in the vicinity of hydrogen sources may need to meet 29 CFR 1910.307 requirements depending on such factors as the quantity of flammable material that might escape in case of accident, the adequacy of ventilating equipment, and the total area involved.

C. The Applicability of Section 5(a)(1) of the Occupational Safety and Health Act of 1970.

In the absence of specific OSHA standards, employers are obligated under Section 5(a)(1)—''the General Duty Clause'' of the OSH Act to protect employees from serious recognized hazards. OSHA would consider several sources to determine whether a hazard is recognized by an employer.

II. Pipeline and Hazardous Materials Safety Administration, USDOT

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has existing regulations governing the safe transportation of hydrogen gas by pipeline and prescribing packaging standards (among other requirements) for the movement in commerce of hydrogen gas or cryogenic liquid by other transportation modes. PHMSA regulations also would apply to transportation in commerce of fuel cells or fuel cell components, to the extent that they contain other hazardous materials.

A. Transportation of Hydrogen to Site of Stationary Fuel Cell

PHMSA issues and enforces the Pipeline Safety Regulations (PSR), 49 CFR parts 190–199, implementing the Federal Pipeline Safety Law, 49 U.S.C. 60101 et seq. to promote the safety of interstate and intrastate pipelines transporting hazardous liquids, natural gas, and other flammable, corrosive and toxic gases. Part 192 of the PSR regulates the transportation of natural and other gases in pipelines, including hydrogen, which is transported as a compressed flammable gas. PHMSA would regulate the transportation of hydrogen gas by pipeline to the site of the stationary fuel cell. (States may enforce safety standards on intrastate pipelines if the State has been certified by PHMSA under 49 U.S.C. 60105.)

PHMSA issues the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180, implementing the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101 et seq., to promote the safe transportation of hazardous materials in commerce. Hydrogen, a hazardous material, is classified as a flammable gas in the Hazardous Materials Table (49 CFR 172.101). Therefore, the transportation in commerce of hydrogen as a gas or refrigerated liquid in cylinders, portable tanks, or cargo tank vehicles to the site of a stationary fuel cell would be regulated by PHMSA, subject to all

applicable requirements in the HMR including packaging and hazard communication requirements.

B. Transportation of Fuel Cell or Fuel Cell Components Containing Hazardous Materials

A variety of types of stationary fuel cells appear to be under development containing different electrolytes. Depending on the type of fuel cell, PHMSA may regulate it under the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101 et seq. and HMR, 49 CFR parts 171–180, when the fuel cell or fuel cell component is in transportation in commerce to the site. PHMSA would only regulate a fuel cell or fuel cell component in transportation if it contains a material identified in the Hazardous Materials Table (49 CFR 172.101) or meeting the definition of a hazardous material in 49 CFR part 173. Electrolytes used to carry electrically charged particles from one electrode to another within a fuel cell include materials such as potassium hydroxide, sodium carbonate, magnesium carbonate, phosphoric acid, calcium oxide, and zirconium oxide. Several of these—potassium hydroxide, phosphoric acid, and calcium oxide—are listed as hazardous materials in the Hazardous Materials Table and would be subject to the applicable requirements of the HMR, including packaging requirements. The HMR provide exceptions from packaging and labeling requirements for limited quantities of certain hazardous materials meeting specified criteria. For units or components too large to be packaged in accordance with the HMR, or for which there is an alternative method of packaging not provided for in the HMR, the offer may apply to PHMSA for a special permit. (49 CFR 107.105)

III. Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission's (FERC) regulatory authority with respect to stationary fuel cells depends on whether the owner or operator of stationary fuel cells is a public utility, i.e., a person that sells electric energy at wholesale in interstate commerce (a person that sells electric energy for resale). If the owner or operator is a public utility, the rates, terms and conditions of such sale are subject to the authority of the FERC pursuant to Parts II and III of the Federal Power Act, 16 U.S.C. 824, et seq.

IV. Environmental Protection Agency

The extent to which particular stationary fuel cells are regulated directly by EPA under the Clean Air Act can usually be determined by whether they are part of a source category (like boilers or process heaters) that is covered by a New Source Performance Standard (40 CFR part 60), National Emission Standard for Hazardous Air Pollutants (40 CFR part 63) or a New Source Review Regulation (40 CFR parts 51 and 52). Smaller stationary fuel cells may also be regulated as consumer or commercial products under Clean Air Act section 183(e), 42 U.S.C. 7511b(e).

5.0 General Comments on State and Local Jurisdiction

The regulatory role in a hydrogen economy for state and local jurisdictions includes, but is not limited to, health and safety regulations of local building codes and safety codes applicable to the use and generation of hydrogen, many aspects of hydrogen fueling stations including tank and infrastructure installation and maintenance for hydrogen fueling operations, the design and structure of parking garages and any other infrastructure regulated by local governments and state governments.

Issued in Washington, DC, on December 22, 2006.

Victoria Sutton,

Chief Counsel, Research and Innovative Technology Administration.

[FR Doc. E6–22554 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 236X); STB Docket No. AB–576 (Sub–No. 2X)]

Union Pacific Railroad Company—Abandonment Exemption—in Bexar County, TX; Alamo Gulf Coast Railroad Company—Discontinuance of Service Exemption—in Bexar County, TX

On December 15, 2006, Union Pacific Railroad Company (UP) and Alamo Gulf Coast Railroad Company (AGCR), jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903. UP seeks to abandon and AGCR seeks to discontinue service over a line of railroad extending between milepost 253.26 and milepost 256.0 on UP's Kerrville Subdivision, a distance of 2.74 miles in Bexar County, TX. The line traverses United States Postal Service Zip Codes 78028 and 78029, and includes no stations.

The line does not contain Federally granted rights-of-way. Any documentation in UP's or AGCR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 4, 2007.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,300 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 24, 2007. Each trail use request must be accompanied by a $200 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub–No. 236X) and AB–576 (Sub–No. 2X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the petition are due on or before January 24, 2007.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 28, 2006.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–22612 Filed 1–4–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Bank Secrecy Act Advisory Group; Solicitation of Application for Membership; Correction

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice; correction.

SUMMARY: On December 7, 2006, FinCEN published a **Federal Register** notice inviting the public to nominate financial organizations and trade groups for membership in the Bank Secrecy Act Advisory Group. Inadvertently the available vacancies announced for ''Industry Representatives Banking'' and the list of members whose terms end as of February 28, 2007 were incorrect. This document corrects that information. Persons responding to the previous notice need not respond again.

DATES: Nominations must be received by January 8, 2007.

ADDRESSES: Applications may be mailed (not sent by facsimile) to Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, P.O. BOX 39, Vienna, VA 22183 or e-mailed to: *BSAAG@fincen.gov.*

FOR FUTHER INFORMATION CONTACT: Yesenia Armijo, Regulatory Policy Specialist at 202–354–6400.

SUPPLEMENTARY INFORMATION: The Annunzio-Wylie Anti-Money Laundering Act of 1992 required the Secretary of the Treasury to establish a Bank Secrecy Act Advisory Group (BSAAG) consisting of representatives from federal regulatory and law enforcement agencies, financial institutions, and trade groups subject to the reporting requirements of the Bank Secrecy Act, 31 CFR part 103 *et seq.* or Section 6050I of the Internal Revenue Code of 1986. The BSAAG is the means by which the Secretary receives advice on the operations of the Bank Secrecy Act.

New members will be selected to serve a three-year term. Applications should consist of:

- Point of contact, title, address, e-mail address, phone number
- Description of the financial institution or trade group and its involvement with the Bank Secrecy Act, 31 CFR part 103 *et seq.*
- Reasons why its participation on the BSAAG will bring value to the group

Entities may nominate themselves.

Based on current BSAAG position openings we encourage applications from the following sectors or types of organizations with experience working on the Bank Secrecy Act:

- State Regulatory Agency (1 vacancy).
- State Banking Trade Group (1 vacancy).
- Industry Trade Group—Banking Sector (1 vacancy).
- Industry Trade Group—Casino (1 vacancy).
- Industry Trade Group—Precious Metals, Stones, and Jewels (1 vacancy).[1]
- Industry Trade Group-Money Services Business Sector (1 vacancy).
- Industry Representatives Banking (3 vacancies).
- Industry Representatives Securities/Futures (2 vacancies).[2]
- Industry Representatives Money Services Business (1 vacancy).

BSAAG members whose terms end as of February 28, 2007,[3] are:

State Regulatory Agency:

- New York State Banking Department.

State Banking Trade Group:

- California Bankers Association.

Industry Trade Group—Banking Sector:

- Independent Community Bankers Association.

Industry Trade Group—Casino:

- American Gaming Association.

Industry Trade Group—Money Services Business Sector:

- Financial Service Center of America.

Industry Representatives Banking:

- Bank of America.
- Branch Bank & Trust.
- Pentagon Federal Credit Union.

Industry Representatives Securities/Futures:

- Morgan Stanley.

Industry Representatives Money Services Business:

- American Express.

[1] This is a newly created position in light of the decision adopted at the May 2006 BSAAG Plenary.

[2] An additional position was created in light of the decision adopted at the May 2006 BSAAG Plenary.

[3] State regulatory agencies, state regulator trade groups, self-regulatory organizations, and industry trade groups can serve renewable three-year terms at the discretion of the Director of FinCEN. Industry members may not serve consecutive terms but may serve multiple terms.

Dated: December 27, 2006.

William F. Baity,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. E6–22572 Filed 1–4–07; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Financial Literacy and Education Commission's Two-Day Summit on Kindergarten Through Postsecondary Financial Education

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a two-day summit on kindergarten through postsecondary financial education of the Financial Literacy and Education Commission (the ''Commission''), established by the Financial Literacy and Education Improvement Act, Title V of the Fair and Accurate Credit Transactions (''FACT'') Act of 2003 (Pub. L. 108–159). This summit is being co-hosted by the Departments of Education and Treasury.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting addresses.

SUPPLEMENTARY INFORMATION: *First Day of the Summit:* The first day of the Summit will be held on February 21, 2007 at the Department of Education. The program, which will include several sessions, will begin at 10 a.m. and end at 4 p.m. (EST). There will be an hour and a half lunch break.

ADDRESSES: The first day of the Summit will be held in the Departmental Auditorium FB–6 at the Department of Education, located at 400 Maryland Avenue, SW., Washington, DC. Limited seating is available to the public on a first-come, first-serve basis. Attendees will be required to provide the following information not later than 5 p.m. (EST) on February 13, 2007: Visitor name, visitor's organization, and date and time of visit to *FLECrsvp@do.treas.gov.* For entry into the building, attendees will be required to provide a valid picture I.D.

Second Day of the Summit: The second day of the Summit will be held on February 22, 2007 at the Department of the Treasury. The program, which will include several sessions, will begin at 9 a.m. and end at 4 p.m. (EST). There will be an hour and half a lunch break.

ADDRESSES: The second day of the Summit will be held in the Cash Room at the Department of Education, located

at 1500 Pennsylvania Avenue, NW., Washington, DC. Limited seating is available to the public on a first-come, first-serve basis. Attendees will be required to provide the following information not later than 5 p.m. (EST) on February 13, 2007: Visitor name, visitor's organization, phone number, Social Security number, date of birth and country of citizenship to *FLECrsvp@do.treas.gov* or (202) 622–1783 (not a toll-free number). For entry into the building, attendees will be required to provide a valid picture I.D.

Background

This two-day summit on kindergarten through postsecondary financial education is part of the implementation of the National Strategy for Financial Literacy issued by the Commission. The FACT Act established the Commission to improve financial literacy and education of persons in the United States. The Commission is composed of the Secretary of the Treasury and the head of the Office of the Comptroller of the Currency; the Office of Thrift Supervision; the Federal Reserve; the Federal Deposit Insurance Corporation; the National Credit Union Administration; the Securities and Exchange Commission; the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs; the Federal Trade Commission; the General Services Administration; the Small Business Administration; the Social Security Administration; the Commodity Futures Trading Commission; and the Office of Personnel Management.

This financial education summit, co-hosted by the Departments of Education and Treasury, will be held during two days at separate locations each day. For each day of the summit, there will be at least 50 seats reserved for members of the public. Seating is available on a first-come basis.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Luz Figuereo by e-mail at: *FLECstrategy@do.treas.gov* or by telephone at (202) 622–5770 (not a toll free number). Additional information regarding the Financial Literacy and Education Commission and the Department of the Treasury's Office of Financial Education may be obtained through the Office of Financial Education's Web site at: *http://www.treas.gov/financialeducation.*

Dated: December 21, 2006.

Dan Iannicola, Jr.,

Deputy Assistant Secretary for Financial Education.

[FR Doc. E6–22614 Filed 1–4–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of time change.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, January 4, 2007, at 1 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, January 4, 2007, at 1 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: December 22, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 07–9 Filed 1–3–07; 1:07 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veteran's Disability Benefits Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission has scheduled a meeting for January 18–19, 2007, at the Hotel Washington, 15th Street and Pennsylvania Avenue, NW., Washington, DC. The meeting will begin at 8 a.m. each day and end at 5:15 p.m. on January 18 and 3 p.m. on January 19. The meeting is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

The agenda for the meeting will include updates on the progress of the studies being conducted by the Center for Naval Analyses (CNA) and the Insititue of Medicine (IOM). CNA will include an overview and discussion with Commissioners regarding its research and analyses of Individual Unemployability and Program Operations. VA will provide a public response to IOM's request for documents and information related to IOM's research on behalf of the Commission. In addition to providing a summary of the overall status of Issue Papers addressing specific Research Questions, Commission staff will also facilitate the presentation and discussion of new or revised Issue Papers at various stages of development. (Research Questions approved by the Commission on October 14, 2005, are available upon request or please visit the Commission's Web site at *http://www.vetscommission.org.*)

On January 19, there will be time set aside for the Commission to receive comments from veteran and military service organizations and interested members of the public on three topics related to specific Research Questions. The three topics will be: *Line of Duty* (Research Question 13); *Character of Discharge* (Research Question 23); and *Concurrent Receipt* (Research Question 21).

Interested persons may present oral statements to the Commission on January 19. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Commission prior to the meeting or

at any time, by e-mail to *veterans@vetscommission.com* or by mail to Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004.

Dated: December 27, 2006.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–9985 Filed 1–4–07; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
January 5, 2007

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121

Security Related Considerations in the Design and Operation of Transport Category Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. FAA–2006–26722; Notice No. 06–19]

RIN 2120–AI66

Security Related Considerations in the Design and Operation of Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Under this notice, the FAA proposes to implement certain security related requirements governing the design of transport category airplanes. The requirements would provide improved airplane design features and greater protection of the cabin, flightdeck, and cargo compartments from the detonation of explosive or incendiary devices, penetration by projectiles, and intrusion by unauthorized persons. The FAA also proposes to require operators to establish a ''least risk bomb location'' on all affected airplanes. These proposed changes would adopt several International Civil Aviation Organization (ICAO) standards. Also, this notice discusses six proposed advisory circulars (ACs) and proposed changes to two existing ACs.

DATES: Send your comments on or before April 5, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–26722 using any of the following methods:

- Submit your comments electronically to (1) the Department of Transportation (DOT) Docket Management System Web site at *http://dms.dot.gov* or (2) the government-wide rulemaking Web site at *http://www.regulations.gov*
- Mail your comments to Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax your comments to the Docket Management System at 1–202–493–2251.
- Hand deliver your comments to 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.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

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 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Jeff Gardlin, FAA Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055; telephone (425) 227–2136, facsimile (425) 227–1149, e-mail: *jeff.gardlin@faa.gov. For legal issues:* Komal Jain, Regulations Division, AGC–200, FAA Office of the Chief Counsel, 800 Independence Avenue, SW., Washington DC, 20591; telephone (202) 267–3073, e-mail: *komal.jain@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA 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 adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, or other group). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Proprietary or Confidential Business Information

You should not file in the docket any information that you consider to be proprietary or confidential business information. Instead, you should send or deliver that information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can access an electronic copy of this proposal at any of the following Web sites:

- The Department of Transportation's electronic Docket Management System (DMS) Web site at *http://dms.dot.gov/search.*
- Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies*; or
- The Government Printing Office's Web site at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also receive a hard copy by mailing a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or calling (202) 267–9680. Please identify the docket number, notice number, or amendment number of this rulemaking.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found under Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft. This regulation is within the scope of that authority because it prescribes new safety standards for the design of transport category airplanes.

Background

Since the mid 1970s, terrorist acts—including hijackings and detonation of explosive devices—have targeted airplanes.

Design Standards by ICAO

Because of the number of airplane bombings and hijackings that occurred in the 1960s, 1970s, and early 1980s, the International Civil Aviation Organization (ICAO) [1] considered several proposals to incorporate security safeguards into the design of new airplanes. ICAO has adopted in Annex 8 airworthiness standards for airplanes that carry passengers, cargo, or mail in international air navigation. In the 1980s, the International Federation of Airline Pilots Association (IFALPA) submitted proposals regarding design standards for security in airplanes. ICAO, in turn, solicited comments on the proposals from organizations and member countries.

On December 21, 1988, a terrorist bomb in a Boeing Model 747 airplane exploded over Lockerbie, Scotland, killing all 259 people onboard and 11 people on the ground. [2] The terrorist bomb exploded in the forward cargo hold on Pan American World Airways Flight 103 from London to New York City. As a result, the effort initiated by IFALPA to establish security design standards gained impetus. Within several months, ICAO formed the ''Incorporation of Security into Aircraft Design'' (ISAD) study group with representatives of the airworthiness authorities of the United States, the United Kingdom, France, Germany, Brazil, and Russia to consider the existing proposals and to recommend standards for security in design to be incorporated into Annex 8. ISAD also included representatives from IFALPA, the International Coordinating Council of Aerospace Industries Associations (ICCAIA), and the International Air Transport Association (IATA).

The study group developed proposals pertaining to the following subjects:

(1) Survivability of systems,

(2) Cargo compartment fire suppression,

(3) Smoke and fumes protection (in the cabin and flightdeck),

(4) Least risk bomb location and design,

(5) Protection of pilot compartment from penetration by small arms fire or shrapnel, and

(6) Interior design to deter hiding of dangerous articles and improve searching.

These proposals were submitted to all ICAO member countries for comment.

On March 12, 1997, new standards were adopted as Amendment 97 to Annex 8. The member countries subsequently approved them. All but one of the standards became effective 3 years after their adoption. The standard requiring identification of a ''least risk bomb location'' became effective immediately because it was already common practice in the aviation industry. It had been applied as an operational standard rather than as a design standard.

While Annex 8 provisions may be applied to an operator of a transport category airplane by a national authority in order to obtain landing rights at international airports, this does not generally occur, in part, because this would assume that operators could pass through the design specifications to the aircraft manufacturers. Typically, Annex 8 standards do not apply *directly* to the design of an airplane but are implemented by adoption into the airworthiness codes of ICAO's member countries. Once implemented, airplane certification by a member country implies compliance with Annex 8. As a signatory to the Convention, the United States must implement the Annex 8 rules into our national airworthiness codes to the extent practicable. It is possible, however, for a signatory to file differences with ICAO if it is unable to implement the ICAO standards. The FAA does not believe permanent differences are warranted in this situation. However, because we have not yet promulgated these ICAO standards into our regulations, the United States (like all other states of manufacture) has filed differences with ICAO regarding the design for security provisions of Annex 8. Adoption of these proposals would remove the current difference with the ICAO standards.

Activity by the Aviation Rulemaking Advisory Committee [3] (ARAC)

In addition to participating in the development of international standards through the ICAO, the FAA considers maintaining harmonized standards between the United States and Europe to be a high priority. The FAA found that carrying out this harmonization task was best achieved through ARAC. The ARAC is composed of 76 member organizations with a wide range of interests in the aviation community and provides the FAA with firsthand information and insight regarding proposed new or revised rules.

In October 1999, the FAA tasked the Transport Aircraft Engine Issues area of ARAC to propose harmonized regulations incorporating security measures into airplane design (64 FR 57921, October 27, 1999). The proposed regulations were to be based on Amendment 97 to Annex 8. The task was assigned to the Design for Security Harmonization Working Group (DSHWG), with members from the aviation industry and the governments of Europe, the United States, Brazil, and Canada.

In April 2001, after several airlines reported incidents of flightdeck intrusion by aggressive passengers, the FAA tasked the DSHWG through ARAC to propose harmonized regulations to improve the intrusion resistance of the flightdeck (66 FR 31273, June 11, 2001).

The DSHWG developed and proposed harmonized regulations for implementing security provisions into the design of transport category airplanes, and the ARAC approved those recommendations and forwarded them to the FAA. We accepted the ARAC recommendations. With one exception that is discussed below, the

[1] A specialized agency of the United Nations with 189 member countries (known in ICAO as contracting states). The agency is charged with development of international standards for safety and security of civil aviation.

[2] The terrorist bomb exploded in the forward cargo hold on Pan American World Airways Flight 103 from London to New York City.

[3] The FAA formally established ARAC on January 22, 1991, to provide advice and recommendations about FAA's safety-related rulemaking (56 FR 2190).

proposals in this document are based on those recommendations.

Other FAA Rulemaking Activity

Following the September 11, 2001, terrorist acts, Congress passed the Aviation and Transportation Security Act (the Act) on November 19, 2001. Section 104(a) of the Act, Improved Flightdeck Integrity Measures, required that aircraft engaged in passenger air transportation or intrastate air transportation have a door between the passenger and pilot compartments. The Administrator of the FAA issued a final rule with the following provisions:

(A) Access to the flightdeck was prohibited,

(B) The flightdeck door was to be strengthened,

(C) Flightdeck doors were to remain locked during flight, and

(D) Possession of a key to any flightdeck door by a member of the flightcrew not assigned to the flightdeck was prohibited.

The FAA published Amendment No. 25–106 in the **Federal Register** on January 15, 2002 (67 FR 2118). Amendment No. 25–106 added new § 25.795, Security considerations, requiring strengthening the flightdeck door to resist forcible intrusion by unauthorized persons or penetration by small arms fire and fragmentation devices. The amendment addressed only the ICAO requirements regarding protection of the pilot compartment. At the same time, the FAA published a notice of issuance of Advisory Circular (AC) 25.795–1, Flightdeck Intrusion Resistance, and AC 25.795–2, Flightdeck Penetration Resistance.

Proposed Changes to Part 25

This proposal has two goals: (1) To improve the safety of transport category airplanes, and (2) To provide an equivalent level of safety for different classes of transport category airplanes.

Accordingly, the proposal considers the following factors:

- The security threat;
- Practicability of compliance;
- Benefits of compliance; and
- Any mitigating factors.

For certain classes of airplanes, applying the proposed security design requirements would improve safety significantly. For others, applying them would not improve safety appreciably and would require great effort and expense.

Applicability of Proposed Rules

1. Flightdeck Security

The January 15, 2002, final rule added the requirement for transport category airplanes with flightdeck doors to strengthen the flightdeck door installation. Under this proposal, we would extend those requirements to all barriers—such as bulkheads, ceilings, and floors—between the flightdeck and other occupied areas. Since strengthening these barriers would serve no purpose unless there also was a door separating the passenger cabin and the flightdeck, the proposed amendments to § 25.795(a) would be applicable only to airplanes required to have a flightdeck door.

2. Other Security Considerations

a. *Commercial and private use operations.* Significant security risks are associated with boarding passengers on commercial airplanes. Even with the best screening and other layered security measures, there is the possibility that a person could carry or place an explosive or incendiary device onboard an airplane. Likewise, there is the possibility that an explosive or incendiary device could be placed aboard a commercial airplane in cargo operations.

Generally, airplanes in private use carry heads of state, business leaders, and ordinary citizens. In contrast to commercial passenger airplanes, access to airplanes in private use is limited to specific individuals, namely, the owner and guests. For this reason, these airplanes typically are not targets of onboard terrorists. We believe that applying the proposed requirements to airplanes in private use would not provide significant improvement in security.

Therefore, the FAA proposes to apply the security requirements under this rule only to airplanes designed for commercial operations involving cargo or passengers. We welcome comments regarding applicability of the proposed rule.

b. *Airplane Size.* Both small and large airplanes transport passengers and cargo. Our review of security-related events over the last 30 years indicates that smaller airplanes (whether carrying passengers or cargo) are less likely to be the target of terrorists. Operators of smaller airplanes have fewer people to screen and/or less cargo to inspect; thus, the probability of detecting an explosive device is greater should a terrorist attempt to carry or place one onboard.

The FAA reviewed passenger capacity and airplane gross weight as distinguishing parameters in assessing applicability of these proposals. We concluded both parameters need to be addressed when defining a satisfactory and practical standard. Specifically, we propose that—with the exception of § 25.795(a)(1), (2), and (3), Protection of Flightcrew Compartment, which is discussed below—the rule applies to airplanes with a certificated passenger seating capacity of more than 60 persons or a maximum certificated gross takeoff weight of over 100,000 pounds.[4] This approach addresses airplanes of significant size that carry both passengers and cargo—called ''combi'' airplanes—because the passenger capacity alone may not trigger the proposed requirements. We welcome comments regarding the applicability of this proposed rule to airplanes of different seating capacity or gross takeoff weight.

Provisions of Proposed Rules

1. Protection of Flightcrew Compartment

This section would apply to airplanes required by operating rules to have a flightdeck door.

a. *Intrusion by unauthorized persons.* The proposed change to § 25.795(a)(1) and (a)(2) would extend the requirement for the design of the strengthened flightdeck door to the bulkhead and other accessible barriers (those barriers that are susceptible to forcible intrusion by a person as distinguished from barriers such as floors or ceilings) separating occupied areas from the flightdeck. The flightdeck and any other accessible areas would need to resist forcible intrusion by an unauthorized person and withstand impacts of 300 joules (221.3 foot-pounds). The FAA believes the flightdeck door is the most critical feature in providing resistance to intrusion. However, there could be other access points through the bulkhead from occupied areas. Therefore, the FAA proposes that these barriers be designed to the same security standards as the flightdeck door.

To demonstrate compliance, a manufacturer would generally be able to rely on the test conducted on the flightdeck door. Critical locations (*i.e.*, those requiring tests) are expected to be the door latch and hinge as well as the panel itself but will depend on the design. If there is a more critical part of the bulkhead, the FAA would require testing, either in addition to testing the door or instead of it.

b. *Penetration by projectiles.* Proposed § 25.795(a)(3) would extend security design precautions to any barrier, not just accessible barriers, between the flightdeck and occupied areas to

[4] Based on the input of its member states, ICAO recently amended its standards to apply to airplanes with a maximum passenger capacity greater than 60 persons, or a gross takeoff weight greater than 100,000 pounds.

minimize the penetration of shrapnel from a fragmentation device or projectiles from small arms. Although protection of the flightdeck door provides a high level of safety, the flightdeck itself remains susceptible to damage from discharge of weapons. For example, in a multi-deck airplane, the ceiling and floor around the flightdeck may be vulnerable, and ballistic penetration of the flightdeck can injure the pilots. Such penetration also could disable critical flight instrumentation because the system controls are concentrated in a small area of the flightdeck.

Under this proposal, protection would be required for all barriers between the flightdeck and occupied areas to the extent necessary to resist penetration of projectiles, because they could interfere with safe flight and landing. Areas of concern include grills, closeouts, and latches, if their failure could compromise continued safe flight and landing. For a multi-deck airplane, these barriers could include the floor and ceiling in addition to the bulkhead and door. Protection equivalent to level IIIA of the National Institute of Justice (NIJ) Standard 0101.04 is considered sufficient to protect against small arms or fragmentation devices.

2. Smoke and Fire Safety

The proposed requirements described in paragraphs a. and b. below would apply to airplanes with a certificated passenger seating capacity of more than 60 persons or a maximum certificated takeoff gross weight of over 100,000 pounds.

a. *Flightdeck.* Currently, § 25.831 addresses removal of smoke from the flightdeck. However, the rule does not directly address penetration of smoke into the flightdeck, other than smoke originating in a cargo compartment. Advisory Circular 25–9A, Smoke Detection, Penetration, and Evacuation Tests and Related Flight Manual Emergency Procedures, discusses smoke penetration testing and does consider smoke originating in other areas. However, these discussions are in the context of more general fire safety practices rather than an explicit requirement to prevent smoke penetration. Proposed § 25.795(b)(1) would require the design of the flightdeck to limit penetration of smoke, fumes, or noxious gases generated by explosives, incendiary devices, or fires elsewhere on the airplane.

The FAA expects the most practicable means of compliance will be to control airflow into and out of the flightdeck, which would include crew rest and other areas accessible only from the flightdeck. Maintaining a slight positive pressure differential between the flightdeck and surrounding areas would direct smoke, fumes, and noxious gases to those surrounding areas.

b. *Passenger cabin.* Proposed § 25.795(b)(2) would require the ability to remove smoke, fumes, and noxious gases—such as might be produced by an explosive or incendiary device—from the passenger cabin. The goal is to prevent smoke, fumes, and noxious gases from reaching incapacitating levels if an explosive or incendiary device is activated. Currently, there are no requirements for evacuation of cabin smoke, fumes, or noxious gases. The levels of smoke, fumes, or noxious gases that could incapacitate passengers depend on at least the following variables:

- The specific gases present;
- Concentrations of those gases; and
- The duration of exposure.

The FAA considered these variables and arrived at an approach that does not require detailed knowledge of the explosive or incendiary device.

We determined a fire resulting from an explosive or incendiary device affects the levels and types of gases in the cabin more than does the type of device. Using data from full-scale tests conducted on fires in the cargo compartment, the FAA developed a ''standard'' for the quantity of smoke, fumes, and noxious gases produced. The quantity is a function of the volume of the compartment and the amount of material in it.

We assume the passenger cabin begins at the flightdeck bulkhead and ends at the aft pressure bulkhead (or other bulkhead separating the passenger cabin from another definable space, such as a cargo compartment). The passenger cabin is bound at the top by the ceiling and stowage-bin contour and at the bottom by the cabin floor. We consider the crew rest and other locations that are accessible only from the flightdeck to be part of the flightdeck. However, isolated areas above or below the passenger cabin that are not occupied for takeoff and landing are included in the cabin. An example of such an isolated area is an overhead crew rest that is only occupied in flight.

If the smoke, fumes, and noxious gases resulting from a fire are dispersed in the passenger cabin, it is possible to calculate the frequency of fresh air changes necessary to prevent fire by-products in the cabin from incapacitating the passengers. Time to incapacitation can be calculated by using a Fractional Effective Dose (FED) model. This model considers the types of gases and the duration of exposure to them to determine whether certain conditions will produce incapacitation. Using this approach, the FAA determined occupants of the passenger cabin must be protected against incapacitation when there is a combined volumetric concentration of 0.59% carbon monoxide and 1.23% carbon dioxide.

The combined effect of the two gases on occupants of the passenger cabin, as predicted by the FED, represents the short-term threat posed by all hazardous fire products generated when an explosive or incendiary device is discharged. As a result, we cannot compare the combined concentrations of carbon monoxide and carbon dioxide specified under proposed § 25.795(b)(2) with the individual concentrations of the two gases specified in the existing ventilation requirements under § 25.831(b).

The FAA cannot assume the smoke, fumes, and noxious gases produced by an explosive device would be uniformly dispersed throughout the passenger cabin. It also is unreasonable to assume the smoke, fumes, and noxious gases would not be dispersed at all before the fire is extinguished. To estimate the expected variability in smoke dispersion, we assume the smoke, fumes, and noxious gases are initially concentrated in any one-quarter portion of the total cabin volume. The other portions of the cabin remain less hazardous than the area of initial concentration and can be removed from the FED calculations. Since the rate of air change applies to the entire passenger cabin, this is a conservative approach.

If we assume airflow patterns within a passenger cabin will create a constant mixing as well as an evacuation of the air, removal of the smoke, fumes, and noxious gases will reduce their concentrations in an exponential decay pattern. Therefore, the initial evacuation of the smoke, fumes, and noxious gases will be rapid, and the FED will quickly reach a maximum value. That value will not increase much after approximately two air changes.

As noted above, we determined the quantity of smoke, fumes, and noxious gases and their resulting concentrations using data from a fire in a cargo compartment. The relationship of cargo compartment volume to passenger compartment volume is not the same for all airplanes that would be affected by this proposal. Therefore, the FAA assessed this relationship before establishing these guidelines. We recognize that it would be equally acceptable to address the proposed

requirements under § 25.795(b)(2) by other means, including providing a protective device for each passenger or using a combination of smoke evacuation and protective devices.

3. Fire Suppression in Cargo Compartments

Proposed § 25.795(b)(3) would require fire suppression systems in cargo compartments to be designed to suppress a sudden and extensive fire, such as might result from an explosive or incendiary device. The principal concerns are that the fire suppression system is able to survive such an event and the extinguishing agent retains its ability to suppress such a fire. These requirements would apply to airplanes with a certificated passenger seating capacity of more than 60 persons or a maximum certificated takeoff gross weight of over 100,000 pounds.

The ICAO standard recognizes that Halon 1301 extinguishing agents satisfy this requirement from the standpoint of suppression. However, the U.S. Environmental Protection Agency banned production of Halon 1301 because it contributes to depletion of the ozone layer. Although existing stores of Halon 1301 may still be used, the product will not be available indefinitely. The FAA worked with the International Systems Fire Protection Working Group (formerly the Halon Replacement Working Group) to establish minimum performance standards for new fire suppression agents that are ''equivalent'' to the Halon 1301 extinguishing agents.

For the fire suppression agent to be effective, the fire suppression system must be able to discharge the agent immediately following an explosion. The FAA reviewed test data to assess the vulnerability of fire suppression systems to damage from explosive devices. These data indicate the fire suppression systems currently in use are not affected by the over-pressure produced by an explosive device. However, the fire suppression systems may be vulnerable to secondary loading by panels and supporting structures that are affected by over-pressure. The fire suppression systems also may be vulnerable to damage from fragments of the explosive device or from contents of the cargo compartment. Storage vessels for the fire suppression agent are usually outside the cargo compartment. Therefore, the distribution lines and nozzles may be vulnerable.

There may be several ways to address this concern. Providing a distribution system that has redundancy and adequate separation would be an acceptable way to comply with the proposed requirement. That is, separate storage vessels for the fire suppression agent with an independent distribution system and adequate separation, could be an acceptable approach. Alternatively, shrouding or otherwise hardening the lines could be acceptable, if the mounting scheme could accommodate the secondary loading mentioned above. Based on a review of test data, the shielding would have to protect against fragments of 0.5-inch diameter traveling at a rate of 430 feet a second.

With respect to secondary loading, the threat to the system is from large displacements that might occur on panels or structure to which the systems are attached. In reviewing test data, local structural displacements up to 6 inches are possible within an airplane in a survivable event. Therefore, system attachment arrangements also would have to tolerate 6-inch local displacements, and each system component would still need to function.

Manufacturers need to address only those components in the cargo compartment or separated from it only by the cargo compartment liner. Manufacturers do not need to provide added protection for the fire suppression agent's storage vessel if it is remote from the compartment. We consider the storage vessel remote if it is outside the compartment and is protected by barriers that meet the criteria discussed above.

The fire detection system in the cargo compartment will not require explosion protection. The FAA determined that, if the event were small, there would be no effect on the fire detection system. If the event is large enough to affect the integrity of the fire detection system, the passengers or crew will notice the event. If smoke, fumes, or noxious gases are present, the crew will know they should discharge the suppression agent to the affected area. In addition, the specific compartment where the affected fire detection system is located must be indicated to the crew. As a result, sufficient warning would be given to the flightcrew to preclude hardening of the fire detection systems.

For affected airplanes, a significant consequence of this proposal would be to effectively prohibit the Class B cargo compartment currently permitted by § 25.857. A Class B cargo compartment incorporates a fire detection system, but relies on a crewmember to manually fight the fire. Entry into the cargo compartment to fight a fire after an explosion would not be practicable.

4. Least Risk Bomb Location

Proposed § 25.795(c)(1) would require the manufacturer to establish a ''least risk bomb location'' (LRBL) as part of the design of airplanes with a certificated passenger seating capacity of more than 60 persons or a maximum certificated takeoff gross weight of over 100,000 pounds.

The LRBL is a location in the cabin where crewmembers can put a suspected explosive device that will do the least amount of damage to the airplane in the event of an explosion. Presently, an airplane manufacturer considers the LRBL only after completion of the design. This proposal would require manufacturers to identify the LRBL during the airplane design process. We expect this will improve the level of safety, since the LRBL will be a design consideration and manufacturers can incorporate provisions to enhance its effectiveness. For example, when considering the physical location and design of the LRBL, the manufacturer must consider systems near the LRBL. The goal is to ensure the manufacturer locates critical systems out of the immediate vicinity of the LRBL or protects those systems from explosive devices. On airplanes with more than one passenger deck, more than one LRBL may be desirable.

Operational procedures also can improve the effectiveness of the LRBL in reducing a threat. For example, reducing or eliminating differential cabin pressure markedly reduces the damage explosive devices could cause to airplane structures.

5. System Safety

Proposed § 25.795(c)(2) would require the manufacturer to separate redundant flight critical systems to maximize the ability to continue safe flight and landing of the airplane if there is an event that damages one of those systems. This requirement would apply to airplanes with a certificated passenger seating capacity of more than 60 persons or a maximum certificated takeoff gross weight of over 100,000 pounds.

The goal of the proposal is to maximize the ability of flight critical systems to survive damage caused by an explosive device or other event through a design that will separate, shield, or provide redundancy to the critical systems. To achieve this purpose, the FAA used a ''damage based'' approach. The FAA had previously proposed a similar requirement related to structural capability of the airplane and concluded

that a damage based approach is reasonable.[5]

Under this approach, the FAA assumes an explosive device destroys the flight critical systems contained within a certain volume. We then assess the ability of the airplane to continue safe flight and landing based on the *functionality* of flight critical systems after an explosion and the effect of any resultant loss of functionality. Under this proposal, the manufacturer would use the formula derived from the requirements of § 25.365 to generate a sphere and use the sphere to determine the volume of the airplane within which one must assess loss of system function. Any associated structural damage that might result from the explosion is not relevant to this assessment.

In practice, the manufacturer may assess the effect of separating each flight critical system from other flight critical systems as a design specification, rather than using the proposed formula throughout the fuselage. However, the manufacturer also should consider the combination of systems made inoperative when determining the effect on continued safe flight and landing. This approach might mean considering whether one should separate primary or backup controls for a particular system from both the primary and backup controls for certain other critical systems.

The manufacturer would apply the spherical volume *within the fuselage:*

- Anywhere within the passenger cabin from the bulkhead (or bulkheads) separating the passenger cabin from the flightdeck to the aft cabin bulkhead, with half of the diameter penetrating those bulkheads, and
- Anywhere within the volumes of the cargo compartments, except that only one-half of the spherical volume need extend beyond the liners of the cargo-compartments.

For practical reasons, we propose an upper limit on the size of the sphere. While it is theoretically possible to increase the distance between systems as the diameter of the fuselage increases, there comes a point of no benefit. That is, the event necessary to render systems inoperative in a larger volume than proposed would have other catastrophic results. A standard with no limit on the volume of the sphere would not be cost-effective and could lead to complications in system design. Those complications could present a safety risk at least as great as the risk of an explosion. For example, separations resulting in acute changes in direction of control cables could complicate the function of the cables and cause additional failure or jamming modes.

Conversely, the formula permits successively smaller considerations of separation as the fuselage diameter decreases. At some point, the volume is so small there is no practical value to the requirement. Because the proposed regulation would apply to airplanes with a gross takeoff weight greater than 100,000 pounds or a passenger capacity greater than 60 persons, the FAA is not proposing a lower limit on the size of the sphere.

Use of the sphere is a tool to measure the effectiveness of separating flight critical systems. The FAA's intention is not to limit separation of such systems to the size of the sphere. Rather, we hope to *maximize* separation to improve survivability of the function of flight critical systems in the aftermath of some event. Conversely, airplanes in general have confined areas where it might not always be possible to apply the sphere.

Therefore, the FAA is proposing an exception for areas where it is impracticable to apply the sphere. Generally, these areas will be at the extreme ends of the fuselage or where concentrations of systems are essentially unavoidable, such as in electronic equipment bays or portions of the flightdeck. In those instances, other design measures, such as shielding, may be appropriate for regions where the sphere or half sphere is to be applied.

6. Interior Security

Proposed § 25.795(c)(3) would require that the interior design of the airplane deter the easy concealment of weapons, explosives, or other objects and lessen the likelihood of overlooking such items during a search. This requirement would apply to airplanes with a certificated passenger seating capacity of more than 60 persons or a maximum certificated takeoff gross weight of over 100,000 pounds.

Under ICAO and TSA requirements, it is necessary to search an airplane interior under certain conditions. To improve reliability of such searches, Amendment 97 to ICAO Annex 8 requires that—during the design phase—manufacturers consider the need to search the interior of the airplane.

Transport category airplanes contain many areas that are not readily visible but are relatively accessible. For example, under-seat areas, areas above stowage bins, and toilet bowl drains may not be easily visible when conducting a search but could be accessible places to hide an explosive device. This proposal would require that during the design phase of the interior, the manufacturer consider the need to search airplanes regularly and, therefore, avoid designs that make it difficult to search an area.

The FAA did not receive a recommendation from ARAC on this subject. While the working group tried to arrive at a recommendation, it did not achieve consensus. Certain members of the working group felt the proposals under consideration were ambiguous and open to different interpretation. In addition, no agreement was reached on the best approach—design changes or better techniques and training for searching the airplane. Therefore, the FAA independently developed the proposal described below.

One approach to eliminating hidden devices is to reduce the number of areas where a device can be hidden. For example, the manufacturer could use locks (or other specialty tools) to limit access to certain areas or could remove certain areas from the design altogether. The result would be to reduce the scope of the search. Another approach is to design features that facilitate a simple inspection, i.e., features that can be searched quickly and easily. Examples include bare and open surfaces or use of mirrors that make compartments more visible.

Both approaches have benefits. Making areas more difficult to access may be preferable in some cases; an example is making fasteners on compartment panels more difficult to remove than standard fasteners. A potential drawback, however, is an area that is less accessible may also become less likely to be searched. Therefore, the FAA proposes to focus on requiring design features that lead to quick and easy searches. By ensuring it is easy to search those areas where the opportunity to hide an explosive device is greatest, we make more time available to search areas that are more difficult to access and inspect. In this way, the overall search of the airplane will be more effective.

The following is a brief description of our proposed requirement for each item.

a. *Area above stowage bins.* The area above stowage bins is difficult to search. Light fixtures often inhibit both visual and physical inspection. Proposed § 25.795(c)(3)(i) would require the area above overhead bins to be designed to prevent hiding objects from view. This objective can be accomplished either by preventing a person from placing an object in the area above stowage bins or by designing a feature that makes it obvious someone has tampered with the area. An example of the first approach is screening off the area above the stowage bins. An example of the second

[5] Notice No. 75–31 (40 FR 29410; July 11, 1975).

is designing the area above the stowage bin so that if anything is placed there, the stowage bin could not be opened properly.

b. *Toilet.* A toilet can be an easy place to hide a device. Some toilets are designed to restrict the size of a device that can be flushed down it. The vacuum-waste system is one example. Proposed § 25.795(c)(3)(ii) would deter hiding a device in a toilet by restricting the diameter of the passage pipes prevent passage of objects greater than or equal to 2 inches.

c. *Life preservers.* Under proposed § 25.795(c)(3)(iii), life preservers or their storage location would be designed so any tampering is evident. One way to meet this requirement would be to make an inspection easier. For example, life preservers are typically installed under seats but alternatively may be installed in the passenger service unit on the underside of stowage bins.

Note that manufacturers have to meet the requirements of § 25.1415, Ditching equipment, for accessibility to life preservers. The FAA, however, does not believe § 25.1415 and proposed § 25.795(c)(3)(iii) conflict.

d. *Other areas.* Designers can consider several other areas of an airplane to promote ease of search. There are no specific requirements to consider these areas under this proposal.

Proposed Advisory Circulars (ACs)

In conjunction with issuance of this NPRM, the FAA is issuing six proposed ACs and proposing changes to two existing ACs. Each AC describes an acceptable means of complying with a specific provision of the proposed amendments to 14 CFR 25.795. These proposed ACs are available for comment at: *http://www.faa.gov/aircraft/draft%5Fdocs/display_docs/index.cfm?Doc_Type=AC*.

○ Proposed AC 25.795–1X, Flightdeck Intrusion Resistance, would revise AC 25.795–1 to provide guidance on designing flightdeck barriers to resist intrusion by unauthorized persons during flight.

○ Proposed AC 25.795–2X, Flightdeck Penetration Resistance, would revise AC 25.795–2 to provide guidance on designing flightdeck barriers to prevent penetration by small arms and fragmentation devices.

○ Proposed AC 25.795–3X, Flightdeck Protection (Smoke and Fumes), would provide guidance on designing an airplane to limit entry of smoke, fumes, and noxious gases into the flightdeck in the event of detonation of an explosive or incendiary device on the airplane.

○ Proposed AC 25.795–4X, Passenger Cabin Smoke Evacuation, would provide guidance on designing an airplane with means to prevent passengers from being incapacitated by smoke, fumes, or noxious gases, resulting from detonation of an explosive or incendiary device during flight.

○ Proposed AC 25.795–5X, Compartment Fire Suppression, would provide guidance on designing the fire suppression system of the cargo compartment to withstand a sudden and extensive fire, such as could be caused by an explosive or incendiary device in the cargo compartment.

○ Proposed AC 25.795–6X, Least Risk Bomb Location (LRBL), would provide guidance on designing a location where an explosive or incendiary device discovered on-board an airplane may be placed to protect flight critical structures and systems from damage in case of detonation.

○ Proposed AC 25.795–7X, Survivability of Systems, would provide guidance on designing redundant systems necessary for continued safe flight and landing of the airplane so that they are physically separated by certain minimum distances.

○ Proposed AC 25.795–8X, Design for Ease of Search, would provide guidance on designing specified areas in the interior of an airplane to make it more difficult to hide dangerous objects or make it easier to find such objects if they have been brought onboard.

Proposed Change to Part 121

Under proposed § 25.795(c)(1), manufacturers would be required to designate a ''least risk bomb location'' (LRBL) in designing new airplanes which have a maximum passenger capacity greater than 60 persons or a gross weight greater than 100,000 pounds. Under proposed § 121.295, within one year of the effective date of this amendment an LRBL would need to be identified on existing airplanes with a passenger seating capacity of more than 60 persons within one year of the amendment. As noted previously, it has been common practice for airplane manufacturers to designate such a location on existing airplanes, but it is not a requirement to do so. Therefore, some airplane types have no LRBL identified. Because designation of the LRBL is already common practice, we propose one year for compliance.

Other procedures regarding use of the LRBL are currently regulated by the Transportation Security Administration.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined no new information collection requirements are associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and proposes these regulations to harmonize with the standards.

Economic Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined this proposal: (1) Has benefits that justify its costs, is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) would not have a significant economic impact on a substantial number of small entities; (3) would be in agreement with the Trade Agreement Act; and (4) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Total Costs and Benefits of This Rulemaking

The cost of a fatal aircraft accident involving terrorist bombing and hijacking can exceed one billion dollars. In addition to the quantitative measures, the psychological impact, investigative costs, bankruptcy proceedings, and other litigation that follows such accidents further emphasizes the importance of the proposed measures as a means of cost avoidance, and the future health of the civil aviation industry in the world marketplace.

The total estimated costs of this proposal are $453.9 million ($197.3 million present value). The total includes the costs of certification, manufacturing, and the incremental fuel consumption cost. We estimate larger transport category aircraft costs at $395.1 million ($167.6 million present value) and smaller transport category aircraft costs are $58.8 million ($29.7 million present value).

We estimate the total benefits of this proposal at $1.2 billion ($328.8 million present value). The total benefits are comprised of operational benefits of $391 million ($119.4 million present value) and safety benefits of $763.5 million ($204.4 million present value).

This proposal is cost beneficial, because the estimated $1.2 billion ($328.8 million) in benefits outweigh the estimated costs of $453.9 million ($197.3 million present value). We estimate one event will be prevented by year 2049 creating safety benefits of $763.5 million ($204.4 present value). The one event is based upon the historical number of aircraft bombings (18), and aircraft hijackings/commandeerings (105).

Who is Potentially Affected by This Rulemaking

Manufacturers of part 25 newly designed passenger aircraft.

Assumptions and Sources of Information

- Period of analysis—2006 through 2049.
- Discount rate—7%.
- Compensation Rates, Economic Values for FAA Investment and Regulatory Decisions, a Guide, May 2005.
- Terrorist Acts, Press Release—Transportation Security Administration, September 29, 2003.
- Civil Aviation Crimes, 2000 Crime Acts Report—Federal Aviation Administration.
- Terrorist Acts, 9–11 Commission Report, July 22, 2004.
- Costs of Terrorist Acts, ''September 11, 2001: Then and Now,'' John R. Jameson.
- Costs of Terrorist Acts, ''The Economic Cost of Terrorism,'' Brian S. Wesbury. September 2002.
- $3 million Value to Avert a Fatality, Revised Departmental Guidance, Treatment of Value of Life and Injuries in Preparing Economic Evaluations, Office of the Secretary of Transportation Memorandum,'' January 29, 2002.
- Airborne Flight Hours, FAA Aerospace Forecasts Fiscal Years 2005–2016.

Alternatives We Considered

The FAA considered reducing the size of transport category airplanes that would be subject to all the requirements contained in this proposal but believed that smaller airplanes (whether carrying passengers or cargo) are less likely to be the target of terrorists. However, given the importance of maintaining cabin security, this proposal would require protection of the flightcrew compartment for all transport category airplanes required by operating rules to have a flightdeck door.

Benefits of This Rule

We estimate the total benefits of this proposal at $1.2 billion ($323.8 million). The total benefits are comprised of operational benefits of $763.5 million ($204.4 million present value) and safety benefits of $391 million ($119.4 million present value).

Currently, larger transport category aircraft have many areas that are accessible to passengers, but can only be inspected with considerable effort. This proposal would require that the interior design of an airplane incorporate features that make it more difficult to hide dangerous objects in the airplane. Improving the aircraft design by incorporating security features would reduce the time required to search an aircraft. Operational cost savings would occur due the design requirements that would reduce the time necessary to conduct aircraft searches.

Based on continued security risks and threats, the FAA believes that adopting the requirements contained in this proposal would provide an overall increase in security to commercial aviation in the United States. This proposal would decrease aircraft vulnerability and increase aircraft survivability in the event of a bombing or hijacking.

The upper bound of a hijacking or bombing could have a similar impact to that of September 11th with direct financial impacts in the billions of dollars, and an indirect financial impact in the billions of dollars.

Costs of This Rule

The total estimated costs of this proposal are $453.9 million ($197.3 million present value). The total includes the costs of certification, manufacturing, and the incremental fuel consumption cost. We estimate larger transport category aircraft costs at $395.1 million ($167.6 million present value) and smaller transport category aircraft costs are $58.8 million ($29.7 million present value).

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Entities potentially affected by this proposal include part 25, transport category airplane manufacturers and operators of affected aircraft.

In its classification, the FAA uses the size standards from the Small Business Administration. It specifies that companies with less than 1,500 employees are small entities. All U.S. transport category airplane manufacturers have more than 1,500 employees; thus, none are considered small entities.

A substantial number of operators who purchase larger affected aircraft are small entities and would incur cost due to increased fuel consumption. Although a substantial number of small entities would be affected, operational cost savings are greater than the additional cost of fuel consumption.

In addition, a substantial number of operators who purchase smaller affected airplanes would incur additional fuel cost. The estimated number of affected smaller aircraft is 714, with an estimated present value cost of roughly $2.1 million. Thus, the total average fuel burn cost for a smaller transport category aircraft is $191. The FAA believes $191 is not a significant amount in the overall cost of purchasing and operating a new aircraft.

Therefore, the FAA certifies that this proposed rule would not have a signifficant economic impact on a substantial number of small entities.

Initial International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or 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, they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that it would promote international trade by standardizing security related design features of part 25 aircraft and thereby complying with ICAO's international design standards. In accordance with the above statute, the FAA has assessed the potential effect of this proposal and determined that it would impose the same costs on domestic and international entities. The FAA uses international aircraft safety standards as the basis for this proposed rule and therefore is in compliance with the International Trade Agreements Act.

Initial Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) 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 an expenditure of $100 million or more (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.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million. This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandate Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government and therefore would not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Environmental Analysis

Environmental Analysis FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 3f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this proposed rulemaking under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

14 CFR Part 121

Aircraft, Aviation safety, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration (FAA) proposes to amend parts 25 and 121 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 4794.

2. Revise § 25.795 to read as follows:

§ 25.795 Security considerations.

(a) *Protection of flightcrew compartment.* If a flightdeck door is required by operating rules:

(1) The bulkhead, door, and any other accessible barrier separating the flightcrew compartment from occupied areas must be designed to resist forcible intrusion by unauthorized persons and be capable of withstanding impacts of 300 joules (221.3 foot pounds).

(2) The bulkhead, door, and any other accessible barrier separating the flightcrew compartment from occupied areas must be designed to resist a constant 250 pound (1,113 Newtons) tensile load on accessible handholds, including the doorknob or handle.

(3) The bulkhead, door, and any other barrier separating the flightcrew compartment from any occupied areas must be designed to resist penetration by small arms fire and fragmentation devices to a level equivalent to level IIIa of the National Institute of Justice (NIJ) Standard 0101.04.

(b) Airplanes with a certificated passenger seating capacity of more than 60 persons or a maximum certificated takeoff gross weight of over 100,000 pounds must be designed to limit the effects of an explosive or incendiary device as follows:

(1) *Flightdeck smoke protection.* Means must be provided to limit entry of smoke, fumes, and noxious gases into the flightdeck.

(2) *Passenger cabin smoke protection.* Means must be provided to prevent passenger incapacitation in the cabin resulting from smoke, fumes, and noxious gases as represented by the combined volumetric concentrations of 0.59% carbon monoxide and 1.23% carbon dioxide.

(3) *Cargo compartment fire suppression.* An extinguishing agent must be capable of suppressing a fire. All cargo-compartment fire suppression-system components must be designed to withstand the following effects, unless they are redundant and separated in accordance with paragraph (c)(2) of this section or are installed remotely from the cargo compartment:

(i) Impact or damage from a 0.5-inch-diameter aluminum sphere traveling at 430 feet per second;

(ii) A 15-pound per square-inch pressure load if the projected surface area of the component is greater than 4 square feet. Any single dimension greater than 4 feet may be assumed to be 4 feet in length; and

(iii) A 6-inch displacement in any direction from a single point force applied anywhere along the distribution system because of support structure displacements or adjacent materials displacing against the distribution system.

(c) An airplane with a certificated passenger seating capacity of more than 60 persons or a maximum certificated takeoff gross weight of over 100,000 pounds must comply with the following:

(1) *Least risk bomb location.* An airplane must be designed with a designated location where a bomb or other explosive device could be placed to best protect flight-critical structures and systems from damage in the case of detonation.

(2) *Survivability of systems.* Redundant airplane systems necessary for continued safe flight and landing must be physically separated, or otherwise designed to maximize their survivability, at a minimum, except where impracticable, by an amount equal to a sphere of diameter

$$D = 2\sqrt{(H_0 / \pi)}$$

(where H_0 is defined under § 25.365(e)(2) of this part and D need not exceed 5.05 feet). The sphere is applied everywhere within the fuselage, limited by the forward and aft bulkheads of the passenger cabin or cargo compartments, beyond which only one-half the sphere is applied.

(3) *Interior design to facilitate searches.* Design features must be incorporated that will deter concealment or promote discovery of weapons, explosives, or other objects from a simple inspection in the following areas of the airplane cabin:

(i) Areas above the overhead bins must be designed to prevent objects from being hidden from view in a simple search from the aisle.

(ii) Toilets must be designed to prevent the passage of solid objects greater than 2.0 inches in diameter.

(iii) Life preservers or their storage locations must be designed so that tampering is evident.

(d) *Exceptions.* Airplanes used solely to transport cargo only need to meet the requirements of paragraphs (b)(1), (b)(3), and (c)(2) of this section.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

4. Add § 121.295 to read as follows:

§ 121.295 Location for a suspect device.

After [insert a date one year after the effective date of this amendment], all airplanes with a passenger seating capacity of more than 60 persons must have a location where a suspected explosive or incendiary device found in flight can be placed to minimize the risk to the airplane.

Issued in Washington, DC on December 21, 2006.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. E6–22563 Filed 1–4–07; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Friday,
January 5, 2007

Part III

The President

Memorandum of December 29, 2006—Assignment of Function Under Section 721(k) of the Defense Production Act of 1950

Federal Register
Vol. 72, No. 3
Friday, January 5, 2007

Presidential Documents

Title 3—

The President

Memorandum of December 29, 2006

Assignment of Function Under Section 721(k) of the Defense Production Act of 1950

Memorandum for the Secretary of the Treasury

By the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the function of the President under section 721(k) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(k)), for purposes of submitting such report by February 28, 2007.

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

THE WHITE HOUSE,
Washington, December 29, 2006.

[FR Doc. 07–20
Filed 1–4–07; 8:49 am]
Billing code 4810–25–M

Reader Aids

Federal Register

Vol. 72, No. 3

Friday, January 5, 2007

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives. gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, 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.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JANUARY

1–246 3
247–462 4
463–644 5

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6641 of 12/15/1993 (See Proc. 8097) 453
6763 of 12/23/1994 (See Proc. 8097) 453
6982 of 4/1/1997 (See Proc. 8095) 429
7351 of 10/2/2000 (See Proc. 8097) 453
7512 of 12/7/2001 (See Proc. 8097) 453
7746 of 12/30/2003 (See Proc. 8097) 453
7747 of 12/30/2003 (See Proc. 8097) 453
7857 of 12/20/2004 (See Proc. 8097) 453
7971 of 12/22/2005 (See Proc. 8097) 453
7987 of 2/28/2006 (See Proc. 8097) 453
7991 of 3/24/2006 (See Proc. 8097) 453
7996 of 3/31/2006 (See Proc. 8097) 453
8034 of 6/30/2006 (See Proc. 8097) 453
8039 of 7/27/2006 (See Proc. 8097) 453
8093 421
8094 423
8095 429
8096 451
8097 453
8098 459

Executive Orders:
11582 (See EO 13421) 425
13421 (See EO 13421) 425

Administrative Orders:
Memorandums:
Memorandum of December 29, 2006 643

9 CFR

77 247

Proposed Rules:
94 ..... 471, 475

10 CFR

Proposed Rules:
50 480
72 480
73 ..... 480, 481

14 CFR

25 1
39 ..... 2, 247, 252, 256

Proposed Rules:
25 630
39 ..... 50, 481, 483, 485, 487
47 489
61 ..... 55, 489
63 489
65 489
91 55
121 630
135 55

17 CFR

Proposed Rules:
230 400
275 400

18 CFR

50 198
380 198

21 CFR

510 260
520 ..... 261, 262
522 ..... 260, 263, 264
524 264

Proposed Rules:
101 ..... 497, 519

22 CFR

Proposed Rules:
9 59

24 CFR

Proposed Rules:
570 62

26 CFR

1 5

29 CFR

1915 7

33 CFR

110 ..... 463, 464
117 466

Proposed Rules:
165 520

38 CFR

3 8

39 CFR

111 468

40 CFR

9 368
52 ..... 9, 11, 18, 20, 23, 200, 265, 267
63 26
141 368
142 368
261 43

Proposed Rules:
35 293

52 .....66, 67, 68, 296
63.....69

42 CFR

Proposed Rules:
72.....92

44 CFR

65.....269
67.....272, 287

Proposed Rules:
67.....297

50 CFR

648.....291, 470

Proposed Rules:
17.....321
635.....96

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 JANUARY 5, 2007

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

North Carolina; published 11-6-06

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

Missouri; published 11-6-06

RULES GOING INTO EFFECT JANUARY 7, 2007

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Practice and procedure:

FERC Form No. 60; software availability for electronic filing; published 12-20-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Onions grown in Idaho and Oregon; comments due by 1-8-07; published 11-7-06 [FR 06-09112]

Perishable Agricultural Commodities Act; implementation:

Electronic data interchange; trust benefit preservation; clarification; comments due by 1-8-07; published 11-8-06 [FR E6-18826]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:

Sugar Program—

Allocation shortfalls reassignment; comments due by 1-12-07; published 11-13-06 [FR E6-19076]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

National School Lunch Program—

Fluid milk substitutions; comments due by 1-8-07; published 11-9-06 [FR 06-09136]

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Barley protein testing; official fees and tolerances; comments due by 1-8-07; published 11-8-06 [FR E6-18860]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Coastal pelagic species; comments due by 1-8-07; published 12-7-06 [FR E6-20770]

Highly migratory species; comments due by 1-8-07; published 12-7-06 [FR E6-20721]

DEFENSE DEPARTMENT

Defense Acquisition Regulations System

Acquisition regulations:

Contracting methods and contract type; comments due by 1-8-07; published 11-9-06 [FR E6-19034]

Receiving reports for shipments; comments due by 1-8-07; published 11-9-06 [FR E6-19035]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Gasoline distribution bulk terminals, pipeline facilities and gasoline dispensing facilities; comments due by 1-8-07; published 11-9-06 [FR E6-18656]

Air pollution; standards of performance for new stationary sources:

Volatile organic compounds (VOC)—

Synthetic organic chemicals manufacturing industry and petroleum refineries; equipment leaks; comments due by 1-8-07; published 11-7-06 [FR E6-18646]

Air programs:

Clean Air Act—

Virgin Islands Water and Power Authority; exemption; comments due by 1-12-07; published 12-13-06 [FR E6-21198]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Michigan; comments due by 1-8-07; published 12-7-06 [FR E6-20639]

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

Delaware; comments due by 1-8-07; published 12-7-06 [FR E6-20650]

South Carolina; comments due by 1-8-07; published 12-7-06 [FR E6-20767]

Toxic substances:

Coke oven light oil (coal); testing requirements; revocation; comments due by 1-8-07; published 12-8-06 [FR E6-20908]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Missoula Intercarrier Compensation Reform Plan; comments due by 1-11-07; published 12-6-06 [FR E6-20676]

Radio services, special:

Maritime communications; comments due by 1-8-07; published 11-8-06 [FR E6-18755]

Television broadcasting:

Advanced television (ATV) systems—

Digital television transition; DTV table of allotments; comments due by 1-11-07; published 11-15-06 [FR E6-18897]

FEDERAL ELECTION COMMISSION

Compliance procedures:

Administrative fines challenges; comments due by 1-8-07; published 12-8-06 [FR E6-20735]

Enforcement matters; policy statement; comments due by 1-8-07; published 12-8-06 [FR E6-20752]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Findings on petitions, etc.—

Colorado River cutthroat trout; comments due by 1-8-07; published 11-7-06 [FR E6-18691]

Importation, exportation, and transportation of wildlife:

Bald eagles protection; definition of ''disturb''; comments due by 1-11-07; published 12-12-06 [FR E6-21139]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Earned Value Management System; implementation; comments due by 1-12-07; published 11-13-06 [FR E6-18918]

NUCLEAR REGULATORY COMMISSION

Nuclear power reactors; security requirements; comments due by 1-9-07; published 10-26-06 [FR 06-08678]

Production and utilization facilities; domestic licensing:

American Society of Mechanical Engineers Boiler and Pressure Vessel Code Cases; incorporation by reference; comments due by 1-10-07; published 10-27-06 [FR E6-18023]

SECURITIES AND EXCHANGE COMMISSION

Securities:

Municipal securities disclosure; amendments; comments due by 1-8-07; published 12-8-06 [FR E6-20829]

STATE DEPARTMENT

Passports:

Card format passport; fee schedule changes; comments due by 1-7-07; published 12-13-06 [FR E6-21219]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 1-8-07; published 12-8-06 [FR E6-20852]

Bombardier; comments due by 1-10-07; published 12-11-06 [FR E6-20969]

Cessna; comments due by 1-8-07; published 11-7-06 [FR E6-18659]

EADS SOCATA; comments due by 1-8-07; published 12-7-06 [FR E6-20760]

Empresa Brasileira de Aeronautica S.A.

(EMBRAER); comments due by 1-8-07; published 12-8-06 [FR E6-20856]
General Electric Co.; comments due by 1-12-07; published 12-13-06 [FR 06-09674]
Pacific Aerospace Corp. Ltd.; comments due by 1-10-07; published 12-11-06 [FR E6-20976]
Pilatus Aircraft Ltd; comments due by 1-10-07; published 12-11-06 [FR E6-20971]
Rolls-Royce plc; comments due by 1-8-07; published 11-7-06 [FR E6-18702]
Turbomecca S.A.; comments due by 1-8-07; published 11-8-06 [FR E6-18839]
Airworthiness standards:
Special conditions—
AmSafe, Inc.; Pilatus Aircraft Ltd., Models PC-12, PC-12/45, and PC-12/47 airplanes; comments due by 1-11-07; published 12-12-06 [FR E6-21018]
Class D airspace; comments due by 1-8-07; published 12-7-06 [FR 06-09563]
Class E airspace; comments due by 1-8-07; published 12-7-06 [FR 06-09564]
Class E Airspace; comments due by 1-12-07; published 11-28-06 [FR E6-20182]
Class E airspace; comments due by 1-12-07; published 11-28-06 [FR E6-20170]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticultural area designations:
Lehigh Valley; Lehigh, Northampton, Berks, Schuylkill, Carbon, and Monroe Counties, PA; comments due by 1-8-07; published 11-8-06 [FR E6-18895]
Tulocay, Napa County, CA; comments due by 1-8-07; published 11-8-06 [FR E6-18891]

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

In the **List of Public Laws** printed in the *Federal Register* on December 29, 2006, S. 2735, Public Law 109-460, was printed incorrectly. It should read as follows:

S. 2735/P.L. 109–460

To amend the National Dam Safety Program Act to reauthorize the national dam safety program, and for other purposes. (Dec. 22, 2006; 120 Stat. 3401)

Last List December 29, 2006

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.