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Presidential Documents

Title 3—

The President

Proclamation 8164 of August 6, 2007

Women's Equality Day, 2007

By the President of the United States of America

A Proclamation

On Women's Equality Day, we commemorate the adoption of the 19th Amendment to our Constitution and the strong leadership of extraordinary women who have made America a more perfect Union by advancing women's suffrage.

At the Seneca Falls Convention of 1848, a group of visionaries gathered to proclaim the ideas that ''all men and women are created equal'' and ''endowed by their Creator with certain inalienable rights.'' That gathering grew into a national movement that led to the ratification of the 19th Amendment, guaranteeing women the right to vote. This achievement reflects the vision and determination of the suffragists who stood for a freer society and changed our Nation's history.

Since the passage of the 19th Amendment, pioneers such as Margaret Chase Smith and Sandra Day O'Connor rose above obstacles and broke down barriers to equality. Today, American women are shaping our Nation and the world by serving in all walks of life. Many brave women volunteer to wear the uniform of the United States, and they serve as an inspiration to all.

Our Nation is grateful for the bold leadership of American women who have opened doors of opportunity for women of future generations. On Women's Equality Day we honor the suffragists and all those who seek to expand equality in our world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 2007, as Women's Equality Day. I call upon the people of the United States to celebrate the achievements of women and observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of August, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 07–3918
Filed 8–8–07; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. AMS–FV–07–0053; FV07–916/917–5 FR]

Nectarines and Peaches Grown in California; Decreased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule decreases the assessment rates established for the Nectarine Administrative Committee and the Peach Commodity Committee (committees) for the 2007–08 and subsequent fiscal periods from $0.21 to $0.06 per 25-pound container or container equivalent of nectarines and peaches handled. The committees locally administer the marketing orders that regulate the handling of nectarines and peaches grown in California. Assessments upon nectarine and peach handlers are used by the committees to fund reasonable and necessary expenses of the programs. The fiscal period runs from March 1 through the last day of February. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective August 10, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Garcia, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone:(559) 487–5901, Fax: (559) 487–5906; or E-mail: *Jennifer.Garcia3@usda.gov* or *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, California nectarine and peach handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates will be applicable to all assessable nectarines and peaches beginning on March 1, 2007, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rates established for the Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) for the 2007–08 and subsequent fiscal periods from $0.21 to $0.06 per 25-pound container or container equivalent of nectarines and peaches handled.

The nectarine and peach marketing orders provide authority for the committees, with the approval of USDA, to formulate annual budgets of expenses and collect assessments from handlers to administer the programs. The members of NAC and PCC are producers of California nectarines and peaches, respectively. They are familiar with the committees' needs, and with the costs for goods and services in their local area and are, therefore, in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

NAC Assessment and Expenses

For the 2006–07 fiscal period, the NAC recommended, and USDA approved, an assessment rate of $0.21 per 25-pound container or container equivalent of nectarines that will continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The NAC met on May 1, 2007, and unanimously recommended 2007–08 expenditures of $1,446,654 and an assessment rate of $0.06 per 25-pound container or container equivalent of nectarines. In comparison, the budgeted expenditures for the 2006–07 fiscal period were $4,473,764. The assessment rate of $0.06 per 25-pound container or container equivalent of nectarines is $0.15 lower than the rate currently in effect. Combining expected assessment revenue of $1,140,000 with the $322,051 carryover available from the 2006–07 fiscal period and other income, such as interest and research grants, should be adequate to meet committee needs. The assessment rate is also likely to provide a $127,133 reserve, which may be used to cover administrative expenses prior to the beginning of the 2008–09 shipping season as provided in the order (§ 916.42). Funds in the reserve will be kept within the maximum

permitted by the order, approximately one year's expenses.

The NAC recommended a substantially reduced 2007–08 fiscal period budget and assessment rate because promotional activities, as well as portions of the committee's administrative and inspection programs, have been discontinued. A new California State marketing program that will conduct such activities has been implemented. An interim final rule discussing the implementation of this marketing program was published on April 16, 2007, in the **Federal Register** at 72 FR 18847.

Expenditures recommended by the NAC for the 2007–08 fiscal period include $262,444 for administration, $37,476 for inspection and compliance, $196,147 for production research, and $950,587 for consumer and category research. Budgeted expenses for these items in 2006–07 were $567,856 for administration; $1,070,832 for inspection; $201,702 for production research; and $2,633,374 for promotions, which included consumer and category research.

The NAC 2007–08 fiscal period assessment rate was derived after considering anticipated fiscal year expenses; estimated assessable nectarines of 19,000,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate financial reserve to carry the NAC into the 2008–09 fiscal period. Therefore, the NAC recommended an assessment rate of $0.06 per 25-pound container or container equivalent.

PCC Assessment and Expenses

For the 2006–07 fiscal period, the PCC recommended, and USDA approved, an assessment rate of $0.21 per 25-pound container or container equivalent of peaches that will continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The PCC met on May 1, 2007, and recommended 2007–08 expenditures of $1,486,971 and an assessment rate of $0.06 per 25-pound container or container equivalent of peaches. In comparison, budgeted expenditures for the 2006–07 fiscal period were $4,988,914. The assessment rate of $0.06 per 25-pound container or container equivalent of peaches is $0.15 lower than the rate currently in effect. Combining expected assessment revenues of $1,200,000 with the $420,386 carryover available from the 2006–07 fiscal period and other income such as interest and research grants should be adequate to meet committee needs. The assessment rate is also likely to provide a $188,222 reserve, which may be used to cover administrative expenses prior to the beginning of the 2008–09 shipping season as provided in the order (§ 917.38). Funds in the reserve will be kept within the maximum permitted by the order, approximately one year's expenses.

The PCC recommended a substantially reduced 2007–08 fiscal period budget and assessment rate because promotional activities, as well as portions of the committee's administrative and inspection programs, have been discontinued. A new California State marketing program that will conduct such activities has been implemented. An interim final rule discussing the implementation of this marketing program was published on April 16, 2007, in the **Federal Register** at 72 FR 18847.

Expenditures recommended by the PCC for the 2007–08 fiscal period include $267,025 for administration, $87,693 for inspection and compliance, $196,149 for production research, and $936,104 for consumer and category research. Budgeted expenses for these items in 2006–07 were $936,104 for administration; $1,299,211 for inspection; $210,718 for production research; and $2,849,961 for promotions, which included consumer and category research.

The PCC 2007–08 fiscal period assessment rate was derived after considering anticipated fiscal year expenses; estimated assessable peaches of 20,000,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate financial reserve to carry the PCC into the 2008–09 fiscal period. Therefore, the PCC recommended an assessment rate of $0.06 per 25-pound container or container equivalent.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committees or other available information.

Although these assessment rates will be in effect for an indefinite period, the committees will continue to meet prior to or during each fiscal period to recommend budgets of expenses and consider recommendations for modification of the assessment rates. The dates and times of committee meetings are available from the committees' Web site at *http://www.eatcaliforniafruit.com* or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the committees' recommendations and other available information to determine whether modification of the assessment rate for each committee is needed. Further rulemaking will be undertaken as necessary. The committees' 2007–08 fiscal period budgets and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 676 producers of nectarines and peaches in the production area and approximately 175 handlers subject to regulation under the orders. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

According to the committees' staff, approximately 85 percent of all the handlers within the industry may be classified as small entities. For the 2006 marketing season, staff estimated that the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 722,223 containers to have annual receipts of $6,500,000.

Also, the committees' staff has estimated that more than 90 percent of all the producers in the industry may be classified as small entities. For the 2006 marketing season, staff estimated the average producer price received was $4.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 166,667 containers of nectarines and peaches to have annual receipts of $750,000.

With an average producer price of $4.50 per container or container equivalent, and a combined packout of nectarines and peaches of 36,388,996 containers, the value of the 2006 packout is estimated to be $163,750,482. Dividing this total estimated grower revenue figure by the estimated number of producers (676) yields an estimate of average revenue per producer of about $242,234 from the sales of peaches and nectarines.

This rule decreases the assessment rates established for NAC and PCC for the 2007–08 and subsequent fiscal periods from $0.21 to $0.06 per 25-pound container or container equivalent of nectarines or peaches.

The NAC recommended 2007–08 fiscal period expenditures of $1,446,654 for nectarines and an assessment rate of $0.06 per 25-pound container or container equivalent of nectarines. The PCC recommended 2007–08 fiscal period expenditures of $1,486,971 for peaches and an assessment rate of $0.06 per 25-pound container or container equivalent of peaches. The assessment rates of $0.06 are $0.15 lower than the rates currently in effect.

Analysis of NAC Budget

The quantity of assessable nectarines for the 2007–08 fiscal period is estimated at 19,000,000 25-pound containers or container equivalents. Thus, the $0.06 rate should provide $1,140,000 in assessment income.

The major expenditures recommended by the NAC for the 2007–08 year include $262,444 for administration; $37,476 for inspection and compliance; $196,147 for production research; and $950,587 for consumer and category research, which were previously included in the promotions budget. Budgeted expenses for these items in 2006–07 were $567,856, $1,070,832, $201,702, and $2,633,374, respectively.

The NAC recommended a decrease in the assessment rate to meet anticipated 2007–08 expenses and provide a financial reserve of $127,133, which is needed to fund expenses for the following year until assessments for that year are received.

Analysis of PCC Budget

The quantity of assessable peaches for the 2007–08 fiscal year is estimated at 20,000,000 25-pound containers or container equivalents. Thus, the $0.06 rate should provide $1,200,000 in assessment income.

The major expenditures recommended by PCC for the 2007–08 year include $267,025 for administration; $87,693 for inspection and compliance; $196,149 for production research; and $936,104 for consumer and category research, which were previously included in the promotions budget. Budgeted expenses for these items in 2006–07 were $629,024, $1,299,211, $210,718, and $2,849,961, respectively.

The PCC recommended a decrease in the assessment rate to meet anticipated 2007–08 fiscal period expenses and provide a financial reserve of $188,222, which is needed to fund expenses for the following year until assessments for that year are received.

Considerations in Determining Expenses and Assessment Rates

Prior to arriving at these budgets, the committees considered information and recommendations from various sources, including, but not limited to: their Executive Committee, their Research Subcommittee, their International Programs Subcommittee, their Domestic Promotion Subcommittee, and the Nectarine and Peach Estimating Committees. Because fewer programs will be conducted under the Federal orders during this fiscal year compared to previous years, the committees decided the assessment rates should be reduced to prevent the accumulation of reserves beyond the levels allowed under the orders. Therefore, they recommended decreasing the assessment rates to $0.06 per 25-pound container or container equivalent. This will allow them to meet their 2007–08 fiscal period expenses and carry over necessary reserves to finance operations before 2008–09 fiscal period assessments are collected.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for nectarines and peaches for the 2007–08 season could range between $6.00 and $8.00 per 25-pound container or container equivalent. Therefore, the estimated assessment revenue for the 2007–08 fiscal period as a percentage of total grower revenue could range between .75 and 1 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate will reduce the burden on handlers, and may reduce the burden on producers. In addition, the committees' meetings were widely publicized throughout the California nectarine and peach industries and all interested persons were invited to attend the meetings and were encouraged to participate in the committees' deliberations on all issues. Like all committee meetings, the May 1, 2007, meetings were public meetings and entities of all sizes were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The AMS is committed to complying 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on June 20, 2007 (72 FR 33919). Copies of the proposed rule were distributed via the committees' Web site. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period which ended July 2, 2007, was provided for interested persons to respond to the proposal. One comment supporting the proposal was received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the committees and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2007–08 fiscal period began on March 1, 2007, and the marketing orders require that the rates of assessment for each fiscal period apply to all assessable nectarines and peaches handled during such fiscal period; (2) this rule decreases the assessment rates for assessable nectarines and peaches beginning with the 2007–08 fiscal period; and (3) handlers are aware of this action, which

was discussed by the committees at public meetings and recommended at their meetings on May 1, 2007, and is similar to other assessment rate actions issued in past years. Also, a 10-day comment period was provided for in the proposed rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

■ 2. Section 916.234 is revised to read as follows:

§ 916.234 Assessment rate.

On and after March 1, 2007, an assessment rate of $0.06 per 25-pound container or container equivalent of nectarines is established for California nectarines.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

■ 3. Section 917.258 is revised to read as follows:

§ 917.258 Assessment rate.

On and after March 1, 2007, an assessment rate of $0.06 per 25-pound container or container equivalent of peaches is established for California peaches.

Dated: August 2, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–15393 Filed 8–8–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28015; Directorate Identifier 2006–NM–210–AD; Amendment 39–15147; AD 2007–16–08]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes. That AD currently requires repetitive inspections for cracking of the station 800 frame assembly, and repair if necessary. This new AD revises certain applicabilities and compliance times in the existing AD. This AD results from several reports of cracks of the station 800 frame assembly on airplanes that had accumulated fewer total flight cycles than the initial inspection threshold in the original AD. We are issuing this AD to detect and correct fatigue cracks that could extend and fully sever the frame, which could result in development of skin cracks that could lead to rapid depressurization of the airplane.

DATES: This AD becomes effective September 13, 2007.

On July 17, 2006 (71 FR 33595, June 12, 2006), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2451, Revision 1, dated November 10, 2005.

On August 30, 2001 (66 FR 38891, July 26, 2001), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2451, including Appendix A, dated October 5, 2000.

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–12–12, amendment 39–14638 (71 FR 33595, June 12, 2006). The existing AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes. That NPRM was published in the **Federal Register** on April 26, 2007 (72 FR 20782). That NPRM proposed to continue to require repetitive inspections for cracking of the station 800 frame assembly, and repair if necessary. That NPRM also proposed to revise certain applicabilities and compliance times in the existing AD.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the single comment that has been received on the NPRM. The commenter, Boeing, supports the NPRM.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comment that has been received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any

operator nor increase the scope of the AD.

Costs of Compliance

There are about 900 airplanes of the affected design in the worldwide fleet. This AD affects about 156 airplanes of U.S. registry.

The repetitive inspections take between 12 and 14 work hours per airplane, depending on the airplane configuration. The average labor rate is $80 per work hour. Based on these figures, the estimated cost of the currently required actions is between $149,760 and $174,720, or between $960 and $1,120 per airplane, per inspection cycle.

The repetitive inspections of the expanded area take between 18 and 20 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the new actions specified in this AD for U.S. operators is between $224,640 and $249,600, or between $1,440 and $1,600 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14638 (71 FR 33595, June 12, 2006) and by adding the following new airworthiness directive (AD):

2007–16–08 Boeing: Amendment 39–15147. Docket No. FAA–2007–28015; Directorate Identifier 2006–NM–210–AD.

Effective Date

(a) This AD becomes effective September 13, 2007.

Affected ADs

(b) This AD supersedes AD 2006–12–12.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from several reports of cracks of the station 800 frame assembly on airplanes that had accumulated fewer total flight cycles than the initial inspection threshold in the original AD. We are issuing this AD to detect and correct fatigue cracks that could extend and fully sever the frame, which could result in development of skin cracks that could lead to rapid depressurization of the airplane.

Compliance

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

Requirements of AD 2006–12–12 With Revised Appicabilities and Thresholds

Repetitive Inspections

(f) For Boeing Model 747–100, 747–100B, 747–200B, 747–200C, and 747SR series airplanes, as identified in Boeing Alert Service Bulletin 747–53A2451, including Appendix A, dated October 5, 2000: Do detailed, surface high-frequency eddy current (HFEC), and open-hole HFEC inspections, as applicable, for cracking of the station 800 frame assembly (including the inner chord strap, angles, and exposed web) between stringers 14 and 18, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2451, including Appendix A, dated October 5, 2000; or Boeing Alert Service Bulletin 747–53A2451, Revision 1, dated November 10, 2005; after the effective date of this AD, only Revision 1 of the service bulletin may be used. Except as provided by paragraph (g) of this AD, do the inspection at the applicable time specified in Table 1 or Table 2 of this AD, as applicable, and repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles until the initial inspections required by paragraph (h) of this AD are accomplished.

TABLE 1.—COMPLIANCE TIMES FOR BOEING MODEL 747–100, 747–100B, 747–200B, AND 747–200C SERIES AIRPLANES

Total flight cycles as of August 30, 2001 (the effective date of AD 2001–14–22, amendment 39–12333, which was superseded by AD 2006–12–12)	Do the inspection in paragraph (f) of this AD at this time
(1) Fewer than 19,000	Before the accumulation of 19,000 total flight cycles, or within 1,500 flight cycles after August 30, 2001, whichever comes later.
(2) 19,000 or more, but 24,250 or fewer	Within 1,500 flight cycles or 12 months after August 30, 2001, whichever comes first.

TABLE 1.—COMPLIANCE TIMES FOR BOEING MODEL 747–100, 747–100B, 747–200B, AND 747–200C SERIES AIRPLANES—Continued

Total flight cycles as of August 30, 2001 (the effective date of AD 2001–14–22, amendment 39–12333, which was superseded by AD 2006–12–12)	Do the inspection in paragraph (f) of this AD at this time
(3) 24,251 or more	Within 750 flight cycles or 12 months after August 30, 2001, whichever comes first.

TABLE 2.—COMPLIANCE TIMES FOR BOEING MODEL 747SR SERIES AIRPLANES

Total flight cycles as of the effective date of this AD	Do the inspection in paragraph (f) of this AD at this time
(4) Fewer than 19,000	Before the accumulation of 19,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever comes later.
(5) 19,000 or more, but 24,250 or fewer	Within 1,500 flight cycles or 12 months after the effective date of this AD, whichever comes first.
(6) 24,251 or more	Within 750 flight cycles or 12 months after the effective date of this AD, whichever comes first.

Adjustments to Compliance Time: Cabin Differential Pressure

(g) For Boeing Model 747–100, 747–100B, 747–200B, and 747–200C series airplanes, as identified in Boeing Alert Service Bulletin 747–53A2451, including Appendix A, dated October 5, 2000, that were inspected before July 17, 2006 (the effective date of AD 2006–12–12); and for Boeing Model 747SR airplanes, as identified in Boeing Alert Service Bulletin 747–53A2451, that were inspected before the effective date of this AD: Except as provided by paragraph (i) of this AD, for the purposes of calculating the compliance threshold and repetitive interval for the actions required by paragraph (f) of this AD, the number of flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less need not be counted when determining the number of flight cycles that have occurred on the airplane, provided that the flight cycles with momentary spikes in cabin differential pressure above 2.0 psi are included as full pressure cycles. For this provision to apply, all cabin pressure records must be maintained for each airplane: No fleet-averaging of cabin pressure is allowed.

Repetitive Inspections of Expanded Area at a New Reduced Threshold

(h) For all airplanes, at the applicable time specified in Table 3 of this AD, except as provided by paragraph (i) of this AD, do the following inspections of the station 800 frame assembly in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2451, Revision 1, dated November 10, 2005: A detailed inspection for cracking of the inner chord strap, angles, and exposed web adjacent to the inner chords on the station 800 frame between stringer 14 and stringer 18; and surface HFEC and open-hole HFEC inspections for cracking of the inner chord strap and angles. Do the initial inspections at the applicable time specified in Table 3 of this AD, and repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. Accomplishing the initial inspections required by this paragraph terminates the inspection requirements of paragraph (f) of this AD.

TABLE 3.—REVISED COMPLIANCE TIMES

Total flight cycles as of July 17, 2006—	Do the inspections in paragraph (h) of this AD at this time—
(1) Fewer than 16,000	Before the accumulation of 16,000 total flight cycles, or within 1,500 flight cycles after July 17, 2006, whichever comes later.
(2) 16,000 or more, but 21,250 or fewer	Within 1,500 flight cycles after July 17, 2006, or within 1,000 flight cycles after the effective date of this AD, whichever comes later.
(3) 21,251 or more	Within 750 flight cycles after July 17, 2006, or within 500 flight cycles after the effective date of this AD, whichever comes later.

Adjustments to Compliance Time: Cabin Differential Pressure

(i) For the purposes of calculating the compliance threshold and repetitive interval for actions required by paragraphs (f) and (h) of this AD, for Boeing Model 747–100, 747–100B, 747–200B, and 747–200C series airplanes, on or after July 17, 2006; and for Boeing Model 747SR series airplanes, on or after the effective date of this AD: All flight cycles, including the number of flight cycles in which cabin differential pressure is at 2.0 psi or less, must be counted when determining the number of flight cycles that have occurred on the airplane. However, for airplanes on which the repetitive interval for the actions required by paragraph (f) of this AD have been calculated in accordance with paragraph (g) of this AD by excluding the number of flight cycles in which cabin differential pressure is at 2.0 pounds psi or less: Continue to adjust the repetitive inspection interval in accordance with paragraph (g) of this AD until the initial inspections required by paragraph (h) of this AD are accomplished. Thereafter, no adjustment to compliance times based on paragraph (g) of this AD is allowed.

Repair

(j) If any cracking is detected during any inspection required by paragraph (f) or (h) of this AD, and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

No Report Required

(k) Although the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2451, including Appendix A, dated October 5, 2000; and Boeing Alert Service Bulletin 747–53A2451, Revision 1, dated November 10, 2005; describe procedures for reporting certain information to the manufacturer, this AD does not require that report.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(4) AMOCs approved previously in accordance with AD 2001–14–22, are approved as AMOCs for the corresponding provisions of paragraphs (f) and (j) of this AD.

(5) AMOCS approved previously in accordance with AD 2006–12–12, are approved as alternative methods of compliance with this AD.

Material Incorporated by Reference

(m) You must use Boeing Alert Service Bulletin 747–53A2451, including Appendix A, dated October 5, 2000; or Boeing Alert Service Bulletin 747–53A2451, Revision 1, dated November 10, 2005; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) On July 17, 2006 (71 FR 33595, June 12, 2006), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2451, Revision 1, dated November 10, 2005.

(2) On August 30, 2001 (66 FR 38891, July 26, 2001), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2451, including Appendix A, dated October 5, 2000.

(3) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on July 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–15416 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27741; Directorate Identifier 2006–NM–261–AD; Amendment 39–15141; AD 2007–16–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 Airplanes; and Model A340–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an airworthiness authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as keel beam rupture, which affects the structural integrity of the area. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective September 13, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 13, 2007.

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This 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 allow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

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

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 30, 2007 (72 FR 15067). That NPRM proposed to require a repetitive special detailed inspection on the horizontal flange of the keel beam in the area of the first fastener hole aft of FR (frame) 40, follow-up actions (further inspections, installation of new fasteners, and sealing the fasteners), and repair if necessary. The MCAI states that during the A330 and A340 aircraft fatigue test, cracks appeared on the right and left sides between the crossing area of the keel beam fitting and the front spar on the center wing box (CWB). This situation if not corrected can lead in the worst case to keel beam rupture, which affects the structural integrity of the area.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Refer to Revised MCAI

Airbus requests we refer to European Aviation Safety Agency (EASA) Airworthiness Directive 2006–0315 R1, dated October 26, 2006, in the AD. (We referred to EASA Airworthiness Directive 2006–0315, dated October 13, 2006, in the NPRM.) Airbus notes that Revision 1 of the EASA airworthiness directive adds an optional terminating action for the repetitive inspections.

We agree with Airbus, and have revised this AD to refer to Revision 1 of the EASA Airworthiness Directive. Revision 1 refers to the following Airbus Service Bulletins as the appropriate sources of service information for doing the optional terminating action: A330–57–3090, dated March 27, 2006; and A340–57–4098, dated March 27, 2006. The modification can be done only on airplanes without Airbus Modification 41652.

The optional terminating action is a modification that involves disconnecting one or more fasteners from the keel beam/bottom skin panel

junction, removing two adjacent fasteners in order to perform cold working, and installing interference fit fasteners. The modification also involves inspections and repairing any cracking detected during the modification; in some instances the repair for cracking or for any bushing that has a diameter beyond certain limits specified in the service bulletin is contacting Airbus for repair instructions. We have added paragraph (e)(6) to this AD, and revised paragraph (d) of this AD to include the optional terminating action. We have revised paragraph (g) of this AD to refer to Revision 1 of the MCAI.

Explanation of Change to Paragraph (c)(3) ''Applicability''

When we issued the NPRM we noted in paragraph (c)(3) that we were considering rulemaking regarding EASA airworthiness directive 2006–0314. EASA airworthiness directive 2006–0314 applies to Model A340–200 and –300 series airplanes repaired in accordance with certain Airbus repair drawings, and paragraph (c)(3) of the NPRM notes that those airplanes are not affected by the current action. We have since issued AD 2007–12–08, amendment 39–15086 (72 FR 31171, June 6, 2007), which is the parallel FAA AD to EASA airworthiness directive 2006–0314. We have changed paragraph (c)(3) of this AD to refer to AD 2007–12–08.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 9 products of U.S. registry. We also estimate that it will take about 12 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $382 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 parts. 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 this AD to the U.S. operators to be $12,078, or $1,342 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–16–02 Airbus: Amendment 39–15141. Docket No. FAA–2007–27741; Directorate Identifier 2006–NM–261–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 13, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD; certificated in any category; except as provided by paragraph (c)(3) of this AD.

(1) Airbus Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes, all serial numbers, except those on which Airbus modification 49202 has been embodied in production, or Airbus Service Bulletin A330–57–3090 has been embodied in service.

(2) Airbus Model A340–200 and –300 series airplanes, all certified models, all serial numbers, except those on which Airbus modification 49202 has been embodied in production or Airbus Service Bulletin A340–57–4098 has been embodied in service.

(3) This AD does not apply to Model A340–200 and –300 series airplanes repaired

in accordance with Airbus Repair Drawing R57115053, R57115051, or R57115047 (installation of titanium doubler). These airplanes are covered by European Aviation Safety Agency (EASA) airworthiness directive 2006–0314, dated October 13, 2006. On May 25, 2007, we issued AD 2007–12–08, amendment 39–15086 (72 FR 31171, June 6, 2007), which is the parallel FAA AD to EASA airworthiness directive 2006–0314.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that during the A330 and A340 aircraft fatigue test, cracks appeared on the right and left sides between the crossing area of the keel beam fitting and the front spar on the center wing box (CWB). This situation if not corrected can lead in the worst case to keel beam rupture which affects the structural integrity of the area. In order to maintain the structural integrity of the aircraft, the MCAI requires a repetitive special detailed inspection on the horizontal flange of the keel beam in the area of the first fastener hole aft of FR (frame) 40, follow-up actions, and repair if necessary. The MCAI also includes an optional terminating action for the repetitive inspections.

Actions and Compliance

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

(1) Within the mandatory threshold (flight cycles or flight hours) mentioned in the paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, Revision 02; or A330–57–3081, Revision 02; both dated January 24, 2006, depending on the configuration of the aircraft model; or within 3 months after the effective date of this AD; whichever occurs later: Carry out the NDT (non-destructive test) inspection of the hole(s) of the horizontal flange of the keel beam located on FR 40 datum on RH (right-hand) and/or LH (left-hand) side of the fuselage, in accordance with the instructions of Airbus Service Bulletin A340–57–4089, Revision 02; or A330–57–3081, Revision 02; as applicable. Inspection in accordance with Airbus A330/A340 Technical Disposition F57D03012810, Issue B, dated August 18, 2003; or 582.0651/2002, Issue A, dated October 17, 2002; satisfies the inspection requirements for the first rotating probe inspection which is specified at the inspection threshold of this AD.

Note 1: In order to prevent large repairs or heavy maintenance, Airbus recommends to perform the above inspection according to recommended thresholds mentioned in paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, Revision 02; or Airbus Service Bulletin A330–57–3081, Revision 02; both dated January 24, 2006.

(2) In case of any crack finding, before further flight, contact Airbus in order to get repair instructions before next flight, and repair before further flight.

(3) Should no crack be detected:

(i) Before further flight: Follow up the actions indicated in the flow charts, figure 7, 8, or 9, of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006; or figure 5, 6, or 7, of Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006; in accordance with the instructions of the applicable service bulletin.

(ii) Within 30 days after the effective date of this AD, or within 30 days after doing the inspection required by paragraph (e)(1) of this AD, whichever occurs later: Send the report of actions carried out in paragraph (e)(3)(i) of this AD to Airbus.

(iii) Renew the inspection at mandatory intervals given in paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, Revision 02, dated January 24, 2006; as applicable; in accordance with the instructions of Service Bulletin A340–57–4089, Revision 02, or Service Bulletin A330–57–3081, Revision 02; as applicable, and send the inspection results to Airbus.

Note 2: In order to prevent large repairs or heavy maintenance, Airbus recommends to perform the above repetitive inspection according to recommended intervals mentioned in paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, Revision 02, dated January 24, 2006.

(4) Upon detection of a crack during a repetitive inspection, before further flight, contact Airbus to get repair instructions, and repair before further flight.

(5) No additional work is required for aircraft inspected in accordance with the instructions of Airbus Service Bulletin A330–57–3081, dated October 30, 2003, or Revision 01, dated May 18, 2004; or Airbus Service Bulletin A340–57–4089, dated October 30, 2003, or Revision 01, dated March 2, 2004. Nevertheless, the operators must check that their inspection program is in accordance with paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, Revision 02, dated January 24, 2006; as applicable; for the repetitive inspection.

(6) For aircraft on which Airbus Modification 41652 is not embodied: When the aircraft has been modified in accordance with Airbus Service Bulletin A330–57–3090, dated March 27, 2006; or Airbus Service Bulletin A340–57–4098, dated March 27, 2006; as applicable; the repetitive inspections required by this AD are cancelled. In case of any crack finding during the modification: Where the applicable service bulletin specifies to contact Airbus, before further flight, contact Airbus to get repair instructions, and repair.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows. The MCAI did not have a required action if cracks are found during a repetitive inspection. This AD requires contacting Airbus for repair instructions and repairing before further flight.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(g) Refer to MCAI EASA Airworthiness Directive 2006–0315 R1, dated October 26, 2006, and the service information listed in Table 1 of this AD, for related information.

TABLE 1.—RELATED SERVICE INFORMATION

Airbus Service Bulletin	Revision level	Date
A330–57–3081	02	January 24, 2006.
A330–57–3090	Original	March 27, 2006.
A340–57–4089	02	January 24, 2006.
A340–57–4098	Original	March 27, 2006.

Material Incorporated by Reference

(h) You must use the applicable service information specified in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional terminating modification specified in this AD, you must use the applicable service information specified in Table 3 of this AD.

TABLE 2.—REQUIRED MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision	Date
A330–57–3081, including Appendix 01	02	January 24, 2006.
A340–57–4089, including Appendix 01	02	January 24, 2006.

TABLE 3.—OPTIONAL MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Date
A330–57–3090	March 27, 2006.
A340–57–4098	March 27, 2006.

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

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 24, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–14866 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28094; Directorate Identifier 2006–NM–258–AD; Amendment 39–15148; AD 2007–16–09]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes and Model ERJ 190 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes. That AD currently requires repetitively replacing the low-stage check valve and associated seals of the right-hand engine bleed system. This new AD adds new airplanes to that existing requirement. For all airplanes, this AD also requires repetitively replacing the low-stage check valve and associated seals of the left-hand engine bleed system with a new check valve and new seals. This AD results from a report that an engine shut down during flight due to the failure of the low-stage check valve to close. We are issuing this AD to prevent failure of the low-stage check valve, which could result in an engine shutting down during flight.

DATES: This AD becomes effective September 13, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 13, 2007.

On November 29, 2005 (70 FR 69075, November 14, 2005), the Director of the Federal Register approved the incorporation by reference of a certain service bulletin.

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

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2005–23–14, amendment 39–14372 (70 FR 69075, November 14, 2005). The existing AD applies to all EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes. That NPRM was published in the **Federal Register** on May 8, 2007 (72 FR 26008). That NPRM proposed to continue to require repetitively replacing the low-stage check valve and associated seals of the right-hand (RH) engine bleed system. That NPRM also proposed to add new airplanes to that existing requirement. For all airplanes, that NPRM also proposed to require repetitively replacing the low-stage check valve and associated seals of the left-hand (LH) engine bleed system with a new check valve and new seals.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the NPRM or on the determination of the cost to the public.

Changes to This AD

We have reviewed Revision 01 of EMBRAER Service Bulletin 190–36–0004, dated November 14, 2006, and have determined that the accomplishment instructions of Revision 01 are the same as those in the original issue of the service bulletin. In the NPRM, we referred to the original issue of EMBRAER Service Bulletin 190–36–0004, dated October 18, 2006, as the appropriate source of service information for replacing the low-stage check valves and associated seals of the RH and LH engine bleed system, on Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes. Therefore, we have revised paragraphs (j) and (k) of this AD to also refer to Revision 01 of EMBRAER Service Bulletin 190–36–0004, dated November 14, 2006, as an appropriate source of service information. We have

also revised paragraph (n) of this AD to specify that this AD does not require sending to the manufacturer any check valve removed in accordance with Revision 01 of EMBRAER Service Bulletin 190–36–0004.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This AD is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this AD. Once this modification is approved we might consider additional rulemaking.

Costs of Compliance

The following table provides the estimated costs, at an average labor rate of $80 per work hour, for U.S. operators to comply with this AD. The parts manufacturer states that it will supply required parts to operators at no cost.

ESTIMATED COSTS

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Replacement of RH check valves on Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes (required by AD 2005–23–14).	3	$240, per replacement cycle.	55	$13,200, per replacement cycle.
Replacement of LH check valves on Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes (new action).	3	$240, per replacement cycle.	75	$18,000, per replacement cycle.
Replacement of RH check valves on Model ERJ 190 airplanes (new action).	3	$240, per replacement cycle.	23	$5,520, per replacement cycle.
Replacement of LH check valves on Model ERJ 190 airplanes (new action).	3	$240, per replacement cycle.	23	$5,520, per replacement cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14372 (70 FR 69075, November 14, 2005) and by adding the following new airworthiness directive (AD):

2007–16–09 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–15148. Docket No. FAA–2007–28094; Directorate Identifier 2006–NM–258–AD.

Effective Date

(a) This AD becomes effective September 13, 2007.

Affected ADs

(b) This AD supersedes AD 2005–23–14.

Applicability

(c) This AD applies to all EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report that an engine shut down during flight due to the failure of the low-stage check valve to close. We are issuing this AD to prevent failure of the low-stage check valve, which could result in an engine shutting down during flight.

Compliance

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

Restatement of Requirements of AD 2005–23–14

Replacement for Right-Hand (RH) Engine on Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU Airplanes With New Service Bulletin

(f) For Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes: Within 100 flight hours after November 29, 2005 (the effective date of AD 2005–23–14), or prior to the accumulation of 3,000 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the RH engine's engine bleed system with a new check valve and new seals, in accordance with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005; or paragraph 3.C. of the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005. Repeat the replacement thereafter at intervals not to exceed 3,000 flight hours.

Parts Installation for RH Engine on Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU Airplanes

(g) For Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes: As of November 29, 2005, no engine may be installed in the RH position unless the low-stage check valve has been replaced in accordance with the actions required by paragraph (f) of this AD.

Removed Check Valves

(h) Although EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005, specifies to send removed check valves to the manufacturer, this AD does not include that requirement.

New Requirements of This AD

Replacement for Left-Hand (LH) Engine on All Model ERJ 170 Airplanes

(i) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes: Within 300 flight hours after the effective date of this AD or prior to the accumulation of 3,000 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the LH engine's engine bleed system with a new check valve and new seals, in accordance with paragraph 3.B. of the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005. Repeat the replacement thereafter at intervals not to exceed 3,000 flight hours.

Replacement for RH Engine on Model ERJ 190 Airplanes

(j) For Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: Within 100 flight hours after the effective date of this AD or prior to the accumulation of 1,500 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the RH engine's engine bleed system with a new check valve and new seals, in accordance with paragraph 3.C. of the Accomplishment Instructions of EMBRAER Service Bulletin 190–36–0004, dated October 18, 2006; or Revision 01, dated November 14, 2006. Repeat the replacement thereafter at intervals not to exceed 1,500 flight hours.

Replacement for LH Engine on Model ERJ 190 Airplanes

(k) For Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: Within 600 flight hours after the effective date of this AD or prior to the accumulation of 1,500 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the LH engine's engine bleed system with a new check valve and new seals, in accordance with paragraph 3.B. of the Accomplishment Instructions of EMBRAER Service Bulletin 190–36–0004, dated October 18, 2006; or Revision 01, dated November 14, 2006. Repeat the replacement thereafter at intervals not to exceed 1,500 flight hours.

Parts Installation for LH Engine on Model ERJ 170 Airplanes

(l) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes: As of the effective date of this AD, no engine may be installed in the LH position unless the low-stage check valve has been replaced in accordance with the actions required by paragraph (i) of this AD.

Parts Installation for RH and LH Engine on Model ERJ 190 Airplanes

(m) For Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: As of the effective date of this AD; no engine may be installed in the RH position unless the low-stage check valve has been replaced in accordance with the actions required by paragraph (j) of this AD; and no engine may be installed in the LH position unless the low-stage check valve has been replaced in accordance with the actions required by paragraph (k) of this AD.

Removed Check Valves in Accordance With New Service Bulletins

(n) Although EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005; EMBRAER Service Bulletin 190–36–0004, dated October 18, 2006; and EMBRAER Service Bulletin 190–36–0004, Revision 01, dated November 14, 2006; specify to send removed check valves to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(p) Brazilian airworthiness directive 2005–09–03R1, effective May 23, 2006; and Brazilian airworthiness directive 2006–11–01R1, effective March 21, 2007; also address the subject of this AD.

Material Incorporated by Reference

(q) You must use the service information identified in Table 1 of this AD, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—ALL MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
EMBRAER Alert Service Bulletin 170–36–A004	Original	September 28, 2005.
EMBRAER Service Bulletin 170–36–0004	Original	November 18, 2005.
EMBRAER Service Bulletin 190–36–0004	Original	October 18, 2006.
EMBRAER Service Bulletin 190–36–0004	01	November 14, 2006.

(1) The Director of the Federal Register approved the incorporation by reference of the documents identified in Table 2 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 2.—NEW MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
EMBRAER Service Bulletin 170–36–0004	Original	November 18, 2005.
EMBRAER Service Bulletin 190–36–0004	Original	October 18, 2006.

TABLE 2.—NEW MATERIAL INCORPORATED BY REFERENCE—Continued

Service Bulletin	Revision level	Date
EMBRAER Service Bulletin 190–36–0004	01	November 14, 2006.

(2) On November 29, 2005 (70 FR 69075, November 14, 2005), the Director of the Federal Register approved the incorporation by reference of EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005.

(3) Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–15412 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28036; Directorate Identifier 2006–NM–278–AD; Amendment 39–15145; AD 2007–16–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and A330–300 Series Airplanes; and Model A340–200, A340–300, A340–500, and A340–600 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an airworthiness authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as failure of an evacuation slide raft to inflate, which could delay the evacuation of passengers in case of an emergency. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective September 13, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 13, 2007.

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, ANM–116, International Branch, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This 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 allow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

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

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 30, 2007 (72 FR 21164). That NPRM proposed to require a set of modifications of the slide raft assembly of each door and the slide raft, as applicable, which consists of: continuous ''speed lacing'' cord and new soft covers with rounded grommets; and a new shorter firing cable, a new anchor block for the slide raft packboard and a new folding procedure. The MCAI states that several operators have reported non-automatic deployment of slide rafts during ground operational testing. In all cases, the slide raft released correctly from the door but did not inflate automatically. Pulling the manual backup handle correctly inflated the slide raft. Investigation conducted by the slide raft manufacturer showed that non-automatic deployments have two potential root causes: non-opening of the lacing; and stiffness and stiction (static friction) on the painted inflatable material. This situation, if not corrected, could delay the evacuation of passengers in case of an emergency. A new design solution has been developed to ensure the automatic slide raft deployment, which consists of: continuous ''speed lacing'' cord and new soft covers with rounded grommets (this modification ensures that the lacing opens); and a new shorter firing cable, a new anchor block for the slide raft packboard and a new folding procedure (this modification ensures automatic deployment regardless of the inflatable paint condition). Both modifications together ensure the automatic deployment function. The MCAI requires accomplishment of the set of modifications.

Comments

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

Clarification of Applicability

We have revised the applicability of this AD to match the MCAI and the current FAA type certification data sheet for the affected airplanes. The revision clarifies the applicability and does not add to or change the affected airplanes.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this AD affects about 28 products of U.S. registry. We also estimate that it takes about 66 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts cost about $3,860 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $255,920, or $9,140 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–16–06 Airbus: Amendment 39–15145. Docket No. FAA–2007–28036; Directorate Identifier 2006–NM–278–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 13, 2007.

Affected ADs

(b) The requirements of this AD relate to those specified in AD 2006–04–03, amendment 39–14484.

Applicability

(c) This AD applies to Airbus Model A330–200 and A330–300 series airplanes; and Model A340–200, A340–300, A340–500, and A340–600 series airplanes, certificated in any category; all certified models, all serial numbers; except those with the European Aviation Safety Agency (EASA) specified modifications installed in production, or the equivalent service bulletins installed in service (as specified in Tables 1 and 2 of this AD), provided no slide has been replaced since either airplane delivery or service bulletin installation, as applicable.

TABLE 1.—EXCEPTIONS TO APPLICABILITY

Airplane model	Configuration	Airbus modifications installed in production
A330, A340–200, –300	With Modification 40161 (optional Type A door 3).	50806, 50807, 55071, and 55072.
A330, A340–200, –300	Without Modification 40161 (Type 1 door 3)	50806 and 55071.
A340–500	All	Either 50806, 50807, and 55071, or 50806 and 55071.
A340–600	All	50806, 50808, 55071, and 55073.

TABLE 2.—EXCEPTIONS TO APPLICABILITY

Airplane model	Airbus Service Bulletins installed in service
A330	A330–25–3173, Revision 01, dated August 2, 2006; and A330–25–3301, dated March 24, 2006.
A340–200, –300	A340–25–4191, Revision 01, dated August 2, 2006; and A340–25–4273, dated March 24, 2006.
A340–500, –600	A340–25–5004, Revision 01, dated August 2, 2006; and A340–25–5110, dated March 24, 2006.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that several operators have reported non-automatic deployment of slide rafts during ground operational testing. In all cases, the slide raft released correctly from the door but did not inflate automatically. Pulling the manual backup handle correctly inflated the slide raft. Investigation conducted by the slide raft manufacturer showed that non-automatic deployments have two potential root causes: Non-opening of the lacing; and stiffness and stiction (static friction) on the painted inflatable material. This situation, if not corrected, could delay the evacuation of passengers in case of an emergency. A new design solution has been developed to ensure the automatic slide raft deployment, which consists of: Continuous ''speed lacing'' cord and new soft covers with rounded grommets (this modification ensures that the lacing opens); and a new shorter firing cable, a new anchor block for the slide raft packboard and a new folding procedure (this modification ensures automatic deployment regardless of the inflatable paint condition). Both modifications together ensure the automatic deployment function. The MCAI requires accomplishment of the set of modifications.

Actions and Compliance

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

(1) For slide raft part numbers (P/Ns) 7A1508–003/–005/–007/–023/–025/–027/–029/–115; P/Ns 7A1539–003/–004/–005/–006/–007/–008/–023/–024/–025/–026/–027/–028/–029/–030/–115/ –116; P/Ns 7A1510–003/–004/–005/–006/–007/–008/–023/–024/–025/–026/–027/–028/–029/–030/–115/–116; and P/Ns 4A3934–1/–2/–001/–002: No later than 36 months after the effective date of this AD, modify the slide raft in accordance with the instructions given in Airbus Service Bulletin A330–25–3173, A340–25–4191, or A340–25–5004, all Revision 01, all dated August 2, 2006; as applicable; and modify the slide raft assembly of each door in accordance with the instructions given in Airbus Service Bulletin A330–25–3301, A340–25–4273, or A340–25–5110, all dated March 24, 2006; as applicable.

(2) For slide raft P/Ns 7A1508–033/–035/–037/–119/–121; P/Ns 7A1539–033/–034/–035/–036/–037/–038/–119/–120/–121/–122; P/Ns 7A1510–033/–034/–035/–036/–037/–038/ –119/–120/–121/–122; and P/Ns 4A3934–5/–6/–7/–8: No later than 36 months after the effective date of this AD, modify the slide raft assembly of each door in accordance with the instructions given in Airbus Service Bulletin A330–25–3301, A340–25–4273, or A340–25–5110, all dated March 24, 2006; as applicable.

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, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Backman, Aerospace Engineer, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(g) Refer to MCAI EASA Airworthiness Directive 2006–0354, dated November 28, 2006; and the Airbus Service Bulletins specified in Table 3 of this AD for related information.

TABLE 3.—AIRBUS SERVICE BULLETINS

Service Bulletin	Revision level	Date
A330–25–3173	01	August 2, 2006.
A330–25–3301	Original	March 24, 2006.
A340–25–4191	01	August 2, 2006.
A340–25–4273	Original	March 24, 2006.
A340–25–5004	01	August 2, 2006.
A340–25–5110	Original	March 24, 2006.

Material Incorporated by Reference

(h) You must use the service information specified in Table 4 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, 1 Rond Point, Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 4.—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision	Date
A330–25–3173	01	August 2, 2006.
A330–25–3225	01	September 30, 2004.
A330–25–3301	Original	March 24, 2006.
A340–25–4191	01	August 2, 2006.
A340–25–4228	01	September 30, 2004.
A340–25–4273	Original	March 24, 2006.
A340–25–5004	01	August 2, 2006.
A340–25–5054	Original	August 2, 2004.
A340–25–5110	Original	March 24, 2006.

Issued in Renton, Washington, on July 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–15413 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25326; Directorate Identifier 2006–NM–081–AD; Amendment 39–15151; AD 2007–16–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757–200 and –300 series airplanes. This AD requires changes to existing wiring; installation of new circuit breakers, relays, relay connectors, and wiring; and replacement of certain circuit breakers with higher-rated circuit breakers. For certain airplanes, this AD also requires modification of wiring of the control module assembly for the electrical systems. This AD results from an in-flight entertainment (IFE) systems review. We are issuing this AD to ensure that the flightcrew is able to turn off electrical power to the IFE system and other non-essential electrical systems through utility bus switches in the flight compartment. The flightcrew's inability to turn off power to the IFE system and other non-essential electrical systems during a non-normal or emergency situation could result in the inability to control smoke or fumes in the airplane flight deck or cabin.

DATES: This AD becomes effective September 13, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 13, 2007.

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

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

FOR FURTHER INFORMATION CONTACT: Shohreh Safarian, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6418; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 757–200 and –300 series airplanes. That NPRM was published in the **Federal Register** on July 13, 2006 (71 FR 39597). That NPRM proposed to require changes to existing wiring; installation of new circuit breakers, relays, relay connectors, and wiring; and replacement of certain circuit breakers with higher-rated circuit breakers. For certain airplanes, that NPRM also proposed to require modification of wiring of the control module assembly for the electrical systems.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support of the NPRM

Boeing, Northwest Airlines (NWA), and the Air Transport Association (ATA) agree with the intent of the NPRM.

Request To Clarify Affected Control Module Assemblies

The ATA, on behalf of its member US Airways, requests that we clarify which control module assemblies are required to be modified. US Airways states that it believes the intent of the NPRM would be to require concurrent modification of the control module assemblies identified in Boeing Service Bulletin 757–24–0093, dated August 14, 2003. However, US Airways points out that the effectivity of Boeing Component Service Bulletin 233N3209–24–04, Revision 1, dated August 14, 2003, identifies additional parts not found in Boeing Service Bulletin 757–24–0093.

We agree that the intent of paragraph (g) of the NPRM was to propose modification of certain control module assemblies identified in paragraph 2.C.3. of Boeing Service Bulletin 757–24–0093. The affected part numbers (P/Ns) are 233N3209–1025, –1026, –1028, –1300, and –1302. We have revised paragraph (g) of this AD to identify those affected part numbers. Further, we have revised paragraph (h) of this AD, ''Credit for Accomplishment of Previous Service Bulletin,'' to specify that doing the modification in accordance with the original issue of Boeing Component Service Bulletin 233N3209–24–04, dated April 10, 2003, is acceptable only for control module assembly, P/Ns 233N3209–1025, –1300, and –1302, since only these part numbers are referenced in the effectivity of the original issue of Boeing Component Service Bulletin 233N3209–24–04.

Request To Address an Additional Circuit Breaker

NWA states that Boeing Service Bulletin 757–24–0093, dated August 14, 2003, does not address the shedding of direct current (DC) power on Model 757–200 airplanes, variable numbers NE311 through NE325 inclusive. NWA further states that circuit breaker C9009, which controls 28-volt DC power on these airplanes, is also not addressed by the service bulletin. We infer that NWA would like Boeing to revise the service bulletin to provide instructions for addressing the unsafe condition on these specific airplanes.

We do not agree. The airplanes mentioned in NWA's comment above are identified as Group 40 airplanes in Boeing Service Bulletin 757–24–0093. Circuit breaker C9009 was not installed as part of the IFE system on Boeing airplanes. That circuit breaker was installed in accordance with a supplemental type certificate (STC), and we are currently evaluating that issue separately from this AD. This AD affects only IFE systems that were installed in production by Boeing. Therefore, we have not changed this AD in this regard.

Request To Exclude Other Non-Essential Electrical Systems

NWA requests that we revise the NPRM to address the IFE system only. NWA states that, in addition to addressing the IFE systems, the NPRM and referenced Boeing service bulletins address other non-essential systems. As justification for its request, NWA states

that the non-essential systems are unrelated to the Interim Policy Guidance for Certification of In-Flight Entertainment Systems on Title 14 CFR Part 25 Aircraft, Policy Number PS–ANM100–2000–00105, dated September 18, 2000.

We do not agree that the other non-essential electrical systems can be excluded from the requirements of this AD. If we excluded non-essential electrical systems from the requirements of this AD and electrical power to those systems had to be shut off due to smoke or fire, then power might also be shut off to other electrical systems that are essential for safe flight and landing. For this reason, control of the IFE and other non-essential electrical systems must be independent from other electrical systems essential for safe flight and landing. Therefore, we have determined that the actions required by this AD are necessary to ensure the continued safety of the affected fleet. We have revised the Summary section and paragraph (d) of this AD to clarify that the flightcrew's inability to turn off power to the IFE system and other non-essential electrical systems during a non-normal or emergency situation could result in the inability to control smoke or fumes in the airplane flight deck or cabin.

Request To Add an Alternative Method of Compliance (AMOC)

NWA requests that we revise this AD to allow use of a master ''kill switch'' in the airplane flight deck and/or cabin to shut off electrical power to the IFE system. As justification, NWA states that kill switches give the flightcrew or flight attendants the ability to shut off power to the IFE system without disturbing operation of flight essential systems. NWA further states that the kill switches in the flight deck should be positioned within easy reach of the flightcrew, and that kill switches in the cabin should be within easy access of the cabin crew. NWA asserts that adding kill switches meets and exceeds the intent of the NPRM.

We do not agree with use of a master ''kill switch'' in either the flight deck or the cabin, in general without understanding the specific design details. To adequately address the unsafe condition, it is necessary to supply power to all non-essential electrical systems through a utility bus and to provide the flightcrew with a means of deactivating all non-essential electrical systems to control smoke or fumes in the flight deck or cabin. Deactivation of non-essential electrical loads might not necessarily be achieved through use of a master ''kill switch.'' However, under the provisions of paragraph (i) of this AD, we may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety. This AD affects only IFE systems that were installed in production by Boeing. We have not changed this AD in this regard.

Request To Exempt Airplanes With Deactivated Systems

NWA recommends that we revise this AD to include a waiver for IFE systems that have been permanently deactivated. NWA states that these systems would have all system power removed (capped and stowed) at the breaker. NWA asserts that, if power is removed at the breaker level, there is no possibility of the IFE system causing non-normal emergencies due to the IFE system.

We do not agree to exempt airplanes with deactivated IFE systems from the requirements of this AD. Since the IFE system has been identified as the source of the unsafe condition, we need to evaluate the method of deactivation with respect to its interaction with the unsafe condition. Therefore, any request to exempt airplanes with deactivated IFE systems should be submitted as an AMOC in accordance with the provisions of paragraph (i) of this AD. We have not changed this AD in this regard.

Request To Extend Compliance Time

NWA requests that we extend the compliance time from 60 months to 72 months. NWA states that the work specified in the referenced Boeing service bulletins is complicated and accomplished best at a heavy check, which occurs at 72-month intervals.

We do not agree with the commenter's request to extend the compliance time. We have determined that the compliance time, as proposed in the NPRM, represents the maximum interval of time allowable for the affected airplanes to continue to safely operate before the modification is done. Since maintenance schedules vary among operators, there would be no assurance that the airplane would be modified during that maximum interval. However, paragraph (i) of this AD provides affected operators the opportunity to apply for an adjustment of the compliance time if the operator also presents data justifying the adjustment.

Request To Publish Service Information

The Modification and Replacement Parts Association (MARPA) states that, typically, ADs are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an AD, it loses its private, protected status and becomes a public document. MARPA adds that if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings. MARPA adds that service documents incorporated by reference should be made available to the public by publication in the Department of Transportation's Docket Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under section 21.303 (''Replacement and modification parts'') of the Federal Aviation Regulations (14 CFR 21.303). MARPA adds that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service document deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument and published in DMS.

We acknowledge MARPA's comment concerning incorporation by reference. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This AD incorporates by reference the documents necessary for the accomplishment of the requirements

mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to the commenter's request to post the service bulletin on DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to this AD is necessary in response to this comment.

Request To Allow Use of Parts Manufacturer Approval (PMA) Parts

MARPA states that the practice of requiring the replacement of a defective part with a certain part conflicts with 14 CFR 21.303. MARPA asserts that requiring installation of a certain part prevents installation of other good parts and prohibits the development of new parts. MARPA also states that the practice of requiring an AMOC to install a PMA part should be stopped. MARPA concludes that this practice presumes that all PMA parts are inherently defective and require an additional layer of approval.

MARPA further states the NPRM does not comply with FAA Order 8040.2; that order states that replacement or installation of certain parts could have replacement parts approved under 14 CFR 21.303 based on a finding of identicality. That order also states that any parts approved under this regulation and installed should be subject to the actions of the AD and included in the applicability.

MARPA states that if a PMA part is defective, then it must be addressed in an AD and not just simply implied by an AMOC requirement. MARPA suggests that we adopt language used in ADs issued by directorates other than the Transport Airplane Directorate, which specify installing an ''FAA-approved equivalent part number'' or ''airworthy parts.'' MARPA contends that the mandates contained in Section 1, paragraph (b)(1) of Executive Order 12866 are not being met because the directorates differ in their treatment of this issue. MARPA, therefore, requests that we revise the NPRM to allow use of PMA parts.

We do not agree to revise this AD. The NPRM does not address PMA parts, as provided in draft FAA Order 8040.2, because the Order was only a draft that was out for comment at the time. After issuance of the NPRM, the Order was revised and issued as FAA Order 8040.5 with an effective date of September 29, 2006. FAA Order 8040.5 does not address PMA parts in ADs.

We acknowledge the need to ensure that unsafe PMA parts are identified and addressed in ADs in a standardized way at the national level. We are currently examining all aspects of this issue, including input from industry. Once we have made a final determination, we will consider how our policy regarding PMA parts in ADs needs to be revised. However, the Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to this AD in this regard.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 548 airplanes of the affected design in the worldwide fleet. This AD affects about 332 Model 757–200 and –300 airplanes of U.S. registry. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this AD. The estimated work hours and cost of parts in the following table depend on the relay and wiring configuration of an airplane.

ESTIMATED COSTS

Model	Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
757–200 series airplanes.	Installation	38 to 46	$2,781 to $5,917	$5,821 to $9,597	318	$1,851,078 to $3,051,846.
	Concurrent modification.	3	$73 to $90	$313 to $330	318	$99,534 to $104,940.
757–300 series airplanes.	Installation	22	$2,080 to $4,632	$3,840 to $6,392	14	$53,760 to $89,488.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–16–12 Boeing: Amendment 39–15151. Docket No. FAA–2006–25326; Directorate Identifier 2006–NM–081–AD.

Effective Date

(a) This AD becomes effective September 13, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Boeing airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model 757–200 series airplanes, as identified in Boeing Service Bulletin 757–24–0093, dated August 14, 2003.

(2) Model 757–300 series airplanes, as identified in Boeing Service Bulletin 757–24–0094, dated April 17, 2003.

Unsafe Condition

(d) This AD results from an in-flight entertainment (IFE) systems review. We are issuing this AD to ensure that the flightcrew is able to turn off electrical power to the IFE system and other non-essential electrical systems through utility bus switches in the flight compartment. The flightcrew's inability to turn off power to the IFE system and other non-essential electrical systems during a non-normal or emergency situation could result in the inability to control smoke or fumes in the airplane flight deck or cabin.

Compliance

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

Installation of Circuit Breakers, Relays, and Wiring

(f) Within 60 months after the effective date of this AD, do the applicable actions specified in paragraphs (f)(1) through (f)(6) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–24–0093, dated August 14, 2003 (for Model 757–200 series airplanes); or Boeing Service Bulletin 757–24–0094, dated April 17, 2003 (for Model 757–300 series airplanes); as applicable.

(1) For all airplanes: Change the wiring at the P5 and P11 panel assemblies in the flight compartment, at the P36 panel assembly in the forward cargo compartment, and at the P37 and P70 panel assemblies in the main electronics compartment. Install a new relay and relay connector, if applicable, at the P36 panel assembly and at the P37 panel assembly.

(2) For Model 757–200 series airplanes identified as Group 1 in Boeing Service Bulletin 757–24–0093, dated August 14, 2003: Install new circuit breakers C3090 and C3089 at the P37 and P70 panel assemblies, respectively, in the main electronics compartment.

(3) For Model 757–200 series airplanes identified as Groups 21 and 22 in Boeing Service Bulletin 757–24–0093, dated August 14, 2003: Replace circuit breaker C311 at the P31 panel assembly in the main electronics compartment with a higher-rated circuit breaker.

(4) For Model 757–200 series airplanes identified as Groups 1 through 20 inclusive and 23 through 40 inclusive in Boeing Service Bulletin 757–24–0093, dated August 14, 2003: Replace circuit breakers C311 and C315 at the P31 and P32 panel assemblies, respectively, in the main electronics compartment with higher-rated circuit breakers.

(5) For Model 757–300 series airplanes identified as Groups 1 and 4 in Boeing Service Bulletin 757–24–0094, dated April 17, 2003: Replace circuit breakers C311 and C315 at the P31 and P32 panel assemblies, respectively, in the main electronics compartment with higher-rated circuit breakers.

(6) For Model 757–300 series airplanes identified as Groups 1, 2, and 3 in Boeing Service Bulletin 757–24–0094, dated April 17, 2003: Install new wires between the P5 panel assembly in the flight compartment and the P36 and P37 panel assemblies in the main electronics compartment.

Concurrent Requirement for Certain Airplanes

(g) For the Model 757–200 series airplanes identified as Groups 8, 9, 12, 15, 20, 21 through 32 inclusive, and 34 through 40 inclusive in Boeing Service Bulletin 757–24–0093, dated August 14, 2003, equipped with control module assembly, part number (P/N) 233N3209–1025, –1026, –1028, –1300, or –1302: Prior to or concurrently with accomplishing the actions specified in paragraph (f) of this AD, modify the wiring of the control module assembly for the electrical systems, by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing Component Service Bulletin 233N3209–24–04, Revision 1, dated August 14, 2003, as applicable.

Credit for Accomplishment of Previous Service Bulletin

(h) Modification of the control module assembly, P/N 233N3209–1025, –1300, or –1302, done before the effective date of this AD in accordance with Boeing Component Service Bulletin 233N3209–24–04, dated April 10, 2003, is acceptable for compliance with the requirements of paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(j) You must use the service information listed Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Service information	Revision level	Date
Boeing Component Service Bulletin 233N3209–24–04	1	August 14, 2003.
Boeing Service Bulletin 757–24–0093	Original	August 14, 2003.
Boeing Service Bulletin 757–24–0094	Original	April 17, 2003.

Issued in Renton, Washington, on July 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–15410 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18814; Directorate Identifier 2003–NM–286–AD; Amendment 39–15144; AD 2007–16–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires repetitive inspections for discrepancies of the elevator tab control rod assemblies and/or damage to the surrounding structure, and related corrective action. This AD results from reports indicating loose jam nuts and/or thread wear at the rod ends on the elevator tab control rod assembly. We are issuing this AD to find and fix discrepancies of the elevator tab control rod assembly, which could result in excessive freeplay in the elevator tab control rods. Such freeplay could cause loss of both load paths, subsequent elevator tab flutter, and consequent reduced structural integrity and loss of controllability of the airplane.

DATES: This AD becomes effective September 13, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 13, 2007.

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

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

FOR FURTHER INFORMATION CONTACT: Kenneth Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6468; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The NPRM was published in the **Federal Register** on August 10, 2004 (69 FR 48424). That NPRM proposed to require repetitive inspections for discrepancies of the elevator tab control rod assemblies and/or damage to the surrounding structure, and related corrective action.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the NPRM.

Supportive Comments

Airline Pilots Association International concurs with the NPRM and the proposed implementation schedule therein.

Air Transport Association (ATA) and Alaska Airlines (Alaska) generally support the intent of the AD.

ATA, on behalf of its member, Alaska, states that the inspection action specified in the NPRM is acceptable provided there are adequate parts available for replacement when discrepancies are discovered. Alaska adds that the proposed compliance intervals and repeat inspections are acceptable as proposed, as they will allow compliance at heavy check maintenance visits. We have verified with Boeing that adequate replacement parts are available.

Request To Revise Service Information

Jet Airways asks that the FAA advise Boeing to revise the referenced service bulletin. Jet Airways states that since there is a difference between the NPRM and the service bulletin, in that the service bulletin recommends a one-time inspection of the control rod tab assemblies and the NPRM requires repetitive inspections, the service bulletin should be revised to include the repetitive inspections.

We agree with Jet Airways for the reasons provided. Since we issued the NPRM, Boeing has issued Alert Service Bulletin 737–27A1266, Revision 1, dated January 2, 2007. The procedures in Revision 1 are essentially the same as those in the original issue of the service bulletin; however, Revision 1 clarifies procedures for visually inspecting for the presence of inspection putty on each jam nut and ensuring that the inspection putty is intact and is not cracked or damaged. In addition, the one-time inspection for discrepancies of the elevator tab control rod assemblies and/or damage to the surrounding structure was changed to repetitive inspections. Therefore, Revision 1 eliminates the difference between this AD and the service bulletin that was noted in the NPRM. We have changed paragraph (f) of this AD to refer to Revision 1 and give credit for inspections and corrective action accomplished using the original issue of Boeing Alert Service Bulletin 737–27A1266, dated September 18, 2003.

Request for Locking Provision for Control Rod Jam Nuts

Jet Airways also states that the repetitive inspection requirement is only needed because there is no locking provision for the jam nuts. Jet Airways

adds that the FAA and Boeing should develop a provision for installation of lockwire to avoid looseness of the jam nuts and to terminate the repetitive inspection requirement.

We partially agree with Jet Airways, as follows:

We agree that locking provisions for certain elevator tab control rods with lockwire might be beneficial; however, we do not agree that the repetitive inspection requirement is needed only because there is no locking provision for the jam nuts. Repetitive inspections of the elevator control tab assemblies will identify discrepancies of the inspection putty, loose jam nuts, worn threads, and damage to surrounding structure that resulted from improperly torqued jam nuts. As previously described, Revision 1 of the service bulletin clarifies procedures for visually inspecting for the presence of inspection putty on each jam nut and ensuring that the inspection putty is intact and is not cracked or damaged. We have made no change to the AD in this regard.

Request To Change Description of the Unsafe Condition

Boeing states that the unsafe condition, as specified in the NPRM, is incorrect. That unsafe condition states, ''We are proposing this AD to find and fix excessive freeplay in the tab control mechanism, which could result in elevator tab flutter and consequent loss of controllability of the airplane.'' Boeing states that there is no freeplay check identified in the procedure specified in the referenced service information. Boeing asks that the wording be changed to read, ''We are proposing this AD to prevent excessive thread wear in the rod ends of the elevator tab control rods as a result of loose jam nuts. Excessive rod end thread wear results in increased freeplay in the elevator tab control loop. Airframe vibration can occur with sufficient freeplay, leading to a degradation of handling characteristics of the airplane.''

Boeing also asks that the unsafe condition, as specified in the Discussion section of the NPRM, be changed for the same reason to read, ''Excessive freeplay in the elevator tab control rods, if not found and fixed, could result in the loss of both load paths, leading to elevator tab flutter and consequent loss of controllability of the airplane.''

We agree to change the description of the unsafe condition because Boeing is accurate in the statement that there is no freeplay check identified in the procedure specified in the referenced service bulletin. We have changed the description of the unsafe condition to read, ''We are issuing this AD to find and fix discrepancies of the elevator tab control rod assembly, which could result in excessive freeplay in the elevator tab control rods. Such freeplay could cause loss of both load paths, subsequent elevator tab flutter, and consequent reduced structural integrity and loss of controllability of the airplane.'' We have changed the wording for the unsafe condition to include the intent of the information provided by Boeing. The discrepancies (loose jam nuts and/or thread wear at the rod ends) are referred to in the sentence immediately preceding the unsafe condition and do not need to be repeated. Concerning Boeing's comment on the Discussion section of the NPRM, since that section of the preamble does not reappear in the final rule, no change to the AD is necessary.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this AD to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 2,878 airplanes of the affected design in the worldwide fleet. This AD affects about 1,078 airplanes of U.S. registry. The inspection takes about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $172,480, or $160 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–16–05 Boeing: Amendment 39–15144. Docket No. FAA–2004–18814; Directorate Identifier 2003–NM–286–AD.

Effective Date

(a) This AD becomes effective September 13, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from reports indicating loose jam nuts and/or thread wear at the rod ends on the elevator tab control rod assembly. We are issuing this AD to find and fix discrepancies of the elevator tab control rod assembly, which could result in excessive freeplay in the elevator tab control rods. Such freeplay could cause loss of both load paths, subsequent elevator tab flutter, and consequent reduced structural integrity and loss of controllability of the airplane.

Compliance

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

Repetitive Inspections

(f) Within 4,500 flight cycles or 6,000 flight hours after the effective date of this AD, whichever is first: Do a detailed inspection for discrepancies of the inspection putty of the elevator tab control rod assemblies and/or damage to the surrounding structure, by doing all the actions, including all applicable related corrective actions, as specified in paragraph 3.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1266, Revision 1, dated January 2, 2007. Do all applicable related corrective actions before further flight, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 4,500 flight cycles or 6,000 flight hours, whichever is first. Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–27A1266, dated September 18, 2003, are considered acceptable for compliance with the corresponding actions specified in this paragraph.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin 737–27A1266, Revision 1, dated January 2, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–15220 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28911; Directorate Identifier 2007–NM–002–AD; Amendment 39–15150; AD 2007–16–11]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050 Airplanes Equipped With Dowty Type R.352 or R.410 Series Propellers

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Fokker Model F27 Mark 050 airplanes equipped with Dowty Type R.352 or R.410 series propellers. This AD requires checking the maintenance records to determine whether Minnesota Mining and Manufacture Co. (3M) 1300L adhesive was used to attach the de-icer assembly overshoes (boots) to the propeller blades, repetitive inspections of affected boots, and replacing boots attached with defective adhesive. This AD results from three events of propeller blade de-icer assembly boots debonding and detaching during flight. This condition was caused by using 3M 1300L adhesive to attach the boot to the propeller blade. We are issuing this AD to detect and correct boots attached with defective adhesive, which could result in debonding and separation of a boot from the airplane, consequent reduced structural integrity of the airplane, and possible injury to passengers and crew.

DATES: This AD becomes effective August 24, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 24, 2007.

We must receive comments on this AD by September 10, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority-The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe condition may exist on certain Fokker Model F27 Mark 050 airplanes equipped with Dowty Type R.352 or R.410 series propellers. The CAA–NL advises that there have been three events of propeller blade de-icer assembly boots debonding and detaching during flight. In two of the incidents, the boot impacted the fuselage causing considerable damage, but did not penetrate into the fuselage. In the third incident the boot hit a passenger cabin

window shattering the pane and penetrating into the fuselage, and subsequently injuring two passengers. Investigation revealed that all of the affected boots had been attached using Minnesota Mining and Manufacture Co. (3M) 1300L adhesive. This condition, if not corrected, could result in debonding and separation of a boot from the airplane, consequent reduced structural integrity of the airplane, and possible injury to passengers and crew.

Relevant Service Information

Dowty has issued Service Bulletin F50–61–158, including Appendix 1, dated September 30, 2005. The service bulletin describes procedures for checking the maintenance records to determine whether 3M 1300L adhesive has been applied to attach the de-icer assembly overshoes (boots) to the propeller blades, repetitive inspections of affected boots, and replacing boots attached with defective adhesive. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA–NL reviewed the service information and issued Dutch airworthiness directive NL–2005–016, dated December 16, 2005, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Determination and Requirements of This AD

These airplanes are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. We have examined the CAA–NL's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to detect and correct boots with defective adhesive, which could result in separation of a boot from the airplane, possible injury to passengers and crew, and consequent reduced structural integrity of the airplane. This AD requires accomplishing the actions specified in the service information described previously.

Costs of Compliance

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

If an affected airplane is imported and placed on the U.S. Register in the future, the required inspections would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD would be $80 per airplane, per inspection cycle.

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2007–28911; Directorate Identifier 2007–NM–002–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–16–11 Fokker Services B.V.: Amendment 39–15150. Docket No. FAA–2007–28911; Directorate Identifier 2007–NM–002–AD.

Effective Date

(a) This AD becomes effective August 24, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F27 Mark 050 airplanes, certificated in any category; equipped with Dowty Type R.352 or R.410 series propellers.

Unsafe Condition

(d) This AD results from three events of propeller blade de-icer assembly overshoes (boots) debonding and detaching during flight. This condition was caused by using Minnesota Mining and Manufacture Co. (3M) 1300L adhesive to attach the boots to the propeller blade. We are issuing this AD to detect and correct boots attached with defective adhesive, which could result in debonding and separation of a boot from the airplane, consequent reduced structural integrity of the airplane, and possible injury to passengers and crew.

Compliance

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

Identification of Affected Boots/Repetitive Inspections/Replacement

(f) Within 30 days after the effective date of this AD: Check the maintenance records to determine whether 3M 1300L adhesive was used to attach the de-icer assembly boots to the propeller blades.

(1) If 3M 1300L adhesive was not used: No further action is required by this paragraph.

(2) If 3M 1300L adhesive was used, or the type of adhesive cannot be determined: Within 650 flight hours, do a general visual inspection for signs of lifting or bubbling of the adhesive in accordance with the Accomplishment Instructions of Dowty Service Bulletin F50–61–158, including Appendix 1, dated September 30, 2005.

(i) If no signs of lifting or bubbling are found: Repeat the inspection at intervals not to exceed 650 flight hours.

(ii) If any signs of lifting or bubbling are found: Before further flight, replace the affected de-icer assembly boot in accordance with Accomplishment Instructions of the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Parts Installation

(g) As of the effective date of this AD, no person may use 3M 1300L adhesive to attach a boot to the propeller blade, on any airplane.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(i) Dutch airworthiness directive NL–2005–016, dated December 16, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Dowty Service Bulletin F50–61–158, including Appendix 1, dated September 30, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–15417 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28017; Directorate Identifier 2007–NM–005–AD; Amendment 39–15146; AD 2007–16–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310–203, A310–204, A310–222, A310–304, A310–322, and A310–324 Airplanes

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

ACTION: Final rule.

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

* * * some structural areas have been identified for which existing recommended SB (service bulletin) needs to be rendered mandatory.

As a consequence, and because it has been shown that the torque applied to the tension bolts connecting the beam (stringer 49) to the forward and aft beam extension at FR11 and FR17 may be insufficient, this AD renders mandatory the replacement of those tension bolts, in order to limit the risks of damage or corrosion of the specified areas.

Damage or corrosion of the specified areas could result in reduced structural integrity of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective September 13, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 13, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200

New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 26, 2007 (72 FR 20785). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During the A310 life extension exercise performed by Airbus, the Airlines Representatives and the Airworthiness Authorities, some structural areas have been identified for which existing recommended SB (service bulletin) needs to be rendered mandatory.
>
> As a consequence, and because it has been shown that the torque applied to the tension bolts connecting the beam (stringer 49) to the forward and aft beam extension at FR11 and FR17 may be insufficient, this AD renders mandatory the replacement of those tension bolts, in order to limit the risks of damage or corrosion of the specified areas.

Damage or corrosion of the specified areas could result in reduced structural integrity of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this AD affects about 29 products of U.S. registry. We also estimate that it will take about 9 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $886 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 this AD on U.S. operators to be $46,574, or $1,606 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–16–07 Airbus: Amendment 39–15146. Docket No. FAA–2007–28017; Directorate Identifier 2007–NM–005–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 13, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A310–203, A310–204, A310–222, A310–304, A310–322, and A310–324 airplanes, certificated in any category, manufacturing serial numbers 283 through 434 inclusive. Airplanes which have received application of Airbus Service Bulletin A310–53–2045 at original issue up to Revision 05 are not affected by this AD.

Subject

(d) Fuselage.

Reason

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

During the A310 life extension exercise performed by Airbus, the Airlines Representatives and the Airworthiness Authorities, some structural areas have been identified for which existing recommended SB (service bulletin) needs to be rendered mandatory.

As a consequence, and because it has been shown that the torque applied to the tension bolts connecting the beam (stringer 49) to the forward and aft beam extension at FR11 and FR17 may be insufficient, this AD renders mandatory the replacement of those tension bolts, in order to limit the risks of damage or corrosion of the specified areas.

Damage or corrosion of the specified areas could result in reduced structural integrity of the airplane.

Actions and Compliance

(f) Unless already done, do the following actions at the applicable time specified in paragraph (f)(1) or (f)(2) of this AD: Rework the structure between frame 11 and frame 17 of the nose landing gear well of the fuselage in accordance with the instructions of Airbus Service Bulletin A310–53–2045, Revision 05, dated July 20, 2006.

(1) For Model A310–300 airplanes: Prior to accumulation of 35,000 total flight cycles from first flight of the airplane, or within 30 days after the effective date of this AD, whichever occurs later.

(2) For Model A310–200 airplanes: Prior to the accumulation of 40,000 total flight cycles from the first flight of the airplane, or within 30 days after the effective date of this AD, whichever occurs later.

(3) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A310–53–2045, dated March 11, 1988; Revision 1, dated June 16, 1988; Revision 2, dated September 7, 1988; Revision 3, dated October 4, 1989; or Revision 4, dated April 20, 1990; is acceptable for compliance with the requirements of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149. Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2006–0367, dated December 5, 2006; and Airbus Service Bulletin A310–53–2045, Revision 05, dated July 20, 2006; for related information.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A310–53–2045, Revision 05, dated July 20, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–15414 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22918; Directorate Identifier 2005–NM–172–AD; Amendment 39–15143; AD 2007–16–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319–100 and A320–200 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A319–100 and A320–200 series airplanes. This AD requires repetitive inspections of the wing-tank fuel pumps, canisters, and wing fuel tanks for detached identification labels, and corrective action if necessary. This AD also requires modification of the fuel strainers at the fuel pump and suction bypass intakes, which would end the repetitive inspections. This AD results from several incidents of detached plastic identification labels found floating in the wing fuel tanks. We are issuing this AD to prevent plastic identification labels being ingested into the fuel pumps and consequently entering the engine fuel feed system, which could result in an engine shutdown.

DATES: This AD becomes effective September 13, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 13, 2007.

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

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer,

International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A319–100 and Model A320–200 series airplanes. That supplemental NPRM was published in the **Federal Register** on March 29, 2007 (72 FR 14715). That supplemental NPRM proposed to require repetitive inspections of the wing-tank fuel pumps, canisters, and wing fuel tanks for detached identification labels, and corrective action if necessary. That supplemental NPRM also proposed to mandate modification of the fuel strainers at the fuel pump and suction bypass intakes.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Add Revised Service Information

Air Transport Association (ATA), on behalf of US Airways, asks that we update the service bulletin reference for the modification specified in paragraph (j) of the supplemental NPRM to Revision 01 of Airbus Service Bulletin A320–28–1149, dated October 9, 2006.

We agree with the request. Airbus has issued Service Bulletin A320–28–1149, Revision 01, dated October 9, 2006. We referred to the original issue of the service bulletin, dated June 14, 2006, as the appropriate source of service information for accomplishing the modification. The procedures in Revision 01 are essentially the same as those in the original issue; however, the procedures in Revision 01 add certain clarifications, and the work hours for accomplishing the modification have been increased. We have changed paragraph (j) of this AD to refer to Revision 01 of the service bulletin, added a new paragraph (k) to this AD to give credit for the original issue of the service bulletin, and re-identified subsequent paragraphs accordingly.

Request To Change Applicability/Add Revised Service Information

Airbus asks that we change the applicability specified in paragraph (c) of the supplemental NPRM. Airbus states that the applicability refers to Airbus Service Bulletins A320–28–1102, Revision 02, dated July 10, 2006; and A320–57–1117, Revision 02, dated March 13, 2006. Airbus notes that the service bulletins are being revised to remove manufacturer's serial numbers (MSNs) 1083, 1310, 1314, and 1360, because Airbus has confirmed that labels were never installed on these airplanes. Airbus also notes that European Aviation Safety Agency (EASA) airworthiness directive 2006–0236, also referred to in the supplemental NPRM, has been revised to remove the MSNs; however, due to an administrative error, MSN 1083 remains in the compliance section of the EASA airworthiness directive. In conclusion, Airbus asks that the applicability section be updated to reflect these changes.

We agree to change the applicability specified in paragraph (c) of this AD to exclude airplanes having MSNs 1083, 1310, 1314, and 1360. However, since the referenced service bulletins have not yet been revised to remove these airplanes, we will retain the reference to Revision 2 of the service bulletin in paragraph (c) as well as paragraph (f) of this AD, which is repetitive inspections and corrective actions of the four wing-tank fuel pumps and canisters.

Request To Change Costs of Compliance Section

Northwest Airlines (NWA) states that it is in the process of implementing the modification of the fuel pump strainers specified in Service Bulletin A320–28–1149. NWA adds that its work-hour estimate is 54 hours for implementation, after access to the tanks is gained. NWA does not provide a specific request.

We infer that NWA is asking that we increase the number of work hours for accomplishing the modification, as specified in the Costs of Compliance section of the supplemental NPRM. Revision 01 of Service Bulletin A320–28–1149 specifies an increase in the work hours for accomplishing the modification from 20 to 36; therefore, we have changed the work hours in the Costs of Compliance section of this AD to match the work hours specified in the subject service bulletin. However, modification costs will likely vary depending on the operator and the airplane configuration.

Request To Change Repetitive Inspection Requirement

NWA agrees with the 3,000-flight-hour repetitive inspection interval after the initial label removal has been completed. However, NWA has not found any labels in the wing pumps on affected airplanes after the removal procedure has been done. NWA would like the exception ''following any wing-tank fuel pump failure'' removed from the repetitive inspection requirement specified in paragraph (g)(2) of the supplemental NPRM to simplify the continued inspections.

We do not agree with the NWA request. Accomplishment of the label removal procedure does not completely remove the risk of detached labels getting into the fuel system, since some of the labels are not accessible during the label removal procedure. The FAA-approved Master Minimum Equipment List prohibits dispatch with one wing-tank fuel pump inoperative on the airplanes affected by the requirements in this AD. Therefore, the fuel pump would have to be repaired before further flight, and inspecting for labels would not impose any additional burden. We have made no change to the AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection specified in Service Bulletin A320–28–1102.	3	$80	$0	$240, per inspection cycle.	70	$16,800, per inspection cycle.
Inspection specified in Service Bulletin A320–57–1117.	20	80	0	$1,600, per inspection cycle.	70	$112,000, per inspection cycle.
Modification specified in Service Bulletin A320–28–1149, Revision 01.	36	80	0	$2,880	70	$201,600.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–16–04 Airbus: Amendment 39–15143. Docket No. FAA–2005–22918; Directorate Identifier 2005–NM–172–AD.

Effective Date

(a) This AD becomes effective September 13, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319–100 and Model A320–200 series airplanes, certificated in any category; as identified in Airbus Service Bulletins A320–28–1102, Revision 02, dated July 10, 2006; and A320–57–1117, Revision 02, dated March 13, 2006; except airplanes having manufacturer's serial numbers 1083, 1310, 1314, and 1360.

Unsafe Condition

(d) This AD results from several incidents of detached plastic identification labels found floating in the wing fuel tanks. We are issuing this AD to prevent plastic identification labels being ingested into the fuel pumps and consequently entering the engine fuel feed system, which could result in an engine shutdown.

Compliance

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

Repetitive Inspections/Corrective Actions of Four Wing-Tank Fuel Pumps and Canisters

(f) Perform a detailed inspection for detached identification labels in the four wing-tank fuel pumps and canisters, and do all applicable corrective actions, by doing all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1102, Revision 02, dated July 10, 2006; except as provided by paragraph (j) of this AD. Do all applicable corrective actions before further flight. Inspect at the earlier of the compliance times specified in paragraphs (f)(1) and (f)(2) of this AD.

(1) Within 600 flight hours after the effective date of this AD.

(2) Before the next flight following any wing-tank fuel pump failure.

(g) Repeat the inspection required by paragraph (f) of this AD thereafter at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, until accomplishment of paragraph (j) of this AD.

(1) For airplanes on which the inspection required by paragraph (i) of this AD has not been done: Repeat the inspection at intervals not to exceed the earlier of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) 600 flight hours.

(ii) Before the next flight following any wing-tank fuel pump failure.

(2) For airplanes on which the inspection required by paragraph (i) of this AD has been done: Repeat the inspection at intervals not to exceed the earlier of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) 3,000 flight hours.

(ii) Before the next flight following any wing-tank fuel pump failure.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Credit for Actions Accomplished Using Previous Service Information

(h) Inspections and corrective actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A320–28–1102, dated August 20, 2002; or Revision 01, dated February 11, 2005; are considered acceptable for compliance with the corresponding actions specified in paragraph (f) of this AD.

Inspection/Corrective Actions of the Collector Cells, Surge Tank, Wing Fuel Tank and Vent Box

(i) Within 60 months after the effective date of this AD: Perform a detailed inspection for detached identification labels in the collector cells between ribs 1 and 2, the surge tank between ribs 22 and 26, and the wing fuel tank and vent box, and do any applicable corrective actions, by doing all the applicable actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1117, Revision 02, including Appendix 01, dated March 13, 2006. Do any applicable corrective action before further flight.

Modification

(j) Before the accumulation of 162 months since first flight of the airplane, or within 6 months after the effective date of this AD, whichever is later: Modify the fuel strainers at the fuel pump and suction bypass intakes by doing all the actions in accordance with Airbus Service Bulletin A320–28–1149, Revision 01, dated October 9, 2006. Accomplishment of the modification in this paragraph ends the repetitive inspections required by paragraph (g) of this AD.

Credit for Actions Accomplished Using Previous Service Information

(k) Modifications accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A320–28–1149, dated June 14, 2006, are considered acceptable for compliance with the corresponding actions specified in paragraph (j) of this AD.

No Reporting Required

(l) Although Airbus Service Bulletin A320–28–1102, Revision 02, dated July 10, 2006, specifies submitting an inspection report to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(n) European Aviation Safety Agency airworthiness directive 2006–0236R1, dated March 9, 2007, also addresses the subject of this AD.

Material Incorporated by Reference

(o) You must use the Airbus service bulletins specified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A320–28–1102, excluding Appendix 01	02	July 10, 2006.
A320–57–1117, including Appendix 01	02	March 13, 2006.
A320–28–1149	01	October 9, 2006.

Issued in Renton, Washington, on July 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–15225 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28920; Directorate Identifier 2007–NM–162–AD; Amendment 39–15152; AD 2007–16–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200PF, and –200CB Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to certain Boeing Model 757–200, –200PF, and –200CB series airplanes. The existing AD currently requires repetitive inspections of the shim installation between the vertical flange and bulkhead, and repair if necessary. This new AD adds, for certain airplanes, an inspection for cracking of the four critical fastener holes in the horizontal flange, and repair if necessary. This AD results from reports of cracking in the pylon under bolts that appear to be undamaged during the existing AD inspections. We are issuing this AD to detect and correct cracks, loose and broken bolts, and shim migration in the joint between the aft torque bulkhead and the strut-to-diagonal brace fitting, which could result in damage to the strut and consequent separation of the strut and engine from the airplane.

DATES: This AD becomes effective August 24, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 24, 2007.

We must receive any comments on this AD by October 9, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle,

Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6450; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On May 26, 2005, we issued AD 2005–12–04, amendment 39–14120 (70 FR 34313, June 14, 2005). That AD applies to certain Boeing Model 757–200, –200PF, and –200CB series airplanes. That AD requires repetitive inspections of the shim installation between the vertical flange and bulkhead, and repair if necessary. That AD resulted from reports of cracks, loose and broken bolts, and shim migration in the joint between the aft torque bulkhead and the strut-to-diagonal brace fitting. The actions specified in that AD are intended to detect and correct such cracks, loose and broken bolts, and shim migration, which could result in damage to the strut and consequent separation of the strut and engine from the airplane.

Actions Since AD Was Issued

Since we issued that AD, we have received reports of cracking in the pylon under bolts that appear to be undamaged during the existing AD inspections. Although the cracking was underneath non-discrepant bolts, it was adjacent to bolts subject to AD 2005–12–04 that were loose for a period of time long enough to cause this cracking.

Other Relevant Rulemaking

On May 25, 2004, we issued AD 2004–12–07, amendment 39–13666 (69 FR 33561, June 16, 2004), for certain Boeing Model 757 series airplanes. That AD requires, for certain airplanes, repetitive detailed inspections of certain aft bulkhead fasteners for loose or missing fasteners, and corrective action if necessary. That AD also requires, for certain other airplanes, a one-time detailed inspection of the middle gusset of the inboard side load fitting for proper alignment and realignment if necessary; a one-time eddy current inspection of certain fastener holes for cracking, and repair if necessary; and a detailed inspection of certain fasteners for loose or missing fasteners; and replacement with new fasteners if necessary. Accomplishing the actions specified in this AD terminates the requirements specified in paragraphs (b) and (c) of AD 2004–12–07.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007 (we referred to Boeing Service Bulletin 757–54A0047, Revision 1, dated March 24, 2005, as the appropriate source of service information for accomplishing the required actions specified in AD 2005–12–04). The alert service bulletin describes basically the same procedures (as required by AD 2005–12–04) for repetitive detailed inspections of the shim installation between the vertical flange and bulkhead and repair if necessary; however, the description of the actions has been revised. The alert service bulletin specifies to do repetitive inspections as follows:

- Do detailed inspections of the shim installations between the vertical flange and bulkhead to determine if there are signs of movement.
- Do detailed inspections of the four fasteners in the vertical flange to determine if there are signs of movement or if there are gaps under the head or collar.
- Do detailed inspections of the fasteners that hold the strut to the horizontal flange of the strut-to-diagonal brace fitting to determine if there are signs of movement or if there are gaps under the head or collar.

The alert service bulletin specifies to do related investigative actions and repairs as follows:

- Repair the shim if cumulative movement is 0.50 inch or less.
- Replace the shim if cumulative movement is more than 0.50 inch and do the inspection and repair of the four critical fastener holes on the horizontal flange specified in Part IV of the alert service bulletin.
- If any fastener is rejected, inspect the fastener hole for cracking and repair if necessary, increase the diameter of the hole, install oversize fasteners, and do the inspection and repair of the four critical fastener holes on the horizontal flange specified in Part IV of the alert service bulletin.

In addition to the repetitive inspections, the alert service bulletin describes procedures for an additional one-time inspection as follows: If any findings from inspections done in accordance with the original issue or Revision 1 of the service bulletin led to a rejection of any fasteners, or if there were any equivalent findings prior to the original issue of the service bulletin (except for findings on airplanes identified as Group 1, Configuration 2 in Revision 3 of the alert service bulletin that are prior to the incorporation of Boeing Service Bulletin 757–54–0035), the alert service bulletin describes a high frequency eddy current (HFEC) inspection for cracking of the four critical fastener holes in the horizontal flange and repair if necessary.

Depending on the group and configuration specified in the alert service bulletin, the initial compliance time ranges from 90 days after the date on the service bulletin to 6,000 flight cycles or 36 months, whichever occurs first, after the incorporation of Boeing Service Bulletin 757–54–0035. Depending on the group and configuration specified in the alert service bulletin, the repetitive interval ranges from 6,000 flight cycles or 36 months, whichever occurs first, to 9,000 flight cycles or 54 months, whichever occurs first.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to supersede AD 2005–12–04. This new AD continues to require repetitive inspections of the shim installation between the vertical flange and bulkhead, and repair if necessary. This AD also requires, for certain airplanes, an inspection for cracking of the four critical fastener holes in the horizontal flange, and repair if necessary.

Differences Between This AD and the Alert Service Bulletin

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and

was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2007–28920; Directorate Identifier 2007–NM–162–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground level of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14120 (70 FR 34313, June 14, 2005) and adding the following new airworthiness directive (AD):

2007–16–13 Boeing: Docket No. FAA–2007–28920; Directorate Identifier 2007–NM–162–AD; Amendment 39–15152.

Effective Date

(a) This AD becomes effective August 24, 2007.

Affected ADs

(b) This AD supersedes AD 2005–12–04. Accomplishing the actions specified in this AD terminates certain requirements of AD 2004–12–07, amendment 39–13666.

Applicability

(c) This AD applies to Boeing Model 757–200, –200PF, and –200CB series airplanes; certificated in any category; line numbers 1 through 1048 inclusive; powered by Rolls-Royce engines.

Unsafe Condition

(d) This AD results from reports of cracking in the pylon under bolts that appear to be undamaged during the existing AD inspections. We are issuing this AD to detect and correct cracks, loose and broken bolts, and shim migration in the joint between the aft torque bulkhead and the strut-to-diagonal brace fitting, which could result in damage to the strut and consequent separation of the strut and engine from the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''alert service bulletin,'' as used in this AD, means Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007.

One-Time Inspection and Repair

(g) For airplanes identified in paragraphs (g)(1) and (g)(2) of this AD: Within 90 days after the effective date of this AD, do a high frequency eddy current (HFEC) inspection for cracking of the four critical fastener holes in the horizontal flange and, before further flight, do all applicable repairs, in accordance with Part IV of the Accomplishment Instructions of the alert service bulletin, except as required by paragraph (k) of this AD.

(1) Airplanes on which findings on the horizontal or vertical fasteners or the shims led to a rejection of any fastener during the actions specified in Boeing Alert Service Bulletin 757–54A0047, dated November 13, 2003; or Boeing Service Bulletin 757–54A0047, Revision 1, dated March 24, 2005.

(2) Airplanes that had equivalent findings prior to Boeing Alert Service Bulletin 757–54A0047, dated November 13, 2003, except for findings on airplanes identified as Group 1, Configuration 2 in the alert service bulletin that were prior to the incorporation of Boeing Service Bulletin 757–54–0035.

Repetitive Inspections and Repair

(h) At the applicable times specified in paragraph 1.E., ''Compliance,'' of the alert service bulletin, except as required by paragraphs (i) and (j) of this AD: Do the inspections specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD and, before further flight, do all applicable related investigative actions and repairs, by doing all the actions specified in Parts I and II of the Accomplishment Instructions of the alert service bulletin, except as required by paragraph (k) of this AD.

(1) Do detailed inspections of the shim installations between the vertical flange and bulkhead to determine if there are signs of movement.

(2) Do detailed inspections of the four fasteners in the vertical flange to determine

if there are signs of movement or if there are gaps under the head or collar.

(3) Do detailed inspections of the fasteners that hold the strut to the horizontal flange of the strut-to-diagonal brace fitting to determine if there are signs of movement or if there are gaps under the head or collar.

Exceptions to Alert Service Bulletin Procedures

(i) Where the alert service bulletin specifies a compliance time relative to ''the date on this service bulletin,'' this AD requires compliance within the corresponding specified time relative to the effective date of this AD.

(j) Where the alert service bulletin specifies a compliance time relative to the ''date of issuance of airworthiness certificate,'' this AD requires compliance within the corresponding time relative to the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(k) If any crack is found during any inspection required by this AD, and the alert service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (o) of this AD

Credit for Actions Done Using Previous Service Information

(l) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 757–54A0047, Revision 1, dated March 24, 2005; and Boeing Alert Service Bulletin 757–54A0047, Revision 2, dated January 31, 2007; are considered acceptable for compliance with the corresponding actions specified in this AD.

(m) An inspection and corrective actions done before June 29, 2005 (the effective date of AD 2005–12–04), in accordance with paragraph (b) or (c), as applicable, of AD 2004–12–07, are acceptable for compliance with the initial inspection requirement of paragraph (h) of this AD.

An Acceptable Method of Compliance With Certain Requirements of AD 2004–12–07

(n) Accomplishing the actions specified in this AD terminates the requirements specified in paragraphs (b) and (c) of AD 2004–12–07.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(4) AMOCs approved previously in accordance with AD 2004–12–07 are approved as AMOCs for the corresponding provisions of this AD.

(5) AMOCs approved previously in accordance with AD 2005–12–04 are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(p) You must use Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 31, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–15419 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–2628; File No. S7–25–06]

RIN 3235–AJ67

Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting a new rule that prohibits advisers to pooled investment vehicles from making false or misleading statements to, or otherwise defrauding, investors or prospective investors in those pooled vehicles. This rule is designed to clarify, in light of a recent court opinion, the Commission's ability to bring enforcement actions under the Investment Advisers Act of 1940 against investment advisers who defraud investors or prospective investors in a hedge fund or other pooled investment vehicle.

DATES: *Effective Date:* September 10, 2007.

FOR FURTHER INFORMATION CONTACT: David W. Blass, Assistant Director, Daniel S. Kahl, Branch Chief, or Vivien Liu, Senior Counsel, at 202–551–6787, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5041.

SUPPLEMENTARY INFORMATION: The Commission is adopting new rule 206(4)–8 under the Investment Advisers Act of 1940 (''Advisers Act'').[1]

I. Introduction

On December 13, 2006, we proposed a new rule under the Advisers Act that would prohibit advisers to pooled investment vehicles from defrauding investors or prospective investors in pooled investment vehicles they advise.[2] We proposed the rule in response to the opinion of the Court of Appeals for the District of Columbia Circuit in *Goldstein* v. *SEC,* which created some uncertainty regarding the application of sections 206(1) and 206(2) of the Advisers Act in certain cases where investors in a pool are defrauded by an investment adviser to that pool.[3] In addressing the scope of the exemption from registration in section 203(b)(3) of the Advisers Act and the meaning of ''client'' as used in that section, the Court of Appeals expressed the view that, for purposes of sections 206(1) and (2) of the Advisers Act, the ''client'' of an investment

[1] 15 U.S.C. 80b. Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Advisers Act, we are referring to 15 U.S.C. 80b of the United States Code, at which the Advisers Act is codified.

[2] *Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles; Accredited Investors in Certain Private Investment Vehicles*, Investment Advisers Act Release No. 2576 (Dec. 27, 2006) [72 FR 400 (Jan. 4, 2007)] (the ''Proposing Release''). In the Proposing Release, we also proposed two new rules that would define the term ''accredited natural person'' under Regulation D and section 4(6) of the Securities Act of 1933 [15 U.S.C. 77d(6)] (''Securities Act''). As proposed, these rules would add to the existing definition of ''accredited investor'' and apply to private offerings of certain unregistered investment pools. On May 23, 2007, we voted to propose more general amendments to the definition of accredited investor. Proposed Modernization of Smaller Company Capital-Raising and Disclosure Requirements, Securities Act Release No. ____ (____, 2007) [72 FR ____ (____, 2007)]. We plan to defer consideration of our proposal to define the term accredited natural person until we have had the opportunity to evaluate fully the comments we received on that proposal together with those we receive on our May 2007 proposal.

[3] 451 F.3d 873 (D.C. Cir. 2006) (''Goldstein'').

adviser managing a pool is the pool itself, not an investor in the pool. As a result, it was unclear whether the Commission could continue to rely on sections 206(1) and (2) of the Advisers Act to bring enforcement actions in certain cases where investors in a pool are defrauded by an investment adviser to that pool.[4]

In its opinion, the Court of Appeals distinguished sections 206(1) and (2) from section 206(4) of the Advisers Act, which is not limited to conduct aimed at clients or prospective clients of investment advisers.[5] Section 206(4) provides us with rulemaking authority to define, and prescribe means reasonably designed to prevent, fraud by advisers.[6] We proposed rule 206(4)–8 under this authority.

We received 45 comment letters in response to our proposal.[7] Most commenters generally supported the proposal. Eighteen endorsed the rule as proposed, noting that the rule would strengthen the antifraud provisions of the Advisers Act or that the rule would clarify the Commission's enforcement authority with respect to advisers.[8] Others, however, urged that we make revisions that would restrict the scope of the rule to more narrowly define the conduct or acts it prohibits.[9]

Today, we are adopting new rule 206(4)–8 as proposed. The rule prohibits advisers from (i) making false or misleading statements to investors or prospective investors in hedge funds and other pooled investment vehicles they advise, or (ii) otherwise defrauding these investors. The rule clarifies that an adviser's duty to refrain from fraudulent conduct under the federal securities laws extends to the relationship with ultimate investors and that the Commission may bring enforcement actions under the Advisers Act against investment advisers who defraud investors or prospective investors in those pooled investment vehicles.

II. Discussion

Rule 206(4)–8 prohibits advisers to pooled investment vehicles from (i) making false or misleading statements to investors or prospective investors in those pools or (ii) otherwise defrauding those investors or prospective investors. We will enforce the rule through civil and administrative enforcement actions against advisers who violate it.

Section 206(4) authorizes the Commission to adopt rules and regulations that ''define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.'' In adopting rule 206(4)–8, we intend to employ all of the broad authority that Congress provided us in section 206(4) and direct it at adviser conduct affecting an investor or potential investor in a pooled investment vehicle.

A. Scope of Rule 206(4)–8

Some commenters questioned the scope of the rule, arguing that the Commission should define fraud.[10] We believe that we have done so, only more broadly than some commenters would have us do. As the Proposing Release indicated, our intent is to prohibit all fraud on investors in pools managed by investment advisers. Congress expected that we would use the authority provided by section 206(4) to ''promulgate general antifraud rules capable of flexibility.'' [11] The terms material false statements or omissions and ''acts, practices, and courses of business as are fraudulent, deceptive, or manipulative'' encompass the well-developed body of law under the antifraud provisions of the federal securities laws. The legal authorities identifying the types of acts, practices, and courses of business that are fraudulent, deceptive, or manipulative under the federal securities laws are numerous, and we believe that the conduct prohibited by rule 206(4)–8 is sufficiently clear and well understood.[12]

1. Investors and Prospective Investors

Rule 206(4)–8 prohibits investment advisers from making false or misleading statements to, or engaging in other fraud on, investors or prospective investors in a pooled investment vehicle they manage. The scope of the rule is modeled on that of sections 206(1) and (2) of the Advisers Act, which make unlawful fraud by advisers against clients or prospective clients. Rule 206(4)–8 prohibits false or misleading statements made, for example, to existing investors in account statements

[4] Prior to the issuance of the *Goldstein* decision, we brought enforcement actions against advisers alleging false and misleading statements to investors under sections 206(1) and (2) of the Advisers Act. *See, e.g., SEC* v. *Kirk S. Wright, International Management Associates, LLC*, Litigation Release No. 19581 (Feb. 28, 2006); *SEC* v. *Wood River Capital Management, LLC*, Litigation Release No. 19428 (Oct. 13, 2005); *SEC* v. *Samuel Israel III; Daniel E. Marino; Bayou Management, LLC; Bayou Accredited Fund, LLC; Bayou Affiliates Fund, LLC; Bayou No Leverage Fund, LLC; and Bayou Superfund, LLC*, Litigation Release No. 19406 (Sept. 29, 2005); *SEC* v. *Beacon Hill Asset Management LLC*, Litigation Release No. 18745A (June 16, 2004).

[5] *See Goldstein, supra* note 3, at note 6. *See also United States* v. *Elliott*, 62 F.3d 1304, 1311 (11th Cir. 1995).

[6] Section 206(4) of the Advisers Act makes it unlawful for an investment adviser to ''engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative'' and authorizes us ''by rules and regulations [to] define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.''

[7] We received over 600 comment letters that addressed the proposed amendments to the term ''accredited natural person'' under Regulation D and section 4(6) of the Securities Act. All of the public comments we received are available for inspection in our Public Reference Room at 100 F Street, NE., Washington DC, 20549 in File No. S7–25–06, or may be viewed at *http://www.sec.gov/comments/s7-25-06/s72506.shtml.*

[8] *E.g.*, Letter of the Alternative Investments Compliance Association (Mar. 5, 2007); Letter of the CFA Center for Financial Market Integrity (Mar. 9, 2007) (''CFA Center Letter''); Letter of the Coalition of Private Investment Companies (Mar. 9, 2007); Letter of the Commonwealth of Massachusetts (Mar. 9, 2007) (''Massachusetts Letter''); Letter of the Department of Banking of the State of Connecticut (Mar. 8, 2007); Letter of the North America Securities Administrators Association (Apr. 2, 2007) (''NASAA Letter''); and Letter of the U.S. Chamber of Commerce (Mar. 9, 2007). Another commenter observed that the proposed rules are broadly similar to current U.K. legislation and regulations. *See* Letter of Alternative Investment Management Association (Mar. 9, 2007) (''AIMA Letter'').

[9] *E.g.*, Letter of American Bar Association (Mar. 12, 2007) (''ABA Letter''); Letter of Davis Polk & Wardwell (Mar. 9, 2007) (''Davis Polk Letter''); Letter of Dechert LLP (Mar. 8, 2007) (''Dechert Letter''); Letter of New York City Bar (Mar. 8, 2007) (''NYCB Letter''); Letter of Schulte Roth & Zabel LLP (Mar. 9, 2007) (''Schulte Roth Letter''); and Letter of Sullivan & Cromwell LLP (Mar. 9, 2007) (''Sullivan & Cromwell Letter'').

[10] *E.g.*, ABA Letter, *supra* note 9; Letter of Debevoise & Plimpton LLP (Mar. 14, 2007); and NYCB Letter, *supra* note 9.

[11] S. Rep. No. 1760, 86th Cong., 2d. Sess. (June 28, 1960) at 4. *See* rule 206(4)–1(a)(5) [17 CFR. 275.206(4)–1(a)(5)] under the Advisers Act; rule 17j–1(b) [17 CFR 270.17j–1(b)] under the Investment Company Act of 1940 [15 U.S.C. 80a–1] (''Investment Company Act''); and rule 13e–3(b)(1) [17 CFR 240.13e–3(b)(1)] under the Securities Exchange Act of 1934 [15 U.S.C. 77a] (''Exchange Act'').

[12] Loss, Seligman, & Paredes, *Securities Regulation*, Chap. 9 (Fraud) (Fourth Ed. 2006); Hazen, *Treatise on The Law of Securities Regulation*, Vol. 3, Ch. 12 (Manipulation and Fraud—Civil Liability; Implied Private Remedies; SEC Rule 10b–5; Fraud in Connection With the Purchase or Sale of Securities; Improper Trading on Nonpublic Material Information) (Fifth Ed. 2005). *See, e.g.*, Superintendent of Insurance of New York v. *Bankers Life & Casualty Co.*, 404 U.S. 6, 11 n. 7 (1971) (''''We believe that section 10(b) and Rule 10b–5 prohibit all fraudulent schemes in connection with the purchase or sale of securities, whether the artifices employed involve a garden type variety of fraud, or present a unique form of deception. Novel or atypical methods should not provide immunity from the securities laws.'''' (quoting *A. T. Brod & Co.* v. *Perlow*, 375 F.2d 393, 397 (CA2 1967))); *Santa Fe Industries, Inc.* v. *Green*, 430 U.S. 462, 477 (1977) (''No doubt Congress meant to prohibit the full range of ingenious devices that might be used to manipulate securities prices.''). Moreover, the established legal principles are sufficiently flexible to encompass future novel factual scenarios. *United States* v. *Brown*, 555 F.2d 336, 339–40 (2d Cir. 1977) (''The fact that there is no litigated fact pattern precisely in point may constitute a tribute to the cupidity and ingenuity of the malefactors involved but hardly provides an escape from the penal sanctions of the securities fraud provisions here involved.'').

as well as to prospective investors in private placement memoranda, offering circulars, or responses to ''requests for proposals,'' electronic solicitations, and personal meetings arranged through capital introduction services.

Some commenters argued that the rule should not prohibit fraud against prospective investors in a pooled investment vehicle, asserting that such fraud does not actually harm investors until they, in fact, make an investment.[13] We disagree. False or misleading statements and other frauds by advisers are no less objectionable when made in an attempt to draw in new investors than when made to existing investors.[14] For similar policy reasons that we believe led Congress to apply the protections of sections 206(1) and (2) to prospective clients, we have decided to apply those of rule 206(4)–8 to prospective investors.[15] We believe that prohibiting false or misleading statements made to, or other fraud on, any prospective investors is a means reasonably designed to prevent fraud.

2. Unregistered Investment Advisers

Rule 206(4)–8 applies to both registered and unregistered investment advisers.[16] As we noted in the Proposing Release, many of our enforcement cases against advisers to pooled investment vehicles have been brought against advisers that are not registered under the Advisers Act, and we believe it is critical that we continue to be in a position to bring actions against unregistered advisers that manage pools and that defraud investors in those pools.[17] The two commenters that expressed an explicit view on this aspect of the proposal supported our application of the rule to advisers that are not registered with the Commission.[18]

3. Pooled Investment Vehicles

The rule we are adopting today applies to investment advisers with respect to any ''pooled investment vehicle'' they advise. The rule defines a pooled investment vehicle[19] as any investment company defined in section 3(a) of the Investment Company Act[20] and any privately offered pooled investment vehicle that is excluded from the definition of investment company by reason of either section 3(c)(1) or 3(c)(7) of the Investment Company Act.[21] As a result, the rule applies to advisers to hedge funds, private equity funds, venture capital funds, and other types of privately offered pools that invest in securities, as well as advisers to investment companies that are registered with us.[22]

Several commenters supported applying the protection of the new antifraud rule to investors in all these kinds of pooled investment vehicles, noting, for example, that every investor, not just the wealthy or sophisticated that typically invest in private pools, should be protected from fraud.[23] Some other commenters urged us not to apply the rule to advisers to registered investment companies, arguing that the rule is unnecessary because other provisions of the federal securities laws prohibiting fraud are available to the Commission to address these matters.[24] They expressed concern that application of another antifraud provision with different elements would be burdensome. These commenters claimed that the rule would, for example, make it necessary for advisers to conduct extensive reviews of all communications with clients. But the other antifraud provisions available to us contain different elements because they were not specifically designed to address frauds by investment advisers with respect to investors in pooled investment vehicles. In some cases, the other antifraud provisions may not permit us to proceed against the adviser.[25] As a result, the existing antifraud provisions may not be available to us in all cases. As we discussed above, before the *Goldstein* decision we had brought actions against advisers to mutual funds under sections 206(1) and (2) for defrauding investors in mutual funds.[26] Because, before the *Goldstein* decision, advisers to pooled investment vehicles operated with the understanding that the Advisers Act prohibited the conduct that this rule prohibits, we believe that advisers that are attentive to their traditional compliance responsibilities will not need to alter their business practices or take additional steps and incur new costs as a result of this rule's adoption.

B. Prohibition on False or Misleading Statements

Rule 206(4)–8(a)(1) prohibits any investment adviser to a pooled investment vehicle from making an untrue statement of a material fact to any investor or prospective investor in the pooled investment vehicle, or omitting to state a material fact necessary in order to make the statements made to any investor or

[13] Davis Polk Letter, *supra* note 9; Dechert Letter, *supra* note 9; NYCB Letter, *supra* note 9; Letter of the Securities Industry and Financial Markets Association (Mar. 9, 2007); Sullivan & Cromwell Letter, *supra* note 9.

[14] *See* CFA Center Letter, *supra* note 8.

[15] We have used the term ''prospective investor'' to give the term similar scope to the term ''prospective client'' in sections 206(1) and (2). *See, e.g., In the Matter of Ralph Harold Seipel*, 38 S.E.C. 256, 257–58 (1958) (the solicitation of clients is part of the activity of an investment adviser and it is immaterial for purposes of an enforcement action under sections 206(1) and (2) that an adviser engaging in fraudulent solicitations was not successful in his efforts to obtain clients).

[16] A few commenters requested that we clarify how we intend to apply rule 206(4)–8 to offshore advisers' interaction with non-U.S. investors. *See* AIMA Letter, *supra* note 8; Letter of Jones Day (Mar. 9, 2007); Sullivan & Cromwell Letter, *supra* note 9. Our adoption of this rule will not alter our jurisdictional authority.

[17] Proposing Release, *supra* note 2, at note 14.

[18] Massachusetts Letter, *supra* note 8; NASAA Letter, *supra* note 8.

[19] Rule 206(4)–8(b).

[20] 15 U.S.C. 80a–3(a). Unless otherwise noted, when we refer to the Investment Company Act, or any paragraph of the Investment Company Act, we are referring to 15 U.S.C. 80a of the United States Code, at which the Company Act is codified.

[21] Section 3(c)(1) of the Investment Company Act excludes from the definition of investment company an issuer the securities (other than short-term paper) of which are beneficially owned by not more than 100 persons and that is not making or proposing to make a public offering of its securities. Section 3(c)(7) of the Investment Company Act excludes from the definition of investment company an issuer the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are ''qualified purchasers'' and that is not making or proposing to make a public offering of its securities. ''Qualified purchaser'' is defined in section 2(a)(51) of the Investment Company Act generally to include a natural person (or a company owned by two or more related natural persons) who owns not less than $5,000,000 in investments; a person, acting for its own account or accounts of other qualified purchasers, who owns and invests on a discretionary basis, not less than $25,000,000; and a trust whose trustee, and each of its settlors, is a qualified purchaser.

[22] We have brought enforcement actions under the Advisers Act against advisers to these types of funds. *See, e.g., In the Matter of Askin Capital Management, L.P and David J. Askin*, Investment Advisers Act Release No. 1492 (May 23, 1995) (hedge fund); *In the Matter of Thayer Capital Partners*, Investment Advisers Act Release No. 2276 (Aug. 12, 2004) (private equity fund); *SEC* v. *Michael A. Liberty*, Litigation Release No. 19601 (Mar. 8, 2006) (venture capital fund).

[23] *E.g.*, NASAA Letter, *supra* note 8.

[24] *E.g.*, ABA Letter, *supra* note 9; Letter of Investment Adviser Association (Mar. 9, 2007); Letter of Investment Company Institute (Mar. 9, 2007) (''ICI Letter''); Sullivan & Cromwell Letter, *supra* note 9. Commenters noted in particular that section 34(b) of the Investment Company Act already prohibits an adviser from making fraudulent material statements or omissions in a fund's registration statement or in required records.

[25] This may be the case with respect to section 34(b) of the Investment Company Act, for example, if the adviser's fraudulent statements are not made in a document described in that section, or with respect to rule 10b–5 under the Exchange Act, where the fraudulent conduct does not relate to a misstatement or omission in connection with the purchase or sale of any security.

[26] *See, e.g., In the Matter of Van Kampen Investment Advisory Corp.*, Investment Advisers Act Release No. 1819 (Sept. 8, 1999); *In the Matter of The Dreyfus Corporation*, Investment Advisers Act Release No. 1870 (May 10, 2000); *In the Matter of Federated Investment Management Company*, Investment Advisers Act Release No. 2448 (Nov. 28, 2005).

prospective investor in the pooled investment vehicle, in the light of the circumstances under which they were made, not misleading.[27]

The provision is very similar to those in many of our antifraud laws and rules that, depending upon the circumstances, may also be applicable to the same investor communications.[28] Sections 206(1) and (2) have imposed similar obligations on advisers since 1940 and, before *Goldstein*, were commonly accepted as imposing similar requirements on communications with investors in a fund. For these reasons, and because the nature of the duty to communicate without false statements is so well developed in current law, we believe that commenters' concerns about the breadth of the prohibition or any chilling effect the new rule might have on investor communications are misplaced.[29] Advisers to pooled investment vehicles attentive to their traditional compliance responsibilities will not need to alter their communications with investors.

Rule 206(4)–8(a)(1) prohibits advisers to pooled investment vehicles from making any materially false or misleading statements to investors in the pool regardless of whether the pool is offering, selling, or redeeming securities. While the new rule differs in this aspect from rule 10b–5 under the Exchange Act, the conduct prohibited is similar. The new rule prohibits, for example, materially false or misleading statements regarding investment strategies the pooled investment vehicle will pursue, the experience and credentials of the adviser (or its associated persons), the risks associated with an investment in the pool, the performance of the pool or other funds advised by the adviser, the valuation of the pool or investor accounts in it, and practices the adviser follows in the operation of its advisory business such as how the adviser allocates investment opportunities.[30]

C. Prohibition of Other Frauds

Rule 206(4)–8(a)(2) makes it a fraudulent, deceptive, or manipulative act, practice, or course of business for any investment adviser to a pooled investment vehicle to ''otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.'' [31] As we noted in the Proposing Release, the wording of this provision is drawn from the first sentence of section 206(4) and is designed to apply more broadly to deceptive conduct that may not involve statements.[32]

Some commenters asserted that section 206(4) provides us authority only to adopt prophylactic rules that explicitly identify conduct that would be fraudulent under the new rule.[33] We believe our authority is broader. We do not believe that the commenters' suggested approach would be consistent with the purposes of the Advisers Act or the protection of investors. That approach would have us adopt the rule prohibiting fraudulent communications but not fraudulent conduct.[34] But, section 206(4) itself specifically authorizes us to adopt rules defining and prescribing ''acts, practices and courses of business,'' (*i.e.*, conduct), and does not explicitly refer to communications, which, nonetheless, represent a form of an act, practice, or course of business. In addition, rule 206(4)–8 as adopted would provide greater protection to investors in pooled investment vehicles.

Alternatively, commenters would have us adopt a rule prohibiting identified known fraudulent conduct or would have us provide detailed commentary describing specific forms of fraudulent conduct that the rule would prohibit.[35] Either approach would fail to prohibit fraudulent conduct we did not identify, and could provide a roadmap for those wishing to engage in fraudulent conduct. This approach would be inconsistent with our historical application of the federal securities laws under which broad prohibitions have been applied against specific harmful activity.

D. Other Matters

We noted in the Proposing Release that, unlike violations of rule 10b–5 under the Exchange Act, the Commission would not need to demonstrate that an adviser violating rule 206(4)–8 acted with scienter.[36] Commenters questioned whether the rule should encompass negligent conduct, arguing that it would ''expand the concept of fraud itself beyond its original meaning.'' [37] We read the language of section 206(4) as not by its terms limited to knowing or deliberate conduct. For example, section 206(4) encompasses ''acts, practices, and courses of business as are * * * deceptive,'' thereby reaching conduct that is negligently deceptive as well as conduct that is recklessly or deliberately deceptive. In addition, the Court of Appeals for the District of Columbia Circuit concluded that ''scienter is not required under section 206(4).'' [38] We believe use of a negligence standard also is appropriate as a method reasonably designed to prevent fraud. As the Supreme Court noted in *U.S.* v. *O'Hagan*, ''[a] prophylactic measure, because its mission is to prevent, typically encompasses more than the core activity prohibited.'' [39] In *O'Hagan*, the Court held that under section 14(e) ''the Commission may prohibit acts, not themselves fraudulent under the common law or § 10(b), if the prohibition is 'reasonably designed to prevent * * * acts and practices [that] are fraudulent.' '' [40] Along these lines, the prohibitions in rule 206(4)–8 are reasonably designed to prevent fraud. We believe that, by taking sufficient care to avoid negligent conduct, advisers will be more likely to avoid reckless deception. Since the Commission clearly is authorized to prescribe

[27] A fact is material if there is a substantial likelihood that a reasonable investor in making an investment decision would consider it as having significantly altered the total mix of information available. *Basic, Inc.* v. *Levinson*, 485 U.S. 224, 231–32 (1988); *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. 438, 449 (1976). *See also In the Matter of Van Kampen Investment Advisory Corp., supra* note 26; *In the Matter of the Dreyfus Corporation, supra* note 26.

[28] *See, e.g.*, sections 12 and 17 of the Securities Act [15 U.S.C. 77l, 77q]; section 14 of the Exchange Act [15 U.S.C. 78n]; section 34 of the Investment Company Act; rules 156, 159, and 610 under the Securities Act [17 CFR 230.156, 230.159, 230.610]; rules 10b–5, 13e–3, 13e–4, and 15c1–2 under the Exchange Act [17 CFR 240.10b–5, 240.13e–3, 240.13e–4, 240.15c1–2]; and rule 17j–1 under the Investment Company Act [17 CFR 270.17j–1]).

[29] Letter of Managed Funds Association (Mar. 9, 2007) (''MFA Letter''); NYCB Letter, *supra* note 9; Davis Polk Letter, *supra* note 9; Dechert Letter, *supra* note 9; Letter of Seward & Kissel LLP (Mar. 8, 2007) (''Seward & Kissel Letter'').

[30] We have previously brought enforcement actions alleging these or similar types of frauds. *See* Proposing Release, *supra* note 2, at note 29.

[31] Rule 206(4)–8(a)(2).

[32] *See* Section II.C of the Proposing Release, *supra* note 2.

[33] ABA Letter, *supra* note 9; ICI Letter, *supra* note 24; Schulte Roth Letter, *supra* note 9; Sullivan & Cromwell Letter, *supra* note 9.

[34] *See, e.g.*, ABA Letter, *supra* note 9.

[35] *Id.*

[36] Section II.B of the Proposing Release, *supra* note 2.

[37] *See* ABA Letter, *supra* note 9 at page 3.

[38] *SEC* v. *Steadman*, 967 F.2d 636, at 647 (D.C. Cir. 1992). The court in *Steadman* analogized section 206(4) of the Advisers Act to section 17(a)(3) of the Securities Act, which the Supreme Court had held did not require a finding of scienter, *id.* (citing *Aaron* v. *SEC*, 446 U.S. 680 (1980)). In discussing section 17(a)(3) and its lack of a scienter requirement, the *Steadman* court observed that, similarly, a violation of section 206(2) of the Advisers Act could rest on a finding of simple negligence. *Id.* at 643, note 5. *But see Aaron* at 690–91 (citing *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 199 (1976)); *cf.* S. Rep. No. 1760, 86th Cong., 2d. Sess. (June 28, 1960) at 8 and H. R. Rep. 2179, 86th Cong., 2d Sess. (Aug. 26, 1960) at 8 (comparing section 206(4) to section 15(c)(2) of the Exchange Act).

[39] *U.S.* v. *O'Hagan*, 521 U.S. 642, 672–73 (1997).

[40] *Id.* at 673.

conduct that goes beyond fraud as a means reasonably designed to prevent fraud, prohibiting deceptive conduct done negligently is a way to accomplish this objective.

Rule 206(4)–8 does not create under the Advisers Act a fiduciary duty to investors or prospective investors in a pooled investment vehicle not otherwise imposed by law. Nor does the rule alter any duty or obligation an adviser has under the Advisers Act, any other federal law or regulation, or any state law or regulation (including state securities laws) to investors in a pooled investment vehicle it advises.[41] The rule, for example, will permit us to bring an enforcement action against an investment adviser that violates a fiduciary duty imposed by other law if the violation of such law or obligation also constitutes an act, practice, or course of business that is fraudulent, deceptive, or manipulative within the meaning of the rule and section 206(4).[42]

Finally, the rule does not create a private right of action.[43]

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 does not apply because rule 206(4)–8 does not impose a new ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995. The rule does not create any filing, reporting, recordkeeping, or disclosure requirements for investment advisers subject to the rule. Accordingly, there is no ''collection of information'' under the Paperwork Reduction Act that requires the approval of the Office of Management and Budget under 44 U.S.C. 3501.

IV. Cost-Benefit Analysis

The Commission is sensitive to costs imposed by our rules and the benefits that derive from them. In the Proposing Release, we encouraged commenters to discuss any potential costs and benefits that we did not consider in our discussion. Three commenters addressed the issue of cost. Two of them stated their belief that the rule would increase advisers' costs of compliance, by, for example, making it necessary for advisers to conduct extensive reviews of all communications with clients.[44] One stated that the rule would achieve a reasonable balance of providing important benefits to investors at an acceptable cost.[45] None of the three commenters, however, provided analysis or empirical data in connection with their statements.

The rule makes it a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) for any investment adviser to a pooled investment vehicle to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle. The rule also makes it a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) for any investment adviser to a pooled investment vehicle to otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle. For the reasons discussed, we do not believe that the rule will require advisers to incur new or additional costs.

Investment advisers to pooled investment vehicles should not be making untrue statements or omitting material facts or otherwise be engaged in fraud with respect to investors or prospective investors in pooled investment vehicles today, because federal authorities, state authorities, and private litigants often can, and do, seek redress from the adviser for the untrue statements or omissions or other frauds. In most cases, the conduct that the rule prohibits is already prohibited by federal securities statutes,[46] other federal statutes (including federal wire fraud statutes),[47] as well as state law.[48]

We recognize that there are costs involved in assuring that communications to investors and prospective investors do not contain untrue or misleading statements and preventing other frauds. Advisers have incurred, and will continue to incur, these costs due to the prohibitions and deterrent effect of the law and rules that apply under these circumstances. While each of the provisions noted above may have different limitation periods, apply in different factual circumstances, or require the government (or a private litigant) to prove different states of mind than the rule, as discussed above we believe that the multiple prohibitions against fraud, and the consequences under both criminal and civil law for fraud, should currently cause an adviser to take the precautions it deems necessary to refrain from such conduct.

Furthermore, prior to *Goldstein*, advisers operated with the understanding that the Advisers Act prohibited the same conduct that would be prohibited by the rule. Accordingly, we do not believe that advisers to pooled investment vehicles attentive to their traditional compliance responsibilities will need to take steps or alter their business practices in such a way that will require them to incur new or additional costs as a result of the adoption of the rule.

We also recognize that the rule may cause some advisers to pay more attention to the information they present to better guard against making an untrue or misleading statement to an investor or prospective investor and to reevaluate measures that are intended to prevent fraud. As a consequence, some advisers might seek guidance, legal or otherwise, and more closely review the

[41] For example, under the Uniform Limited Partnership Act, advisers who serve as general partners owe fiduciary duties to the limited partners. Unif. Limited Partnership Act section 408 (2001).

[42] For example, if an adviser has a duty from a source other than the rule to make a material disclosure to an investor in a fund and negligently or deliberately fails to make the disclosure, the rule would apply to the failure.

[43] The Supreme Court has held that ''there exists a limited private remedy under the Investment Advisers Act of 1940 to void an investment adviser's contract, but that the Act confers no other private causes of action, legal or equitable.'' *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U.S. 11 at 24 (1979) (footnote omitted).

[44] NYCB Letter, *supra* note 9; Seward & Kissel Letter, *supra* note 29.

[45] CFA Center Letter, *supra* note 8.

[46] *See, e.g.*, section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and section 17(a) of the Securities Act [15 U.S.C. 77q] which would apply when the false statements are made ''in connection with the purchase or sale of a security'' or involve the ''offer or sale'' of a security, and section 34(b) of the Investment Company Act which makes it unlawful ''to make any untrue statement of a material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to [the Investment Company Act] * * *.''

[47] *See, e.g.*, 18 U.S.C. 1341 (Frauds and Swindles) and 18 U.S.C. 1343 (Fraud by wire, radio, or television) which make it a criminal offense to use the mails or to communicate by means of wire, having devised a scheme to defraud or for obtaining money or property by means of false or fraudulent pretenses, and 18 U.S.C. 1957 (Engaging in monetary transactions in property derived from specified unlawful activity) which makes it a criminal racketeering offense to engage or attempt to engage in a transaction in criminally derived property of a value greater than $10,000.

[48] *See, e.g., Metro Communications Corp. BVI* v. *Advanced Mobilecomm Technologies*, 854 A.2d 121, 156 (Del. Ch. 2004) (court held that plaintiff-former member of LLC had sufficiently alleged a common law fraud claim based on the allegation that a series of reports by LLC's managers contained misleading statements; court stated that ''[i]n the usual fraud case, the speaking party who is subject to an accusation of fraud is on the opposite side of a commercial transaction from the plaintiff, who alleges that but for the material misstatements or omissions of the speaking party he would not have contracted with the speaking party'').

information that they disseminate to investors and prospective investors and the antifraud related policies and procedures they have implemented. While increased concern about making false statements or committing fraud could be attributable to the new rule, advisers should already be incurring these costs to ensure truthfulness and prevent fraud, regardless of the rule, because of the myriad of laws or regulations that may already apply.

The principal benefit of the rule is that it clearly enables the Commission to bring enforcement actions under the Advisers Act, if an adviser to a pooled investment vehicle disseminates false or misleading information to investors or prospective investors or otherwise commits fraud with respect to any investor or prospective investor. As noted above, the existing antifraud provisions may not be available to us in all cases. Through our enforcement actions we are able to protect fund investor assets by stopping ongoing frauds,[49] barring persons that have committed certain specified violations or offenses from being associated with an investment adviser,[50] imposing penalties,[51] seeking court orders to protect fund assets,[52] and to order disgorgement of ill-gotten gains.[53] Moreover, we believe that rule 206(4)–8 will deter advisers to pooled investment vehicles from engaging in fraudulent conduct with respect to investors in those pools and will provide investors with greater confidence when investing in pooled investment vehicles.

V. Regulatory Flexibility Act Analysis

The Commission certified, pursuant to section 605(b) of the Regulatory Flexibility Act, that rule 206(4)–8 will not have a significant economic impact on a substantial number of small entities.[54] This certification was included in the Proposing Release.[55] While we encouraged written comment regarding this certification, none of the commenters responded to this request.

[49] *See* section 203(k) of the Advisers Act (Commission authority to issue cease and desist orders).

[50] *See* section 203(f) of the Advisers Act (Commission authority to bar a person from being associated with an investment adviser).

[51] *See* section 203(i) of the Advisers Act (Commission authority to impose civil penalties).

[52] *See* section 209(d) of the Advisers Act (Commission authority to seek injunctions and restraining orders in federal court).

[53] *See* section 203(j) of the Advisers Act (Commission authority to order disgorgement).

[54] 5 U.S.C. 605(b).

[55] Section VII.A of the Proposing Release, *supra* note 2.

VI. Statutory Authority

We are adopting new rule 206(4)–8 pursuant to our authority set forth in sections 206(4) and 211(a) of the Advisers Act (15 U.S.C. 80b–6(4) and 80b–11(a)).

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

VII. Text of Rules

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

■ 2. Section 275.206(4)–8 is added to read as follows:

§ 206(4)–8 Pooled investment vehicles.

(a) *Prohibition.* It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for any investment adviser to a pooled investment vehicle to:

(1) Make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or

(2) Otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

(b) *Definition.* For purposes of this section ''pooled investment vehicle'' means any investment company as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)) or any company that would be an investment company under section 3(a) of that Act but for the exclusion provided from that definition by either section 3(c)(1) or section 3(c)(7) of that Act (15 U.S.C. 80a–3(c)(1) or (7)).

Dated: August 3, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

Concurrence of Commissioner Paul S. Atkins to the Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles

New Rule 206(4)–8 under the Investment Advisers Act of 1940 (''Advisers Act''),[56] which we adopt today, prohibits advisors from (i) making false or misleading statements to investors or prospective investors in hedge funds and other pooled investment vehicles they advise, or (ii) otherwise defrauding these investors.[57] Although the SEC has other ways to reach fraud by advisors, this new rule will fill in gaps in the coverage of other transaction-based, anti-fraud provisions so that the SEC may pursue advisors of pooled investment vehicles who have defrauded investors and prospective investors in the course of their acting as fund advisors. I support the new rule, but I am writing separately to express my disagreement with the conclusions in the Adopting Release[58] related to the requisite mental state for violation of the rule.[59]

In discussing the mental state required for violation of the rule, the Adopting Release states that ''the Commission would not need to demonstrate that an adviser violating rule 206(4)–8 acted with scienter.''[60]

[56] 15 U.S.C. 80b.

[57] 17 CFR 275.206(4)–8. Paragraph (a) of the new rule provides:

Prohibition. It shall constitute a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for any investment adviser to a pooled investment vehicle to:

(1) Make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or

(2) Otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

Paragraph (b) of the rule defines a ''pooled investment vehicle'' to include any investment company and any company that relies on an exclusion from the definition of ''investment company'' in Section (3)(c)(1) or (3)(c)(7) of the Investment Company Act [15 U.S.C. 80a–3(c)(1) or (7))].

[58] Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles, Advisers Act Release No. 2628 (Aug. 3, 2007) (''Adopting Release'').

[59] *See* Section II.D of the Adopting Release. I agree with the Section's conclusions with respect to fiduciary duty (Rule 206(4)–8 does not create a fiduciary duty) and private rights of action (Rule 206(4)–8 does not create any private rights of action).

[60] Adopting Release, at text accompanying note 36.

According to the Adopting Release, therefore, the rule covers negligent conduct as well as intentional conduct. My objections to this interpretation of the rule's scope are twofold. First, I do not believe that a negligence standard is consistent with the Commission's authority under Section 206(4). Second, even if a negligence standard were within our authority, for policy reasons, we should require a finding of scienter [61] as part of establishing a violation under this anti-fraud rule.

The Adopting Release offers several arguments in support of a negligence standard. First, it argues that the language of section 206(4) is not limited to knowing or deliberate conduct. In support of this argument, it cites the decision by the United States Court of Appeals for the District of Columbia Circuit in *SEC* v. *Steadman*.[62] Second, the Adopting Release contends that use of a negligence standard is an appropriate method reasonably designed to prevent fraud. In support of this contention, it cites *U.S.* v. *O'Hagan*.[63] I will discuss each of these in turn.

The language of Section 206(4) does not reach negligent conduct. Section 206(4) makes it unlawful for an advisor ''to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative'' and directs the Commission ''by rules and regulations [to] define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.''

The Adopting Release maintains that, because Section 206(4) ''encompasses 'acts, practices, and courses of business as are * * * deceptive,' '' it reaches ''conduct that is negligently deceptive as well as conduct that is recklessly or deliberately deceptive.'' [64] As the Supreme Court has said, however, ''it is a 'familiar principle of statutory construction that words grouped in a list should be given related meaning.' '' [65] Hence, it is inappropriate to base a conclusion that negligent conduct is reached by looking at the term ''deceptive'' apart from its companion terms.

In the Section 10(b) context, the Supreme Court has accorded special significance to the term ''manipulative'':

> Use of the word ''manipulative'' is especially significant. It is and was virtually a term of art when used in connection with securities markets. It connotes intentional or willful conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities.[66]

The language of Section 206(4), like the language of Section 10(b), would seem then to suggest a scienter requirement.

The Adopting Release, however, cites for the contrary conclusion a decision by the United States Court of Appeals for the District of Columbia. Indeed, it is true that in *SEC* v. *Steadman*, the court held that ''scienter is not required under section 206(4).'' [67] The court reached its conclusion by comparing the language of Section 206(4) to the language of Section 17(a)(3) under the Securities Act of 1933,[68] which makes it unlawful ''to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.'' [69] The *Steadman* court drew a comparison between Section 17(a)(3)'s ''transaction, practice, or course of business'' and Section 206(4)'s ''act, practice, or course of business.'' The court, relying on the Supreme Court's decision in *Aaron*, held that, in both cases, the focus was on effect. [70] The Supreme Court in *Aaron*, however, placed considerable weight on the terms ''operate'' or ''would operate,'' neither of which appears in Section 206(4).[71] In fact, Section 206(4) instead uses the affirmative word ''is,'' which would seem to de-emphasize effect.[72] Further, while Section 17(a)(3) speaks of only ''fraud'' and ''deceit,'' Section 206(4) also includes ''manipulative.''

It is also helpful to note that Section 206(4), which was adopted in 1960,[73] was modeled on Section 15(c)(2) under the Securities Exchange Act of 1934.[74] Section 15(c)(2) makes it unlawful for brokers and dealers to effect transactions in or induce the purchase or sale of securities in connection with which they ''engage[] in any fraudulent, deceptive, or manipulative act or practices, or make[] any fictitious quotation.'' [75] Hence, as the legislative history of Section 206(4) noted, Section 206(4) ''is comparable to section 15(c)(2).'' [76] The *Steadman* opinion did not address the link between Sections 206(4) and 15(c)(2).

Section 14(e) under the Exchange Act, which relates to tender offers, also follows the Section 15(c)(2) pattern.[77] Section 14(e), like Section 206(4), includes both a proscription against ''engag[ing] in any fraudulent, deceptive, or manipulative acts or practices'' and a directive that the SEC ''by rules and regulations define, and prescribe means reasonably designed to prevent such acts and practices as are fraudulent, deceptive, or manipulative.'' Because of the similarities, it is useful to look at the Supreme Court's interpretation of Section 14(e). In *Schreiber* v. *Burlington Northern,* the Supreme Court relied on *Hochfelder's* interpretation of the term ''manipulative'' in the Section 10(b) context to interpret that term in the Section 14(e) context.[78] The *Schreiber Court* noted that the addition of the rulemaking authorization to Section 14(e) did not ''suggest[] any change in the meaning of 'manipulative' itself.'' [79] In *U.S.* v. *O'Hagan,* The Supreme Court again looked at Section 14(e). This time, it considered whether Rule 14e–3(a), which prohibits trading on undisclosed information in connection with a tender offer, exceeds the SEC's authority under Section 14(e) given that the prohibition applies regardless of whether there is a duty to disclose. The Court held that

[61] ''Scienter'' is ''a mental state embracing intent to deceive, manipulate, or defraud.'' *Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185, 194 (1976). Recklessness has also been found to satisfy a scienter standard.

[62] *SEC* v. *Steadman,* 967 F.2d 636 (D.C. Cir. 1992).

[63] *U.S.* v. *O'Hagan,* 521 U.S. 642, 672–73 (1997).

[64] Adopting Release at Section II.D.

[65] *Schreiber* v. *Burlington Northern, Inc.* 472 U.S. 1, 8 (1985) (quoting *Securities Industry Assn.* v. *Board of Governors, FRS,* 468 U.S. 207, 218 (1984).

[66] *Hochfelder,* 425 U.S. at 199 (footnote to dictionary definition omitted). *Hochfelder* considered whether scienter was a necessary component of a private action under Section 10(b). In a subsequent case, the Court considered whether scienter was a necessary element of an injunctive action by the SEC and concluded that it was. *Aaron* v. *SEC,* 446 U.S. 680, 691 (1980) (''the rationale of *Hochfelder* ineluctably leads to the conclusion that scienter is an element of a violation of section 10(b) and Rule 10b–5, regardless of the identity of the plaintiff or the nature of the relief sought.'').

[67] *Steadman,* 967 F.2d at 647.

[68] 15 U.S.C. 77a *et seq.*

[69] 15 U.S.C. 77q(a)(3).

[70] *Steadman* at 647.

[71] *Aaron,* 446 U.S. at 696–97 (''the language of section 17(a)(3), under which it is unlawful for any person to 'engage in any transaction, practice, or course of business which *operates* or *would operate* as a fraud or deceit,' quite plainly focuses upon the *effect* of particular conduct * * * rather than upon the culpability of the person responsible.'') (emphasis in original).

[72] Section 206(4) makes it unlawful ''to engage in any act, practice, or course of business which *is* fraudulent, deceptive, or manipulative.'' (Emphasis added.)

[73] S. Rep. No. 86–1760, at 4 (1960) (''The proposal has precedent in similar authority granted to the SEC over brokers and dealers by the Securities Exchange Act of 1934.'').

[74] 15 U.S.C. 78a *et seq.*

[75] 15 U.S.C. 78o(c)(2).

[76] H.R. Rep. No. 86–2179, at 8 (1960). *See also* S. Rep. No. 86–1760, at 8 (1960) (''almost the identical wording of section 15(c)(2)'').

[77] 15 U.S.C. 78n(e).

[78] *Schreiber,* 472 U.S. at 12 (''We hold that the term, 'manipulative' as used in § 14(e) requires misrepresentation or nondisclosure. It connotes 'conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities.'') (citing *Hochfelder,* 425 U.S. at 199).

[79] *Id.* at 12 n.11.

Rule 14e–3(a) was within the SEC's authority under Section 14(e) because Section 14(e) allows the SEC to ''prohibit acts, not themselves fraudulent under the common law or § 10(b), if the prohibition is 'reasonably designed to prevent * * * acts and practices [that] are fraudulent.' '' [80] The lesson from both of these cases is that the SEC cannot effect a change in the meaning of specific statutory terms under its comparable Section 206(4) rulemaking authority.

The Adopting Release asserts that, under *O'Hagan,* a negligence standard is a means reasonably designed to prevent fraud. As the Adopting Release notes, conduct outside of the bounds of the statutory prohibition can be prohibited by Commission rule under Section 206(4). The rule that we are adopting here, however, differs markedly from the rules at issue in *O'Hagan* and *Steadman.*[81] Both of those rules were narrowly targeted rules that covered clearly-defined behavior. They were designed to prohibit conduct, that, although outside of the ''core activity prohibited'' by the statute, were designed to ''assure the efficacy'' of the statute.[82]

Rule 206(4)–8(a)(2), by contrast, is as broad as the statute itself. It essentially repeats the statutory prohibition. It does not logically follow, therefore, that lowering the standard of care would be the type of ''means reasonably designed to prevent'' within the contemplation of the regulatory mandate within Section 206(4). Lowering the standard of care is instead an attempt to rewrite the statute by assigning new definitions to the words of the statute. A potential unfortunate consequence of the Adopting Release's change in mental state is that it is now arguably contrary to statute and therefore might interfere with the SEC's ability to use the rule effectively.[83] Congress included a rulemaking directive in order to give the SEC the necessary authority to provide clarity in this area about the types of practices covered by the statute's broad prohibition,[84] not to alter the standard of care that Congress selected through the language it used.[85] Imposing a negligence standard is particularly improper given that, as the Adopting Release notes, ''Rule 206(4)–8 does not create under the Advisers Act a fiduciary duty to investors and prospective investors in a pooled investment vehicle.'' [86]

Finally, from a purely practical perspective, I dispute the regulatory approach underlying the contention that ''by taking sufficient care to avoid negligent conduct, advisers will be more likely to avoid reckless deception.'' [87] By an extension of that same logic, a strict liability standard would evoke even more care by advisors. Even if the SEC is authorized to pick the standard of care that applies broadly to all ''fraudulent, deceptive, or manipulative'' acts and practices, arbitrarily selecting a higher standard of care ''just to be on the safe side'' has the potential of misdirecting enforcement and inspection resources and chilling well-intentioned advisors from serving their investors.

[FR Doc. E7–15531 Filed 8–8–07; 8:45 am]

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[80] *O'Hagan,* 521 U.S. at 672–73.

[81] *O'Hagan* dealt with Rule 14e–3(a), which governed trading on non-public, material information in connection with a tender offer. *Steadman* dealt with Rule 206(4)–2, the investment advisor custody rule.

[82] *O'Hagan,* 521 U.S. at 673–74.

[83] *See Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984). The Adopting Release states: ''Since the Commission is clearly authorized to prescribe [sic] conduct that goes beyond fraud as a means reasonably designed to prevent fraud, prohibiting deceptive conduct done negligently is a way to accomplish this objective.'' Adopting Release at Section II.D. This does not answer the question, however, of whether ''fraudulent, deceptive, or manipulative'' conduct can arise from negligent acts.

[84] Up until now under Section 206(4), we have done exactly this. We have adopted rules covering advertisements [17 CFR 275.206(4)–1], custody of client funds and securities [17 CFR 275.206(4)–2], cash payments for client solicitations [17 CFR 275.206(4)–3], disclosure of financial and disciplinary information [17 CFR 275.206(4)–4], proxy voting [17 CFR 275.206(4)–6], and compliance procedures [17 CFR 275.206(4)–7].

[85] *See* H.R. Rep. No. 2179 at 7 (1960) (identifying as the ''problem'' that Section 206(4) was intended to remedy: ''there has always been a question as to the scope of the fraudulent and deceptive activities which are prohibited and the extent to which the Commission is limited in this area by common law concepts of fraud and deceit.'').

[86] Adopting Release at Section II.D.

[87] Adopting Release at Section II.D.

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2007–0036]

RIN 0960–AG49

Amendment to the Attorney Advisor Program

AGENCY: Social Security Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: We are announcing this interim final rule to modify, on a temporary basis, the prehearing procedures we follow in claims for Social Security disability benefits or supplemental security income (SSI) payments based on disability or blindness. Under the interim final rule, we may allow certain attorney advisors, under managerial oversight, to conduct certain prehearing proceedings, and where the documentary record developed as a result of these proceedings warrants, issue decisions that are wholly favorable to the parties to the hearing.

DATES: *Effective date:* This rule is effective August 9, 2007. *Comment date:* To be sure that your comments are considered, we must receive them no later than October 9, 2007.

ADDRESSES: You may give us your comments by: Internet through the Federal eRulemaking Portal at *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on the Federal eRulemaking Portal, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT: Marilyn Hull, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041–3260, 703–605–8500 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*.

Explanation of Changes

We are dedicated to providing high-quality service to the American public. Today and for the foreseeable future, we face significant challenges in our ability to provide the level of service that disability benefit claimants deserve because of the significantly increased number and complexity of these benefit claims. Consequently, we are publishing a temporary modification to the procedures we follow in the administrative law judge (ALJ) hearings process in claims for Social Security disability benefits or SSI payments

based on disability or blindness. This temporary modification will help us provide accurate and timely service to claimants for Social Security disability benefits and SSI payments based on disability or blindness. With this modification, we are permitting attorney advisors, under managerial oversight, to conduct certain prehearing proceedings to help develop claims, and issue fully favorable decisions in appropriate claims before a hearing is conducted. We expect that this change will help us reduce the very high number of pending cases at the hearing level by enhancing claims development before the hearing and by permitting attorney advisors to issue fully favorable decisions in appropriate claims. This temporary modification applies only to claims processed under parts 404 and 416 of our regulations; it does not apply to claims processed under part 405 of our regulations, which concerns only disability claims filed in the Boston region after July 31, 2006. Parts 404 and 416 of our regulations concern disability cases in every area outside the Boston region and non-disability cases in every location.

Generally, when a claim is filed for Social Security disability benefits or SSI payments based on disability or blindness, a State agency makes the initial and reconsideration disability determination for us. ALJs conduct hearings after we have made a reconsideration determination. Under this interim final rule, attorney advisors who serve as decision writers or managers within the hearing operation may conduct certain prehearing proceedings and, where appropriate, issue decisions that are wholly favorable to claimants and any other party to the hearing.

Attorney advisors have performed these duties in the past. In June 1995, we announced final rules establishing the attorney advisor program for a limited period of 2 years. 60 FR 34126 (June 30, 1995). The program's success prompted us to extend the program several times, until it finally ended in April 2001. 62 FR 35073 (June 30, 1997), 63 FR 35515 (June 30, 1998), 64 FR 13677, 64 FR 51892.

Requests for hearings have significantly increased in recent years, and we expect even more such requests in the future due to the projected increase in disability claims as the baby boomers move into their disability-prone years. Additionally, the very high number of pending cases at the hearing level has grown to an alarming level. We plainly must do everything that we can to address this workload. This interim final rule is an important part of our efforts designed to help us decide these cases more efficiently.

These regulations will allow us to expedite the processing of cases pending at the hearing level without infringing on the right of a claimant to a hearing before an ALJ. The attorney advisor's conduct of certain prehearing proceedings will not delay the scheduling of a hearing before an ALJ. If the prehearing proceedings are not concluded before the hearing date, the case will be sent to the ALJ unless a decision wholly favorable to the claimant and all other parties is in process, or the claimant and all other parties to the hearing agree in writing to delay the hearing until the prehearing proceedings are completed.

Prehearing proceedings may be conducted by the attorney advisor under this interim final rule if one of the following criteria is met: new and material evidence is submitted, there is an indication that additional evidence is available, there is a change in the law or regulations, or there is an error in the file or some other indication that a wholly favorable decision could be issued. A decision by an attorney advisor will be mailed to all parties. The notice of decision will state the basis for the decision and advise the parties that an ALJ will dismiss the hearing request unless a request to proceed with the hearing is made by a party within 30 days after the date the notice of the decision was mailed.

These procedures will remain in effect for a period of time not to exceed 2 years from the effective date of this interim final rule, unless we terminate or extend them by publication of a final rule in the **Federal Register**. If we publish such a final rule, we need not request further public comment.

Clarity of These Rules

Executive Order 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these interim final rules, we invite your comments on how to make them easier to understand.

For example:

Have we organized the material to suit your needs?

Are the requirements in the rules clearly stated?

Do the rules contain technical language or jargon that isn't clear?

Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?

Would more (but shorter) sections be better?

Could we improve clarity by adding tables, lists, or diagrams?

What else could we do to make the rules easier to understand?

Regulatory Procedures

Pursuant to sections 205(a), 702(a)(5), and 1631(d)(1) of the Social Security Act, 42 U.S.C. 405(a), 902(a)(5), and 1383(d)(1), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of our regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for issuing this regulatory change as an interim final rule. However, we are inviting public comment on the interim final rule and will consider any responsive comments we receive within 60 days of the publication of the interim final rule.

We are not changing the substantive provisions of the attorney advisor program, which still appear in the regulations. We are merely re-enacting the provisions that we have used in the past. The substantive rules were promulgated with notice and public comment procedures, with a notice of proposed rulemaking published on April 14, 1995 (60 FR 19008) and final rules published on June 30, 1995 (60 FR 34126). Accordingly, we find that an additional opportunity for public comment prior to re-enactment of this program is unnecessary.

We also find that it would be contrary to the public interest not to effectuate these rules as quickly as we can. The attorney advisor program will help, along with a series of other initiatives that we are contemplating, reduce the pending hearing requests to a manageable level. We must address the hearing backlog as quickly as possible. If we do not address this issue now, the situation could easily worsen, possibly resulting in over one million cases awaiting a hearing within 3 years. Of course, such a state of affairs is acceptable neither to us nor to the public at large. For these reasons, we believe we must take swift action and implement this rule as quickly as possible.

Executive Order 12866, as Amended

We have consulted with the Office of Management and Budget (OMB) and determined that this rule meets the criteria for a significant regulatory action under Executive Order 12866, as

amended. Thus, it was reviewed by OMB.

Regulatory Flexibility Act

We certify that this interim final rule will not have a significant economic impact on a substantial number of small entities as it affects only States and individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This rule will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

Federalism Impact and Unfunded Mandates Impact

We have reviewed this rule under the threshold criteria of Executive Order 13132 and the Unfunded Mandates Reform Act and have determined that it does not have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government, or on imposing any costs on State, local, or tribal governments. This rule does not affect the roles of the State, local, or tribal governments. However, the rule takes administrative notice of existing statutes governing the roles and relationships of the State agencies and SSA with respect to disability determinations under the Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: May 22, 2007.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart J part 404 and subpart N of part 416 as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended].

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.942 by revising the first sentence of paragraph (a) and paragraph (g) to read as follows:

§ 404.942 Prehearing proceedings and decisions by attorney advisors.

(a) *General.* After a hearing is requested but before it is held, an attorney advisor may conduct prehearing proceedings as set out in paragraph (c) of this section. * * * * * * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on August 10, 2009, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

■ 3. The authority citation for subpart N continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 4. Amend § 416.1442 by revising the first sentence of paragraph (a) and paragraph (g) to read as follows:

§ 416.1442 Prehearing proceedings and decisions by attorney advisors.

(a) *General.* After a hearing is requested but before it is held, an attorney advisor may conduct prehearing proceedings as set out in paragraph (c) of this section. * * * * * * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on August 10, 2009, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

[FR Doc. E7–15422 Filed 8–8–07; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2006–0097]

RIN 0960–AG35

Temporary Extension of Attorney Fee Payment System to Title XVI; 5-Year Demonstration Project Extending Fee Withholding and Payment Procedures to Eligible Non-Attorney Representatives; Definition of Past-Due Benefits; and Assessment for Fee Payment Services

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are issuing these final rules to adopt without change the interim final rules published on April 5, 2007 to reflect in our regulations three self-implementing statutory provisions in the Social Security Protection Act of 2004 (SSPA) and three related self-implementing provisions in earlier legislation. These earlier provisions are in the Omnibus Budget Reconciliation Act of 1990 (OBRA), the Social Security Independence and Program Improvements Act of 1994 (SSIPIA), and the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA).

DATES: The interim rule published on April 5, 2007, is confirmed as final effective August 9, 2007.

FOR FURTHER INFORMATION CONTACT: Marg Handel, Supervisory Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 239 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–4639. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*.

Background

Sections 206(a) and 1631(d) of the Social Security Act (Act) direct the Commissioner of Social Security (Commissioner) to determine the maximum fees representatives may charge claimants for services that they perform in claims before the Social Security Administration (SSA) under title II or title XVI of the Act. For claims under title II in which the claimant is

found entitled to past-due benefits, section 206 of the Act further authorizes the Commissioner to pay attorneys' fees, approved by the Commissioner or by a Federal court, out of a portion of the past-due benefits in the case. Prior to enactment of the SSPA (Pub. L. 108–203), we were not authorized to withhold and pay fees approved for attorneys in title XVI cases or for non-attorney representatives in cases under either title of the Act.

Direct Payment of Attorneys' Fees in Title XVI

Section 302 of the SSPA amended section 1631(d)(2) of the Act to extend the attorney fee withholding and direct payment procedures to claims under title XVI of the Act. The amendments made by section 302 apply with respect to attorney fees that were first required to be paid from title XVI past-due benefits on or after February 28, 2005, and we began paying fees directly to attorneys in cases effectuated on or after that date. Section 302 includes a sunset provision. Under that provision, the amendments made by section 302 will not apply to claims for benefits with respect to which the claimant and the representative enter into the agreement for representation after February 28, 2010.

Direct Payment of Fees to Eligible Non-Attorney Representatives

Section 303 of the SSPA directs the Commissioner to carry out a 5-year nationwide demonstration project to determine the potential results of extending the fee withholding and direct payment procedures that apply to attorneys under titles II and XVI of the Act, to non-attorney representatives who meet certain minimum prerequisites specified in section 303 and any additional prerequisites that the Commissioner may prescribe. Under the prerequisites specified in section 303, individuals applying to participate in the demonstration project must have a bachelor's degree or equivalent education, possess liability insurance or equivalent insurance adequate to protect claimants in the event of malpractice by the representative, pass a criminal background check ensuring fitness to practice before SSA, pass an examination testing knowledge of the relevant provisions of the Act and the most recent developments in Agency and court decisions, and demonstrate ongoing completion of qualified continuing education courses. In addition, the Commissioner has required that individuals applying to participate in the demonstration project show that they have sufficient prior experience representing claimants before SSA. More detailed information about these prerequisites may be found in the **Federal Register** notices published at the start of the demonstration project in 2005 (70 FR 2447, January 13, 2005; 70 FR 14490, March 22, 2005; and 70 FR 41250, July 18, 2005).

The 5-year demonstration project on direct payment of fees to eligible non-attorneys under section 303 of the SSPA commenced on February 28, 2005. We began making direct payment to non-attorneys under the demonstration project on July 28, 2005, the date on which we determined that the initial group of applicants had satisfied the prerequisites for participation in the project. The demonstration project established by SSPA section 303 applies to claims for benefits with respect to which the agreement for representation is entered into after February 27, 2005, and before March 1, 2010. In these final rules, we are amending our regulations to reflect the fact that non-attorney representatives participating in the demonstration project may have their approved fees withheld from their clients' past-due benefits and paid directly to them.

Definition of ''Past-Due Benefits''

The amount of ''past-due benefits'' is important in calculating the fees of representatives and in determining the maximum amount we can pay directly for representation. Since we last defined the term ''past-due benefits'' in our regulations, there have been several legislative enactments that affect the definition of past-due benefits. In section 5106 of the OBRA (Pub. L. 101–508), section 321(f) of the SSIPIA (Pub. L. 103–296), and section 302 of the SSPA, the Act was amended to exclude from past-due benefits any continued benefits paid pursuant to § 404.1597a of part 404, any interim benefits paid pursuant to section 223(h) of the Act, any continued benefits paid pursuant to § 416.996 of part 416, any continued benefits paid pursuant to § 416.1336(b) of part 416, and any interim benefits paid pursuant to section 1631(a)(8) of the Act; to specify how a reduction under section 1127 of the Act (for receipt of benefits for the same period under both title II and title XVI) affects the past-due benefit computation; and to address the effect of interim assistance reimbursement payments. We are amending our regulations to reflect these statutory changes.

Assessment on Direct Payment of Fees

Section 406 of the TWWIIA (Pub. L. 106–170) amended section 206 of the Act by adding section 206(d), which imposed an assessment on attorneys for the services we provide in determining and paying fees directly to attorneys from the benefits due claimants under title II of the Act. When that provision took effect on February 1, 2000, the amount of the assessment was 6.3 percent of the direct payment amount, with a provision allowing the Commissioner to determine for future years the percentage (not to exceed 6.3 percent) necessary to achieve full recovery of the costs of determining and paying fees to attorneys. Effective September 1, 2004, section 301 of the SSPA revised section 206(d) to cap the assessment at the lesser of the amount calculated using the percentage rate determined by the Commissioner or $75, and to provide for annual adjustment of the $75 cap based on the cost-of-living computation in section 215(i)(2)(A)(ii) of the Act. Sections 302 and 303 of the SSPA extended this assessment to the direct payment of fees to attorneys under title XVI and to the direct payment of fees to non-attorney representatives participating in the demonstration project authorized by section 303.

Explanation of Changes

We are amending our regulations on representation in 20 CFR parts 404 and 416 to reflect the legislative changes to sections 206, 1127 and 1631(d) of the Act that were enacted under section 5106 of OBRA, section 321(f) of the SSIPIA, section 406 of the TWWIIA, and sections 301 and 302 of the SSPA. In addition, we are revising the regulations to reflect the provisions of section 303 of the SSPA. We are making only those substantive changes necessary to conform our regulations to these currently applicable statutory provisions. In these changes we are:

- Amending § 404.1703 to revise the definition of ''past-due benefits'' to explain that we determine past-due benefits before any applicable reduction for receipt of benefits for the same period under title XVI and that past-due benefits do not include continued payment of disability benefits during appeal or interim benefits in cases of delayed final decision.
- Adding to § 416.1503 the definition of ''past-due benefits'' for title XVI benefits to explain that when we determine the amount of past-due benefits, we subtract the amount of any reduction under section 1127 for the concurrent receipt of benefits for the same period under both title II and title XVI, regardless of whether the actual reduction was applied to the title II benefits or to the title XVI benefits, and

that past-due benefits do not include continued benefits or interim benefits.

• Adding new §§ 404.1717 and 416.1517 to reflect the demonstration project extending benefit withholding and direct fee payment to non-attorneys under title II and title XVI. These sections also define ''eligible to participate in the direct payment demonstration project'' and describe the claims to which the demonstration project applies.

• Amending § 404.1720 to revise paragraph (b)(4) to provide that we make direct fee payments from title II past-due benefits both to attorneys and to non-attorney representatives eligible to participate in the direct payment demonstration project, and that we assume no responsibility for the payment of any fee that we have authorized to a non-attorney if the representative is not eligible to participate in the demonstration project. We are also revising paragraph (c)(3) to provide that our notice of a fee determination will state whether we are responsible for paying the representative's fee from past-due benefits.

• Amending § 416.1520 to add a new paragraph (b)(4) stating that we make direct payment of fees from past-due benefits under title XVI to attorneys and to non-attorneys eligible to participate in the direct payment demonstration project, and that we assume no responsibility for the payment of any fee that we have authorized to a non-attorney if the representative is not eligible to participate in the demonstration project. We are revising paragraph (c)(3) to state that our notice of fee determination will state whether we are responsible for paying the fee, rather than that we are not responsible for paying the fee. We are also revising paragraph (d)(3) to state that we assume no responsibility for fee payment based on a revised determination if the representative does not file the request for administrative review timely.

• Revising § 416.1528 to place the existing text in a newly designated paragraph (a) having the heading, ''Representation of a party in court proceedings'' and to add a new paragraph (b) that has the heading ''Attorney fee allowed by a Federal court.'' Paragraph (b) states that the court may allow a reasonable fee to an attorney as part of its favorable judgment in a proceeding under title XVI of the Act and that we may pay the attorney the amount of the fee out of, but not in addition to, the amount of the past-due benefits payable to the claimant by reason of the court judgment.

• Amending § 404.1730 to insert a previously omitted ''the'' in paragraph (a), to add a cross-reference to the definition of ''past-due benefits'' in § 404.1703, and to reflect in paragraphs (b) and (c) the extension of the direct payment of fees from past-due benefits under title II to non-attorneys eligible to participate in the direct payment demonstration project. We are also adding a new paragraph (d) to reflect that we impose an assessment on the representative when we pay a fee directly to the representative; to explain how we calculate the assessment; and to state that the representative may not, directly or indirectly, request or otherwise obtain reimbursement of the amount of the assessment from the claimant.

• Adding new § 416.1530 to state that direct payment of fees under title XVI extends to attorneys for fees we authorize and for fees a Federal court allows, and extends to non-attorneys eligible to participate in the direct payment demonstration project for fees we authorize. This section also describes the maximum amount we will pay to the representative; shows that we impose an assessment on the representative when we pay a fee directly to the representative; explains how we calculate the assessment; and states that the representative may not, directly or indirectly, request or otherwise obtain reimbursement of the amount of the assessment from the claimant.

In addition to these substantive changes, we are revising §§ 404.1720(b)(4) and 404.1730(a), (b) and (c) to refer to the person claiming a right under the old-age, disability, dependents', or survivors' benefits program in the second person, and thus make the language in these sections consistent with the use of the second person throughout the regulations.

Interim Final Rule

On April 5, 2007 (72 FR 16720), we published interim final rules with request for comments. The interim final rules were effective on that date. We received no public comments on the interim final rules. Thus, we are adopting them without change.

Regulatory Procedures

Executive Order 12866, as amended

The Office of Management and Budget (OMB) earlier determined that the interim final rules we published on April 5, 2007, met the criteria for a significant regulatory action under Executive Order 12866, as amended. Accordingly, those interim final rules were subject to OMB review. Because these final rules merely adopt the provisions of the earlier interim final rules without change, however, OMB determined that it did not need to review these rules again. We also have determined that these rules meet the plain language requirement of Executive Order 12866, as amended.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities. Also, these final rules simply reflect legislation already in effect. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that OMB has approved the information collection requirements contained in §§ 404.1717, 404.1730(c)(1), 404.1730(c)(2)(i), 404.1730(c)(2)(ii), 416.1517, 416.1528(a), 416.1530(c)(1), 416.1530(c)(2)(i), and 416.1530(c)(2)(ii) of these final rules. The OMB Control Number for this (these) collection(s) is 0960–0745, expiring 06/30/2010.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: July 31, 2007.

Michael J. Astrue,

Commissioner of Social Security.

■ Accordingly, the interim final rules amending subpart R of part 404 and subpart O of part 416 of chapter III of title 20 of the Code of Federal Regulations, which were published at

72 FR 16720 on April 5, 2007, are adopted as final rules without change.

[FR Doc. E7–15242 Filed 8–8–07; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA29

Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Final rule.

SUMMARY: The Financial Crimes Enforcement Network is issuing this final rule to implement the enhanced due diligence requirements for correspondent accounts for certain foreign banks set forth in section 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107–56. Section 312 requires U.S. financial institutions to establish due diligence and, where necessary, enhanced due diligence, policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts established or maintained by U.S. financial institutions for non-U.S. persons. We issued final rules implementing the due diligence requirements for correspondent accounts and the due diligence and enhanced due diligence requirements for private banking accounts for non-U.S. persons on January 4, 2006. This final rule completes the section 312 rulemaking process.

DATES: This final rule is effective September 10, 2007.

Applicability Dates: On February 5, 2008, the enhanced due diligence provisions of this final rule will apply to correspondent accounts for certain foreign banks established on or after such date. On May 5, 2008, the enhanced due diligence provisions of this final rule will apply to correspondent accounts for certain foreign banks established before February 5, 2008. See 31 CFR 103.176(f) of this final rule.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949–2732.

SUPPLEMENTARY INFORMATION

I. Background

Section 312 of the USA PATRIOT Act amended the Bank Secrecy Act [1] to add new subsection (i) to 31 U.S.C. 5318. This provision requires each U.S. financial institution that establishes, maintains, administers, or manages a correspondent account or a private banking account in the United States for a non-U.S. person to subject such accounts to certain anti-money laundering measures. In particular, a covered financial institution [2] must establish appropriate, specific and, where necessary, enhanced due diligence policies, procedures, and controls that are reasonably designed to enable the financial institution to detect and report instances of money laundering through these accounts.

On May 30, 2002, we published a notice of proposed rulemaking in the **Federal Register**, proposing to implement the requirements of section 312 in their entirety.[3] In that proposal, we set forth a series of specific measures that covered financial institutions could, and in some instances would be required to, apply to correspondent accounts and private banking accounts established or maintained for non-U.S. persons. We received comments on that proposal raising concerns about the definitions in the proposal, the scope of the requirements contained in the proposed rule text, and the types of financial institutions that would be subject to the proposal's requirements.

To have adequate time to review the comments we received in response to the proposal, to determine the appropriate resolution of the issues raised, and to give direction to financial institutions that would be subject to section 312,[4] we issued an interim final rule on July 23, 2002.[5] In the interim final rule, we exercised our authority under 31 U.S.C. 5318(a)(6) to defer temporarily the application of section 312 to certain financial institutions.[6] For those financial institutions that were not subject to the deferral,[7] we provided interim guidance for compliance with the statute by generally describing the scope of coverage, duties, and obligations under that provision, pending issuance of a final rule.

Thereafter, on January 4, 2006, we issued final rules implementing section 312, excepting the enhanced due diligence provisions for correspondent accounts established or maintained for certain foreign banks.[8] Also on January 4, we published a second notice of proposed rulemaking (Second Proposed Rule or proposed rule),[9] seeking comment on a new approach to implementing the enhanced due diligence provisions of section 312 with respect to correspondent accounts established or maintained for certain statutorily designated foreign banks (''respondent banks'').[10]

As required by section 312, the enhanced due diligence measures proposed would apply to correspondent accounts maintained for a foreign bank operating under an offshore banking license,[11] under a license issued by a country that has been designated as being non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the United States representative to the group or organization concurs,[12] or under a license issued by a country designated by the Secretary of the Treasury

[1] Bank Secrecy Act, Pub. L. No. 91–508 (codified as amended at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332).

[2] 31 CFR 103.175(f) (defining a ''covered financial institution'' as any one of a number of specific U.S. financial institutions, including banks, broker-dealers, futures commission merchants, and mutual funds).

[3] *Due Diligence Anti-Money Laundering Programs for Certain Foreign Accounts,* 67 FR 37736 (May 30, 2002) (First Proposed Rule).

[4] Section 312(b)(2) of the Act provides that section 5318(i) of the Bank Secrecy Act would take effect on July 23, 2002, whether or not final rules had been issued by that date.

[5] *Due Diligence Anti-Money Laundering Programs for Certain Foreign Accounts,* 67 FR 48348 (July 23, 2002).

[6] Pursuant to the interim final rule, banks, savings associations, and credit unions had to comply with the correspondent account and private banking account provisions of section 312. Securities broker-dealers, futures commission merchants, and introducing brokers had to comply with the private banking account provisions of section 312. We deferred the application of section 312 to all other financial institutions.

[7] *See* id.

[8] *Anti-Money Laundering Programs; Special Due Diligence for Certain Foreign Accounts*, 71 FR 496 (January 4, 2006).

[9] *Anti-Money Laundering Programs; Special Due Diligence for Certain Foreign Accounts*, 71 FR 516 (January 4, 2006).

[10] Section 312 contains enhanced due diligence provisions for both correspondent accounts and private banking accounts for non-U.S. persons. Unless otherwise provided in this release, the term ''enhanced due diligence provisions'' relates exclusively to the correspondent account provisions of section 312.

[11] *See* 31 U.S.C. 5318(i)(4)(A) and 31 CFR 103.175(k) (defining ''offshore banking license'').

[12] The Financial Action Task Force (FATF) is the only intergovernmental organization of which the United States is a member that has designated countries as non-cooperative with international anti-money laundering principles (no such countries currently are designated). The United States has concurred with all FATF designations to date.

(Secretary) as warranting special measures due to money laundering concerns.[13] With respect to these accounts, we proposed that a covered financial institution would be required to conduct risk-based enhanced due diligence with regard to a correspondent account maintained for or on behalf of such a foreign bank to guard against money laundering and to report suspicious activity; to ascertain whether such a foreign bank maintains correspondent accounts for other foreign banks[14] and, if so, to conduct appropriate due diligence; and to identify the owners of such a foreign bank if its shares are not publicly traded. This final rule adopts the risk-based enhanced due diligence rule that we proposed on January 4, 2006.

Finally, section 312(b)(1) of the USA PATRIOT Act provides that the Secretary shall issue implementing regulations under this section ''in consultation with the appropriate federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act) of the affected financial institutions.'' This final rule was developed in consultation with the staffs of the federal functional regulators.[15]

II. Summary of Comments and Revisions

A. Comments

We received seven comment letters on the Second Proposed Rule. Commenters included U.S. banks, an association of state banking supervisors, and trade associations representing U.S. banks, foreign banks, the futures industry, investment companies, the securities industry, and the bond markets.[16] Eleven trade associations representing covered financial institutions jointly signed one of the comment letters. In general, commenters expressed support for the risk-based approach elaborated in the Second Proposed Rule. We respond to the submitted comments in the *Section-by-Section Analysis*, below.

B. Revisions

This final rule is substantially similar to the Second Proposed Rule. The following revisions to the rule, which we will explain more fully in the Section-by-Section Analysis below, have been made in response to comments received on the Second Proposed Rule.

First, the provisions requiring covered financial institutions, in appropriate circumstances, to obtain and review ''documentation'' relating to a respondent bank's anti-money laundering program and to ''consider[ ] whether such program appears to be reasonably designed to detect and prevent money laundering'' have been revised to require covered financial institutions, in appropriate circumstances, to obtain and consider ''information'' relating to a respondent bank's anti-money laundering program in order to assess the risk of money laundering presented by the respondent bank's account.

Second, the provision requiring a covered financial institution, in certain circumstances, to take reasonable steps to assess and ''minimize'' money laundering risks related to the customers of their respondent banks has been revised to require a covered financial institution, in certain circumstances, to take reasonable steps to assess and ''mitigate'' such money laundering risks.

III. Section-by-Section Analysis

A. Section 103.176(b)—Enhanced Due Diligence for Certain Foreign Banks

Section 103.176(b) of this final rule requires a covered financial institution to establish enhanced due diligence procedures that, at a minimum, include taking reasonable steps to (1) Conduct risk-based enhanced scrutiny of correspondent accounts established or maintained for respondent banks to guard against money laundering and to identify and report suspicious transactions, (2) determine whether the subject respondent bank in turn maintains correspondent accounts for other foreign banks that enable those other foreign banks to gain access to the respondent bank's correspondent account with the covered financial institution and, if so, to take reasonable steps to obtain information to assess and mitigate the money laundering risks associated with such accounts, and (3) determine the identity of each owner of a respondent bank whose shares are not publicly traded, and the nature and extent of each owner's ownership interest.

The commenters generally expressed support for the risk-based approach of the Second Proposed Rule. One commenter suggested that the five risk factors enumerated in our rules implementing the due diligence requirements for correspondent accounts contained in section 312 should also be applied to determine the appropriate extent of enhanced due diligence.[17]

As these five risk factors are meant to apply to all respondent banks, including those subject to the enhanced due diligence provisions of section 312, it would be appropriate to consider the five factors listed in subsection (a)(2) when assessing the risk posed by a respondent bank subject to the provisions of this final rule to help determine the level of enhanced due diligence required. The fourth risk factor in particular—the anti-money laundering regime of the jurisdiction that issued a charter or license to the foreign bank and, to the extent reasonably available, of the home jurisdiction of the foreign bank or its parent[18]—may be especially relevant in a covered financial institution's determination of the nature and extent of the risks posed by the correspondent

[13] The Secretary is authorized under section 311 of the USA Patriot Act, after finding that reasonable grounds exist for concluding that a foreign jurisdiction, foreign financial institution, international class of transaction, or type of account is of ''primary money laundering concern,'' to require domestic financial institutions and domestic financial agencies to take certain statutorily defined ''special measures'' against the primary money laundering concern. Section 311 requires the Secretary to consult with various Federal agencies before making such a finding or imposing special measures. For a listing of findings and rulemakings issued pursuant to section 311, *see http://www.fincen.gov/reg_section311.html.*

[14] In the preamble to the Second Proposed Rule, we referred to these relationships as nested accounts or nested banks. It has been suggested that the term ''nested'' is not synonymous with indirect use of a correspondent account. We have not employed the terminology in this final rule.

[15] Section 509 of the Gramm-Leach-Bliley Act defines federal functional regulators to include the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration Board, and the U.S. Securities and Exchange Commission. *See* 15 U.S.C. 6809. The Commodity Futures Trading Commission was defined in section 321 of the USA PATRIOT Act as a federal functional regulator for the purposes of implementing that Act.

[16] The comment letters may be inspected at the Financial Crimes Enforcement Network reading room in Vienna, Virginia between 10 a.m. and 4 p.m. Persons wishing to inspect comments must request an appointment by telephone at (202) 354–6400 (not a toll-free number). The comment letters are also available on our Web site at *http://www.fincen.gov/71fr516.htm.*

[17] As part of its general due diligence program for foreign correspondent accounts, a covered financial institution is expected to establish policies, procedures, and controls that include assessing the money laundering risk of a correspondent account based upon consideration of all the risk factors, including (1) The nature of the foreign financial institution's business and the markets it serves; (2) the type, purpose, and anticipated activity of the correspondent account; (3) the nature and duration of the covered financial institution's relationship with the foreign financial institution; (4) the anti-money laundering and supervisory regime of the jurisdiction that issued a charter or license to the foreign financial institution, and its owners if applicable, to the extent that such information is reasonably available; and (5) information known or reasonably available to the covered financial institution about the foreign financial institution's anti-money laundering record. 31 C.F.R. 103.176(a)(2).

[18] 31 CFR 103.176(a)(2)(iv).

accounts for the foreign banks covered by this rule and the extent of the enhanced due diligence that is necessary and appropriate to mitigate these risks.[19]

1. 103.176(b)(1)—*Enhanced scrutiny to guard against money laundering.* Section 103.176(b)(1) of the Second Proposed Rule would have required a covered financial institution to conduct risk-based enhanced scrutiny of correspondent accounts established or maintained for respondent banks to guard against money laundering and to identify and report suspicious transactions. This provision is adopted in the final rule without substantial change.

Section 103.176(b)(1)(i) and (ii) of the Second Proposed Rule would have required covered financial institutions, as part of their enhanced due diligence programs when appropriate, to obtain and review documentation related to a respondent bank's anti-money laundering program and consider whether the program appears to be reasonably designed to detect and prevent money laundering. Several commenters questioned the utility of the requirement and expressed concern about the cost of complying with it.

One commenter read the Second Proposed Rule as effectively requiring a covered financial institution to perform an audit of a respondent bank's anti-money laundering program, despite guidance in the preamble stating that an audit was not required. Another commenter similarly expressed concern that this and other provisions of the Second Proposed Rule would cause covered financial institutions to become policemen and regulators. A third commenter was concerned that this provision ultimately would be enforced as a default or mandatory requirement.

Other commenters additionally suggested that obtaining and reviewing documentation frequently would be a difficult and expensive proposition, as such documents may be written only in the native language of a respondent bank. One commenter questioned the utility of reviewing the documentation of a respondent bank's anti-money laundering program and suggested that other due diligence measures, such as reviewing and monitoring transactions conducted by the foreign bank, would be more productive. Other commenters offered that administering a questionnaire to a respondent bank about its anti-money laundering practices, when appropriate, would be more effective than a review of its anti-money laundering program documents.

In response to these comments, section 103.176(b)(1)(i) of the final rule now requires a covered financial institution, in appropriate circumstances, to obtain and consider information related to the anti-money laundering program of the respondent bank to assess the risk of money laundering presented by the respondent bank's correspondent account. This provision of the final rule is not meant to be a mandatory requirement. Rather, it is intended to be risk-based. We emphasize that whether enhanced due diligence should include a reasonable inquiry into the anti-money laundering program of a respondent bank will depend on the extent to which reviewing the anti-money laundering program of the respondent bank would be appropriate based upon the nature of the correspondent account.[20] While covered financial institutions have discretion with respect to implementing this provision, as with other risk-based provisions of the BSA and its implementing regulations, a covered financial institution is responsible for reasonably demonstrating that it is effectively exercising that discretion on a risk-assessed basis.

We revised this due diligence provision of the Second Proposed Rule to clarify that covered financial institutions are expected neither to conduct an audit of the anti-money laundering programs of their respondent bank customers, nor to determine the extent to which the respondent bank's anti-money laundering program is ''reasonably designed to detect and prevent money laundering,'' which may be difficult to determine without conducting an audit.[21] Rather, under the final rule, a covered financial institution is required to consider and assess more generally the extent to which it may be exposed to money laundering risk by the respondent bank's correspondent account. The revision also was made to reduce the burdens associated with reviewing documents, such as language barriers, as well as to provide covered financial institutions with flexibility to determine how to conduct due diligence with respect to a respondent bank's anti-money laundering efforts.

For example, a covered financial institution may, in appropriate circumstances, use a questionnaire, as several commenters suggested, to gather information related to the anti-money laundering program of a respondent bank, provided that the questionnaire and the responses thereto enable a covered financial institution to assess effectively the risk of money laundering presented by the respondent bank. In appropriate situations, such as where a covered financial institution has a sufficient transaction history with a respondent bank, a covered financial institution may also conduct a review of that transaction history to assess the money laundering risk presented by the respondent bank.

As one commenter suggested, a covered financial institution may also, in appropriate circumstances, incorporate its enhanced due diligence efforts into the certification process available under the rules implementing sections 313 and 319(b) of the USA PATRIOT Act.[22] Incorporating a questionnaire into the certification form would not alone affect the safe harbor provided under the rules implementing sections 313 and 319(b),[23] provided that the covered financial institution also obtains and maintains all of the information required under those rules.

We caution, however, that the certifications are subject to renewal only every three years. Waiting until the next certification is required before obtaining information about the respondent bank's anti-money laundering program may not be reasonable for purposes of complying with the enhanced due diligence provisions of section 312. We also remind covered financial institutions incorporating a questionnaire into their certifications that doing so will not extend the section 313 and 319(b) safe harbor to this final rule.

[19] *See* Second Proposed Rule, 71 FR at 517 (adopting a risk-based approach to enhanced due diligence as an alternative to creating exceptions to the enhanced due diligence provisions for foreign banks operating under an offshore banking license).

[20] For example, a covered financial institution may maintain a correspondent account for a respondent bank with which it has had a longstanding relationship, for a respondent bank that only conducts proprietary transactions through the correspondent account, for a respondent bank that is controlled by a U.S. institution, or for a respondent bank whose licensing or home jurisdiction is known for maintaining a comprehensive anti-money laundering regime. In such circumstances, a covered financial institution may determine through experience and due diligence that reviewing information related to the anti-money laundering program of the respondent bank will not provide information that is relevant to the covered financial institution's risk-assessment or monitoring of the respondent bank's correspondent account. In contrast, a respondent bank that permits or conducts transactions on behalf of other foreign banks, or operates payable-through accounts, through the covered financial institution may pose a greater money laundering risk. In such circumstances, conducting due diligence that includes a review of information related to the respondent bank's anti-money laundering program may be appropriate.

[21] *See, e.g.,* Second Proposed Rule, 71 FR at 518 (''[w]e do not contemplate that the covered financial institution would conduct an audit of the foreign correspondent bank's written anti-money laundering program'').

[22] *See* 31 CFR 103.177.

[23] 31 CFR 103.177(b).

Finally, one commenter asked whether a covered financial institution would be required to formulate additional due diligence measures for its accounts for foreign banks that are subject of this final rule if the covered financial institution applies the equivalent of enhanced due diligence required in this final rule to all of its correspondent accounts for foreign financial institutions.[24] If a covered financial institution applies both the due diligence program for foreign correspondent accounts [25] and the enhanced due diligence requirements of this final rule to all of its correspondent accounts for foreign financial institutions, then the covered financial institution would not be required to formulate additional due diligence measures for the correspondent accounts it establishes and maintains for foreign banks that are the subjects of this final rule.

Section 103.176(b)(1)(iii) of the Second Proposed Rule would have required covered financial institutions to monitor transactions to, from, or through a respondent bank in a manner that is reasonably designed to detect money laundering and suspicious activity. In the preamble to the Second Proposed Rule, we emphasized that monitoring is an important aspect of enhanced due diligence.[26] This monitoring may be conducted manually or electronically, may be done on an individual account basis or by product activity, and should reflect the risk assessment conducted by the covered financial institution on each respondent bank subject of the enhanced due diligence provisions. Section 103.176(b)(1)(iii) has been incorporated into the final rule without change, and has been re-designated as Section 103.176(b)(1)(ii).

Section 103.176(b)(1)(iv) of the Second Proposed Rule would have required covered financial institutions to obtain information from the foreign bank about the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, and the sources and beneficial owners of funds or other assets in the payable-through account. This provision has been incorporated into the final rule without change, and has been re-designated as Section 103.176(b)(1)(iii).

2. 103.176(b)(2)—Foreign bank customers. Section 103.176(b)(2) of the Second Proposed Rule would have required a covered financial institution to determine whether a respondent bank in turn maintains correspondent accounts for other foreign banks that enable those other foreign banks to gain access to the respondent bank's account with the covered financial institution. If such a situation exists, the Second Proposed Rule would have required the covered financial institution to take reasonable steps to assess and minimize the potential money laundering risk posed by the respondent bank's accounts for those other foreign banks.

Commenters were concerned about the extent to which they would be expected to obtain lists of foreign bank customers from their respondent banks, for the purposes of complying with section 103.176(b)(2).[27] One commenter, for example, stated that it may not be possible to obtain a list of the foreign bank customers of respondent banks due to strict privacy laws in some countries.[28] Two commenters suggested that there are situations where it is unlikely, due to the nature of the correspondent account, that funds transfers will be conducted through the account, and therefore the covered financial institution should not be required to obtain lists of, or other information about, foreign bank customers of their respondent banks.

As a general rule, we do not expect that a covered financial institution will request and obtain lists of foreign bank customers from their respondent banks. We do expect, however, that covered financial institutions, based upon their risk assessment of a respondent bank and as part of their enhanced due diligence efforts, will make appropriate inquiries about such factors as the nature of the foreign bank customers the respondent bank serves (if any) and the extent to which transactions for any such foreign bank customer may be conducted through the respondent bank's correspondent account. The covered financial institution also could consult bank reference guides, and monitor or otherwise assess transaction activity to the extent it may contain foreign bank customer information.[29]

There may be circumstances, such as in the highest risk situations, where it may be necessary and appropriate to request and obtain the identity of a respondent bank's foreign bank customers directly from the respondent bank. If obtaining such information in appropriate circumstances is not possible—including by monitoring account activity—the covered financial institution should determine, pursuant to section 103.176(d) of this final rule, how to proceed in light of the particular circumstances.

One commenter expressed concern that covered financial institutions may be held responsible, according to the provisions of section 103.176(b)(2), for monitoring and reporting suspicious activity of the foreign bank customers of their respondent banks. The obligation to monitor for and report suspicious activity arises from the rules implementing 31 U.S.C. 5318(g). Under those rules, covered financial institutions must report suspicious activity involving any of their accounts to the extent they know, suspect, or have reason to suspect a violation of law or regulation, including suspicious activity attempted or conducted by, at, or through correspondent accounts they establish or maintain for respondent banks.[30] Such activity may involve the respondent bank's foreign bank customers.

One commenter was concerned by the level of due diligence that may be required by the use of the word ''minimize'' in section 103.176(b)(2) of the Second Proposed Rule and suggested replacing with the word *mitigate.* Accordingly, in this final rule, we have revised the relevant clause to require a covered financial institution to ''take reasonable steps to obtain

[24] *See* 31 CFR 103.175(h) (defining ''foreign financial institution'' to include banks, broker-dealers in securities, futures commission merchants, and mutual funds).

[25] 31 CFR 103.176(a).

[26] Second Proposed Rule, 71 FR at 518.

[27] Other commenters requested clarification that the provisions of subsection (b)(2) are risk-based.

[28] One commenter expressed the view that it should not be required to obtain the anti-money laundering programs of the foreign bank customers of a respondent bank. Section 103.176(b)(2) does not contain such a requirement. Obtaining and considering information related to the anti-money laundering program of a foreign respondent bank, and not the program of its foreign bank customers, is set forth in this final rule as an enhanced due diligence procedure when appropriate. *See* 31 CFR 103.176(b)(1)(i).

[29] In situations where it is unlikely that funds transfers will be conducted through a correspondent account, covered financial institutions may determine that it would not be necessary to obtain a list of the respondent bank's foreign bank customers. We note, however, that correspondent accounts that may not be used to conduct funds transfers nonetheless may be used to launder money and conduct other illicit financial activity.

[30] *See* 31 CFR 103.15(a) (suspicious activity reporting requirements for mutual funds), 31 CFR 103.17(a) (same for futures commission merchants), 31 CFR 103.18(a) (for banks), and 31 CFR 103.19(a) (for broker-dealers in securities). *See also* In the Matter of the Federal Branch of Arab Bank PLC, FinCEN enforcement action 2005–2 (Aug. 17, 2005) and In the Matter of the New York Branch of ABN Amro Bank N.V., FinCEN enforcement action 2005–5 (Dec. 19, 2005) (financial institutions responsible for monitoring the transactions through correspondent accounts maintained on behalf of foreign financial institutions), available at *http://www.fincen.gov/reg_enforcement.html.*

information relevant to assess and *mitigate* money laundering risks associated with the foreign bank's correspondent accounts for other foreign banks'' [31] as the commenter suggested.

Finally, commenters sought clarification as to whether section 103.176(b)(2) is risk-based. The first part of this sub-paragraph requires a covered financial institution to take reasonable steps to ''[d]etermine whether the foreign bank for which the correspondent account is established or maintained in turn maintains correspondent accounts for other foreign banks that use the foreign correspondent account established or maintained by the covered financial institution.'' Making that initial determination is not dependent on the risks associated with a particular respondent bank.

However, once a covered financial institution has taken reasonable steps to make such a determination, it may ''take reasonable steps to obtain information relevant to assess and mitigate money laundering risks associated with the foreign bank's correspondent accounts for other foreign banks, including, as appropriate, the identity of those foreign banks,'' as section 103.176(b)(2) provides and the authorizing statute contemplates. A covered financial institution may take a risk-based approach when determining what steps to gather due diligence information are appropriate.

3. 103.176(b)(3)—*Identification of the owners of foreign banks.* Section 103.176(b)(3) of the Second Proposed Rule would require a covered financial institution to take reasonable steps to identify the owners of a respondent bank if the respondent bank's shares are not publicly traded. The section defined an owner as ''any person who directly or indirectly owns, controls, or has the power to vote 10 percent or more of any class of securities'' of the respondent bank.

One commenter suggested that we increase the proposed 10% threshold for identifying the interest of the owners of respondent banks to 25% for banks that are considered to represent a relatively low level of money laundering risk. Other commenters requested clarification that the provisions of subsection (b)(3) are risk-based.

After consideration, we adopted the proposed threshold into the final rule without change. The final rule covers three specific and relatively small categories of foreign banks that have been designated by statute. We believe that tiered ownership thresholds would undermine the benefit of identifying the owners of high-risk respondent banks while not appreciably reducing the burden of identifying such owners. Accordingly, we have not adopted a risk-based approach to section 103.176(b)(3).

B. Section 103.176(c)—Foreign Banks Subject to Enhanced Due Diligence

Section 103.176(c) of the Second Proposed Rule set forth the types of foreign banks for which enhanced due diligence would be required, as provided by section 312 of the USA PATRIOT Act. The enhanced due diligence provisions would apply to foreign banks operating under (1) An offshore banking license; [32] (2) a license issued by a country designated as being non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the United States representative to the group or organization concurs; [33] or (3) a license issued by a country designated by the Secretary as warranting special measures due to money laundering concerns.[34] The final rule adopts this provision without change.

One commenter suggested that we reinstate the proposed exception from the enhanced due diligence requirements of section 312 for an offshore bank that ''has been found, or is chartered in a jurisdiction where one or more foreign banks have been found, by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act or the International Banking Act, to be subject to comprehensive supervision or regulation on a consolidated basis by the relevant supervisors in that jurisdiction.'' [35] After consideration, we did not include such an exception in this final rule.

We believe that the risk-based provisions of the final rule are better suited to addressing the various risk profiles of respondent banks subject to enhanced due diligence than the proposed exception. Thus, when dealing with an offshore booking location of a bank located in a country with a strong anti-money laundering regime, for example, a covered financial institution ordinarily will not be required to conduct enhanced due diligence to the same degree as it would with a stand-alone offshore bank.[36]

One commenter was concerned that a covered financial institution may be cited for a violation of this final rule if it failed to subject an account established or maintained for a high-risk foreign bank to the enhanced due diligence requirements of the rule even when the foreign bank was not in one of the three designated categories of banks subject to enhanced due diligence. However, section 103.176(b) is expressly limited to the foreign banks enumerated at section 103.176(c). With respect to high-risk foreign banks not enumerated in section 103.176(c), a failure to apply appropriate due diligence to a correspondent account maintained for such a foreign bank would constitute a violation of the general due diligence provisions of the correspondent account rule,[37] but not the enhanced due diligence provisions of this final rule.

C. Section 103.176(d)—Special Procedures

According to the provisions of proposed section 103.176(d), a covered financial institution would be required to establish special procedures for circumstances in which appropriate due diligence or enhanced due diligence cannot be performed with respect to a correspondent account. We received no comments on this provision of the Second Proposed Rule. It has been adopted in this final rule without change.

D. Section 103.176(e) and (f)—Applicability Rules

This final rule revises section 103.176(e) and adds new section (f) to reflect the applicability dates of the obligations under this section. The Second Proposed Rule did not address the issue of applicability dates. We are mindful, however, of the obligations that will result from the statutory requirement that enhanced due diligence apply to all correspondent accounts maintained for certain foreign banks, regardless of when the accounts were opened. Effective 180 days after the date of publication of this final rule, the requirements of this final rule will

[31] Emphasis added.

[32] *See supra* note 11.

[33] *See supra* note 12.

[34] *See supra* note 13.

[35] *See* First Proposed Rule, 67 FR at 37743.

[36] *See supra* note 19 and accompanying text (recognizing that the anti-money laundering and supervisory regime of the jurisdiction that issued a charter or license to a foreign bank may be particularly relevant in assessing the money laundering risk posed by the foreign bank and a mitigating risk factor for the purposes of complying with the enhanced due diligence provisions, as also may be the regime of the home jurisdiction of the foreign bank or its parent to the extent relevant information is readily available).

[37] *See* 31 CFR 103.176(a).

apply to correspondent accounts opened on or after that date. Effective 270 days after the date of publication of this final rule, the rule's requirements will apply to all correspondent accounts opened prior to the date that is 180 days after the date of publication of this final rule.

Section 103.176(f)(2) contains a special implementation rule for banks. This special implementation rule requires banks that have been subject to the provisions of our interim final rule [38] to continue to comply with the existing enhanced due diligence requirements for correspondent accounts of section 312 until the effective dates described in section 103.176(f)(1) are triggered.

Section 103.176(f)(3) contains a special implementation rule for all other covered financial institutions. This section provides that securities broker-dealers, futures commission merchants, introducing brokers, mutual funds, and trust banks or trust companies that have a federal regulator are not required to comply with the enhanced due diligence provisions until the effective dates described in section 103.176(f)(1) are triggered.

E. Section 103.176(g)—Exemptions

New section 103.176(g) restates and conforms the exemption for certain financial institutions from the due diligence and enhanced due diligence requirements of section 103.176.

IV. Regulatory Flexibility Act

We certified that the January 4, 2006 proposed rule would not have a significant economic impact on a substantial number of small entities. We made this certification because the proposed rule would provide guidance concerning certain mandated enhanced due diligence requirements in section 312 of the Act, and because the financial institutions that would be covered by the rule tend to be larger institutions.

One commenter expressed concern that the final rule will make it prohibitive for smaller institutions to engage in the foreign correspondent banking business. However, this final rule does not impose significant new burdens on covered financial institutions of any size. Since at least 2002, the depository institutions covered by this rule have been subject to an interim final rule containing substantially similar enhanced due diligence requirements.[39] Other covered financial institutions have been required to establish and maintain anti-money laundering programs reasonably designed, among other things, to prevent money laundering through correspondent accounts generally.[40]

Because the terms of the interim rule and the final rule are substantially similar, and because the single comment does not provide evidence of any significant economic impact created by the interim or final rule, we believe that the final rule will not have a significant economic impact on a substantial number of small businesses. We also note that even if, as the comment asserts, the rule made foreign correspondent banking prohibitive for small entities, this would establish neither that a substantial number of small entities engage in foreign correspondent banking, nor that any that do derive significant revenue from such business.

Moreover, we have incorporated flexibility into this final rule, particularly by shifting from the prescriptive approach to compliance proposed in the First Proposed Rule to the risk-based approach adopted in this final rule. This flexibility will permit each covered financial institution to tailor its enhanced due diligence program for statutorily designated foreign banks [41] to fit its size and the risks of its customer base.

For these reasons, it is hereby certified, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this final rule will not have a significant economic impact on a substantial number of small businesses.

V. Executive Order 12866

This final rule is not a ''significant regulatory action'' as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

VI. Paperwork Reduction Act

The collection of information contained in this final rule has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and was assigned Office of Management and Budget Control Number 1506–0046. 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 control number assigned by the Office of Management and Budget.

The only requirements in the final rule that are subject to the Paperwork Reduction Act are set forth in 31 CFR 103.176(b)(1)(i), 103.176(b)(1)(iii)(A), and 103.176(b)(3), requiring covered financial institutions to obtain information relating to certain foreign banks' anti-money laundering programs, when appropriate, to obtain information from such foreign banks about the identity of any person with authority to direct transactions through a correspondent account that is a payable-through account and the sources and beneficial owner of funds or other assets in the payable-through account, when appropriate, and to obtain the identity of certain owners of any such foreign bank that is privately owned and the nature and extent of the ownership interest. The estimated annual average burden associated with this collection of information was one hour per recordkeeper. We estimated that there would be 28,163 recordkeepers, for a total of 28,163 annual burden hours.[42] We received two comments on this burden estimate.

One commenter argued that the burden would ''number into the hundreds of hours, at a minimum.'' The number of burden hours set forth under the Paperwork Reduction Act is designed to be an average, however, and includes recordkeepers subject to the provisions of this final rule that may not maintain correspondent accounts for statutorily designated foreign banks. Moreover, the number of burden hours pertains only to the collection of information when appropriate, and not to the review of the information.

Another commenter suggested that the number of burden hours may be two hours per year instead of one hour. We accept that estimate and, accordingly, have adjusted our final estimate of burden hours to two hours per recordkeeper.

Comments concerning the accuracy of this recordkeeping burden estimate and suggestions for reducing this burden should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the internet to *ahunt@omb.eop.gov*), with a copy by regular mail to Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, ''ATTN: Regulation Identifier Number 1506–AA29'' or by electronic mail to

[38] *See supra* note 5 and accompanying text.

[39] *Due Diligence Anti-Money Laundering Programs for Certain Foreign Accounts,* 67 FR 48348 (July 23, 2002).

[40] *See* Anti-Money Laundering Programs for Financial Institutions, 67 FR 21110 (April 29, 2002) (establishing anti-money laundering program requirements for federally regulated depository institutions, broker-dealers in securities, futures commission merchants, and introducing brokers in commodities). *See also Anti-Money Laundering Program for Mutual Funds,* 67 FR 21117 (April 29, 2002).

[41] *See supra* text accompanying footnotes 11–13.

[42] Second Proposed Rule, 71 FR at 519.

regcomments@fincen.treas.gov with the caption ''ATTN: Regulatory Information Number 1506–AA29'' in the body of the text.

List of Subjects in 31 CFR Part 103

Banks, Banking, Brokers, Counter-money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth above, we are amending subpart I of 31 CFR Part 103 as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

■ 2. In subpart I, amend § 103.176 by adding paragraphs (b) and (c), revising paragraphs (d) and (e), and adding paragraphs (f) and (g) to read as follows:

§ 103.176 Due diligence programs for correspondent accounts for foreign financial institutions.

* * * * *

(b) *Enhanced due diligence for certain foreign banks.* In the case of a correspondent account established, maintained, administered, or managed in the United States for a foreign bank described in paragraph (c) of this section, the due diligence program required by paragraph (a) of this section shall include enhanced due diligence procedures designed to ensure that the covered financial institution, at a minimum, takes reasonable steps to:

(1) Conduct enhanced scrutiny of such correspondent account to guard against money laundering and to identify and report any suspicious transactions in accordance with applicable law and regulation. This enhanced scrutiny shall reflect the risk assessment of the account and shall include, as appropriate:

(i) Obtaining and considering information relating to the foreign bank's anti-money laundering program to assess the risk of money laundering presented by the foreign bank's correspondent account;

(ii) Monitoring transactions to, from, or through the correspondent account in a manner reasonably designed to detect money laundering and suspicious activity; and

(iii)(A) Obtaining information from the foreign bank about the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, and the sources and beneficial owner of funds or other assets in the payable-through account.

(B) For purposes of paragraph (b)(1)(iii)(A) of this section, a *payable-through account* means a correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

(2) Determine whether the foreign bank for which the correspondent account is established or maintained in turn maintains correspondent accounts for other foreign banks that use the foreign correspondent account established or maintained by the covered financial institution and, if so, take reasonable steps to obtain information relevant to assess and mitigate money laundering risks associated with the foreign bank's correspondent accounts for other foreign banks, including, as appropriate, the identity of those foreign banks.

(3)(i) Determine, for any correspondent account established or maintained for a foreign bank whose shares are not publicly traded, the identity of each owner of the foreign bank and the nature and extent of each owner's ownership interest.

(ii) For purposes of paragraph (b)(3)(i) of this section:

(A) *Owner* means any person who directly or indirectly owns, controls, or has the power to vote 10 percent or more of any class of securities of a foreign bank. For purposes of this paragraph (b)(3)(ii)(A):

(1) Members of the same family shall be considered to be one person; and

(2) *Same family* has the meaning provided in § 103.175(l)(2)(ii).

(B) *Publicly traded* means shares that are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

(c) *Foreign banks to be accorded enhanced due diligence.* The due diligence procedures described in paragraph (b) of this section are required for any correspondent account maintained for a foreign bank that operates under:

(1) An offshore banking license;

(2) A banking license issued by a foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative to the group or organization concurs; or

(3) A banking license issued by a foreign country that has been designated by the Secretary as warranting special measures due to money laundering concerns.

(d) *Special procedures when due diligence or enhanced due diligence cannot be performed.* The due diligence program required by paragraphs (a) and (b) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence or enhanced due diligence with respect to a correspondent account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

(e) *Applicability rules for general due diligence.* The provisions of paragraph (a) of this section apply to covered financial institutions as follows:

(1) *General rules*—(i) *Correspondent accounts established on or after July 5, 2006.* Effective July 5, 2006, the requirements of paragraph (a) of this section shall apply to each correspondent account established on or after that date.

(ii) *Correspondent accounts established before July 5, 2006.* Effective October 2, 2006, the requirements of paragraph (a) of this section shall apply to each correspondent account established before July 5, 2006.

(2) *Special rules for certain banks.* Until the requirements of paragraph (a) of this section become applicable as set forth in paragraph (e)(1) of this section, the due diligence requirements of 31 U.S.C. 5318(i)(1) shall continue to apply to any covered financial institution listed in § 103.175(f)(1)(i) through (vi).

(3) *Special rules for all other covered financial institutions.* The due diligence requirements of 31 U.S.C 5318(i)(1) shall not apply to a covered financial institution listed in § 103.175(f)(1)(vii) through (x) until the requirements of paragraph (a) of this section become applicable as set forth in paragraph (e)(1) of this section.

(f) *Applicability rules for enhanced due diligence.* The provisions of paragraph (b) of this section apply to covered financial institutions as follows:

(1) *General rules*—(i) *Correspondent accounts established on or after* February 5, 2008. Effective February 5, 2008, the requirements of paragraph (b) of this section shall apply to each correspondent account established on or after such date.

(ii) *Correspondent accounts established before* February 5, 2008. Effective May 5, 2008, the requirements of paragraph (b) of this section shall apply to each correspondent account established before February 5, 2008.

(2) *Special rules for certain banks.* Until the requirements of paragraph (b) of this section become applicable as set forth in paragraph (f)(1) of this section, the enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall continue to apply to any covered financial institutions listed in § 103.175(f)(1)(i) through (vi).

(3) *Special rules for all other covered financial institutions.* The enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall not apply to a covered financial institution listed in § 103.175(f)(1)(vii) through (x) until the requirements of paragraph (b) of this section become applicable, as set forth in paragraph (f)(1) of this section.

(g) *Exemptions*—(1) *Exempt financial institutions.* Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1), or § 103.11(n) is exempt from the requirements of 31 U.S.C. 5318(i)(1) and (i)(2) pertaining to correspondent accounts.

(2) *Other compliance obligations of financial institutions unaffected.* Nothing in paragraph (g) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this part.

Dated: August 2, 2007.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E7–15467 Filed 8–8–07; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD14–07–001]

RIN 1625–AA87

Security Zones; Oahu, Maui, Hawaii, and Kauai, HI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the permanent security zones in waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, Hawaii. Review of the established zones indicated the need for some adjustment to better suit vessel and facility security in and around Hawaiian ports. The changes are intended to enhance the protection of personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature.

DATES: This rule is effective September 10, 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 CGD14–07–001 and are available for inspection and copying at U.S. Coast Guard Sector Honolulu, Sand Island Parkway, Honolulu, Hawaii 96819–4398 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Jasmin Parker, U.S. Coast Guard Sector Honolulu at (808) 842–2600.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 19, 2007, we published a notice of proposed rulemaking (NPRM) entitled Security Zones; Oahu, Maui, Hawaii, and Kauai, HI in the **Federal Register** (72 FR 33711). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The terrorist attacks against the United States that occurred on September 11, 2001, have emphasized the need for the United States to establish heightened security measures in order to protect the public, ports and waterways, and the maritime transportation system from future acts of terrorism or other subversive acts. The terrorist organization al-Qaeda and other similar groups remain committed to conducting armed attacks against U.S. interests, including civilian targets within the United States. National security and intelligence officials warn that future terrorist attacks are likely.

In response to this threat, on December 19, 2005, the Coast Guard published a final rule establishing the current permanent security zones in designated waters surrounding the Hawaiian Islands (70 FR 75036, December 19, 2005). The current zones replaced zones established by a final rule issued in 2003 (68 FR 20344, April 25, 2003) which in turn replaced temporary zones that had been established, and then extended, in the waters surrounding the Hawaiian Islands soon after the attacks (66 FR 52693, October 17, 2001). The existing permanent security zones have been in operation for more than 18 months.

We have recently completed a periodic review of port and harbor security procedures and considered the oral feedback that local vessel operators gave to Coast Guard units enforcing the zones. In response, the Coast Guard is reducing the scope of the *Honolulu International Airport, North Section* security zone. The Coast Guard is also establishing new zones at Kawaihae Harbor, Hawaii and Kahe Point, Oahu to address a new vessel operation and recent identification of a critical facility. Additionally, we are clarifying the application of large cruise ship (LCS) security zones to the new Hawaii SuperFerry.

Our action with respect to the *Honolulu International Airport, North Section* zone (33 CFR 165.1407(a)(4)(i)) is to change it from one that is perpetually activated and enforced to one that is used only in response to a threat. This change, permitting a reduced security posture in the waters adjacent to Honolulu International Airport, is based on a 2006 reevaluation of airport protection requirements. The new arrangement offers us the opportunity to decrease disruption to maritime commerce and inconvenience to small entities by making the zone subject to activation and enforcement only under certain conditions rather than all the time.

All of the security zones described in this final rule are permanently established. We use the word ''activated'' to describe when these permanently established zones are subject to enforcement.

Our addition of a Kawaihae Harbor security zone is due to the arrival of the Hawaii SuperFerry. In June 2004, Hornblower Marine Services, Inc. signed a Marine Management Operating

Agreement and Construction Oversight contract for the new Hawaii SuperFerry operation, an inter-island ferry service. The service will transport passengers and vehicles to Hawaiian island ports, including Kawaihae Harbor on the island of Hawaii. Each day, these ferries will carry many passengers as well as cargo and vehicles, presenting the same security vulnerabilities as the large cruise ships that operate in those areas. Kawaihae Harbor, however, lacked a security zone to protect such vessels, so we are creating one there.

Additionally, the definition of *large cruise ship* (LCS) in 33 CFR 165.1408(b), 165.1409(b), and 165.1410(b) did not adequately describe the Hawaii SuperFerry or any other vessel of similar size and carriage capacity. Therefore, the Coast Guard is revising the term *large cruise ship* to clarify that the presence of Superferry-type vessels triggers the activation and enforcement of the Maui, Hawaii, and Kauai security zones described in those three sections.

Our creation of a Kahe Point security zone is meant to protect the Hawaiian Electric Company power plant at Kahe Point, which produces a significant portion of the electricity for the island of Oahu. This beach-front power plant uses sea water piped in directly from the ocean to cool its turbines. Loss or damage to this cooling water system due to sabotage would reduce the power-generating capacity of the plant and overburden the other island facilities. The *Kahe Point, Oahu* zone is intended to enhance the plant's security.

Discussion of Comments and Changes

We did not receive any comments in response to our NPRM. Our review of the regulation text, however, revealed a typo in the proposed amendment of 33 CFR 165.1410(b). In that paragraph, the word ''ferries'' should have been singular, so we made that change for this final rule. No other changes were made to the regulation text proposed in the NPRM.

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.

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This expectation is based on the short activation and enforcement duration of the zones created or impacted by this rule, as well as the limited geographic area affected by them.

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. While we are aware that affected areas have small commercial entities, including canoe and boating clubs and small commercial businesses that provide recreational services, we anticipate that there will be little or no impact to these small entities due to the narrowly tailored scope of these changes.

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 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 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 does not create an environmental risk to health or risk to safety that may 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 guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that 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)(g) of the Instruction, from further environmental documentation. That provision excludes regulations establishing or changing security zones.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 165.1407 to add paragraph (a)(7) and to revise the paragraph (d) heading and the introductory text of paragraph (d)(1) to read as follows:

§ 165.1407 Security Zones; Oahu, HI.

(a) * * *

(7) *Kahe Point, Oahu.* All waters adjacent to the Hawaiian Electric Company power plant at Kahe Point within 500 yards of 21° 21.30' N/158′ 07.7° W (lighted tower).

* * * * *

(d) *Notice of enforcement or suspension of enforcement of security zones.*

(1) The security zones described in paragraphs (a)(3) (Kalihi Channel and Keehi Lagoon, Oahu), (a)(4)(i) (Honolulu International Airport, North Section), (a)(4)(ii) (Honolulu International Airport, South Section), and (a)(6) (Barbers Point Harbor, Oahu) of this section, will be enforced only upon the occurrence of one of the following events—

* * * * *

■ 3. Amend § 165.1408 to revise paragraphs (a)(1), (a)(2), (b), (c)(1), and (c)(2) to read as follows:

§ 165.1408 Security Zones; Maui, HI.

(a) * * *

(1) *Kahului Harbor, Maui.* All waters extending 100 yards in all directions from each large passenger vessel in Kahului Harbor, Maui, HI or within 3 nautical miles seaward of the Kahului Harbor COLREGS DEMARCATION (See 33 CFR 80.1460). This is a moving security zone when the LPV is in transit and becomes a fixed zone when the LPV is anchored, position-keeping, or moored.

(2) *Lahaina, Maui.* All waters extending 100 yards in all directions from each large passenger vessel in Lahaina, Maui, whenever the LPV is within 3 nautical miles of Lahaina Light (LLNR 28460). The security zone around each LPV is activated and enforced whether the LPV is underway, moored, position-keeping, or anchored, and will continue in effect until such time as the LPV departs Lahaina and the 3-mile enforcement area.

(b) *Definitions.* As used in this section, *large passenger vessel* or *LPV* means a cruise ship more than 300 feet in length that carries passengers for hire, and any passenger ferry more than 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones created by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. When authorized passage through a large passenger vessel security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. No person is allowed within 100 yards of an LPV that is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representative.

(2) When conditions permit, the Captain of the Port, or his or her designated representative, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LPV security zone in order to ensure navigational safety.

* * * * *

■ 4. Amend § 165.1409 to revise paragraphs (a)(1), (a)(2), (b), (c)(1), and (c)(2) and to add paragraph (a)(3) to read as follows:

§ 165.1409 Security Zones; Hawaii, HI.

(a) * * *

(1) *Hilo Harbor, Hawaii.* All waters extending 100 yards in all directions from each large passenger vessel in Hilo Harbor, Hawaii, HI or within 3 nautical miles seaward of the Hilo Harbor COLREGS DEMARCATION (See 33 CFR 80.1480). This is a moving security zone when the LPV is in transit and becomes a fixed zone when the LPV is anchored, position-keeping, or moored.

(2) *Kailua-Kona,* Hawaii. All waters extending 100 yards in all directions from each large passenger vessel in Kailua-Kona, Hawaii, whenever the LPV is within 3 nautical miles of Kukailimoku Point. The 100-yard security zone around each LPV is activated and enforced whether the LPV is underway, moored, position-keeping, or anchored and will continue in effect until such time as the LPV departs Kailua-Kona and the 3-mile enforcement area.

(3) *Kawaihae Harbor, Hawaii.* All waters extending 100 yards in all directions from each large passenger vessel in Kawaihae Harbor, Hawaii, or within 3 nautical miles seaward of the Kawaihae Harbor COLREGS

DEMARCATION (See 33 CFR 80.1470). The 100-yard security zone around each LPV is activated and enforced whether the LPV is underway, moored, position-keeping, or anchored.

(b) *Definitions.* As used in this section, *large passenger vessel* or *LPV* means a cruise ship more than 300 feet in length that carries passengers for hire, and any passenger ferry more than 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones created by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representative. When authorized passage through a large passenger vessel security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. No person is allowed within 100 yards of a large passenger vessel that is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(2) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LPV security zone in order to ensure navigational safety.

* * * * *

■ 5. Amend § 165.1410 to revise paragraphs (a)(1), (a)(2), (b), (c)(1), and (c)(2) to read as follows:

§ 165.1410 Security Zones; Kauai, HI.

(a) * * *

(1) *Nawiliwili Harbor, Lihue, Kauai.* All waters extending 100 yards in all directions from each large passenger vessel in Nawiliwili Harbor, Kauai, HI or within 3 nautical miles seaward of the Nawiliwili Harbor COLREGS DEMARCATION (See 33 CFR 80.1450). This is a moving security zone when the LPV is in transit and becomes a fixed zone when the LPV is anchored, position-keeping, or moored.

(2) *Port Allen, Kauai.* All waters extending 100 yards in all directions from each large passenger vessel in Port Allen, Kauai, HI or within 3 nautical miles seaward of the Port Allen COLREGS DEMARCATION (See 33 CFR 80.1440). This is a moving security zone when the LPV is in transit and becomes a fixed zone when the LPV is anchored, position-keeping, or moored.

(b) *Definitions.* As used in this section, *large passenger vessel* or *LPV* means a cruise ship more than 300 feet in length that carries passengers for hire, and any passenger ferry more than 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones created by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representative. When authorized passage through an LPV security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representative. No person is allowed within 100 yards of a large passenger vessel that is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representative.

(2) When conditions permit, the Captain of the Port, or his or her designated representative, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LPV security zone in order to ensure navigational safety.

* * * * *

Dated: July 30, 2007.

Sally Brice-O'Hara,

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

[FR Doc. E7–15508 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0619; FRL–8450–7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the maintenance plan prepared by Missouri to maintain the 8-hour national ambient air quality standard (NAAQS) for ozone in the Missouri portion of the Kansas City area. The Kansas City area is designated attainment for the ozone NAAQS. This revision is required by the Clean Air Act. A similar final action pertaining to the Kansas portion of the Kansas City maintenance area is being done in conjunction with this rulemaking. The effect of this approval is to ensure Federal enforceability of the state air program plan and to maintain consistency between the state-adopted plan and the approved SIP.

DATES: This direct final rule will be effective October 9, 2007, without further notice, unless EPA receives adverse comment by September 10, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0619, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *E-mail: algoe-eakin.amy@epa.gov.*

3. *Mail:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier.* Deliver your comments to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2007–0619. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be

able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a Section 110(a)(1) maintenance plan?

What are the components of a Section 110(a)(1) 8-hour ozone maintenance plan?

How has the state addressed the components of a Section 110(a)(1) 8-hour ozone maintenance plan?

What action is EPA taking?

What is a Section 110(a)(1) maintenance plan?

Section 110(a)(1) of the Clean Air Act (CAA or Act) requires, in part, that states submit to EPA plans to maintain any NAAQS promulgated by EPA. EPA interprets this provision to require that areas that were maintenance areas for the 1-hour ozone NAAQS but attainment for the 8-hour ozone NAAQS submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS. EPA established June 15, 2007, three years after the effective date of the initial 8-hour ozone designations, as the deadline for submission of plans for these areas. Missouri's Section 110(a)(1) maintenance plan was received by EPA on May 23, 2007.

What are the components of a Section 110(a)(1) 8-hour ozone maintenance plan?

On May 20, 2005, EPA issued guidance that applies, in part, to areas that are designated attainment/unclassifiable for the 8-hour ozone standard and that had an approved 1-hour ozone maintenance plan. The purpose of the guidance, referred to as Section 110(a)(1) guidance, is to assist the states in the development of a SIP which addresses the maintenance requirements found in Section 110(a)(1) of the CAA. There are five components of the Section 110(a)(1) maintenance plan which are: (1) An attainment inventory, which is based on actual typical summer day emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) for a ten-year period from a base year as chosen by the state; (2) a maintenance demonstration which shows how the area will remain in compliance with the 8-hour ozone standard for 10 years after the effective date of designations (June 15, 2004); (3) a commitment to continue to operate air quality monitors; (4) a contingency plan that will ensure that a violation of the 8-hour ozone NAAQS is promptly addressed; and (5) an explanation of how the state will track the progress of the maintenance plan.

How has the state addressed the components of a Section 110(a)(1) 8-hour ozone maintenance plan?

Missouri Department of Natural Resources' (MDNR) 8-hour ozone maintenance plan addresses the components of the Section 110(a)(1) 8-hour ozone maintenance as outlined in EPA's May 20, 2005, guidance. Missouri has requested that the Section 110(a)(1) 8-hour ozone maintenance plan replace the existing Section 175A 1-hour ozone maintenance plan.

Emissions Inventory: An emissions inventory is an itemized list of emission estimates for sources of air pollution in a given area for a specified time period. MDNR has provided a comprehensive and current emissions inventory for ozone precursors (NO_X and VOCs) in the area. MDNR has chosen to use 2002 as the base year from which it projects emissions. The maintenance plan also includes an explanation of the methodology used for determining the anthropogenic (point, area, and mobile sources) emissions in the maintenance area. The inventory is based on emissions for a typical ozone season day. The term ''typical'' refers to emissions expected on a typical weekday during the months where ozone concentrations are typically the highest. For Kansas City, these months are June through August.

Maintenance Demonstration and Tracking Progress: With regard to demonstrating continued maintenance of the 8-hour ozone standard, Missouri projects that the total emissions from the entire Kansas City Maintenance Area (KCMA) will decrease during the ten-year maintenance period. MDNR has projected emissions for 10 years from the effective date of initial designations, or 2014. In 2002, the total anthropogenic emissions in the entire KCMA were 226.42 tons/ozone season day for VOCs and 316.09 tons/ozone season day for NO_X. The projected 2014 anthropogenic emissions from the entire KCMA are 181.07 tons/ozone season day for VOCs and 180.08 tons/ozone season day for NO_X. As such, the plan demonstrates that, from an emissions projections standpoint, emissions are projected to decrease.

It is important to note that the formation of ozone is dependent on a number of variables which cannot be estimated through emissions growth and reduction calculations. A few of these variables include weather and the transport of ozone precursors from outside the maintenance area. In the Section 110(a)(1) maintenance plan, MDNR has indicated that the state will track the progress of the maintenance plan by updating the emissions inventory for the KCMA approximately every three years. The years of 2005, 2008, and 2011 were chosen as the years in which emissions will be reviewed. A review of the 2005 emissions inventory is underway. The emissions inventory update will include point, area, and onroad and offroad emissions. Information from these future updates will be compared with the projected growth estimates for the 2002 base inventory data to track maintenance of the standard.

Ambient Monitoring: With regard to the ambient air monitoring component of the maintenance plan, Missouri's plan describes the ozone monitoring network in Kansas City and explains that states and local air agencies are responsible for the operation, maintenance and data collection at these monitoring sites. MDNR commits to continue operating air quality monitors in accordance with 40 CFR Part 58 to verify maintenance of the 8-hour ozone standard. If any changes to the monitoring locations become necessary, MDNR commits to working with EPA to ensure that the adequacy of the monitoring network is maintained.

Contingency Measures: EPA interprets Section 110(a)(1) of the CAA to require that the state develop a contingency

plan that will ensure that any violation of a NAAQS is promptly corrected. The purposes of the contingency measures, outlined in MDNR's maintenance plan, are to achieve sufficient VOC and/or NO_X emissions to reduce further ozone monitored concentrations. Missouri and Kansas worked together to design a two-phased approach for the contingency measure portion of the maintenance plan. The approach includes specific triggers for each phase. The triggers are the same for both states although the measures vary slightly. For Phase 1, the Missouri plan provides that a violation of the 8-hour ozone standard, once quality assured, would trigger two control measures, which are (1) early implementation of control devices on Clean Air Interstate Rule-(CAIR) affected coal-fired electric generating units; and (2) an idle reduction regulation.

Phase 2 contingency measures would be triggered by the occurrences of either of the following two events: (1) A three-year design value for the area equaling or exceeding 0.089 parts per million (ppm) which would become active one year following the end of the ozone season that triggered the Phase 1 contingency measures or (2) three consecutive years following the Phase 1 trigger year with a design value greater than 0.084 ppm. Either of these events would implement the selection of control measures of Phase 2. Following the implementation of Phase 1, if any one year has a three-year design value equaling or exceeding 0.085 ppm, an evaluation to determine appropriate action will be undertaken by MDNR. The purpose of delaying the potential implementation of Phase 2 control measures for a period of time following the implementation of Phase 1 is to allow for Phase 1 controls to be initiated and have an effect on air quality in the region before Phase 2 is implemented. It also allows for further evaluation of the various control measures that could be implemented under Phase 2. Below are a few of the controls options being considered for Phase 2: NO_X reductions to coal-fired electric generating units (EGUs) not covered under CAIR that exceed 100 tons of NO_X emissions per year; NO_X reductions from industrial boilers and process heaters that exceed 100 tons of NO_X emissions per year; NO_X reductions from cement kilns that exceed 100 tons of NO_X emissions per year; lowering the threshold for major sources of VOCs to 75 tons per year; enacting regulations to reduce VOC emissions from 46 architectural and industrial maintenance coatings, including traffic coatings; enacting emissions offsets of 1.1:1.0 for new sources; diesel Engine Chip Re-Flashing regulations; or enacting the gas-cap testing program. If triggered, the Phase 2 measures will be selected based on emission reduction benefits, cost effectiveness and timeframe for implementation. MDNR also would consider additional potential measures if other beneficial emission reduction methods are determined to be useful to the air quality in the KCMA.

What action is EPA taking?

Missouri has addressed the components of a maintenance plan pursuant to EPA's May 20, 2005, guidance. The Section 110(a)(1) 8-hour ozone Kansas City maintenance plan approved in this action will replace the existing Section 175A 1-hour ozone maintenance plan. Existing VOC control rules included in the 1-hour maintenance plan will remain in place. Missouri has committed to implementing the contingency measures within 24 months of the trigger date and will take action to maintain the standard in the event the contingency measures are triggered.

We are processing this action as a direct final action because we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule

cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 9, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 27, 2007.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320(e) the table is amended by adding an entry in numerical order to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(53) Maintenance Plan for the 8-hour ozone standard in the Missouri portion of the Kansas City area.	Kansas City	5/23/07	8/9/07 [*insert FR page number where the document begins*].	This plan replaces numbers (46) and (50).

[FR Doc. E7–15264 Filed 8–8–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0620; FRL–8450–5]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the Kansas State Implementation Plan (SIP) prepared by Kansas to maintain the 8-hour national ambient air quality standard (NAAQS) for ozone in the Kansas portion of the Kansas City area. The Kansas City area is designated attainment for the ozone NAAQS. This revision is required by the Clean Air Act. A similar final rulemaking pertaining to the Missouri portion of the Kansas City maintenance area is being done in conjunction with this rulemaking. The effect of this approval is to ensure Federal enforceability of the state air program plan and to maintain consistency between the state-adopted plan and the approved SIP.

DATES: This direct final rule will be effective October 9, 2007, without further notice, unless EPA receives adverse comment by September 10, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0620, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *E-mail: algoe-eakin.amy@epa.gov.*

3. *Mail:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier. Deliver your comments to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2007–0620. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a Section 110(a)(1) maintenance plan?

What are the components of a Section 110(a)(1) 8-hour ozone maintenance plan?

How has the state addressed the components of a Section 110(a)(1) 8-hour ozone maintenance plan? What action is EPA taking?

What is a Section 110(a)(1) maintenance plan?

Section 110(a)(1) of the Clean Air Act (CAA or Act) requires, in part, that states submit to EPA plans to maintain any NAAQS promulgated by EPA. EPA interprets this provision to require that areas that were maintenance areas for the 1-hour ozone NAAQS but attainment for the 8-hour ozone NAAQS submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS. EPA established June 15, 2007, three years after the effective date of the initial 8-hour ozone designations, as the deadline for submission of plans for these areas. Kansas's Section 110(a)(1) maintenance plan was received by EPA on May 23, 2007.

What are the components of a Section 110(a)(1) 8-hour ozone maintenance plan?

On May 20, 2005, EPA issued guidance that applies, in part, to areas that are designated attainment/unclassifiable for the 8-hour ozone standard and that had an approved 1-hour ozone maintenance plan. The purpose of the guidance, referred to as Section 110(a)(1) guidance, is to assist the states in the development of a SIP which addresses the maintenance requirements found in Section 110(a)(1) of the CAA. There are five components of the Section 110(a)(1) maintenance plan which are: (1) An attainment inventory, which is based on actual typical summer day emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) for a ten-year period from a base year as chosen by the state; (2) a maintenance demonstration which shows how the area will remain in compliance with the 8-hour ozone standard for 10 years after the effective date of designations (June 15, 2004); (3) a commitment to continue to operate air quality monitors; (4) a contingency plan that will ensure that a violation of the 8-hour ozone NAAQS is promptly addressed; and (5) an explanation of how the state will track the progress of the maintenance plan.

How has the state addressed the components of a Section 110(a)(1) 8-hour ozone maintenance plan?

The Kansas Department of Health and Environment's (KDHE) 8-hour ozone maintenance plan addresses the components of the Section 110(a)(1) 8-hour ozone maintenance plan as outlined in EPA's May 20, 2005, guidance. Kansas has requested that the Section 110(a)(1) 8-hour ozone maintenance plan replace the existing Section 175A 1-hour ozone maintenance plan.

Emissions Inventory: An emissions inventory is an itemized list of emission estimates for sources of air pollution in a given area for a specified time period. KDHE has provided a comprehensive and current emissions inventory for ozone precursors (NO_X, and VOCs) in the area. KDHE has chosen to use 2002 as the base year from which they project emissions. The maintenance plan also includes an explanation of the methodology used for determining the anthropogenic (point, area, and mobile sources) emissions in the maintenance area. The inventory is based on emissions for a typical ozone season day. The term ''typical'' refers to emissions expected on a typical weekday during the months where ozone concentrations are typically the highest. For Kansas City, these months are June through August.

Maintenance Demonstration and Tracking Progress: With regard to demonstrating continued maintenance of the 8-hour ozone standard, Kansas projects that the total emissions from the entire Kansas City Maintenance Area (KCMA) will decrease during the ten-year maintenance period. KDHE has projected emissions for 10 years from the effective date of initial designations, or 2014. In 2002, the total anthropogenic emissions in the entire KCMA were 226.42 tons/ozone season day for VOCs and 316.09 tons/ozone season day for NO_X. The projected 2014 anthropogenic emissions from the entire KCMA are 181.07 tons/ozone season day for VOCs and 180.08 tons/ozone season day for NO_X. As such, the plan demonstrates that, from an emissions projections standpoint, emissions are projected to decrease.

It is important to note that the formation of ozone is dependent on a number of variables which cannot be estimated through emissions growth and reduction calculations. A few of these variables include weather and the transport of ozone precursors from outside the maintenance area. In the Section 110(a)(1) maintenance plan, KDHE has indicated that the state will track the progress of the maintenance plan by updating the emissions inventory for the KCMA approximately every three years. The years of 2005, 2008, and 2011 were chosen as the years in which emissions will be reviewed. A review of the 2005 emissions inventory is underway. The emissions inventory update will include point, area, and onroad and offroad emissions. Information from these future updates will be compared with the projected growth estimates for the 2002 base inventory data to track maintenance of the standard.

Ambient Monitoring: With regard to the ambient air monitoring component of the maintenance plan, Kansas's plan describes the ozone monitoring network in Kansas City and explains that states and local air agencies are responsible for the operation, maintenance and data collection at these monitoring sites. KDHE commits to continue operating air quality monitors in accordance with 40 CFR Part 58 to verify maintenance of the 8-hour ozone standard. If any changes to the monitoring locations become necessary, KDHE commits to working with EPA to ensure that the adequacy of the monitoring network is maintained.

Contingency Measures: EPA interprets Section 110(a)(1) of the CAA to require that the state develop a contingency plan which will ensure that any violation of an NAAQS is promptly corrected. The purposes of the contingency measures, outlined in KDHE's maintenance plan, are to achieve sufficient VOC and/or NO_X emissions to reduce ozone monitored concentrations. Kansas and Missouri worked to design a two-phased approach for the contingency measure portion of the maintenance plan. The approach includes specific triggers for

each phase. The triggers are the same for both states, although the measures vary slightly. For Phase 1, the Kansas plan provides that a violation of the 8-hour ozone standard, once quality assured, would trigger two control measures, which are, (1) reduction in NO_X emission from point sources greater than 1000 tons of actual annual emissions from the entire facility averaged over the last three years of complete, quality-assured inventory data in Wyandotte and Johnson Counties. This would be accomplished through either NO_X Reasonable Available Control Technology (RACT) rules or signed agreements with affected sources, and (2) diesel idle reduction in Wyandotte and Johnson Counties through administrative regulations or local ordinances. If this measure is implemented, KDHE would develop the enforcement mechanism through contracts with local agencies.

Phase 2 contingency measures would be triggered by the occurrences of either of the following two events: (1) A three-year design value for the area equaling or exceeding 0.089 parts per million (ppm) which would become active one year following the end of the ozone season that triggered the Phase 1 contingency measures or (2) three consecutive years following the Phase 1 trigger year with a design value greater than 0.084 ppm. Either of these events would implement the selection of control measures of Phase 2. Following the implementation of Phase 1, if any one year has a three-year design value equaling or exceeding 0.085 ppm, an evaluation to determine appropriate action will be undertaken by KDHE. The purpose of delaying the potential implementation of Phase 2 control measures for a period of time following the implementation of Phase 1 is to allow for Phase 1 controls to be initiated and have an effect on air quality in the region before Phase 2 is implemented. It also allows for further evaluation of the various control measures that could be implemented under Phase 2. Below are a few of the control options being considered for Phase 2:

- Reductions in NO_X emissions from point sources that exceed 100 tons of actual annual emissions from the entire facility averaged over the last three years of complete, quality-assured inventory data in Wyandotte and Johnson Counties. This would be accomplished through either NO_X RACT rules or signed agreements with affected sources.
- Reductions in NO_X emissions from point sources greater than 1000 tons of *actual* annual emissions from the entire facility averaged over the last three years of complete, quality-assured inventory data in areas located south of and outside the KCMA (Miami and Linn Counties). Based on current emissions inventory, this would affect two sources. Reductions would be accomplished through either a regional NO_X administrative regulation or signed agreements with affected sources.
- Open burning restrictions in Wyandotte and Johnson Counties.
- Lower threshold for major sources of VOC to 75 tons per year (tpy) in Wyandotte and Johnson Counties. The KDHE would evaluate remaining large VOC emitters subject to existing VOC RACT rules to determine if further reductions could be achieved (VOC RACT rules).
- VOC control for 46 Architectural and Industrial Maintenance Coatings, including traffic coatings in Wyandotte and Johnson Counties.
- Diesel Engine Chip Re-Flashing regulations in Wyandotte and Johnson Counties.

If triggered, the Phase 2 measures will be selected based on emission reduction benefits, cost effectiveness and timeframe for implementation. KDHE also would consider additional potential measures if other beneficial emission reduction methods are determined to be useful to the air quality in the KCMA.

What action is EPA taking?

Kansas has addressed the components of a maintenance plan pursuant to EPA's May 20, 2005, guidance. The section 110(a)(1) 8-hour ozone Kansas City maintenance plan approved in this action will replace the existing section 175A 1-hour ozone maintenance plan. Kansas has committed to continue implementation of the VOC control measures in the 1-hour maintenance plan. Kansas has also committed to implementing the contingency measures no later than 24 months after the trigger date and will take action to maintain the standard in the event the contingency measures are triggered.

We are processing this action as a direct final action because we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard.

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 9, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 27, 2007.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart R—Kansas

■ 2. In § 52.870(e) the table is amended by adding an entry at the end of the table to read as follows:

§ 52.870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(31) Maintenance Plan for the 8-hour ozone standard in the Kansas portion of the Kansas City area.	Kansas City	5/23/07	8/9/07 [*insert FR page number where the document begins*].	This plan replaces numbers (28) and (29).

[FR Doc. E7–15251 Filed 8–8–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2007–0001; FRL–8451–9]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of the Toledo Area 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Ohio Environmental Protection Agency (Ohio EPA) submitted a request on December 22, 2006, and supplemented it on March 9, 2007, for redesignation of the Toledo, Ohio area (Lucas and Wood Counties) to attainment for the 8-hour ozone standard. The submission also includes a maintenance plan that provides for continued attainment through 2018. On June 12, 2007, EPA proposed to approve this submission. EPA provided a 30-day review and comment period. One comment, from BP Products, North America Inc., was received supporting EPA's proposal. Today, EPA is approving Ohio's request and corresponding State Implementation Plan (SIP) revision. In so doing, EPA is making a determination that the Toledo, Ohio area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2004–2006 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. Preliminary 2007 air quality data show that the area continues to attain the 8-hour ozone standard. EPA is approving the maintenance plan for this area and is redesignating the area to attainment. Finally, EPA is approving, for purposes of transportation conformity, the motor vehicle emission budgets (MVEBs) for the years 2009 and 2018.

DATES: This final rule is effective on August 9, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2007–0001. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Michael

G. Leslie, Environmental Engineer, at (312) 353–6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: In the following, whenever ''we,'' ''us,'' or ''our'' are used, we mean the United States Environmental Protection Agency.

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I. What Is the Background for This Rule?
II. What Comments Did We Receive on the Proposed Action?
III. What Are Our Final Actions?
IV. Statutory and Executive Order Review

I. What Is the Background for This Rule?

The background for today's action is discussed in detail in EPA's June 12, 2007, proposal (72 FR 32246). In that rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm. (See 69 FR 23857 (April 30, 2004) for further information). The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness, as determined in accordance with Appendix I of part 50.

Under the CAA, EPA may redesignate nonattainment areas to attainment if sufficient complete, quality-assured data are available to determine that the area has attained the standard and that it meets the other CAA redesignation requirements in section 107(d)(3)(E).

The Ohio EPA submitted a request on December 22, 2006, and supplemented it on March 9, 2007, for redesignation of the Toledo, Ohio area, which includes Lucas and Wood Counties, to attainment for the 8-hour ozone standard. The request included three years of complete, quality-assured data for the period of 2004 through 2006, indicating that the 8-hour NAAQS for ozone had been achieved. Preliminary 2007 air quality data show that the area continues to attain the 8-hour ozone standard. The data satisfy the applicable CAA requirements discussed above. The June 12, 2007, proposed rule provides a detailed discussion of how Ohio met these requirements.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist.* v. *EPA,* Docket No. 04–1201, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates, and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS, remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, contingent on an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8 decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

For the reasons set forth in the proposal, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

With respect to the requirement for transportation conformity under the 1-hour standard, the Court in its June 8 decision clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires only that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

II. What Comments Did We Receive on the Proposed Action?

EPA provided a 30-day review and comment period. One comment, from BP Products, North America Inc., was received supporting EPA's proposal.

III. What Are Our Final Actions?

EPA is taking several related actions for the Toledo, Ohio area. First, EPA is making a determination that the Toledo, Ohio area has attained the 8-hour ozone standard. EPA is approving Ohio's maintenance plan SIP revision for the Toledo, Ohio area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Toledo, Ohio area in attainment of the 8-hour ozone NAAQS through 2018 by ensuring that the 2018 Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) emissions are less than 2004 emissions, the attainment year. EPA is also approving the State's request to change the legal designation of the Toledo, Ohio area from nonattainment to attainment of the 8-hour ozone NAAQS. Finally, as supported by and consistent with the ozone maintenance plan, EPA is approving the 2009 and the 2018 VOC and NO_X MVEBs for the Toledo, Ohio area. The 2009 MVEBs are 18.99 tons/day of VOC and 33.75 tons/day for NO_X. The 2018 MVEBs are 11.20 tons/day of VOCs and 14.11 tons/day for NO_X.

In accordance with 5 U.S.C. 553(d), EPA finds that there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise

apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3) which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the State of planning requirements for these 8-hour ozone nonattainment areas. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Review

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, and does not impose any new requirements on sources, or allows a state to avoid adopting or implementing additional requirements, and does not alter the relationship or distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 9, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to force its requirements. (See Section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: July 31, 2007.

Steve Rothblatt,

Acting Regional Administrator, Region 5.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart 1885—Ohio

■ 2. Section 52.1885 is amended by adding paragraph (ff)(6) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(ff) * * *

(6) On December 22, 2006, and supplemented on March 9, 2007, the State of Ohio submitted a redesignation request and maintenance plan for the Toledo area, including Lucas and Wood Counties. The maintenance plan for this area establishes motor vehicle emission budgets (MVEB) for 2009 and 2018. The 2009 MVEBs are 18.99 tons/day of Volatile Organic Compounds (VOC) and 33.75 tons/day for Oxides of Nitrogen (NO_X). The 2018 MVEBs are 11.20 tons/day of VOCs and 14.11 tons/day for NO_X.

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.336 is amended by revising the entry for Toledo, Ohio area: Lucas and Wood Counties in the table entitled ''Ohio—Ozone (8-Hour Standard)'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
* * * *	*	*	*	
Toledo Area:				
Lucas County	08/09/07	Attainment		
Wood County				
* * * *	*	*	*	

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. E7–15474 Filed 8–8–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–R04–SFUND–2007–0613; FRL–8451–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final notice of deletion for the Rochester Property Superfund Site from the National Priorities list.

SUMMARY: EPA Region 4 is publishing a direct final notice of deletion of the Rochester Property, Superfund Site (Site), located in Travelers Rest, South Carolina, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SCDHEC) because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final notice is effective October 9, 2007 without further notice, unless EPA receives adverse comment by September 10, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final notice in the **Federal Register** and inform the public that the notice will not take effect.

ADDRESSES: Submit your comments, identified by EPA–R04–SFUND–2007–0613, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: webster.donna@epa.gov.*
3. *Fax:* (404) 562–8788.
4. *Mail:* EPA–R04–SFUND–2007–0613, Superfund Remedial & Site Evaluation Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Donna K. Webster, Remedial Project Manager, Superfund Remedial & Site Evaluation Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to EPA–R04–SFUND–2007–0613. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov Web site is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the for further information contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

Comprehensive information on this Site is available through the Region 4 public docket, which is available for viewing at the Rochester Property Site information repositories at two locations. Locations, contacts, phone numbers and viewing hours are:

Rochester Property Site Repository, Travelers Rest Library, 17 Center Street, Travelers Rest, SC 29690, Hours: Monday through Thursday—9 a.m. until 9 p.m., Friday and Saturday—9 a.m. until 6 p.m.

U.S. EPA Record Center, Attn: Ms. Debbie Jourdan, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, Phone: (404) 562–8862, Hours 8 a.m. to 4 p.m., Monday through Friday by appointment only.

FOR FURTHER INFORMATION CONTACT: Donna K. Webster, Remedial Project Manager, Superfund Remedial & Site Evaluation Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, Phone: (404) 562–8870, Electronic Mail: *webster.donna@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 4 is publishing this direct final notice of deletion of the Rochester Property Superfund Site from the NPL.

The EPA identifies Sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those Sites. As described in the Section 300.425(e)(3) of the NCP, Sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted Site warrant such action.

Section II of this document explains the criteria for deleting Sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Rochester Property Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a Site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted Site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the Site be conducted at least every five years after the initiation of the remedial action at the deleted Site to ensure that the action remains protective of public health and the environment. In the case of this site, the selected remedy is protective of human health and the environment. EPA has determined that all remedial action objectives and cleanup goals have been attained, that all cleanup actions are completed at this site, and there are no hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a Site deleted from the NPL, the deleted Site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with the State of South Carolina on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) South Carolina concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of

this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a Site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a Site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Rochester Property Site (Site) is located west of the town of Travelers Rest, in Greenville County, South Carolina, in a rural, sparsely populated area. The 4.5 acre site lies approximately 300 feet north of County Road 268, also known as Ledbetter Road, and approximately one-quarter mile east of County Road 102. The area where waste was disposed, and later removed, is located within a 0.6 acre fenced area. The northern portion of the property is a pine and deciduous forest, while the southern portion is grassed. A small house is located at the east end of the site.

In late 1971 and early 1972, waste materials were placed in four trenches on the site. Each of the trenches was approximately 40 feet long, 3 feet wide and 10 feet deep. The wastes were thought to include wood glue, print binders, powder materials, natural guar gums, adhesive for food packages, and adhesive restick for envelopes.

Response Actions

The site was included on the NPL on October 4, 1989.

On June 5, 1989, EPA and the Potentially Responsible Party (PRP) signed an Administrative Order on Consent (AOC), Docket No. 89–09–C, requiring that the PRP characterize the vertical and horizontal extent of affected media and remove the buried waste. In January 1990, 1400 cubic yards of waste and surrounding soil were excavated and disposed of off-site at a secure hazardous waste landfill.

EPA and the PRP signed another AOC, Docket Number 92–04–C, dated February 19, 1992, to conduct the Remedial Investigation and Feasibility Study (RI/FS). RMT, Inc. (RMT) submitted to EPA, on behalf of the PRP, the Final RI Report in April 1993, and the Final FS Report in May 1993. A ROD was signed August 31, 1993.

Cleanup Goals

The ROD specified that the preferred remedy for groundwater at the site would be the installation and operation of a dual trench, in-situ air sparging system, in order to meet the remedial goals (RGs). The RGs were set at the Maximum Contaminant Level (MCL) of .005 ppm for trichlorethylene (TCE) and 0.006 ppm for bis (2-ethylhexyl) phthalate, and a risk-based level of 0.180 ppm for manganese (Mn).

Construction of the system was completed by June 1995. After approximately three years of air sparging, the monitoring wells that had the highest concentration of organic contaminants of concern during the RI did not show any concentrations exceeding the RGs. However, in 1996, one monitoring well, located downgradient of the air sparging trenches, began to show TCE concentrations above the RG.

On July 8, 2002, an ESD to the ROD was issued to address the downgradient contamination. The significant change to the ROD was that a mixture of air and ozone would be sparged, rather than air only. The supplemental remedy for the site, ozone sparging and recirculation, was installed at the site in 2002 and began operation in October 2002.

Since the ROD was signed, the toxicity criterion for Mn in USEPA's Integrated Risk Information System (IRIS) database was changed; Mn is now believed to be less toxic than previously thought and the hazard quotient for Mn in groundwater is an order of magnitude lower. As a result, on January 31, 2006, a second ESD was issued removing the RG for Mn from the site remedy.

Confirmatory sampling verifies that all remedial action objectives and cleanup goals have been attained, and all cleanup actions are complete as specified in the ROD, as changed by the ESDs issued July 2002 and January 2006. Three annual confirmatory groundwater sampling events were conducted to provide further assurance that the site is currently protective, no longer poses any threats to human health or the environment, all areas of concern described in the NPL listing have been adequately addressed, and no further Superfund response is needed to protect human health and the environment. The final groundwater sampling event was conducted in November 2006. No further operations and maintenance (O&M) activities are required.

Operation and Maintenance

The cleanup of the site complies with the ''clean closure'' requirements, consistent with the Resource Conservation and Recovery Act of 1976, as amended, CERCLA, as amended, and to the extent practicable, the NCP. No further site O&M activities are required.

Five-Year Review

CERCLA requires a five-year review of all sites with hazardous substances remaining above the health-based levels for unrestricted use of the site. EPA conducted two five-year reviews at the site while the remedial action was being implemented. Since there are no hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and restricted exposure, no further five-year reviews are required.

Community Involvement

An information repository was established at the Travelers Rest Library and all of the documents used to make the decision were placed there before the final ROD was signed. All other reports and fact sheets were sent to the repository as they were completed. Since the remedy was initiated at this site, public interest or concern about the site has not been expressed.

Applicable Deletion Criteria/State Concurrence.

One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate. 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of South Carolina through the SCDHEC in a letter dated July 5, 2007, believes that this criterion for deletion has been met. All the completion requirements for this Site have been met as described in the Final Close-Out Report (COR) dated June 8, 2007. The Final COR documents the completion of all remedial and operation and maintenance activities. Consequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available in the docket.

V. Deletion Action

The EPA, with concurrence of the State of South Carolina, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions under

CERCLA are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective October 9, 2007 unless EPA receives adverse comments by September 10, 2007. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Superfund, Water pollution control, Water supply.

Dated: July 23, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing the site ''Rochester Property, Travelers Rest, SC.''

[FR Doc. E7–15332 Filed 8–8–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 222

[Docket No. FRA–2007–27285, Notice No. 1]

RIN 2130–AB86

Use of Locomotive Horns at Highway-Rail Grade Crossings; Technical Amendments to Appendix D

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Direct final rule.

SUMMARY: This direct final rule makes technical amendments to appendix D of part 222 of the Code of Federal Regulations to update information contained in the appendix and direct the public to the most recent value of the Nationwide Significant Risk Threshold (NSRT). The amendments are intended to eliminate confusion regarding the data and calculations that will be used to determine the NSRT on an annual basis. Interested parties may submit written adverse comments or request an oral hearing on these amendments during the thirty (30) day period following publication of this direct final rule.

DATES: *Effective Date:* Unless FRA receives written adverse comment or a request for an oral hearing on this direct final rule, the effective date will be October 9, 2007.

Written Comments: Comments or a request for an oral hearing must be received by September 10, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FRA–2007–27285 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading later in this document for more information.

Docket: For access to the docket to read comments received, go to *http://dms.dot.gov* at any time or go to Room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ronald Ries, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: (202) 493–6299); or Kathryn Shelton, Office of Chief Counsel, Mail Stop 10, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: (202) 493–6038).

SUPPLEMENTARY INFORMATION:

Background

Appendix D of part 222 of title 49 of the Code of Federal Regulations was included in the interim final rule (68 FR 70586) in order to provide additional information about the calculations underlying various risk calculations discussed within the part. Even though a minor modification was made to appendix D when the final rule was issued (70 FR 21844, April 27, 2005), the appendix was not revised to reflect necessary variations in the data that would be used in future risk index calculations.

Changes to Appendix D

FRA has determined that appendix D needs to be revised in order to eliminate confusion about the data that will be used in certain risk index calculations. As currently written, portions of appendix D contain specific numbers and dates that are required to be revised on an annual basis, in order to properly calculate the NSRT. For example, in paragraph (e) under the section titled ''Risk Index'', a specific value is listed for the total number of collisions identified over a five-year period. However, each year that the NSRT is recalculated, this number and the date range will need to change. Otherwise, the NSRT value will not accurately reflect current risk levels at gated crossings nationwide where train horns are routinely sounded. Therefore, FRA is revising appendix D by removing references to specific numbers and dates that will change from year to year and simply leaving the relevant formulas. (Actual numbers will be provided in annual **Federal Register** notices announcing FRA's recalculation of the NSRT value.) FRA believes these technical amendments will avoid any misunderstanding or confusion over how the NSRT is calculated.

Notice and Comment Procedures

FRA has determined that these technical amendments to appendix D are nonsubstantive clarifications that will make the appendix more accurate, without changing the actual risk index calculations that were contained in the final rule. While FRA does not anticipate any adverse comment, interested parties may submit written adverse comments or request an oral hearing on these amendments during

the thirty (30) day period immediately following publication of this direct final rule.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034 (Feb. 26, 1979)).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has issued a final policy that formally establishes ''small entities'' as including railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, app. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. Id.

FRA certifies that this direct final rule will have no significant economic impact on a substantial number of small entities. To the extent that this rule has any impact on small entities, the impact will not be significant.

Paperwork Reduction Act

There are no new information collection requirements associated with this direct final rule. Therefore, no estimate of a public reporting burden is required.

Federalism Implications

Executive Order 13132, entitled, ''Federalism,'' issued on August 4, 1999, requires that each agency ''in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provide[ ] to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *.'' This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and the responsibilities among the various levels of government, as specified in the Executive Order 13132. Accordingly, FRA has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism assessment. Accordingly, a federalism assessment has not been prepared.

Environmental Impact

FRA has evaluated this regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of [$120,800,000 or more (as adjusted for inflation)] in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The direct final rule will not result in the expenditure, in the aggregate, of $120,800,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: That (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this direct final rule in accordance with Executive Order 13211. FRA has determined that this direct final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 222

Use of locomotive horns, Railroad safety.

The Rule

■ In consideration of the foregoing, FRA amends part 222 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 222—[AMENDED]

■ 1. The authority citation for part 222 continues to read as follows:

Authority: 28 U.S.C. 2461, note; 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 49 CFR 1.49.

■ 2. Appendix D to Part 222 is amended by revising paragraphs (b) through (e) in the section titled ''RISK INDEX'' to read as follows:

Appendix D to Part 222—Determining Risk Levels

* * * * *

Risk Index

* * * * *

(b) The average number of fatalities observed in fatal collisions and the average number of injuries in collisions involving injuries are calculated by FRA as described in paragraphs (c) through (e).

(c) FRA will match the highway-rail incident files for the past five years against a data file containing the list of grade crossings where the train horn was not routinely sounded over that five-year period to identify two types of collisions involving trains and motor vehicles: (1) Those that occurred at crossings where the train horn was not routinely sounded during the period, and (2) those that occurred at crossings equipped with automatic gates where the train horn was routinely sounded. Certain records will be excluded, including records pertaining to incidents where the driver was not in the motor vehicle or where the motor vehicle struck the train beyond the fourth locomotive or rail car that entered the crossing. FRA believes that sounding the train horn would not be very effective at preventing such incidents.[1]

(d) Collisions in the group containing the gated crossings nationwide where horns were routinely sounded will then be identified as fatal, injury only or no casualty. Collisions will be identified as fatal if one or more deaths occurred, regardless of whether injuries were also sustained. Collisions will be identified as injury only when injuries, but no fatalities, resulted.

(e) The collisions (incidents) will be summarized by year for the five-year period preceding the year in which the risk index is being updated. The fatality rate for each year will be calculated by dividing the number of fatalities by the number of fatal incidents. The injury rate will be calculated by dividing the number of injuries in injury only incidents by the number of injury only incidents. FRA will publish updated fatality and injury rates on an annual basis in the **Federal Register**.

* * * * *

■ 3. Appendix D to Part 222 is amended by revising the section titled, ''Nationwide Significant Risk Threshold'' to read as follows:

Appendix D to Part 222—Determining Risk Levels

* * * * *

Nationwide Significant Risk Threshold

The Nationwide Significant Risk Threshold is simply an average of the risk indexes for all of the gated public crossings nationwide where train horns are routinely sounded. This value will be recalculated annually and published in a notice in the **Federal Register**. For the most recent value of the Nationwide Significant Risk Threshold, please visit FRA's public Web site at *http://www.fra.dot.gov.*

* * * * *

■ 4. Appendix D to Part 222 is amended by revising the section titled, ''Crossing Corridor Risk Index'' to read as follows:

Appendix D to Part 222—Determining Risk Levels

* * * * *

Crossing Corridor Risk Index

The Crossing Corridor Risk Index is the average of the risk indexes of all the public crossings in a defined rail corridor.

* * * * *

Issued in Washington, DC on August 2, 2007.

Clifford C. Eby,

Federal Railroad Deputy Administrator.

[FR Doc. 07–3871 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–06–P

[1] The data used to make these exclusions is contained in blocks 18—Position of Car Unit in Train; 19—Circumstance: Rail Equipment Struck/Struck by Highway User; 28—Number of Locomotive Units; and 29—Number of Cars on the current FRA Form 6180–57 Highway-Rail Grade Crossing Accident/Incident Report.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

Regulatory Guidance for Recording of Commercial Motor Vehicle Accidents Involving Fires; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Regulatory Guidance; correction.

SUMMARY: The FMCSA published in the **Federal Register** on July 24, 2007, a document announcing regulatory guidance concerning its definition of ''accident.'' This notice corrects that document by providing the correct telephone number for the agency contact.

DATES: The regulatory guidance was effective on July 24, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, (202) 366–4325, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: The FMCSA published on July 24, 2007 (72 FR 40250), a document announcing regulatory guidance concerning its definition of ''accident.'' In that document, FMCSA provided an incorrect telephone number for the agency contact person under the heading **FOR FURTHER INFORMATION CONTACT**. The correct telephone number should read (202) 366–4325.

Issued on: August 3, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–15599 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XB89

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processor Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 total allowable catch (TAC) of Pacific cod specified for trawl catcher processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 6, 2007, through 1200 hrs, A.l.t., December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management

Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 TAC of Pacific cod specified for catcher processor vessels using trawl gear in the BSAI is 37,110 metric tons (mt) as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007). See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(B).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2007 Pacific cod TAC specified for catcher processor vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 32,310 mt, and is setting aside the remaining 4,800 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher processor vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 3, 2007.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 6, 2007.

Emily Menashes,

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

[FR Doc. 07–3889 Filed 8–6–07; 12:59 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XB88

Fisheries of the Exclusive Economic Zone Off Alaska; Rock Sole, Flathead Sole, and ''Other Flatfish'' by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for rock sole, flathead sole, and ''other flatfish'' by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl rock sole, flathead sole, and ''other flatfish'' fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 6, 2007, through 1200 hrs, A.l.t., December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl rock sole, flathead sole, and ''other flatfish'' fishery category in the BSAI is 167 metric tons as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl rock sole, flathead sole, and ''other flatfish'' fishery category in the BSAI has been reached. Consequently, NMFS is closing directed fishing for rock sole, flathead sole, and ''other flatfish'' by vessels using trawl gear in the BSAI.

''Other flatfish'' includes Alaska plaice, as well as all other flatfish species except for Pacific halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, flathead sole, and arrowtooth flounder.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for rock sole, flathead sole, and ''other flatfish'' by vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 3, 2007.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: August 6, 2007.

Emily Menashes,

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

[FR Doc. 07–3894 Filed 8–8–07; 2:03 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XB87

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 6, 2007, through 1200 hrs, A.l.t., December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI is 936 metric tons as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI has been reached. Consequently, NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for yellowfin sole by vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 3, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: August 6, 2007.

Emily Menashes,

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

[FR Doc. 07–3892 Filed 8–6–07; 2:03 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XB86

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2007 total allowable catch (TAC) of Pacific ocean perch in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 6, 2007, through 2400 hrs, A.l.t., December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA is 4,244 metric tons (mt) as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,234 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries

data in a timely fashion and would delay the closure of Pacific ocean perch in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 3, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 6, 2007.

Emily Menashes,

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

[FR Doc. 07–3893 Filed 8–6–07; 2:03 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0612242964–7332–02; I.D. 080106C]

RIN 0648–AS84

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Development Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS adopts a rule that modifies the Individual Fishing Quota (IFQ) Program for the fixed-gear commercial Pacific halibut fishery and sablefish fishery by revising regulations specific to those fisheries. This action is intended to improve the effectiveness of the Halibut and Sablefish IFQ Program (IFQ Program) and is necessary to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to the IFQ fisheries.

DATES: Effective on September 10, 2007, except for §§ 679.42(d) and 679.42(i) which contain information collection requirements that have not been approved by OMB. NMFS will publish a document in the **Federal Register** announcing the effective date of these paragraphs.

ADDRESSES: Copies of the Categorical Exclusion, Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA) prepared for the proposed rule and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained from the North Pacific Fishery Management Council (Council) at 605 West 4th, Suite 306, Anchorage, Alaska 99501–2252, 907–271–2809, or NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, and on the NMFS Alaska Region website at *http://www.noaa.fakr.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Alaska Region, and by email to *David_Rostker@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228 or *jay.ginter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Halibut Act (16 U.S.C. 773–773k). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea. The IPHC's regulations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). NMFS publishes the approved IPHC regulations as annual management measures pursuant to 50 CFR 300.62. Additional management regulations not in conflict with regulations adopted by the IPHC (such as the IFQ Program) may be recommended by the Council and implemented by the Secretary through NMFS to allocate harvesting privileges among U.S. fishermen under the authority of the Halibut Act (16 U.S.C. 773–773k).

The U.S. groundfish fisheries of the exclusive economic zone in the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands (BSAI) are managed by NMFS under fishery management plans (FMPs). The FMPs were prepared by the Council under the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and are implemented by regulations at 50 CFR part 679. Fishing for sablefish (*Anoplopoma fimbria*) with hook-and-line gear is governed by regulations implementing the BSAI and GOA groundfish FMPs as part of the IFQ Program.

Relevant background on the IFQ Program and each part of this action is presented in the proposed rule published November l, 2006 (71 FR 64218). That publication proposed changes to the IFQ Program regulations in seven areas. This final rule adopts the following five changes in their entirety:

- Allow transfers of QS for medical reasons;
- Require a vessel monitoring system for vessels harvesting sablefish in the BSAI;
- Amend the block program for halibut by (a) allowing a QS holder to hold 3 blocks rather than 2, (b) dividing halibut blocks in Areas 3B and 4A that yield more than 20,000 lb (9.1 mt), based on the 2004 harvest figures, into a block of 20,000 lb (9.1 mt) and the remainder unblocked, and (c) increasing the halibut sweep-up level in Areas 2C and 3A to 5,000 lb (2.3 mt);
- Allow category D QS to be fished on vessels less than or equal to 60 ft (18.3 m) length overall (LOA) in areas 3B and 4C; and
- Allow category B catcher vessel QS for Area 2C halibut and Southeast Outside District sablefish, which currently must be fished on vessels greater than 60 ft (18.3 m) LOA, to be fished on catcher vessels of any length.

The sixth proposed change would have tightened the requirements for QS holders who use hired skippers by requiring specific documentation of vessel ownership and requiring ownership of the vessel used by the hired skipper for the prior 12 months. The final rule adopts the documentation requirement but not the 12-month ownership requirement. Specifically, the final rule lists the documentation a QS holder must submit to prove ownership of a documented vessel that a hired master will use. This final rule does not adopt the 12-month ownership requirement in the proposed rule, namely that QS holders must prove at least the minimum vessel ownership (20 percent ownership interest) for 12 consecutive months prior to using a hired master. NMFS is seeking clarification from the Council on whether the Council wishes to exclude from the 12-month requirement those QS holders whose vessels need temporary repairs and, for that reason, have their QS fished from vessels that the QS holders have owned less than 12 months.

This final rule does not adopt the seventh proposed change. The final rule

does not change the Product Recovery Rate (PRR) for bled sablefish from 0.98 to 1.00. The Secretary disapproves this proposed rule because it would violate National Standard 2 of the Magnuson-Stevens Act: ''Conservation and management measures shall be based upon the best scientific information available.''

The parts of the final rule affecting the halibut fishery are adopted under the authority of the Halibut Act. The parts of the final rule affecting the sablefish fishery are adopted under the authority of the Magnuson-Stevens Act. This final rule also implements Amendment 67 to the FMP for Groundfish for the Gulf of Alaska (Notice of Availability published October 3, 2006; 71 FR 58372), which allows category B QS to be fished on a vessel of any length in all areas (November l, 2006; 72 FR 64218). Amendment 67 was approved by the Secretary on January 3, 2007.

The final rule also adopts two administrative changes that were in the proposed rule (November l, 2006; 72 FR 64218). The first administrative change clarifies the existing regulation that once an IFQ permit holder has caught his or her total sablefish IFQ, the IFQ permit holder can not catch additional IFQ sablefish in State of Alaska (State) or Federal waters. The second administrative change eliminates the term ''IFQ card'' and replaces it with ''IFQ hired master permit.'' The final rule extends this change to the Western Alaska Community Development Quota (CDQ) Program, changing the term ''CDQ card'' to ''CDQ hired master permit.''

The background and rationale for each part of this final rule were explained in the proposed rule, published November l, 2006 (71 FR 64218). Changes made in the final rule from the proposed rule are explained below.

Changes in the Final Rule

This section explains the changes from the proposed rule in the final rule, except editorial changes, which are not discussed.

1. The final rule revises §§ 679.4, 679.5, and 679.7 and extends the administrative change in the proposed rule regarding IFQ cards to the CDQ Program. The CDQ halibut fishery and the IFQ halibut fishery are largely subject to the same fisheries management regulations. The two fisheries have comparable permitting and reporting requirements. The final rule eliminates the term ''IFQ cards.'' To maintain consistency between the IFQ Program and the CDQ Program, the final rule also eliminates the term ''CDQ cards.'' Under the final rule, NMFS instead will issue ''CDQ permits'' and ''CDQ hired master permits.''

As described in the proposed rule, CDQ cards, like IFQ cards, originally served as a catch accounting tool for identification and catch reporting through a swipe card computer system. NMFS has replaced that system with an Internet-based reporting system. Hence, CDQ cards are obsolete and unnecessary. CDQ hired masters will be required to carry an original CDQ hired master permit for identification purposes while fishing for or making landings of CDQ halibut and a copy of the CDQ permit under which they are fishing. The final rule also revises associated terms, such as changing ''CDQ cardholder'' to ''CDQ hired master permit holder.''

2. The final rule clarifies who may seek a medical transfer provision of catcher vessel QS under § 679.42(d). The final rule uses the term ''QS holder'' as the most accurate and precise term. The proposed rule used the term ''IFQ holder'' and ''QS holder.'' An ''IFQ holder'' could be confused with an ''IFQ permit holder.'' Usually, an IFQ permit holder will also hold QS, but a few IFQ catcher vessel permit holders do not hold QS because they are leasing QS from the heir of a deceased QS holder under § 679.41(k) or from a Community Quota Entity under § 679.41(l). The IFQ Program generally does not allow catcher vessel QS to be leased; however, the Council and the Secretary have approved leasing in these restricted situations. The person who leases catcher vessel QS receives an IFQ permit and is therefore an IFQ permit holder, but not necessarily a QS holder.

NMFS concludes that the Council intended to allow medical transfers by QS holders, not the slightly larger class of IFQ permit holders. The IRFA, prepared by Council staff, described those eligible for the benefit of medical transfers as ''individual halibut or sablefish QS holders.'' If IFQ permit holders who are lessees could obtain a medical transfer of the right to fish the pounds remaining on their IFQ permit, those IFQ permit holders would, in essence, be subleasing QS. Because the basic rule in the IFQ Program is that catcher vessel QS cannot be leased, and because the Council has approved leasing only in strictly limited situations, NMFS concludes that the Council did not intend to allow subleasing of QS and did not intend to grant the benefit of medical transfers to IFQ permit holders who are fishing leased QS.

A corollary of this conclusion is that a QS holder may obtain a medical transfer only of the IFQ derived from the QS certificate issued in the name of the QS holder. Sometimes a QS holder has IFQ derived from his or her QS and IFQ leased from another QS holder on the same IFQ permit. The QS holder may obtain a medical transfer only for the IFQ derived from his or her own QS. The final rule makes explicit that NMFS may not approve a medical transfer of leased QS.

By specifying that a ''QS holder'' may obtain a medical transfer, the final rule also clarifies that an IFQ or CDQ hired master permit holder cannot obtain a medical transfer other than for his or her IFQ. If a hired master becomes sick and unable to participate in the fishery, the QS holder who hired the master can hire another master. Again, NMFS concludes that the Council did not intend to allow subleasing of QS, in this instance by the hired master who becomes sick.

3. The final rule clarifies who may receive an emergency waiver under § 679.42(d)(1). This provision allows NMFS to waive the requirements that the person authorized to fish IFQ sablefish or halibut be present on the vessel and sign the landing report, if that person experiences an extreme personal emergency during a fishing trip. The prior regulation stated that NMFS could waive those requirements for an IFQ card holder. Because the rule eliminates IFQ cards, the final rule states that NMFS may waive those requirements for ''a person authorized to fish IFQ halibut or IFQ sablefish,'' which may be an IFQ permit holder or an IFQ hired master permit holder.

4. The final rule eliminates the requirement proposed at § 679.42(d)(2)(iv)(B) that NMFS disapprove an application for a second medical transfer unless a health professional attested to a reasonable likelihood of recovery of the applicant. This requirement is eliminated from the final rule because the Council motion adopting this action did not have that requirement. Further, this requirement would put an applicant's doctor or other health professional and the applicant in a difficult situation if the doctor could not attest that the applicant had a reasonable likelihood of recovery. Additionally it might be hard for a health professional to assess whether the applicant/patient has a reasonable likelihood of recovery if the patient is in the early stages of diagnosis and treatment of a disease or condition. NMFS notes that the Council's motion had other elements which prevented potential abuse of medical transfers such as a prohibition against a QS holder receiving a medical transfer more

than twice in five years and the requirement for proof of a qualifying medical condition from a health professional. These requirements were in the proposed rule and are retained in the final rule.

5. The final rule clarifies the documentation that a QS holder must submit to prove the QS holder's minimum 20 percent ownership in the vessel from which a hired master will fish the QS. The QS holder who is an owner of a documented vessel must submit an Abstract of Title issued by the U.S. Coast Guard to show that the QS holder is an owner of the vessel and, if the Abstract of Title does not prove the required percentage interest, the QS holder must submit additional written documentation. The QS holder who is the owner of an undocumented vessel must submit a State of Alaska boat registration or a commercial vessel license that shows that the QS holder is an owner of the vessel. The State of Alaska issues an ''Alaska Boat Registration'' through its Department of Motor Vehicles and a ''Commercial Vessel License'' through its Commercial Fisheries Entry Commission. If either State document does not prove the required percentage ownership, the final rule clarifies that the QS holder must submit further written documentation to prove the required percentage ownership.

This clarification was necessary because the proposed rule at § 679.42(i) and (j) required proof of ownership of a documented vessel ''as supported by the U.S. Abstract of Title issued by the U.S. Coast Guard and any other documentation indicating percentage ownership'' and proof of ownership of an undocumented vessel ''as supported by a State of Alaska vessel registration and any other documentation indicating percentage ownership.'' The problem with this language is that it did not clearly state the role and purpose of ''other documentation.'' On one hand, read literally, it required the QS holder to submit the Abstract of Title and other documentation, even if the abstract or the State document sufficiently proved percent ownership. On the other hand, it could have been read to allow a QS holder to prove the required ownership interest through other documentation only, without submitting an Abstract of Title. The latter interpretation would have been the same as the prior regulation which merely required a QS holder to submit written documentation of his or her ownership interest.

The Council concluded that the prior regulation the requirement simply for written documentation was inadequate. It was concerned that some QS holders were abusing the hired skipper provision through vessel ownership arrangements that were informal and unverifiable. The Council also was responding to NMFS staff reports that NMFS had difficulty verifying the required ownership under the prior regulation which simply required written documentation. The final rule addresses the Council's concerns by requiring that the QS holders submit specified formal documents that are issued by the government to prove that they are an owner of the vessel that will be used to harvest their IFQ. If these formal documents do not show percentage ownership, the final rule requires QS holders to supplement those formal documents with other written documentation.

6. The final rule does not adopt the proposed requirement that a QS holder prove the minimum 20 percent vessel ownership for 12 months prior to the QS holder's use of a hired master. NMFS is seeking clarification from the Council on whether the Council wants also to exempt QS holders whose vessels need repairs from the 20 percent/12-month requirement and, if so, the criteria for the exemption. For a full explanation, see Response to Comment 4.

7. The final rule adds § 679.42(g)(2) which directs the Regional Administrator to identify all halibut blocks in Areas 3B and 4A that result in an allocation of more than 20,000 lb (9.1 mt) of halibut IFQ, based on the 2004 total allowable catch (TAC) for fixed gear halibut in those areas, and divide those halibut blocks into one block of 20,000 lb (9.1 mt) and the remainder unblocked, based on the 2004 TAC. This action was analyzed in the RIR/IRFA and specifically adopted by the Council. The proposed rule inadvertently omitted the regulatory text for this action although its description and rationale were presented in the proposed rule, and NMFS gave notice that it was considering approving it (71 FR 64222 - 64223). The final rule adopts this action as recommended by the Council and described in the proposed rule.

Because of this change, existing paragraph (g)(2) with the heading ''Holding or to hold blocks of QS'' is renumbered as paragraph (g)(4).

Proposed paragraph (g)(3) in this section, headed ''Transfer of QS blocks,'' remains paragraph (g)(3) in the final rule. However, the final rule clarifies paragraph (g)(3) to provide an exception to the requirement in paragraph (g)(1)(i) for those persons who have more than one block of QS and unblocked QS as a result of the Regional Administrator's action under paragraph (g)(2). The final rule also eliminates a specific effective date for this provision and relies instead on the overall effective date of the final rule (see DATES).

8. The final rule does not approve the proposed change in the PRR for bled sablefish from 0.98 to 1.00. NMFS finds that this proposed change is not based on the best scientific information available, and would violate National Standard 2 in the Magnuson-Stevens Act, that requires conservation and management measures to be based upon the best scientific information available (16 U.S.C. 1851 (a)(2)). Therefore, the PRR for bled sablefish remains at 0.98. See responses to comments 20, 21 and 22 below.

Comments and Responses

NMFS received 12 letters that contained 22 comments on the proposed rule.

Comment 1: One individual, who identified himself as a current IFQ holder, stated that he supported all the proposed changes as beneficial to the IFQ Program.

Response: This support is noted.

Comment 2: NMFS allows too many fish to be harvested. Fish species are going extinct.NMFS should cut all quotas by 50 percent this year and 10 percent each succeeding year.

Response: This rule changes certain features of the IFQ Program and does not affect how many halibut or sablefish may be harvested in Federal waters off Alaska. NMFS disagrees with the commenter's perception that fish species off Alaska are going extinct. Halibut and groundfish are managed conservatively and sustainably with annual quotas based on the best scientific information available. The IPHC recommends annual catch limits for Pacific halibut, which are adopted in regulations that the United States Secretary of State approves under section 4 of the Halibut Act. NMFS annually publishes catch limits and other management measures that are recommended by the IPHC to sustain halibut stocks. For 2007, the annual management measures for halibut were published March 14, 2007 (72 FR 11792). NMFS sets the annual TAC for groundfish, including sablefish, in regulations which are adopted by the Secretary under the Magnuson-Stevens Act. NMFS annually publishes TAC specifications for groundfish, including sablefish, and the rationale for the TAC, in the **Federal Register**. The TACs for groundfish for 2007 and 2008 in the BSAI were published on March 2, 2007 (72 FR 9451). The TACs for groundfish for 2007 and 2008 in the Gulf of Alaska

were published on March 5, 2007 (72 FR 9676).

Comment 3: Two comments specifically supported the new provision at § 679.42(d)(1) to allow medical transfers by QS holders.

Response: The support is noted.

Comment 4: Under proposed § 649.42(i)(1), QS holders who want to use a hired master to harvest their IFQ must have owned at least a 20 percent interest in the vessel from which the QS will be fished for at least 12 months prior to their using a hired master permit. The proposed regulation at § 679.42(i)(6) exempted a QS holder from this requirement if the QS holder suffered ''the actual total loss or constructive total loss'' of a vessel owned by the QS holder. The final rule should define ''constructive total loss'' to include a vessel that is out of the fishery for 30 days or longer. Another comment said that a vessel owner should be exempt if his or her vessel would be out of the fishery for repairs for two to six months.

Response: NMFS acknowledges that the term ''constructive total loss'' was not defined in the proposed rule and agrees that it should be defined in a final rule. The terms ''total loss'' and ''constructive total loss'' are most commonly used in insurance. ''Total loss'' means the complete destruction of an item of property. ''Constructive total loss'' means a loss to insured property that is not total, but is so great that repair would cost more than the value of the property. Some definitions of ''constructive total loss'' include that the item has lost its total usefulness to the insured person. If NMFS were going to adopt the 12-month vessel ownership requirement in the final rule, the only QS holders that it could exempt from the 20 percent/12-month requirement would be those IFQ permit holders who had suffered a total loss or constructive total loss of their vessels, in accordance with a standard definition of those terms.

NMFS cannot adopt in this final rule a definition of ''constructive total loss'' that includes a vessel that is out of the IFQ fishery temporarily for repair. This definition of ''constructive total loss'' was not in the proposed rule. This definition is antithetical to the standard definition of ''constructive total loss,'' which is that the item is unable to be repaired for less than the value of the item. Thus, NMFS could not, consistent with the requirements in the Administrative Procedure Act, adopt in this final rule an exemption from the 12-month requirement for QS holders whose vessels are undergoing repair because the proposed rule did not give notice that NMFS might adopt that provision. A vessel repair exemption is not a logical outgrowth of the proposed rule, which exempted only QS holders who suffered a total loss or constructive total loss of their vessels.

Comments on this subject, however, bring to light a consequence of the proposed rule, which NMFS concludes was unanalyzed, and probably unintended, by the Council. Currently, if a QS holder's vessel needs repairs, the QS holder can acquire a 20 percent ownership interest in another vessel and use a hired master on that vessel to harvest his or her IFQ. Under the proposed rule, if a QS holder's vessel suffers damages and is out of the fishery for repairs, the QS holder would not be able to hire a master to fish his or her QS until his vessel is repaired, or until 12 months have elapsed, unless the QS holder had a minimum 20 percent ownership interest in a second vessel for the 12 months prior to wanting to use a hired master and the second vessel was available to fish in the IFQ fishery. NMFS is not willing to presume that many or most QS holders could maintain at least a 20 percent ownership interest in two or more vessels.

For QS holders who may use hired masters (other than in Area 2C for halibut or Southeast Outside for sablefish), the proposed rule left them the option of personally fishing their IFQ. If an individual QS holder is personally fishing his or her IFQ, this can be done from any boat, even if the QS holder has no ownership interest in it. For QS holders that must use hired masters such as corporations or partnerships that were initial QS recipients, the proposed rule did not leave them that option because they must use a hired master.

It is not clear whether the Council wanted to exempt QS holders whose vessels need repairs from the 12-month vessel ownership requirement, from the 20 percent ownership requirement or from the combined 20 percent/12-month vessel ownership requirement. In December 2006 the Council passed a resolution asking NMFS to define ''constructive loss.'' The Council then submitted a comment on the proposed rule. The Council's comment suggests that the Council wanted NMFS to define ''constructive loss'' to include a vessel that was out of the fishery for repairs. In that case, however, NMFS has insufficient guidance on what vessel repair situations to exempt. This uncertainty leads to the following questions: Would any repair of a vessel, or only certain types of repairs, trigger an exemption from the 12-month ownership requirement? Would a QS holder who is scheduling a vessel upgrade or routine maintenance be exempt or only a QS holder whose vessel needs unanticipated repairs? Would the exemption be triggered by repairs over a certain dollar amount or by repairs that kept the vessel out of the fishery for a certain period of time? Would it matter whether the need for repairs occurred early or late in the IFQ season? For how long would the QS holder be exempt from the 12-month requirement? And would the QS holder whose vessel needs repairs be exempt from the 12-month ownership requirement and the 20 percent ownership requirement? After receiving Council guidance on this issue, the Administrative Procedure Act would require that NMFS publish the criteria or conditions of the ''vessel repair'' exemption in a new proposed rule, before NMFS could adopt it in a final rule.

Therefore, NMFS is not adopting the 12-month requirement in the final rule and is seeking clarification from the Council on whether it wants to exempt QS holders whose vessels need repair from the 20 percent ownership requirement, the 12-month ownership requirement, or the combined 20 percent/12-month requirement and, if it does, the terms of the exemption.

Comment 5: The only QS holders who have the right to use a hired skipper are QS holders who were initial recipients of QS for catcher vessels and who meet other requirements. Some of these ''old timers'' will not be able to afford to buy or build a new boat and then leave it tied to the dock for 12 months before it goes fishing.

Response: The proposed regulation would not have required a QS holder to leave a boat tied to the dock before the vessel goes fishing, as it could have been used in non-IFQ fisheries. If NMFS had adopted this part of the proposed rule, NMFS would have had to determine whether to make this requirement effective immediately or whether to delay the effective date for 12 months. See Comment 9.

As noted in response to Comment 4, NMFS has concluded that the proposed regulation affected whether these ''old timers'' could use hired masters to fish their IFQ when their vessels were out of the fishery temporarily for repairs. NMFS is seeking clarification from the Council on whether it wants to exempt from the 20 percent/12-month vessel ownership requirement only those QS holders who suffer a total loss or total constructive loss of their vessels or whether it also wants to exempt QS holders whose vessels are temporarily

out of the fishery for repairs and, if so, the terms of the exemption.

Comment 6: The proposed requirement for a QS holder to own a 20 percent interest in a vessel for 12 months prior to using a hired master will make entry into the halibut and longline fishery more difficult. Under the current system, it is easier for a person who owns a vessel, and does not own IFQ, to find IFQ permit holders to be partners.

Response: The imposition of a 12-month vessel ownership requirement would still allow those seeking entry into the IFQ fishery to prove themselves by forming ownership agreements with IFQ permit holders, but they would have to be longer-term agreements, i.e., a year or longer. If the imposition of the 12-month ownership requirement causes QS holders who have been entering into short-term ownership agreements to sell their QS, more QS will be available for purchase by those seeking entry into an IFQ fishery.

As noted in response to Comment 4, however, NMFS needs the Council to clarify whether it wishes to exempt QS holders whose vessels are temporarily out of the IFQ fishery for repairs from the 20 percent/12-month ownership requirement and if so, the terms of the exemption.

Comment 7: The problem of QS holders forming short-term vessel ownership agreements has never been quantified and is a personal issue only.

Response: NMFS disagrees that the proposed 12-month vessel ownership rule was merely responding to ''personal issues.'' The Council was responding to genuine policy concerns. From the inception of the IFQ Program, the Council's goal has been to have an owner-operated fleet in the IFQ fisheries. Based on the Council's recommendation, NMFS adopted the minimum 20 percent vessel ownership requirement in 1999 (May 10, 1999; 89 FR 24960). Before that, an IFQ permit holder wishing to use a hired master had to prove only ''an ownership interest'' and IFQ permit holders could acquire as little as 0.1 percent ownership interest in a vessel expressly for the purpose of hiring a skipper (December 16, 1998; 63 FR 69256). The Council required a minimum 20 percent ownership interest to prevent that practice, which had circumvented the Council's goal of an owner-operated fleet in the IFQ fisheries. But the minimum 20–percent-ownership requirement still allowed an IFQ permit holder to ''own'' a 20 percent interest in a vessel for a short period of time, e.g., the duration of a two- or three-week fishing trip. Such short-term ownership agreements undermined the development of an owner-operated fishery. Therefore, in addition to a substantial percentage ownership, defined as 20 percent or more, the Council recommended an additional requirement of owning the vessel for a substantial period of time, defined as twelve months or longer.

The proposed 12-month ownership requirement resulted from recommendations of Council committees established to assist the Council in its conservation and management duties under the Magnuson-Stevens Act. In October 2003 the IFQ Implementation and Cost Recovery Committee (Committee) recommended a number of changes in the IFQ Program. The Committee recommended that NMFS implement criteria to tighten compliance with the minimum 20 percent vessel ownership requirement that the Council adopted in 1999, including a one-year limitation on ownership changes. In December 2003, the Advisory Panel for the Council reviewed the Committee's recommendations and recommended that the Council analyze them. In December 2003, the Council approved the Committee's recommendations for analysis. In October 2004, the Council approved publication of the analysis for public review and comment. In December 2004, the Council approved tightening the 20 percent vessel ownership requirement by requiring specified documentation of ownership and by requiring that the QS holder have the requisite minimum ownership interest for twelve months prior to using the hired skipper exception. All meetings of the Council and its committees are open to the public.

As noted in response to Comment 4, however, the proposed rule would have prevented all QS holders from entering into short-term ownership agreements, including those who do so because their vessels need repairs. NMFS is seeking clarification from the Council on whether the Council wishes to exempt from the 20 percent/12-month ownership requirement those QS holders whose vessels are temporarily out of the IFQ fishery due to repairs and, if so, the terms of the exemption.

Comment 8: The proposed requirement that a QS holder own a 20 percent interest in a vessel for twelve months prior to applying to use a hired master is unnecessary because the only QS holders who can hire masters are original recipients. Eventually, no original recipients will exist and all QS holders will have to be onboard the vessel when their IFQ is fished.

Response: NMFS agrees that in the long run this problem will be resolved as original recipients pass from the fishery. However, a considerable amount of catcher vessel QS is still held by QS holders who may use hired masters and QS holders who must use hired masters. As of 2002, QS holders who may use hired masters held 42 percent of the halibut catcher vessel QS and 33 percent of sablefish catcher vessel QS. As of 2002, QS holders who must use hired masters held 25 percent of halibut catcher vessel QS and 30 percent of sablefish catcher vessel QS (see Table 3.1 of the FRFA). Because many QS holders are still using hired masters, the Council and NMFS can impose restrictions to prevent these QS holders from, in effect, leasing their QS. Hence, the Council's recommendation and the proposed rule that these original QS holders must have a substantial, long term interest in the vessel from which their QS is fished.

As noted in response to Comment 4, however, the proposed rule would have prevented all QS holders from entering into short-term ownership agreements, including those who do so because their vessels need repairs. NMFS is seeking clarification from the Council on whether the Council wishes to exempt from the 20 percent/12 month ownership requirement those QS holders whose vessels are temporarily out of IFQ fishery due to repairs and, if so, the terms of the exemption.

Comment 9: If NMFS adopts the proposed 12-month ownership provision in § 679.42(i) and (j), the effective date of this provision should be 12 months after the regulation is adopted. This would provide lead time for compliance by QS holders before the regulation becomes law.

Response: NMFS is not adopting the 12-month ownership requirement in this final rule. If NMFS adopts this requirement in a future rule, NMFS will consider this comment when it sets an effective date for the rule.

Comment 10: The proposed 12-month ownership requirement in § 649.42(i) and § 679.42 (j)(1) imposes an unfair burden on QS holders that are required to hire a master to harvest their QS. Maintaining and insuring a vessel for 12 months prior to using the vessel is an inequitable requirement. QS holders who may, or who must, use a hired master could be required to maintain their ownership for a period of 12 months without such an economic burden. An alternative suggested in the comment is to accept only one change annually in a vessel's documentation.

Response: NMFS does not see this comment as a reason not to adopt the

12-month ownership requirement. If by ''economic burden,'' the commenter means that the rule may result in QS holders making a more substantial investment in the vessels from which their QS is fished, NMFS sees that as consistent with the Council's reasons for adopting the 12-month ownership requirement. See Response to Comment 7. The alternative suggested by the commenter only one change in vessel ownership a year does not require that the QS holder maintain an ownership interest for 12 months. This alternative still allows a QS holder to use a hired master on a vessel in which the QS holder had an ownership interest only for the duration of a fishing trip.

However, the minimum 12-month requirement would affect all QS holders, including those QS holders who resort to short-term vessel ownership agreements because their regular vessels need repairs. NMFS is seeking clarification from the Council on whether it wishes to exempt QS holders whose vessels are temporarily out of the IFQ fishery for repairs from the 20 percent/12-month ownership requirement and, if it does, the terms of the exemption.

Comment 11: The proposed regulation is good because it tightens up the requirement for a QS holder to use a hired skipper. The current regulation is too vague.

Response: NMFS agrees that the previous regulation for documentation of a QS holders's 20 percent ownership interest in the vessel was vague in that it required an individual to submit only non-specified ''written documentation.'' The final rule requires specific documentation an Abstract of Title for documented vessels and a State of Alaska boat registration or commercial vessel license for undocumented vessels. See the discussion of change number 5 under ''Changes in the Final Rule.''

The proposed rule also sought to restrict the use of hired masters by requiring a QS holder to own the required interest in a vessel for at least 12 months before receiving a hired master permit. As noted, NMFS is seeking clarification from the Council on whether it wants to exempt QS holders whose vessels need repairs from the minimum 12-month vessel ownership requirement and, if so, the terms of the exemption.

Comment 12: The final rule should define what documentation is necessary to prove a ''constructive total loss'' for the exemption from the 12-month ownership vessel requirement in § 679.42(i)(6).

Response: This final rule does not specify what documentation is necessary to prove a ''constructive total loss'' because it does not adopt any provision that contains the term ''constructive total loss.'' As previously noted, NMFS is seeking clarification from the Council on whether it wants to exempt from the 12-month ownership requirement only those QS holders who have suffered a total loss or total constructive loss of their vessel or whether it also wants to exempt those QS holders whose vessels are out of the IFQ fishery temporarily for repair. If in the future the Council proposes a rule that requires a QS holder to prove a ''constructive total loss'' of a vessel, the Council will evaluate whether to specify the documentation required to prove the loss.

Comment 13: The proposed regulation specifying the documentation that a QS holder must submit to prove 20 percent ownership interest in a vessel is unnecessary because an owner already has to produce documentation to prove 20 percent ownership of a vessel.

Response: NMFS disagrees. The prior regulation required only that NMFS determine 20 percent ownership of a vessel ''on the basis of written documentation'' (50 CFR 679.42(i)(1)). The Council was concerned that, under the prior regulation, some vessel owners were abusing the hired skipper provision through the use of informal, unverifiable transactions. The Council also was responding to NMFS staff reports that, under the prior regulation, it had been difficult to verify the minimum 20 percent vessel ownership. The final rule meets the Council's concerns by requiring the QS holder to submit a formal document of ownership issued by a government agency. An owner of a documented vessel must submit an Abstract of Title issued by the U.S. Coast Guard that shows the QS holder is an owner of the vessel. An owner of an undocumented vessel must submit a State of Alaska boat registration or commercial vessel license that shows the QS holder is an owner of the vessel. If these documents prove the required percentage ownership, the QS holder need not submit any other documentation. If these formal documents do not prove percentage ownership, the QS holder must prove the required percentage ownership through additional written documentation.

Comment 14: Vessel operators who harvest sablefish in the BSAI should not be exempt from the Vessel Monitoring System (VMS) based on vessel size. If an exemption is desired, it should be based on the value of the sablefish that the vessel harvests in a year.

Response: This rule does not exempt any vessel operator who harvests sablefish in the BSAI from the requirement to have a VMS. The requirement applies to all vessels. The preamble to the proposed rule invited comment on whether small vessels should be exempt from the VMS requirement. No comments were received in favor of exempting vessels based on size. This comment merely stated that an exemption based on the amount of a vessel's harvest would be better than an exemption based on an overall length of a vessel. For reasons described in the preamble to the proposed rule, NMFS concludes that no exemption is warranted.

Comment 15: Our vessel is already required to have a VMS, because we fish in critical habitat in the Aleutian Islands and in area 4B. Using the VMS for clearance in the BSAI has turned out to have some actual time and fuel saving benefits.

Response: NMFS notes this information.

Comment 16: The number of QS blocks that a person can hold should not be increased from two blocks to three blocks. The proposed regulation allows further fleet consolidation, will result in less blocks available for purchase, will likely increase the cost of QS and will make entry into the halibut fishery more difficult.

Response: When the IFQ Program was started, all initially issued QS that resulted in less than 20,000 lb of IFQ was ''blocked,'' that is, issued as an inseparable unit. Also, no person was allowed to own more than two QS blocks per species in any regulatory area, or one QS block, if unblocked QS also was held by that individual for that area. The block approach was meant to prevent excessive consolidation in the IFQ fisheries, and maintain the diversity of the IFQ longline fleet, without compromising the flexibility and economic efficiency of the program as a whole. As noted in the FRFA for this action, the proportion of QS that is unblocked QS ranges from 29 percent in Area 2C to 65 percent in Area 3A. NMFS is aware of the concerns raised in the comment; they were discussed by the Council and discussed in the FRFA for this action. The FRFA notes that an increase from two to three blocks would lead to consolidation of QS, and would be likely to increase the value of blocked QS, but may consequently decrease the value of unblocked QS. The FRFA notes that the action might reduce the availability of entry-level opportunities in the fishery. The

Council weighed these considerations against the potential benefits of easing restrictions on the transfer of large blocks, and on helping small vessel owners constrained by ownership of two small blocks to make more economically viable trips.

Comment 17: The sweep up limit for QS blocks in regulatory Areas 2C and 3A should not be increased to 5,000 pounds, particularly in light of the proposal to increase the QS blocks a person can hold from two to three blocks. The proposed sweep up regulation will make entry into the halibut fishery more difficult. If the halibut sweep up limit is increased to 5,000 pounds, at current quota prices, an ''entry level'' block of halibut would cost approximately $100,000.

Response: The block provisions of the IFQ Program created many blocks that were quite small. The halibut IFQ regulations allow a ''sweep-up'' of small blocks that would be economically unfishable (i.e., the value of the harvest would not exceed the costs of the fishing trip). This allowed small QS blocks to be permanently consolidated as long as the resulting block did not exceed a specified limit. This limit has been 3,000 lb for halibut, based on 1996 TACs. This final rule implements the Council's recommendation that, for Areas 2C and 3A, the sweep-up limit be increased to 5,000 lb, based on 1996 QS units.

The FRFA for this rule recognizes that the block program was implemented in part to provide entry level opportunity in the IFQ fisheries, and that the increase in the ''sweep-up'' limit would reduce the numbers of small blocks available in the fishery. In this event, blocks containing more QS units than were previously allowed likely will cost more to purchase. Note that not all blocks would be consolidated to the maximum size, and the amount of unblocked QS would not be affected. The FRFA also indicates that the 3,000–lb sweep-up limit imposed costs on some fishing operations by constraining their growth and efficiency. The FRFA indicates large declines in the numbers of operations in areas 2C and 3A with QS holdings less than 3,000 lb, suggesting that holdings in this size range are not economically viable. Moreover, the block system creates significant transaction costs for operations with two blocks. An operation with two blocks must sell one of its existing blocks before buying a new block. The FRFA notes that the complexity involved in this dual transaction may provide a substantial obstacle to growth for active fishery participants. This final rule allows some QS holders who currently are at the threshold limit and the block limit to incrementally increase their QS holding without first selling one of their blocks. The Council balanced these considerations before choosing the 5,000 lb limit as its preferred alternative.

Comment 18: The ''fish down'' exception for category B QS in Area 2C and Southeast Outside should not be repealed. The current regulation prevents category B QS in Area 2C and Southeast Outside from being fished on vessels less than 60 feet length overall (LOA). The proposed regulation will have a severe adverse financial effect on IFQ permit holders who purchased vessels larger than 60 feet (18.3 m) LOA because the proposed rule will make QS less available for vessels that size.

Response: This final rule makes the category B restrictions for Area 2C halibut QS and Southeast Outside sablefish QS consistent with restrictions in all other halibut and sablefish management areas off of Alaska. The FRFA noted that this action would increase the marketability and potentially the value of unblocked and large blocks of category B QS. In this event, existing holders of category B QS in these areas would see an increase in the value of their holdings. The FRFA further noted that this might reduce the value of category C halibut and sablefish QS, relatively, as the supply of QS was expanded for operators of vessels less than or equal to 60 ft (18.3 m) LOA. While the FRFA points to potential increased costs for large vessels, the costs are not expected to be prohibitive. Large vessel operations may still enter the market to purchase category B shares, and may be in a better financial position to do so. Small vessel owners would be unlikely to drive category B prices above category C and D QS prices because that would increase their cost of usable QS.

Comment 19: The exception to the ''fish down'' regulation for category B QS in Area 2C and Southeast Outside should not be repealed. The proposed rule allows category B QS that currently must be fished on vessels greater than 60 feet (18.3 m) LOA to be fished on smaller vessels. The proposed regulation will decrease scientific data available on the halibut and sablefish fisheries since vessels greater than 60 feet must have observers onboard but vessels smaller than 60 feet do not have to have observers onboard.

Response: This rule likely will result in some QS that currently is fished from vessels greater than 60 ft (18.3 m) LOA being fished from vessels less than or equal to 60 ft (18.3 m) LOA and, therefore, likely will result in somewhat less observer data. NMFS concludes, however, that this is not a reason to disapprove this action for several reasons. First, this rule makes the category B QS restrictions for Area 2C halibut QS and Southeast Outside sablefish QS consistent with the category B QS restrictions in the rest of the State. Second, vessels over 60 ft (18.3 m) LOA that harvest IFQ sablefish and halibut generally must have observer coverage for 30 percent of their fishing days. Therefore, these vessels do not currently generate observer data every time they are fishing. These vessels still will harvest some IFQ halibut and sablefish and will supply observer data from 30 percent of their fishing days. The extent of the decrease in observer data is uncertain but is expected to be marginal. Finally, if the Council and NMFS perceive a harmful decline in observer data, they can propose rules to change the requirements of observer coverage.

Comment 20: The Product Recovery Rate (PRR) for bled sablefish should be changed from 0.98 to 1.00, based on the study, ''Product Recovery Rates for Bled Sablefish,'' by NOAA Fisheries and Alaska Longline Fishermen's Association (ALFA) members in Sitka. The study supports the conclusion that the PRR for bled sablefish of 0.98 does not reflect the difference between the weight of bled sablefish and unbled sablefish.

Response: NMFS disagrees based on its determination that the study does not support the proposed change in the PRR for bled sablefish from 0.98 to 1.00. NMFS concludes that the proposed change is not based upon the best scientific information available and that adoption of the proposed change would violate National Standard 2 of the Magnuson-Stevens Act. Therefore, NMFS disapproves the proposed change of the PRR for bled sablefish from 0.98 to 1.00. This means that the PRR for bled sablefish remains at 0.98, which is the current PRR in Table 3 to Part 679.

In the preamble to the proposed rule, NMFS noted ''serious concerns that the proposal may not be based on sufficient scientific evidence'' (71 FR 64222). NMFS specifically requested public comment on the appropriate PRR for this product type. Public comment did not demonstrate to NMFS that the proposed rule was based on the best scientific information available. Therefore, NMFS cannot approve the proposed change in the sablefish PRR.

A brief description of the study cited in the comment follows (the full study is in Appendix 2 of the FRFA). In 2002 and 2003, NMFS staff and ALFA

members conducted field experiments to determine the change in individual sablefish weight due to blood loss from different types of harvest methods. Fish weights were compared before and after bleeding. Sablefish lost 2 percent of their weight when bled on deck without flowing seawater. Sablefish lost 1.6 percent of their weight when bled and immersed in flowing seawater. Sablefish lost 2 percent of their weight when carefully brought aboard and bled. Sablefish lost 1.7 percent of their weight when they were gaffed aboard and bled without flowing seawater. Sablefish lost 1 percent of their weight when gaffed aboard, and not intentionally bled, because of blood loss at the gaff wound. The study concluded the following statement:

> The Product Recovery Rate currently applied by fishery managers to estimate catch weight for bled sablefish (2.0 %) slightly overestimates ''blood loss'' for fish gaffed aboard (1.7 %). The PRR applied by fishery managers for unbled sablefish (0.0 %) underestimates ''blood loss'' for fish gaffed aboard (1.0 %). Estimating the actual change in weight due to blood loss for a commercial fishing trip is difficult because it requires accounting for storage methods and handling practices.

The question is whether this study supports the proposed change in the PRR for bled sablefish from 0.98 to 1.00. The study does not support that change. The study concludes that the 2.0 percent PRR for bled sablefish ''slightly overestimates'' blood loss for bled sablefish. The blood loss for bled sablefish was 1.7 percent. The slight overestimation is 0.03 percent. All the percentages in the PRR table are whole percentages (Table 3 to Part 679). Therefore, under conventional rounding rules, 2 percent is the closest whole percentage to the actual blood loss of 1.7 percent and is the proper PRR for bled sablefish.

A change in the PRR for bled sablefish to 1.00 would imply that NMFS concluded that sablefish, when bled, lose no weight. The PRR for all other groundfish species, when bled, is 0.98 (Table 3 to Part 679). The conclusion that a species, when bled, loses no weight is counterintuitive and the study does not support that conclusion.

The commenters are correct that the study results do question the accuracy of the PRR of 1.00 for unbled sablefish. The PRR for unbled sablefish is 1.00, which means NMFS adds nothing to the weight of unbled sablefish when debiting the IFQ account of the IFQ permit holder that harvests sablefish that are categorized as unbled. The study stated that gaffing was the normal method for bringing sablefish aboard during longline fishing. Gaffed sablefish are treated as unbled. The study found a blood loss of 1 percent for gaffed sablefish because gaffing itself even with no intentional bleeding causes blood loss. Hence, the study suggests that the PRR for bled sablefish is inaccurate, relative to the PRR for unbled sablefish, because fishermen who catch and bleed their sablefish are charged 2 percent more than fishermen who catch and gaff their sablefish. The study does not suggest, however, that even this ''relative inaccuracy'' is 2 percent, because it concludes that bled sablefish weigh 1 percent less, not 2 percent less, than gaffed sablefish. Thus, even if ''relative inaccuracy'' were a valid basis to change the PRR for bled sablefish, it would support a change in the PRR for bled sablefish only from 0.98 to 0.99, an alternative that was rejected by the Council and not proposed.

If the current PRRs do not accurately reflect the difference between bled and unbled sablefish, it may be because the PRR for unbled sablefish is inaccurate, not because the PRR for bled sablefish is inaccurate. The problem may be that gaffed sablefish are treated as unbled but they are, in fact, bled, albeit unintentionally. To solve this problem, the Council could consider recommending a PRR for unbled sablefish of 0.99 or recommending a new category for gaffed sablefish with a PRR of 0.99. This problem cannot be solved by changing the PRR for bled sablefish from 0.98 to 1.00, because the conclusion that a sablefish loses no weight when bled is not based on the best available scientific data.

Comment 21: The PRR for bled sablefish should be changed from 0.98 to 1.00 because the study, ''Product Recovery Rates for Bled Sablefish,'' concluded that different storage methods and handling practices could affect blood loss.

Response: NMFS agrees that the study concluded that different storage methods and handling practices could affect blood loss. The study concluded, ''Measuring an accurate PRR requires further studies of the effects of storage methods (ice or refrigerated seawater) and handling practices (gaffing, hook removal devices, and soak time), which would be time-consuming to complete.'' The only practice that the study analyzed and stated was normal was gaffing. The study concluded that gaffing led to a 1 percent weight loss. Gaffed fish are treated as unbled. As noted in response to Comment 20, this conclusion about gaffed fish does not support changing the PRR for bled sablefish from 0.98 to 1.00. The study did not state that any other storage or handling method was standard. The study did not analyze the effect of any other storage or handling methods. Therefore, the caveat in the study about different storage and handling practices does not support changing the PRR for bled sablefish from 0.98 to 1.00.

Comment 22: A PRR of 0.98 for bled sablefish discourages bleeding sablefish, which is bad because bleeding improves the quality of product.

Response: The FRFA noted that in the fall of 2005, Council staff interviewed representatives of the major sablefish processors and the unanimous response was that they paid fishermen no price premium for bled versus unbled sablefish. If quality is measured by the market by what processors are willing to pay bleeding does not increase quality.

A more basic problem exists with this argument. Any PRR less than 1.00 for any fish product ''discourages'' that product because a fisherman's IFQ account is debited more for that product than for a whole fish product. For example, the PRR for sablefish headed and gutted without tail is 0.50 (Table 3 to Part 679). This means that if an IFQ permit holder reports a sablefish headed and gutted without a tail that weighs 10 pounds, the permit holder will be counted as having caught a sablefish that weighed 20 pounds. Although this arguably discourages heading and gutting and removing the tail of the sablefish, the discouragement is compensated to the extent that buyers want that sablefish product enough to pay fishermen for the time, labor, and expense to produce it.

The purpose of the PRR is not to encourage or discourage particular processing activities. The purpose of the PRR is to accurately measure the biomass of fish that is removed from the ocean. NMFS concludes that the current PRR for bled sablefish accurately measures the biomass of sablefish that is removed from the ocean and is based on the best scientific information available. Because NMFS concludes that the proposed 1.00 PRR for bled sablefish is not based on the best scientific information available, the proposed change is not approved.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 67 is necessary for the conservation and management of the sablefish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The FRFA prepared for each action assesses potential impacts on small entities for purposes of the Regulatory

Flexibility Act (RFA). NMFS reviewed multiple alternatives for each individual action, including a ''no action'' alternative and a preferred alternative, in separate FRFAs. Each FRFA describes the potential adverse impacts on small entities, attributable to the proposed alternatives for each action.

The objective of each action in this final rule and its legal basis is explained in the preamble of the proposed rule (71 FR 64218) and in this final rule. Changes in the final rule from the proposed rule are described under ''Changes in Final Rule'' above.

NMFS defines all halibut and sablefish vessels as small businesses, for the purpose of this analysis. In 2003, 1,338 unique vessels made IFQ halibut landings, and 409 unique vessels made sablefish landings.

The number of small entities operating as fishing vessels in the IFQ fisheries may be deduced from certain restrictions placed on those vessels. The IFQ Program restricts the amount of annual IFQ that may be landed from any individual vessel. A vessel may be used to land up to 0.5 percent of all halibut IFQ TAC, or up to 1 percent of all sablefish TAC. In 2003, 295,050 lb (133.8 mt) of halibut constituted 0.5 percent of all the halibut IFQ TAC and 348,635 lb (158.1 mt) of sablefish constituted 1 percent of all the sablefish IFQ TAC. NMFS annually publishes standard prices for halibut and sablefish that are estimates of the ex-vessel prices received by fishermen for their harvests. NMFS uses these prices for calculating IFQ holder cost recovery fee liabilities. In 2003 price data suggested that the prevailing prices were approximately $2.92 per pound for halibut and $2.36 per pound for sablefish (68 FR 71036; December 22, 2003). In combination, the harvest limits and prices imply maximum ex-vessel revenues of about $1.68 million for halibut and sablefish together. Although some halibut and sablefish IFQ operations participate in other revenue generating activities, the halibut and sablefish IFQ fisheries probably represent the largest single source of annual gross receipts.

Based on available data, and more general vessel economic activity information of vessels in these IFQ fisheries, no vessel subject to these restrictions is believed to have been used to land more than $4.0 million in combined gross receipts in 2003. Therefore, all halibut and sablefish vessels have been assumed to be ''small entities,'' for purposes of the FRFA. However, this simplifying assumption likely overestimates the true number of small entities, since it does not take account of vessel affiliations. No reliable data exist on vessel affiliation. The conclusions of the FRFA for each action are summarized separately below.

Emergency Medical Transfers

Since the initial implementation of the halibut and sablefish IFQ Program in 1995, individuals have submitted numerous petitions to NMFS and the Council requesting the temporary transfer of IFQs for medical reasons. These individuals sought medical transfers due to the inability of IFQ holders to physically be onboard the vessel as IFQs were fished. NMFS was previously unable to implement a medical transfer program recommended by the Council due to legal and administrative constraints. The approach proposed in this action would resolve the issues arising from previous approaches.

This action could directly affect 3,349 halibut QS holders and 874 sablefish QS holders. NMFS currently does not have sufficient ownership and affiliation information to determine the precise number of small entities in the IFQ Program or the number that would be impacted by the proposed action. Approximately 12 QS holders contact NMFS or the Council each year for information about medical transfers in the IFQ Program. However, it is not possible to estimate how many QS holders did not contact NMFS or the Council, but would have requested a medical transfer if it were available. This analysis assumes that all halibut and sablefish QS operations are small for RFA purposes.

Alternative 1 was the no action or status quo alternative and would not have any associated adverse economic impacts on directly regulated small entities. However, the status quo would not have advanced the objectives of this action to relieve a burden on certain types of fishing operations. Alternative 2 would allow medical transfers, but would require an applicant to document his/her medical emergency with NMFS. The transfer would also require an affidavit from a licensed medical doctor, an advanced nurse practitioner, or a primary community health aide, that describes the medical condition affecting the applicant and attests to the inability of the applicant to participate in the IFQ fishery(ies) for which she or he holds IFQ permit(s), during the IFQ season. In the case of a family member's medical emergency, the affidavit would describe the necessity for the IFQ permit holder to tend to an immediate family member who suffers from the medical condition. An emergency transfer would not be granted if the individual had been granted an emergency medical transfer in any two of the previous five years.

Options were considered which would have been less specific about the types of medical professionals from whom affidavits would have been accepted, and which would have allowed transfers for persons who had received medical transfers in three of the last six years. These options might have provided more flexibility to small entities, however the Council and NMFS are also concerned about the potential for abuse of this program, and adopted more conservative measures to better control use of the exemption. These more conservative measures advance the Council's objective of limiting IFQ leasing and encouraging an owner-operator fishery.

An individual must submit an Application for Emergency Medical Transfer of IFQ to receive a medical transfer. Public reporting time per response is estimated to average 2 hours per application. To support the application, the QS holder must submit a written declaration from a medical professional.

Owner Onboard Exception

The proposed rule, and the Council's preferred alternative for Action 2, had two elements for tightening the requirements for a QS holder to use a hired skipper rather than being onboard the vessel. First, the proposed rule specified the documentation a QS holder had to submit to prove the minimum 20 percent ownership interest in the vessel that the hired skipper would use. Second, the proposed rule required the QS holder to have the minimum ownership interest for 12 months prior to using a hired master. As explained below, the final rule adopts the documentation requirement but does not adopt the 12-month provision.

Specified Documentation

The requirement for catcher vessel QS holders to be onboard the vessel during harvest and offloading of IFQ species constitutes a key element of the halibut and sablefish IFQ Program. The Council remains concerned about alleged abuses of the regulatory provision allowing vessel owners who received QS as initial allocation to hire masters to harvest their IFQs without being onboard the vessel. Specifically, the final rule specifies the documentation that a QS holder must submit to prove the required ownership of the vessel that the hired master will use. For documented vessels, the QS holder must submit an Abstract of Title. For undocumented vessels, the QS holder must submit a State of Alaska

registration or license. In both cases, other written documentation may be required if necessary to prove the required percentage ownership interest. The Council adopted the documentation requirement out of concern that some vessel owners were abusing the hired skipper provision through the use of informal, unverifiable transactions. The Council was also responding to NMFS staff reports that, under the prior regulation, it had been difficult to verify the minimum 20 percent vessel ownership.

Two comments on the proposed rule addressed the documentation issue. Comment 11 favored the provision. Comment 13 said the requirement was unnecessary because the current regulation required written documentation. NMFS responded to those comments under ''Comments and Responses'' and made no change in this provision as a result of public comment.

The final rule could directly regulate a maximum of 4,200 halibut and sablefish QS holders who hold category B, C, or D QS. NMFS currently does not have sufficient ownership and affiliation information to determine precisely the number of small entities in the IFQ Program or the number that would be adversely impacted by the present action. The FRFA assumes that all entities affected by the hired master provision are small for RFA purposes.

The FRFA for the documentation provision reviews the status quo (Alternative 1) and the Council's preferred alternative (Alternative 2) which was contained in the proposed rule and is adopted in the final rule. Alternative 1 would maintain the current 20 percent vessel ownership requirement for catcher vessel QS holders eligible to hire a master to harvest IFQs. Current regulations do not specify the documents needed to demonstrate percentage of vessel ownership and, therefore, the requirement is difficult to monitor, verify, or enforce. Alternative 2 amends the regulations to require specific, formal documentation of ownership of the catcher vessel before use of the hired master exception: (1) an Abstract of Title for a documented vessel showing the required 20 percent minimum ownership interest (or other percentage, if applicable), and (2) a State of Alaska vessel registration or license for undocumented vessels. In both cases, other written documentation may be required if necessary to prove the required percentage ownership interest. While the status quo would place a smaller burden on directly regulated small entities, it would not accomplish the objective of tightening the documentation procedures so as to successfully enforce the regulations. This regulation supports the Council's objective of encouraging an owner-operator fishery.

The projected reporting, recordkeeping, and other compliance requirements of this provision are expected to take one hour per document to prove vessel ownership.

12-month Ownership Requirement

The final rule did not adopt the 12-month requirement in the Council's preferred alternative for reasons explained in Comments and Responses. NMFS received comments from the public and from the Council on the proposed rule. These comments raised the question of the effect of the proposed rule on QS holders whose vessels need repair and who, for that reason, use a hired master to fish their IFQ from a vessel which they have not owned for 12 months. NMFS concluded that it could not exempt those QS holders whose vessels need repairs from the 12-month requirement because the proposed rule only excluded QS holders whose vessels suffered ''constructive total loss.'' That term is commonly used in insurance and a key element of a standard definition of ''constructive total loss'' is that the insured item cannot be economically repaired, i.e., the cost of repairing the item is worth more than the item itself. Further, if the Council wishes to adopt a vessel repair exemption, the Council must specify the elements of the exemption. NMFS therefore is not adopting the 12-month requirement in the final rule but is seeking clarification from the Council on a possible exemption to the 12-month vessel ownership for QS holders who resort to short-term ownership vessel agreements because their vessels need repairs.

Sablefish Vessel Clearance Requirements

This rule adds a VMS-based vessel clearance requirement to the BSAI sablefish fisheries. The BS and AI sablefish fixed gear sectors have not fully harvested their TACs since the beginning of the IFQ Program. Reasons for harvest shortfalls include predation by killer whales, increased costs of traveling to the BSAI, and relatively low catch rates in the BSAI that may result in harvesters fishing in the western GOA and possible misreporting that the harvest was from the BS or AI. The industry has expressed concern that a lack of enforcement may have resulted in misreporting of harvests taken in the GOA as having come from the BSAI.

There are 163 unique persons holding QS in the AI or BS and GOA. Of these unique persons, 42 hold QS in all three areas, 34 hold QS in the AI and GOA, and 43 hold QS in both the BS and GOA for a total of 119 directly affected small entities under Alternative 2. This analysis assumes that all operations are small.

The analysis of vessel clearance alternatives reviews the status quo and the preferred alternative to add either visual clearance or VMS requirements. Alternative 1 would result in no change to the regulations. Alternative 2 imposes a check-in/check-out requirement and/or a VMS requirement. The preferred alternative would implement the VMS requirement option of Alternative 2, without the check-in/check-out option, as a disincentive to misreporting of catch areas.

The status quo alternative would not have created a clearance requirement. An option for Alternative 2 that would have created a visual clearance requirement for vessels that did not carry VMS was not adopted. The status quo alternative would have created smaller costs for operating vessels, but would not have met the monitoring and enforcement objectives of this action, and the objective of increasing public confidence in sablefish management. The visual clearance alternative was not adopted because the lack of personnel, and legal constraints on delegation of enforcement authority to private entities, made it impracticable for enforcement purposes.

This action will create new recordkeeping requirements for fishing operations. The operator of any vessel who fishes for sablefish in the BSAI management area must carry a transmitting VMS while fishing until all sablefish caught in any of these areas is landed. The operator of the vessel also must notify NOAA Fisheries Office of Law Enforcement of the presence of a functioning VMS unit on the vessel at least 72 hours before fishing, and receive a VMS confirmation number.

Bled Sablefish Product Recovery Rate

Under current regulations, NMFS applies a PRR of 0.98 to all sablefish intentionally bled upon landing. NMFS uses this rate to calculate the equivalent round weight to be attributed to a harvest allocation.

This action could directly affect a maximum of 874 sablefish QS holders (this estimate is probably high because of some double-counting of QS holders), although not all of these IFQ holders land their catch as bled fish. At present, NMFS does not have sufficient ownership and affiliation information to

determine precisely the number of small entities in the IFQ Program or the number that would be adversely impacted by this action. This analysis assumes that all operations are small.

The FRFA reviewed the status quo and two alternatives to change the PRR for bled sablefish. Alternative 1 would not revise the PRR for bled sablefish, and it would remain at 0.98. Alternative 2 would change the PRR to 1.0 for bled sablefish, which would effectively eliminate the PRR. Alternative 3 would change the PRR to 0.99. Alternatives 2 and 3 might have allowed some small fishing entities to increase the revenues from their QS. The Council's preferred alternative was Alternative 2, which was contained in the proposed rule. However, NMFS concluded that the proposed rule, which would have changed the PRR for bled sablefish from 0.98 to 1.00, was not based on the best scientific information available and therefore violated National Standard 2 of the Magnuson-Stevens Act. NMFS explains this conclusion in responses to comments 20, 21, and 22 on the proposed rule. The FRFA incorporates NMFS' responses to these public comments and also concludes that Alternative 2 violates National Standard 2.

No additional recordkeeping or reporting requirements are associated with this action.

Halibut Block Program Amendments

Since implementation of the IFQ Program, the halibut fleet has experienced large quota increases, consolidation, and changing use patterns. Halibut QS holders have indicated that the existing block and sweep-up restrictions are cumbersome, and changing the restrictions could improve flexibility and efficiency in fishing operations.

This action would directly regulate holders of halibut QS blocks in all IFQ areas. There are 3,205 persons, both individual and collective entities, who hold at least one block of halibut QS. Eighty to ninety percent of QS holders hold at least one block in each regulatory area except for Area 4A. At present, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of small entities in the IFQ Program, nor the number of directly regulated small entities that would be adversely impacted by the present actions. This analysis assumes that all operations are small for RFA purposes.

The FRFA reviews the status quo and four alternatives to the existing halibut IFQ Program requirements. One alternative would increase block holding limits, two alternatives would allow the break-up of blocks yielding more than 20,000 lb of halibut, based on the 2004 TACs, and a fourth would increase sweep-up limits for halibut in Areas 2C and 3A.

Alternative 1 is the no action alternative and would not have any associated adverse economic impacts on directly regulated small entities, but would not accomplish the objectives of the action.

Alternative 2 would increase the block limits for persons holding only blocks, and/or persons holding blocks and unblocked QS. Four options were available. The Council chose the option that relaxed the limits the least; under its preferred option a QS holder without unblocked QS would be able to hold three blocks (as opposed to two under the status quo), while a QS holder with unblocked QS would continue to be restricted to holding one block (as under the status quo). Other alternatives would have allowed persons without unblocked QS to hold up to four blocks, or allowed persons with unblocked QS to hold up to 2 or 3 blocks. QS block holders that are currently constrained would benefit from increased operational flexibility under an increased block size limit. This may decrease the market value of unblocked QS in relation to blocked QS, because by relaxing the ownership constraint on blocked QS, it would become relatively more marketable. This would hurt small entities that currently hold it, but benefit small entities that would like to acquire it. There are no data available to determine whether and by how much the alternative would change QS market value.

Alternative 3 would unblock all QS blocks yielding more than 20,000 lb of halibut based on 2004 TACs, in all regulatory areas. The Council modified Alternative 3 by (a) limiting the preferred alternative to only Areas 3B and 4A, because these areas contain the most large QS blocks, and by (b) permitting the division of large blocks into new blocks yielding 20,000 lb, plus unblocked QS. Additional flexibility in managing QS holdings would yield greater asset liquidity to owners of large QS blocks, allowing them to be more responsive to operational needs and economic opportunities. The preferred alternative also may impact the value of unblocked shares in Areas 3B and 4A by increasing the proportion of unblocked QS available in those IFQ areas. Benefits could accrue to holders of large QS blocks, and fishermen wishing to make adjustments to their QS asset holdings to reflect changes in their personal circumstances, or the broader economic environment (e.g., market demand, input costs). At present, the capital demands associated with transferring very large restricted blocks is reportedly prohibitive. The preferred alternative would contribute to alleviating this potential barrier to the transfer of the large, restricted blocks. The action may increase the amount of unblocked QS and decrease its value. This would hurt small entities currently holding unblocked QS, but may help small entities that had an interest in acquiring more. Differential impacts on the basis of size of the regulated entity attributable to this preferred alternative are difficult to identify, because all are ''small'' based on criteria in the RFA.

Alternative 4 would allow large QS block holders to divide their holding into smaller blocks, potentially increasing efficient use of the QS holding. Data are unavailable to determine the extent to which QS holders would be likely to take advantage of this option. Should all large holdings be divided, the alternative may impact the market price of block holdings.

Alternative 5 was selected as a part of the preferred alternative. Alternative 5 would increase the halibut sweep-up levels in Areas 2C and 3A from 3,000 lb equivalents to 5,000 lb equivalents in QS units, based on the 1996 halibut TAC. This preferred alternative would allow small QS block holders to incrementally increase their holdings. There are no apparent adverse impacts on small entities.

The Council sought to provide more flexibility for fishing operations to change and grow, and to structure themselves into viable operations, while maintaining a balance with constraints that prevented undue consolidation. The Council relaxed consolidation restrictions somewhat in order to permit operations to restructure more easily, but it did not adopt other alternatives that would have relaxed restrictions by a greater amount because it sought to limit the extent to which consolidation would occur. Alternative 1 was rejected because it would not address the problem. The less restrictive options for Alternatives 2 and 3 were rejected because of the increased scope for consolidation. Alternative 4 was somewhat more restrictive than the preferred version of Alternative 3 in the areas where increased flexibility was considered to be appropriate (3B and 4A), and was thus rejected. Alternative 5 was adopted.

No additional recordkeeping and reporting requirements are associated with this action.

Halibut QS Vessel Category Amendments

Halibut fishermen in western Alaska have identified safety concerns in Areas 3B and 4C, and problems in fully harvesting Area 4C QS, associated with fishing in those areas on small vessels. These problems can be alleviated, in large part, by relaxing the current restrictions on vessel length associated with category D quota share.

The action could potentially directly regulate 243 category D halibut QS holders in Areas 3B, 4A, 4B, and 4C. Currently, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of entities in the IFQ Program that are ''small,'' based on the Small Business Administration guidelines, nor the number that would be adversely impacted by the present action. This analysis assumes that all directly regulated operations are small for RFA purposes.

Four alternatives were considered: (1) the status quo, (2) an alternative permitting category D QS to be fished from category C vessels, (3) an alternative permitting D QS to be fished from category C and B vessels, and (4) an alternative to combine C and D QS. The preferred alternative is Alternative 2 in Areas 3B and 4C, and the status quo in other western Alaska areas.

Alternative 1 is a no action alternative and would not have associated adverse economic impacts on directly regulated small entities. Alternative 1 is the preferred alternative in Areas 4A, 4B, and 4D, because no safety or IFQ harvest concerns were raised by industry in those areas.

Alternatives 2, 3, and 4 would allow category D QS to be fished on larger vessels, which includes vessels less than or equal to 60 ft (18.3 m) LOA for Alternatives 2 and 4, and vessels of any size for Alternative 3. The proposed alternatives could address safety concerns for small vessel operators and concerns over the ability of category D QS holders in Area 4C to completely harvest their IFQs. Because the proposed alternatives are likely to increase the value of category D QS, there may be some corollary decrease in the value of category C QS, and also category B QS in the case of Alternative 3. However, category D QS constitutes such a small share of the aggregate halibut TAC in Area 3B, that such a change in relative value would not be expected to substantially influence the market for QS. There may be a somewhat greater impact in Area 4C.

The objective of this action is to address industry concerns about small vessel safety in the Western Alaska halibut fisheries in Areas 3B and 4C, and concerns over low harvests of category D QS in Area 4C. Since concerns are specific to Areas 3B and 4C, the status quo action is appropriate for Western Alaska Areas 4A, 4B, and 4D. The status quo alternative does not address the safety objectives in Areas 3B and 4C, and the low harvest concerns in Area 4C, so it was not chosen. Alternatives 2, 3, and 4 can meet these objectives. A qualitative analysis suggests that these alternatives appear to impose similar costs on directly regulated small entities. Alternative 2, which would allow category D QS to be fished off of category C vessels is the preferred alternative. Both Alternatives 2 and 3 may reduce entry level opportunities by increasing the cost of acquiring category D QS. Alternative 3 would allow category D QS to be fished off of vessels of any size, while Alternative 2 maintains the less than or equal to 60 ft (18.3 m) LOA restriction; thus Alternative 2 would preserve more of the existing fleet structure. Alternative 4 would eliminate category D QS, and may limit the Council's future ability to use this class of QS to meet its programmatic objections. NMFS is not aware of any alternatives, in addition to the alternatives considered therein, that would more effectively meet these RFA criteria.

No additional recordkeeping and reporting requirements are associated with this action.

Southeast Alaska QS Restriction Amendment

In the original IFQ Program for halibut and sablefish, category B QS was permitted to be fished only on a vessel greater than 60 ft (18.3 m) LOA. In 1996 the Council adopted a regulatory change that allowed category B QS to be fished on vessels less than or equal to 60 ft (18.3 m) LOA. At the time, certain category B QS holdings in the Southeast Outside District sablefish and Area 2C halibut fisheries were identified as ineligible for ''fish down,'' and IFQ derived from these quota shares must be fished on a vessel greater than 60 ft (18.3 m) LOA. This was intended to ensure that category B quota share would be available to vessels 60 ft (18.3 m) LOA or greater. However, some fishermen have recently identified this prohibition as unnecessary, inefficient, and burdensome.

This proposed action could potentially affect 72 holders of category B halibut QS in Area 2C, and 87 persons who hold category B sablefish QS in the Southeast Outside District. Indirectly, the action may affect 22 owners of vessels greater than 60 ft (18.3 m) LOA who made landings in 2003 in the halibut fisheries in Area 2C, 40 large vessel owners who landed sablefish in the Southeast Outside District in 2003, 825 persons who are category B, C, or D halibut QS holders in Area 2C, and 436 persons who are category B or C sablefish QS holders in the Southeast Outside District. Currently, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of RFA small entities in the IFQ Program nor the number that would be adversely impacted by the preferred alternative. For the purposes of this RFA, this analysis assumes that all operations are small.

The preferred alternative would allow all category B QS, in either Area 2C for halibut or the Southeast Outside District for sablefish to be fished on any size catcher vessel. It may have the potential to disadvantage large (greater than 60 ft (18.3 m) LOA) vessel operations that can only harvest category B QS, as competition for access to these QS could be substantially broadened. It may also lead to decreases in the prices of category C and D QS. While the status quo alternative may have smaller adverse impacts on owners of larger vessels and of category C and D QS, the status quo would not accomplish the objective of the action, which is to eliminate a discriminatory provision, align halibut and sablefish program rules in Southeast Alaska with rules elsewhere in the state, and relieve a burden on holders of halibut and sablefish B QS in Southeast Alaska.

No additional recordkeeping and reporting requirements are associated with this action.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0445. Public reporting burden per response is estimated to average 12 minutes for a VMS check-in report, 6 hours for VMS installation, and 4 hours for VMS maintenance.

This rule also contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden per response is estimated to average 2 hours for Application for Emergency Medical Transfer of IFQ and 4 hours for each letter of appeal. NMFS will publish a final rule upon notification of OMB approval and assignment of an OMB control number for this new collection.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Estimated time includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed , and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 1, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; and Pub. L. 108 199, 118 Stat. 110.

■ 2. In § 679.1, paragraph (d)(1)(i)(B) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(d) * * *

(1)* * *

(i) * * *

(B) Using fixed gear in waters of the State of Alaska adjacent to the BSAI and the GOA, provided that aboard such vessels are persons who currently hold sablefish quota shares, sablefish IFQ permits, or sablefish IFQ hired master permits.

* * * * *

■ 3. In § 679.2 add definitions in alphabetical order for ''Advanced nurse practitioner'', ''Licensed medical doctor'', and ''Primary community health aide'' to read as follows:

§ 679.2 Definitions.

* * * * *

Advanced nurse practitioner means a registered nurse authorized to practice in any state who, because of specialized education and experience, is certified to perform acts of medical diagnosis and the prescription and dispensing of medical, therapeutic, or corrective measures under regulations adopted by the state Board of Nursing.

* * * * *

Licensed medical doctor means a person who is licensed, certified, and/or registered in accordance with applicable Federal, state, or local laws and regulations, and is authorized to conduct the practice of medicine as defined by the state in which the person resides.

* * * * *

Primary community health aide means a person who has completed the first of three levels of community health aide training offered by the Norton Sound Health Corporation at the Nome Hospital, the Kuskokwim Community College in Bethel, the Alaska Area Native Health Service in Anchorage, or another accredited training center.

* * * * *

■ 4. In § 679.4, paragraphs (a) introductory text, (a)(1)(i), (a)(1)(ii), (d) introductory text, (d)(2), (d)(3)(i), (d)(4), (d)(5), (d)(6)(i), (e) introductory heading, (e)(3), (e)(4), and (e)(5) are revised to read as follows:

§ 679.4 Permits.

(a) Requirements. Only persons who are U.S. citizens are authorized to receive or hold permits under this section, with the exception that an IFQ hired master permit or a CDQ hired master permit need not be held by a U.S. citizen.

(1) * **

If program permit type is:	Permit is in effect from issue date through the end of:	For more information, see...
(i) IFQ:		
(A) Registered Buyer	Until next renewal cycle	Paragraph (d)(3) of this section
(B) Halibut & sablefish permits	Specified fishing year	Paragraph (d)(1) of this section
(C) Halibut & sablefish hired master permits	Specified fishing year	Paragraph (d)(2) of this section
(ii) CDQ Halibut		
(A) Halibut permit	Specified fishing year	Paragraph (e) of this section
(B) Halibut hired master permit	Specified fishing year	Paragraph (e) of this section
* * *	* *	* *

(d) *IFQ permits, IFQ hired master permits, and Registered Buyer permits.* The permits described in this section are required in addition to the permit and licensing requirements prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title and in the permit requirements of this section.

* * * * *

(2) *IFQ hired master permit.* (i) An IFQ hired master permit authorizes the individual identified on the IFQ hired master permit to land IFQ halibut or IFQ sablefish for debit against the specified IFQ permit until the IFQ hired master permit expires, or is revoked, suspended, or modified under 15 CFR part 904, or cancelled on request of the IFQ permit holder.

(ii) An original IFQ hired master permit issued to an eligible individual in accordance with § 679.42(i) and (j) by the Regional Administrator must be on board the vessel that harvests IFQ halibut or IFQ sablefish at all times that such fish are retained on board by a hired master. Except as specified in § 679.42(d), an individual that is issued an IFQ hired master permit must remain on board the vessel used to harvest IFQ

halibut or IFQ sablefish with that IFQ hired master permit during the IFQ fishing trip and at the landing site during all IFQ landings.

(iii) Each IFQ hired master permit issued by the Regional Administrator will display an IFQ permit number and the name of the individual authorized by the IFQ permit holder to land IFQ halibut or IFQ sablefish for debit against the IFQ permit holder's IFQ. In addition, IFQ hired master permits will also display the ADF&G vessel identification number of the authorized vessel.

(3) * * *

(i) A Registered Buyer permit authorizes the person identified on the permit to receive and make an IFQ landing by an IFQ permit holder or IFQ hired master permit holder or to receive and make a CDQ halibut landing by a CDQ permit holder or CDQ hired master permit holder at any time during the fishing year for which it is issued until the Registered Buyer permit expires, or is revoked, suspended, or modified under 15 CFR part 904.

* * * * *

(4) *Issuance*. The Regional Administrator will issue IFQ permits and IFQ hired master permits annually or at other times as needed to accommodate transfers, revocations, appeals resolution, and other changes in QS or IFQ holdings, and designation of masters under § 679.42.

(5) *Transfer*. The quota shares and IFQ issued under this section are not transferable, except as provided under § 679.41. IFQ hired master permits and Registered Buyer permits issued under this paragraph (d) are not transferable.

(6) * * *

(i) *IFQ permit and IFQ hired master permit*. (A) The IFQ permit holder must present a copy of the IFQ permit for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.

(B) The IFQ hired master permit holder must present a copy of the IFQ permit and the original IFQ hired master permit for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.

* * * * *

(e) *Halibut CDQ permits and CDQ hired master permits*. * * *

* * * * *

(3) *Halibut CDQ hired master permits*. An individual must have onboard the vessel a valid halibut CDQ hired master permit issued by the Regional Administrator before landing any CDQ halibut. Each halibut CDQ hired master permit will identify a CDQ permit number and the individual authorized by the CDQ group to land halibut for debit against the CDQ group's halibut CDQ.

(4) *Alteration*. No person may alter, erase, mutilate, or forge a halibut CDQ permit, hired master permit, Registered Buyer permit, or any valid or current permit or document issued under this part. Any such permit or document that has been intentionally altered, erased, mutilated, or forged is invalid.

(5) *Landings*. A person may land CDQ halibut only if he or she has a valid halibut CDQ hired master permit. The person(s) holding the halibut CDQ hired master permit and the Registered buyer must comply with the requirements of § 679.5(g) and (l)(1) through (6).

* * * * *

■ 5. In § 679.5, paragraphs (a)(1)(i)(B) and (C); (g)(2)(iv)(A) and (B); (l)(2)(i)(D) and (E); (l)(2)(iii)(C), (l)(2)(iii)(H), (I) and (M); (l)(2)(iv)(B)(*2*); (l)(2)(iv)(D); (l)(4)(i)(E)(*1*) and (*2*); (l)(4)(ii)(D); and (l)(5)(ii) introductory text are revised to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a)* * *

(1)* * *

(i)* * *

(B) *IFQ halibut and sablefish*. The IFQ permit holder, IFQ hired master permit holder, or Registered Buyer must comply with the R&R requirements provided at paragraphs (g), (k), and (l) of this section.

(C) *CDQ halibut*. The CDQ permit holder, CDQ hired master permit holder, or Registered Buyer must comply with the R&R requirements provided at paragraphs (g), (k), (l)(1) through (6), (n)(1), and (n)(2) of this section.

* * * * *

(g) * * *

(2) * * *

(iv) * * *

(A) A person holding a valid IFQ permit, or IFQ hired master permit, and a Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish with a person who has not been issued a Registered Buyer permit after all IFQ halibut and IFQ sablefish have been landed and reported in accordance with paragraph (l) of this section.

(B) A person holding a valid halibut CDQ hired master permit and Registered Buyer permit may conduct a dockside sale of CDQ halibut with a person who has not been issued a Registered Buyer permit after all CDQ halibut have been landed and reported in accordance with paragraph (l) of this section.

* * * * *

(l) * * *

(2) * * *

(i) * * *

(D) *Remain at landing site*. Once the landing has commenced, the IFQ permit holder, IFQ hired master permit holder, or CDQ hired master permit holder and the harvesting vessel may not leave the landing site until the IFQ halibut, IFQ sablefish or CDQ halibut account is properly debited (as defined in paragraph (l)(2)(iv)(D) of this section).

(E) *No movement of IFQ halibut, CDQ halibut, or IFQ sablefish*. The offloaded IFQ halibut, CDQ halibut, or IFQ sablefish may not be moved from the landing site until the IFQ Landing Report is received by OLE, Juneau, AK, and the IFQ permit holder's or CDQ permit holder's account is properly debited (as defined in paragraph (l)(2)(iv)(D) of this section).

* * * * *

(iii) * * *

(C) Name and permit number of the IFQ permit holder, IFQ hired master permit holder, or CDQ hired master permit holder;

* * * * *

(H) ADF&G statistical area of harvest reported by the IFQ permit holder or IFQ hired master permit holder;

(I) If ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ permit holder or IFQ hired master permit holder;

* * * * *

(M) After the Registered Buyer enters the landing data in the Internet submission form(s) and receipts are printed, the Registered Buyer, or his/her representative, and the IFQ permit holder, IFQ hired master permit holder, or CDQ hired master permit holder must sign the receipts to acknowledge the accuracy of the IFQ landing report.

(iv) * * *

(B) * * *

(*2*) The IFQ permit holder, IFQ hired master permit holder, or CDQ hired master permit holder must initiate a Landing Report by logging into the IFQ landing report system using his or her own password and must provide identification information requested by the system.

* * * * *

(D) *Properly debited landing*. A properly concluded printed Internet submission receipt or a manual landing report receipt which is sent by facsimile from OLE to the Registered Buyer, and which is then signed by the Registered Buyer and IFQ permit holder, IFQ hired master permit holder, or CDQ hired master permit holder constitutes confirmation that OLE received the landing report and that the IFQ permit

holder's or CDQ permit holder's account is properly debited. A copy of each receipt must be maintained by the Registered Buyer as described in paragraph (l) of this section.

* * * * *

(4) * * *

(i) * * *

(E) * * *

(*1*) A vessel operator submitting an IFQ Departure Report to document IFQ halibut or IFQ sablefish must have one or more IFQ permit holders or IFQ hired master permit holders on board with a combined IFQ balance equal to or greater than all IFQ halibut and IFQ sablefish on board the vessel.

(*2*) A vessel operator submitting an IFQ Departure Report to document CDQ halibut must ensure that one or more CDQ hired master permit holders are onboard with enough remaining halibut CDQ balance to harvest amounts of CDQ halibut equal to or greater than all CDQ halibut onboard.

* * * * *

(ii) * * *

(D) Halibut IFQ, halibut CDQ, sablefish IFQ, and CR crab permit numbers of IFQ and CDQ permit holders on board;

* * * * *

(5) * * *

(ii) *Record retention*. The IFQ permit holder, IFQ hired master permit holder, or CDQ hired master permit holder must retain a legible copy of all Landing Report receipts, and the Registered Buyer must retain a copy of all reports and receipts required by this section. All retained records must be available for inspection by an authorized officer:

* * * * *

■ 6. In § 679.7, paragraphs (a)(10)(ii), (f)(3)(i), (f)(3)(ii), (f)(4), (f)(6)(i), (f)(6)(ii), and (f)(11) introductory text are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(10) * * *

(ii) Alter, erase, or mutilate any permit or document issued under §§ 679.4 or 679.5.

* * * * *

(f) * * *

(3) * * *

(i) *Halibut*. (A) Retain halibut caught with fixed gear without a valid IFQ permit, and if using a hired master, without an IFQ hired master permit in the name of an individual aboard.

(B) Retain halibut caught with fixed gear without a valid CDQ permit and without a CDQ hired master permit in the name of an individual aboard.

(ii) *Sablefish*. Retain sablefish caught with fixed gear without a valid IFQ permit, and if using a hired master, without an IFQ hired master permit in the name of an individual aboard, unless fishing on behalf of a CDQ group and authorized under § 679.32(c).

(4) Except as provided in § 679.40(d), retain IFQ or CDQ halibut or IFQ or CDQ sablefish on a vessel in excess of the total amount of unharvested IFQ or CDQ, applicable to the vessel category and IFQ or CDQ regulatory area(s) in which the vessel is deploying fixed gear, and that is currently held by all IFQ or CDQ permit holders aboard the vessel, unless the vessel has an observer aboard under subpart E of this part and maintains the applicable daily fishing log prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title and § 679.5.

* * * * *

(6) *Landing*—(i) IFQ permit or IFQ hired master permit. Make an IFQ landing without an IFQ permit or IFQ hired master permit, as appropriate, in the name of the individual making the landing.

(ii) Hired master, CDQ. Make a CDQ halibut landing without a CDQ hired master permit listing the name of the hired master.

* * * * *

(11) Discard halibut or sablefish caught with fixed gear from any catcher vessel when any IFQ permit holder aboard holds unused halibut or sablefish IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating, unless:

* * * * *

■ 7. In § 679.23, paragraph (g)(2) is revised to read as follows:

§ 679.23 Seasons.

* * * * *

(g) * * *

(2) Catches of sablefish by fixed gear during other periods may be retained up to the amounts provided for by the directed fishing standards specified at § 679.20 when made by an individual aboard the vessel who has a valid IFQ permit and unused IFQ in the account on which the permit was issued.

* * * * *

■ 8. In § 679.40, paragraphs (a)(5)(ii)(A) through (D) are revised to read as follows:

§ 679.40 Sablefish and halibut QS.

* * * * *

(a) * * *

(5) * * *

(ii) * * *

(A) Category A QS and associated IFQ, which authorizes an IFQ permit holder to harvest and process IFQ species on a vessel of any length;

(B) Category B QS and associated IFQ, which authorizes an IFQ permit holder to harvest IFQ species on a vessel of any length;

(C) Category C QS and associated IFQ, which authorizes an IFQ permit holder to harvest IFQ species on a vessel less than or equal to 60 ft (18.3 m) LOA:

(D) Category D QS and associated IFQ, which authorizes an IFQ permit holder to harvest IFQ halibut on a vessel less than or equal to 35 ft (10.7 m) LOA, except as provided in § 679.42(a).

* * * * *

■ 9. In § 679.41, paragraphs (a)(2), (e)(3) introductory text, (e)(3)(i), and (e)(3)(ii) are revised to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

(a) * * *

(2) Transactions requiring IFQ permits to be issued in the name of a hired master employed by an individual or a corporation are not transfers of QS or IFQ.

* * * * *

(e) * * *

(3) *Halibut*. QS blocks for the same IFQ regulatory area and vessel category that represent less than 3,000 lb (1.4 mt) of halibut IFQ, based on the 1996 catch limit for halibut in a specific IFQ regulatory area and the QS pool for that IFQ regulatory area on January 31, 1996, may be consolidated into larger QS blocks provided that the consolidated blocks do not represent greater than 3,000 lb (1.4 mt) of halibut IFQ based on the preceding criteria. In Areas 2C and 3A, QS blocks for the same IFQ regulatory area and vessel category that represent less than 5,000 lb (2.3 mt) of halibut IFQ, based on the 1996 catch limit for halibut in a specific IFQ regulatory area and the QS pool for that IFQ regulatory area on January 31, 1996, may be consolidated into larger QS blocks provided that the consolidated blocks do not represent greater than 5,000 lb (2.3 mt) of halibut IFQ based on the preceding criteria. A consolidated block cannot be divided and is considered a single block for purposes of use and transferability. The maximum number of QS units that may be consolidated into a single block in each IFQ regulatory area is as follows:

(i) Area 2C: 33,320 QS.

(ii) Area 3A: 46,520 QS.

* * * * *

■ 10. In § 679.42, paragraph (a)(3) is removed; paragraphs (a)(2)(iv), and (l) are added; and paragraphs (a)(1) introductory text, (c)(1)(i), (d), (g), (i), and (j) are revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

(a) * * *

(1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area, except all or part of the QS and IFQ specified for regulatory area 4C may be harvested in either Area 4C or Area 4D.

* * * * *

(2) * * *

(iv) In Areas 3B and 4C, category D QS and associated IFQ authorizes an IFQ permit holder to harvest IFQ halibut on a vessel less than or equal to 60 ft (18.3 m) LOA.

* * * * *

(c) * * *

(1) * * *

(i) Have a valid IFQ permit or a valid IFQ hired master permit.

* * * * *

(d) *Emergency waivers and medical transfers*. The person authorized to fish IFQ halibut or sablefish must be aboard the vessel during fishing operations and must sign the IFQ landing report except as provided in § 679.41 and under the following circumstances:

(1) *Emergency waiver*. In the event of extreme personal emergency during a fishing trip involving a person authorized to fish IFQ halibut or sablefish, the requirements or paragraph (c)(1) of this section may be waived. The waiving of these requirements under this provision shall apply to IFQ halibut or IFQ sablefish retained on the fishing trip during which the emergency occurred.

(2) *Medical transfers*. In the event of a medical condition affecting a QS holder or an immediate family member of a QS holder that prevents the QS holder from being able to participate in the halibut or sablefish IFQ fisheries, a medical transfer may be approved for the IFQ derived from the QS held by the person affected by the medical condition.

(i) *General*. A medical transfer will be approved if the QS holder demonstrates that:

(A) He or she is unable to participate in the IFQ fishery for which he or she holds QS because of a medical condition that precludes participation by the QS holder; or

(B) He or she is unable to participate in the IFQ fishery for which he or she holds QS because of a medical condition involving an immediate family member that requires the QS holder's full time attendance.

(ii) *Eligibility*. To be eligible to receive a medical transfer, a QS holder must:

(A) Possess one or more catcher vessel IFQ permits; and

(B) Not qualify for a hired master exception under paragraph (i)(1) of this section.

(iii) *Application*. A QS holder may apply for a medical transfer by submitting a medical transfer application to the Alaska Region, NMFS. A QS holder who has received an approved medical transfer from RAM may transfer the IFQ derived from his or her own QS to an individual eligible to receive IFQ. A medical transfer application is available at *http://www.fakr.noaa.gov* or by calling 1–800–304–4846. Completed applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668. A complete application must include:

(A) The applicant's (transferor's) identity including his or her full name, NMFS person ID, date of birth, Social Security Number or Tax ID, permanent business mailing address, business telephone and fax numbers, and e-mail address (if any). A temporary mailing address may be provided, if appropriate;

(B) The recipient's (transferee's) identity including his or her full name, NMFS person ID, date of birth, Social Security Number or Tax ID, permanent business mailing address, business telephone and fax numbers, and e-mail address (if any). A temporary mailing address may be provided, if appropriate;

(C) The identification characteristics of the IFQ including whether the transfer is for halibut or sablefish IFQ, IFQ regulatory area, number of units, range of serial numbers for IFQ to be transferred, actual number of IFQ pounds, transferor (seller) IFQ permit number, and fishing year;

(D) The price per pound (including leases) and total amount paid for the IFQ in the requested transaction, including all fees;

(E) The primary source of financing for the transfer, how the IFQ was located, and the transferee's (buyer's) relationship to the transferor (seller);

(F) A written declaration from a licensed medical doctor, advanced nurse practitioner, or primary community health aide as those persons are defined in § 679.2. The declaration must include:

(*1*) The identity of the licensed medical doctor, advanced nurse practitioner, or primary community health aide including his or her full name, business telephone, permanent business mailing address (number and street, city and state, zip code), and whether the individual is a licensed medical doctor, advanced nurse practitioner, or primary community health aide;

(*2*) A concise description of the medical condition affecting the applicant or applicant's family member including verification that the applicant is unable to participate in the IFQ fishery for which he or she holds IFQ permits during the IFQ season because of the medical condition and, for an affected family member, a description of the care required; and

(*3*) The dated signature of the licensed medical doctor, advanced nurse practitioner, or primary community health aide who conducted the medical examination;

(G) The signatures and printed names of the transferor and transferee, and date; and

(H) The signature, seal, and commission expiration of a notary public.

(iv) *Restrictions*. (A) A medical transfer shall be valid only during the calendar year for which the permit is issued;

(B) A medical transfer will be issued only for the IFQ derived from the QS held by the applicant;

(C) NMFS will not approve a medical transfer if the applicant has received a medical transfer in any 2 of the previous 5 years for the same medical condition.

(v) *Medical transfer evaluations and appeals*—(A) *Initial evaluation*. The Regional Administrator will evaluate an application for a medical transfer submitted in accordance with paragraphs (d)(2)(iii) and (d)(2)(iv) of this section. An applicant who fails to submit the information specified in the application for a medical transfer will be provided a reasonable opportunity to submit the specified information or submit a revised application.

(B) *Initial administrative determinations (IAD)*. The Regional Administrator will prepare and send an IAD to the applicant if the Regional Administrator determines that the application provided by the applicant is deficient or if the applicant fails to submit the specified information or a revised application. The IAD will indicate the deficiencies in the application, including any deficiencies with the information on the revised application. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43.

* * * * *

(g) *Limitations on QS blocks*—(1) *Number of blocks per species*. No person, individually or collectively, may hold more than two blocks of sablefish or three blocks of halibut in any IFQ regulatory area, except:

(i) A person, individually or collectively, who holds unblocked QS

for a species in an IFQ regulatory area, may hold only one QS block for that species in that regulatory area; and

(ii) A CQE may hold no more than ten blocks of halibut QS in any IFQ regulatory area and no more than five blocks of sablefish QS in any IFQ regulatory area on behalf of any eligible community.

(2) *Action by the Regional Administrator in Areas 3B and 4A.* In Areas 3B and 4A, the Regional Administrator shall:

(i) Identify any halibut blocks that result in an allocation of more than 20,000 lb (9.1) mt of halibut IFQ, based on the 2004 TAC for fixed gear halibut in those areas and the QS pools for those areas as of January 31, 2004; and

(ii) Divide those halibut blocks into one block of 20,000 lb (9.1 mt) and the remainder unblocked, based on the 2004 TAC for fixed gear halibut in those areas and the QS pools for those areas as of January 31, 2004.

(3) *Transfer of QS blocks.* Notwithstanding paragraph (g)(1)(i) of this section, a person who holds more than one block of halibut QS and unblocked halibut QS as a result of the Regional Administrator's action under paragraph (g)(2) of this section may transfer unblocked QS until such time as that person transfers a halibut QS block to another person.

(4) Holding or to hold blocks of QS. For purposes of this section, ''holding'' or ''to hold'' blocks of QS means being registered by NMFS as the person who received QS by initial assignment or approved transfer.

* * * * *

(i) *Use of IFQ resulting from QS assigned to vessel category B, C, or D by individuals.* In addition to the requirements of paragraph (c) of this section, IFQ permits issued for IFQ resulting from QS assigned to vessel category B, C, or D must be used only by the individual who holds the QS from which the associated IFQ is derived, except as provided in paragraph (i)(1) of this section.

(1) An individual who received an initial allocation of QS assigned to category B, C, or D does not have to be aboard the vessel on which his or her IFQ is being fished or to sign IFQ landing reports if that individual:

(i) For a documented vessel, owns a minimum 20–percent interest in the vessel as shown by the U.S. Abstract of Title issued by the U.S. Coast Guard that lists the individual as an owner and, if necessary to prove the required percentage ownership, other written documentation;

(ii) For an undocumented vessel, owns a minimum 20–percent interest in the vessel as shown by a State of Alaska vessel license or registration that lists the individual as an owner and, if necessary to show the required percentage ownership interest, other written documentation; and

(iii) Is represented on the vessel by a hired master employed by that individual and permitted in accordance with § 679.4(d)(2).

(2) Paragraph (i)(1) of this section does not apply to any individual who received an initial allocation of QS assigned to category B, C, or D and who, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that individual, provided the individual continues to own the vessel from which the IFQ is being fished at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that this individual has not acquired additional QS through transfer after September 23, 1997.

(3) Paragraph (i)(1) of this section does not apply to individuals who received an initial allocation of QS assigned to vessel category B, C, or D for halibut in IFQ regulatory Area 2C or for sablefish QS in the IFQ regulatory area east of 140° W. long., and this exemption is not transferable.

(4) The exemption provided in paragraph (i)(1) of this section may be exercised by an individual on a vessel owned by a corporation, partnership, or other entity in which the individual is a shareholder, partner, or member, provided that the individual maintains a minimum 20–percent interest in the vessel owned by the corporation, partnership, or other entity. For purposes of this paragraph, interest in a vessel is determined as the percentage ownership of a corporation, partnership, or other entity by that individual multiplied by the percentage of ownership of the vessel by the corporation, partnership, or other entity.

(5) IFQ derived from QS held by a CQE must be used only by the individual whose IFQ permit account contains the resulting IFQ.

(j) *Use of IFQ resulting from QS assigned to vessel category B, C, or D by corporations and partnerships.* (1) Except as provided in paragraph (j)(7) of this section, a corporation, partnership or other entity that received an initial allocation of QS assigned to category B, C, or D may fish the IFQ resulting from that QS and any additional QS acquired within the limitations of this section from a vessel if that corporation, partnership or other entity:

(i) For a documented vessel, owns a minimum 20–percent interest in the vessel as shown by the U.S. Abstract of Title issued by the U.S. Coast Guard that lists the corporation, partnership or other entity as an owner and, if necessary to prove the required percentage ownership, other written documentation;

(ii) For an undocumented vessel, owns a minimum 20–percent interest in the vessel as shown by a State of Alaska vessel license or registration that lists the corporation, partnership or other entity as an owner and, if necessary to show the required percentage ownership interest, other written documentation; and

(iii) Is represented on the vessel by a hired master employed by that individual and permitted in accordance with § 679.4(d)(2).

(2) The provision of paragraph (j)(1) of this section is not transferable and does not apply to QS assigned to vessel category B, C, or D for halibut in IFQ regulatory Area 2C or for sablefish in the IFQ regulatory area east of 140° W. long. that is transferred to a corporation or partnership. Such transfers of additional QS within these areas must be to an individual pursuant to § 679.41(c) and be used pursuant to paragraphs (c) and (i) of this section.

(3) A corporation or partnership, except for a publicly held corporation, that receives an initial allocation of QS assigned to vessel category B, C, or D loses the exemption provided under this paragraph (j) on the effective date of a change in the corporation or partnership from that which existed at the time of initial allocation.

(4) For purposes of this paragraph (j), ''a change'' means:

(i) For corporations and partnerships, the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership; or

(ii) For estates, the final or summary distribution of the estate.

(5) The Regional Administrator must be notified of a change in the corporation, partnership, or other entity as defined in this paragraph (j) within 15 days of the effective date of the change. The effective date of change, for purposes of this paragraph (j), is the date on which the new shareholder(s) or partner(s) may realize any corporate liabilities or benefits of the corporation or partnership or, for estates, the date of the determination of a legal heir to the estate, or the date of the order for distribution of the estate.

(6) QS assigned to vessel category B, C, or D and IFQ resulting from that QS held in the name of a corporation, partnership, or other entity that changes, as defined in this paragraph (j),

must be transferred to an individual, as prescribed in § 679.41, before it may be used at any time after the effective date of the change.

(7) A corporation or a partnership that received an initial allocation of QS assigned to category B, C, or D and that, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that corporation or partnership may continue to employ a master to fish its IFQ on a vessel owned by the corporation or partnership provided that the corporation or partnership continues to own the vessel at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that corporation or partnership did not acquire additional QS through transfer after September 23, 1997.

(8) A corporation, partnership, or other entity, except for a publicly held corporation, that receives an initial allocation of QS assigned to category B, C, or D must provide annual updates to the Regional Administrator identifying all current shareholders or partners and affirming the entity's continuing existence as a corporation or partnership.

(9) The exemption provided in this paragraph (j) may be exercised by a corporation, partnership, or other entity on a vessel owned by a person who is a shareholder in the corporation, partnership, or other entity, provided that the corporation, partnership, or other entity maintains a minimum of 20–percent interest in the vessel. For purposes of this paragraph (j), interest in a vessel is determined as the percentage of ownership in the corporation, partnership, or other entity by that person who is a shareholder in the corporation, partnership, or other entity, multiplied by the percentage of ownership in the vessel by that person who is a shareholder in the corporation, partnership, or other entity.

* * * * *

(l) *Sablefish vessel clearance requirements*—(1) *General.* Any vessel operator who fishes for sablefish in the Bering Sea or Aleutian Islands IFQ regulatory areas must possess a transmitting VMS transmitter while fishing for sablefish.

(2) *VMS requirements.* (i) The operator of the vessel must comply with § 679.28(f)(3), (f)(4), and (f)(5); and

(ii) The operator of the vessel must contact NMFS at 800–304–4846 (option 1) between 0600 and 0000 A.l.t. and receive a VMS confirmation number at least 72 hours prior to fishing for sablefish in the Bering Sea or Aleutian Islands IFQ regulatory areas.

[FR Doc. E7–15341 Filed 8–8–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 153
Thursday, August 9, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28883; Directorate Identifier 2007–NM–106–AD]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Model 400A Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Hawker Beechcraft Model 400A series airplanes. This proposed AD would require inspecting the galley cabinets to determine if a certain part number is installed or if a certain size of wire already exists, and doing related investigative/corrective actions if necessary. This proposed AD results from reports of undersized, and consequently unprotected, wire in the galley cabinets. We are proposing this AD to prevent overheating of wire insulation and consequent fire or smoke in the airplane cabin.

DATES: We must receive comments on this proposed AD by September 24, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67206, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28883; Directorate Identifier 2007–NM–106–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground level of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received reports of undersized, and consequently unprotected, wire in the galley cabinets, on Hawker Beechcraft Model 400A series airplanes. The electrical current-carrying capacity of the main bus power wiring installed in the galley cabinet(s) is not capable of supporting the trip rating of the airframe 50 amp galley power (50A) circuit breaker. This condition, if not corrected, could result in overheating of wire insulation and consequent fire or smoke in the airplane cabin.

Relevant Service Information

We have reviewed Raytheon Service Bulletin SB 25–3758, dated June 2006. The service information describes procedures for inspecting the galley cabinets to determine if Precision Pattern galley cabinet, part number (P/N) 20917, 20918, or 20921, is installed, or if 8AWG (American Wire Gauge) wire already exists; and doing any related investigative and applicable corrective actions, if necessary. The related investigative action is a visual inspection of the galley power wire for presence of 10AWG wire. The corrective action is replacing the undersized 10AWG wire with 8AWG wire in the gallery power circuit. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Raytheon Service Bulletin SB 25–3758, dated June 2006, refers to Raytheon Kit 128–3068–0001, Revision 3, dated April 18, 2006, as an additional source of service information for replacing the undersized 10AWG wire with 8AWG wire in the gallery power circuit.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same

type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Differences Between the Proposed AD and Service Information

Raytheon Service Bulletin SB 25–3758 does not specify a compliance time for accomplishing the related investigative and applicable corrective actions after inspecting the galley cabinets. This proposed AD would require those applicable actions within 20 flight hours or 30 days after inspecting the galley cabinets. In developing an appropriate compliance time, we considered the safety implications, the time necessary to perform the related investigative and applicable corrective actions, and normal maintenance schedules for timely accomplishment of those actions. In light of these items, we have determined that a compliance time of 20 flight hours or 30 days after inspecting the galley cabinet is appropriate. We have coordinated this difference with Hawker Beechcraft.

Costs of Compliance

There are about 285 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 214 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $17,120, or $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended].

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

Hawker Beechcraft Corporation: Docket No. FAA–2007–28883; Directorate Identifier 2007–NM–106–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 24, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hawker Beechcraft Model 400A series airplanes, certificated in any category; as identified in Raytheon Service Bulletin SB 25–3758, dated June 2006.

Unsafe Condition

(d) This AD results from reports of undersized, and consequently unprotected, wire in the galley cabinets. We are issuing this AD to prevent overheating of wire insulation and consequent fire or smoke in the airplane cabin.

Compliance

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

Inspection and Related Investigative/Corrective Actions

(f) Within 200 flight hours or 12 months after the effective date of this AD, whichever occurs first, inspect the galley cabinets to determine if Precision Pattern galley cabinet, part number (P/N) 20917, 20918, or 20921, is installed, or if 8 American Wire Gauge (AWG) wire already exists, and within 20 flight hours or 30 days after the inspection, do all applicable related investigative and corrective actions, if necessary. The actions must be done in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 25–3758, dated June 2006.

Note 1: Raytheon Service Bulletin SB 25–3758, dated June 2006, refers to Raytheon Kit 128–3068–0001, Revision 3, dated April 18, 2006, as an additional source of service information for replacing the undersized 10AWG wire with 8AWG wire in the gallery power circuit.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on July 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–15424 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27430; Airspace Docket No. 07–ANM–4]

Proposed Establishment of Class E Airspace; Springfield, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Springfield, CO. Additional controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Springfield Municipal Airport. The FAA is proposing this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Springfield Municipal Airport, Springfield, CO.

DATES: Comments must be received on or before September 24, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2007–27430; Airspace Docket No. 07–ANM–4, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Western Service Area, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 917–6726.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2007–27430 and Airspace Docket No. 07–ANM–4) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2007–27430 and Airspace Docket No. 07–ANM–4''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Springfield, CO. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAP at Springfield Municipal Airport. This action would enhance the safety and management of IFR aircraft operations at Springfield Municipal Airport, Springfield, CO.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO, E5 Springfield, CO [New]

Springfield Municipal Airport, CO
(Lat. 37°27′56″ N., long. 102°37′14″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Springfield Municipal Airport; that airspace extending upward from 1,200 feet above the surface beginning at TOBE VORTAC, thence north along V–169 to lat. 38°34′00″ N., thence to lat. 38°34′00″ N., long. 102°00′00″ W., thence to lat. 36°30′00″ N., long. 102°00′00″ W., thence west on lat. 36°30′00″ N. to V–81, thence northwest along V–81 to point of beginning.

* * * * *

Issued in Seattle, Washington, on July 25, 2007.

Clark Desing,

Manager, System Support Group, Western Service Area.

[FR Doc. E7–15578 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 26

[Docket No. OJP (DOJ)–1464]

RIN 1121–AA74

Certification Process for State Capital Counsel Systems

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: On June 6, 2007, the Department of Justice published a notice of proposed rulemaking in the **Federal Register**, 72 FR 31217, concerning a process for certifying state systems for providing counsel to indigent capital defendants. That rulemaking was issued pursuant to section 507 of the USA PATRIOT Improvement and Reauthorization Act. The original 60-day comment period expired on August 6, 2007. The Department is reopening the comment period for an additional 45-day period.

DATES: Comments must be received on or before September 24, 2007.

ADDRESSES: Please address all comments, by U.S. mail, to: Ms. Danica Szarvas-Kidd, Policy Advisor for Adjudication, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531; by telefacsimile (fax), to: (202) 307–0036 or by e-mail, to: *OJP_Fed_Reg_Comments@usdoj.gov*. To ensure proper handling, please reference OJP Docket No.1464 on your correspondence. You may view an electronic version of the proposed rule at www.regulations.gov, and you may also comment by using the www.regulations.gov comment form. When submitting comments electronically you must include OJP Docket No. 1464 in the subject box.

FOR FURTHER INFORMATION CONTACT: Danica Szarvas-Kidd (Policy Advisor for Adjudication), (202) 305–7418. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On June 6, 2007, the Department of Justice (Department) published a notice of proposed rulemaking in the **Federal Register**, 72 FR 31217, in order to promulgate regulations pursuant to Public Law 109–177, the USA PATRIOT Improvement and Reauthorization Act of 2005, (''the Act''). Section 507 of the Act amends chapter 154 of title 28 of the United States Code. Chapter 154 provides expedited Federal habeas corpus review procedures in capital cases for States that establish a mechanism for providing counsel to indigent capital defendants in state postconviction proceedings that satisfies certain statutory requirements. The Act amended sections 2261(b) and 2265 of title 28 to assign responsibility to the Attorney General of the United States for certification of a State's satisfaction of the requirements for the application of chapter 154 , subject to review by the Court of Appeals for the District of Columbia Circuit. Section 2265(a) as amended makes clear that the only requirements that the Attorney General may impose for a state to receive certification are those expressly stated in chapter 154. See 28 U.S.C. 2265(a)(3) (''[t]here are no requirements for certification or for application of this chapter other than those expressly stated in this chapter''). As a result, the rule in large measure simply recounts and provides illustration relating to the express statutory requirements, addresses some limited interpretive questions, and outlines a procedure for States' requests for certification.

The Department consulted with a number of groups in developing this proposed rule to carry out the statutory directive, including representatives of state officials and both prosecution and defense interests concerned with capital case litigation. Notwithstanding the limited nature of the matters to be determined in the rule, the extensive consultation concerning these matters with interested officials and organizations, and the normal 60-day period for comment provided in the rule as originally published, a number of organizations involved in capital defense or advocacy activities have requested additional time for comment. While the justification for the requested extensions is at best marginal in light of the considerations noted above, and extending the time for comment will further delay realization of the legislative objectives reflected in chapter 154 of title 28, the Department nevertheless wishes to ensure ample opportunity for provision of input by interested groups and members of the public.

Further, some technical problems arose because of the recent transition of the Department to using the Regulations.gov Web site (*http://www.regulations.gov*) to post public comments on rulemakings. These problems with using Regulations.gov have now been resolved and public comments received by the Department are posted for public viewing in a timely manner. However, there was a short period when public comments received by the Department and posted by Department personnel to the Regulations.gov site were not viewable by the public.

Accordingly, the Department is reopening the public comment period and will accept comments for an additional 45 days after publication of this notice of proposed rulemaking.

Dated: August 1, 2007.

Cybele Daley,

Deputy Assistant Attorney General, Office of Justice Programs.

[FR Doc. E7–15254 Filed 8–8–07; 8:45 am]

BILLING CODE 4410–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0620; FRL–8450–4]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Kansas for the purpose of including the Kansas City 8-hour ozone maintenance plan into the SIP. Section 110(a)(1) of the Clean Air Act requires that areas which were maintenance areas for the 1-hour ozone standard and attainment for the 8-hour ozone standard develop a plan showing how the state will maintain the ozone standard for the

area. The maintenance plan includes an emissions inventory demonstration, a plan for how the states will track progress on reducing emissions, a commitment to continue ozone monitoring, and a contingency plan that will ensure that a violation of the 8-hour ozone standard is promptly addressed.

DATES: Comments on this proposed action must be received in writing by September 10, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0620 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: algoe-eakin.amy@epa.gov.*
3. *Mail:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier. Deliver your comments to:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: July 27, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–15255 Filed 8–8–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0619; FRL–8450–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of including the Kansas City 8-hour ozone maintenance plan into the SIP. Section 110(a)(1) of the Clean Air Act requires that areas which were maintenance areas for the 1-hour ozone standard and attainment for the 8-hour ozone standard develop a plan showing how the state will maintain the ozone standard for the area. The maintenance plan includes an emissions inventory demonstration, a plan for how the states will track progress on reducing emissions, a commitment to continue ozone monitoring, and a contingency plan that will ensure that a violation of the 8-hour ozone standard is promptly addressed.

DATES: Comments on this proposed action must be received in writing by September 10, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0619 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: algoe-eakin.amy@epa.gov.*
3. *Mail:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier. Deliver your comments to:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: July 27, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–15258 Filed 8–8–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–R04–SFUND–2007–0590; FRL–8451–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Rochester Property Superfund Site from the National Priorities List.

SUMMARY: EPA Region 4 is issuing a notice of intent to delete the Rochester Property Superfund Site (Site) located in Travelers Rest, South Carolina, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SCDHEC), have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

In the Final Rules section of this **Federal Register**, the EPA is approving the direct final notice of deletion of the Rochester Property Superfund Site without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final notice. If no significant, material, and adverse comments are received in response to this notice, no further activity is contemplated. If EPA receives adverse comments, the direct final notice will be withdrawn and all public comments received will be addressed in a subsequent final notice based on this proposed notice. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments concerning this Site must be received by September 10, 2007.

ADDRESSES: Submit your comments, identified by EPA–R04–SFUND–2007–0590 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: webster.donna@epa.gov.*

3. *Fax:* (404) 562–8788.

4. *Mail:* Donna Webster (EPA–R04–SFUND–2007–0590), Superfund Remedial & Site Evaluation Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Donna K. Webster, Remedial Project Manager, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final notice which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Donna K. Webster, Remedial Project Manager, Superfund Remedial & Site Evaluation Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, Phone: (404) 562–8870, Electronic Mail: *webster.donna@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final notice which is published in the Rules section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following addresses:

1. Travelers Rest Library, 17 Center Street, Travelers Rest, SC 29690, Hours: Monday through Thursday—9 a.m. until 9 p.m., Friday and Saturday—9 a.m. until 6 p.m.; or,

2. U.S. EPA Record Center, Region IV Library, 61 Forsyth St. SW., Atlanta, GA 30303–8960, Hours: Monday thru Friday—8 a.m. until 4 p.m., by appointment only. Contact Ms. Debbie Jourdan, (404) 562–8862.

Dated: July 23, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7–15331 Filed 8–8–07; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 72, No. 153

Thursday, August 9, 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

Submission for OMB Review; Comment Request

August 6, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Trends in Use and Users in the Boundary Waters Canoe Area Wilderness, Minnesota.

OMB Control Number: 0596–NEW.

Summary of Collection: The Wilderness Act of 1964, Public Law 88–577 (Act) directs the National Wilderness Preservation System (System) be managed to preserve natural conditions and to provide outstanding opportunities for solitude or a primitive and unconfined type of recreation. The System administers wilderness for the use and enjoyment of the American people in such manner as will leave these areas unimpaired for future use and enjoyment as wilderness. The Act encourages the gathering and dissemination of information regarding the use and enjoyment of these areas as wilderness.

Need and Use of the Information: The data collected from this information collection request will update trend information for the Boundary Waters Canoe Area Wilderness in Minnesota. Mangers of this Wilderness need to know and be able to inform the public, how visits (and visitors) have changed because of changing policies; natural disturbances; and national, regional, and local societal changes in 1990's and early 21st century. Mangers use this information to adapt current programs to changing societal interests and needs.

Description of Respondents: Individuals or households.

Number of Respondents: 1,166.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 195.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–15600 Filed 8–8–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447

AGENCY: USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Eastern Region Recreation Resource Advisory Committee will hold its second meeting at the Hilton Milwaukee City Center, 509 W. Wisconsin Ave., Milwaukee, Wisconsin. The purpose of the meeting is to receive recommendations concerning recreation fee proposals on areas managed by the Forest Service in Maine, New Hampshire, Vermont, New York, Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Missouri, Minnesota, Michigan and Wisconsin; and to discuss other items of interest related to the Federal Lands Recreation Enhancement Act of 2004. A final detailed agenda, with any additions/corrections to agenda topics and meeting times, will be sent to regional media sources at least 14 days before the meeting and hard copies can also be mailed or sent via Fax. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Marcia Heymen at 626 East Wisconsin Ave., Milwaukee, WI (by phone 414–297–3662) no later than 10 days prior to the meeting.

DATES: The meeting will be held September 18–19, 2007.

ADDRESSES: The meeting will be held at Hilton Milwaukee City Center, 509 W. Wisconsin Ave., Milwaukee, WI. Send written comments to Cheryl Chatham, Designated Federal Official for the Eastern Recreation RAC, U.S. Forest Service, P.O. Box 1270, Hot Springs, AR 71902.

FOR FURTHER INFORMATION CONTACT: Cheryl Chatham, Designated Federal Official, U.S. Forest Service, P.O. Box 1270, Hot Springs, AR 71902.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by September 11, 2007, will have the opportunity to address the Committee at the meeting.

The Recreation RAC is authorized by the Federal Land Recreation

Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: August 2, 2007.

Cheryl G. Chatham,

Designated Federal Officer, Southern Region.

[FR Doc. 07–3870 Filed 8–8–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Southern Region Recreation Resource Advisory Committee will hold its second meeting at the Advantage West Economic Development Center, 134 Wright Brothers Way, Fletcher, North Carolina (Asheville area). The purpose of the meeting is to receive recommendations concerning recreation fee proposals on areas managed by the Forest Service in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and the territory of Puerto Rico; and to discuss other items of interest related to the Federal Lands Recreation Enhancement Act of 2004.

A final detailed agenda, with any additions/corrections to agenda topics, location, field trips and meeting times, will be sent to regional media sources at least 14 days before the meeting, and hard copies can also be mailed or sent via fax. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Caroline Mitchell at P.O. Box 1270, Hot Springs, AR 71902 no later than 10 days prior to the meeting.

DATES: The meeting will be held September 26–27, 2007.

ADDRESSES: The meeting will be held at Advantage West Economic Development Center, 134 Wright Brothers Way, Fletcher, North Carolina. Send written comments to Cheryl Chatham, Designated Federal Official for the Southern Recreation RAC, U.S. Forest Service, P.O. Box 1270, Hot Springs, AR 71902.

FOR FURTHER INFORMATION CONTACT: Cheryl Chatham, Designated Federal Official, U.S. Forest Service, P.O. Box 1270, Hot Springs, AR 71902.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by September 19, 2007, will have the opportunity to address the Committee at the meeting.

The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: August 2, 2007.

Cheryl G. Chatham,

Designated Federal Officer, Southern Region.

[FR Doc. 07–3869 Filed 8–8–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS's) intention to request an extension for a currently approved information collection in support of 7 CFR 3560, Direct Multi-Family Housing Loans and Grants.

DATES: Comments on this notice must be received by October 9, 2007 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: William Cole, Loan Specialist, Multi-Family Housing Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Room 1247, South Building, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781, telephone (202) 720–5443.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 3560 Direct Multi-Family Housing Loans and Grants.

OMB Number: 0575–0189.

Expiration Date of Approval: November 30, 2007.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collected is used by the Agency to manage, plan, evaluate, and account for Government resources. The reports are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals, corporations, associations, trusts, Indian tribes, public or private nonprofit organizations, which may include faith-based, consumer cooperative, or partnership.

Estimated Number of Respondents: 2,082,153.

Estimated Number of Responses per Respondent: 1.1.

Estimated Number of Responses: 2,307,553.

Estimated Total Annual Burden on Respondents: 1,132,930 hours.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, at (202) 692–0042.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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. Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 3, 2007.

David Villano,

Acting Administrator, Rural Housing Service.

[FR Doc. E7–15520 Filed 8–8–07; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Membership of the Departmental Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of Membership on the Departmental Performance Review Board.

SUMMARY: In accordance with 5 U.S.C., 4314(c)(4), Department of Commerce (DOC) announces the appointment of persons to serve as members of the Departmental Performance Review Board (DPRB). The DPRB provides an objective peer review of the initial performance ratings, performance-based pay adjustment and bonus recommendations, higher-level review requests and other performance-related actions submitted by appointing authorities for Senior Executive Service (SES) members whom they directly supervise, and makes recommendations based on its review. The term of the new members of the DPRB will expire December 31, 2009.

DATES: *Effective Date:* The effective date of service of appointees to the Departmental Performance Review Board is upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Denise A. Yaag, Director, Office of Executive Resources, Office of Human Resources Management, Office of the Director, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–3600.

SUPPLEMENTARY INFORMATION: The names and position titles of the members of the DPRB are set forth below by organization:

Department of Commerce Departmental Performance Review Board Membership 2007–2009

Office of the Secretary: Tracey S. Rhoades, Director, Executive Secretariat.

Office of General Counsel: Michael A. Levitt, Assistant General Counsel for Legislation and Regulation; Joan Maginnis, Assistant General Counsel for Finance and Litigation.

Chief Financial Officer and Assistant Secretary for Administration: William J. Fleming, Deputy Director for Human Resources Management.

Office of the Chief Information Officer: John W. McManus, Deputy Chief Information Officer.

Bureau of Industry and Security: Gay G. Shrum, Director of Administration.

Bureau of the Census: C. Harvey Monk, Assistant Director for Economic Programs.

Economics and Statistics Administration: James K. White, Associate Under Secretary for Management.

Economics and Development Administration: Matthew Crow, Deputy Assistant Secretary for External Affairs and Communication.

International Trade Administration: Michelle O'Neill, Deputy Under Secretary for International Trade; Stephen P. Jacobs, Director, Office of Policy Coordination.

Minority Business Development Agency: Edith J. McCloud, Associate Director for Management.

National Oceanic and Atmospheric Administration: Robert J. Byrd, Chief Financial Officer/Chief Administrative Officer, NWS; Joseph F. Klimavicz, Chief Information Officer and Director of High Performance Computing and Communications; Elizabeth R. Scheffler, Associate Assistant Administrator for Management and CFO/CAO, NOS; Maureen Wylie, Chief Financial Officer; Kathleen A. Kelly, Director, Office of Satellite Operations, NESDIS.

National Technical Information Service: Ellen Herbst, Director, National Technical Information Service.

National Telecommunications and Information Administration: Daniel C. Hurley, Director, Communications and Information Infrastructure Assurance Program.

National Institute of Standards and Technology: James M. Turner, Deputy Director.

Dated: July 18, 2007.

Denise A. Yaag,

Director, Office of Executive Resources.

[FR Doc. 07–3886 Filed 8–8–07; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Walter L. Lachman; Correction

In the **Federal Register** of Tuesday, March 20, 2007, the Bureau of Industry and Security published an Order denying the export privileges of Walter L. Lachman at 13083. This notice is being published to correct certain standard language regarding the scope of the ''Denied Person'' in that Order, which was defined in a way that made Walter L. Lachman appear as a corporation rather than an individual. Paragraph I of the text of the Order currently defines the scope of the ''Denied Person'' as follows: ''* * * Walter L. Lachman, 1159 Old Marlboro Road, Concord, MA 01742, his successors or assigns, and when acting for or on behalf of Lachman, his officers, representatives, agents, or employees * * *.'' This language should instead read as follows: ''* * * Walter L. Lachman, 1159 Old Marlboro Road, Concord, MA 01742, and when acting for or on behalf of Lachman, his representatives, assigns, agents, or employees * * *.''

Dated: July 31, 2007.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 07–3887 Filed 8–8–07; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Maurice Subilia; Correction

In the **Federal Register** of Tuesday, March 20, 2007, the Bureau of Industry and Security published an Order denying the export privileges of Maurice Subilia at 13085. This notice is being published to correct certain standard language regarding the scope of the ''Denied Person'' in that Order, which was defined in a way that made Maurice Subilia appear as a corporation rather than an individual. Paragraph I of the text of the Order currently defines the scope of the ''Denied Person'' as follows: ''* * * Maurice Subilia, 17 Oakwood Road, Kennebunkport, ME 04046, his successors or assigns and when acting for or on behalf of Subilia, his officers, representatives, agents, or employees * * *.'' This language should instead read as follows: '' * * * Maurice Subilia, 17 Oakwood Road, Kennebunkport, ME 04046, and when acting for or on behalf of Subilia, his representatives, assigns, agents, or employees * * *.''.

Dated: July 31, 2007.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 07–3888 Filed 8–8–07; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–806]

Certain Hot-Rolled Carbon Steel Flat Products From Romania: Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an

administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Romania. The period of review is November 1, 2005, through October 31, 2006. We preliminarily determine that sales of subject merchandise by Mittal Steel Galati, S.A. (MS Galati), have been made below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries. Interested parties are invited to comment on these preliminary results. Parties that submit comments are requested to submit with each argument (1) A statement of the issue(s) and (2) a brief summary of the argument(s). We will issue the final results no later than 120 days from the publication of this notice.

DATES: *Effective Date:* August 9, 2007.

FOR FURTHER INFORMATION CONTACT: David Dirstine at (202) 482–4033, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published an antidumping duty order on certain hot-rolled carbon steel flat products from Romania. See *Notice of Amended Final Antidumping Duty Determination and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Romania,* 66 FR 59566 (November 29, 2001).

On November 1, 2006, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Romania for the period November 1, 2005, through October 31, 2006. See *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation,* 71 FR 64240 (November 1, 2006). On November 30, 2006, the Department received timely requests for an administrative review of this order on behalf of MS Galati, Nucor Corporation (a domestic interested party), and United States Steel Corporation (USSC), the petitioner in this proceeding.

On December 27, 2006, the Department initiated an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Romania for the period November 1, 2005, through October 31, 2006 (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 71 FR 77720 (December 27, 2006)).

Scope of the Order

For purposes of this order, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight length, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order. The merchandise subject to this order is classified in the Harmonized Tariff Schedules of the United States (HTSUS) at the following subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products are covered by this order, including vacuum degassed fully stabilized, high strength low alloy, and the substrate for motor lamination steel which may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this proceeding is dispositive. For a full description of the scope of the order, see *Notice of Amended Final Antidumping Duty Determination and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from Romania,* 66 FR 59566 (November 29, 2001).

Date of Sale

Normally, the Department uses the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business, as the date of sale of the subject merchandise or foreign like product. See 19 CFR 351.401(i). A date other than the date of invoice may be used, however, it we determine that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *Id.* In the 2003–2004 and the 2004–2005 reviews of this order, we examined customer-order acknowledgments and the corresponding invoices and compared the price, quantity, terms of delivery, and payment terms on the documents. We found that all material terms of sale which were established on the date of the customer-order acknowledgment issued by MS Galati's U.S. subsidiary, MS North America (MSNA), did not change in the corresponding invoices. Based on our analysis in those reviews, we determined that the date of MSNA's customer-order acknowledgment represented the appropriate date of sale for reporting U.S. sales. See *Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review and Rescission in Part of Administrative Review,* 71 FR 30656 (May 30, 2006), and accompanying Issues and Decision Memorandum at Comment 7.

In the current review, however, we find variations in the quantity shipped which exceed the commercial tolerances as stated in the terms and conditions on the customer-order acknowledgment and on the customer invoice. We examined all U.S. sales made during the period of review and found that there were a number of occurrences where the quantity on the invoice differed from the contracted quantity on the customer-order acknowledgment. Therefore, we determine that date of invoice represents the appropriate date of sale for reporting U.S. sales for this administrative review.

Fair-Value Comparisons

To determine whether MS Galati's sales of the subject merchandise from Romania to the United States were made at prices below normal value, we compared the constructed export price (CEP) to the normal value as described

in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. Therefore, pursuant to section 777A(d)(2) of the Tariff Act of 1930 as amended (the Act), we compared the CEPs of individual U.S. transactions to the monthly weighted-average normal value of the foreign like product where there were sales made in the ordinary course of trade.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products within the ''Scope of the Order'' section above which were produced and sold by MS Galati in the home market during the period of review to be foreign like product for the purpose of determining appropriate product comparisons to U.S. sales of subject merchandise. We relied on the following eleven characteristics, in order of significance, to match U.S. sales of subject merchandise to comparison sales of the foreign like product: (1) Painted; (2) quality; (3) carbon content; (4) yield strength; (5) thickness; (6) width; (7) form; (8) temper rolled; (9) pickled; (10) edge trim; and (11) patterns in relief. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics and reporting instructions we identified in our questionnaire. See Appendix III and IV of the Department's antidumping duty questionnaire to MS Galati dated January 17, 2007.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. For purposes of this administrative review, we have treated sales by MS Galati as CEP transactions because MS Galati's U.S. affiliate, MSNA, made the first sale to an unaffiliated party in the United States. Therefore, we based CEP on the packed, duty-paid prices to unaffiliated purchasers in the United States in accordance with sections 772(b), (c), and (d) of the Act. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included foreign inland freight from the plant to the port of export, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, other U.S. transportation expenses (*i.e.*, U.S. stevedoring, wharfage, and surveying), and U.S. customs duty. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses) and indirect selling expenses.

For these CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We deducted the profit allocated to expenses pursuant to sections 772(d)(1) and 772(d)(2) of the Act in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

Normal Value

A. Home-Market Viability

We compared the aggregate volume of all home-market sales of the foreign like product and the U.S. sales of the subject merchandise to determine whether the volume of the foreign like product sold in Romania was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form a basis for normal value. Because the volume of home-market sales of the foreign like product was greater than five percent of the U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act we have based the determination of normal value on the home-market sales of the foreign like product. Thus, we used as normal value the prices at which the foreign like product was first sold for consumption in Romania, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade as the CEP sales, as appropriate. See section 773(a)(1)(B)(i) of the Act. After testing home-market viability, we calculated normal value as discussed in the ''Price-to-Price Comparisons'' section of this notice.

B. Cost-of-Production Analysis

Because we disregarded below-cost sales by MS Galati in the home market in the previous administrative review, we conducted a sales-below-cost investigation of MS Galati's home-market sales of the foreign like product in the current administrative review. See section 773(b)(2)(A)(i) of the Act.

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average cost of production based on the sum of the cost of materials and fabrication for the foreign like product plus amounts for home-market general and administrative (G&A) expenses, interest expenses, and packing expenses. We relied on the cost-of-production data MS Galati submitted in its March 27, 2007, questionnaire response.

On a model-specific basis, we compared the cost of production to the home-market prices, less any applicable movement charges and direct and indirect selling expenses.

We disregarded below-cost sales where 20 percent or more of MS Galati's sales of a given product were made at prices below the cost of production and, thus, such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act and where, based on comparisons of the price to the weighted-average cost of production, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act.

C. Arm's-Length Test

MS Galati reported that it made sales in the home market to affiliated and unaffiliated customers. The Department did not require MS Galati to report downstream sales by its affiliated party because these sales represented less than five percent of its total home-market sales. See 19 CFR 351.405(d). We excluded sales to affiliated customers in the home market not made in the ordinary course of trade from our analysis pursuant to section 773(a)(1)(B)(i) of the Act. To determine whether sales to affiliated customers were made in the ordinary course of trade, we tested whether sales to each affiliated customer were made at arm's length. As such, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length, consistent with *Antidumping Proceedings: Affiliated*

Party Sales in the Ordinary Course of Trade, 67 FR 69186 (November 15, 2002).

D. Price-to-Price Comparisons

We based normal value on the home-market sales to unaffiliated purchasers and sales to affiliated customers that passed the arm's-length test. We adjusted gross unit price for reported freight revenue. We made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made adjustments for movement expenses (*i.e.*, inland freight from plant to distribution warehouse and warehousing expenses) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for imputed credit, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. In accordance with section 773(a)(6) of the Act, we deducted home-market packing costs and added U.S. packing costs.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the CEP transaction. See also 19 CFR 351.412. The normal-value level of trade is the level of the starting-price sales in the comparison market or, when normal value is based on constructed value, the level of the sales from which we derive selling, general, and administrative expenses and profits. For CEP sales, the U.S. level of trade is the level of the constructed sale from the exporter to the affiliated importer. See 19 CFR 351.412(c)(1).

To determine whether home-market sales are at a different level of trade than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home-market sales are at a different level of trade than CEP sales and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which normal value is based and home-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the normal-value level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP offset). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731–33 (November 19, 1997).

In this review, MS Galati reported that it sold to unaffiliated distributors and end-users in Romania as well as to affiliated end-users for consumption and affiliated distributors. In the United States, MS Galati had sales to an affiliate, MSNA, that resold the merchandise to unaffiliated customers.

MS Galati reported one level of trade in the home market with the following three channels of distribution: (1) Direct sales to customers where the customer picks up the merchandise at MS Galati's location or MS Galati ships the goods to the destination requested by the customer; (2) sales with delivery to the Danube River port of Galati, located a few kilometers from MS Galati's location, where certain customers load the goods on barges for delivery within Romania; (3) sales through its affiliated warehouse. Home-market sales were made to two classes of customers, end-users and distributors. Along with MS Galati's home-market sales of merchandise stored at its affiliated warehouse, MS Galati also had sales to affiliated end-users for consumption. Based on our review of evidence on the record, we find that home-market sales through the three channels of distribution to both customer categories, whether affiliated or not, were substantially similar with respect to selling functions and stages of marketing. MS Galati performed the same selling functions at the same level for sales to all home-market customers. Accordingly, we preliminarily find that MS Galati had only one level of trade for its home-market sales.

MS Galati reported one CEP level of trade with one channel of distribution in the United States which consists of its U.S. affiliate's direct sales to end-users and distributors of merchandise shipped directly from Romania. As such, we preliminarily determine that MS Galati made CEP sales to the United States through one channel of distribution—direct sales to end-users and distributors.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. Accordingly, we reviewed the selling functions and services MS Galati reported it performed on CEP sales and we have determined that the selling functions it performed on all CEP sales were identical. Therefore, we preliminarily determine that there is one CEP level of trade in the U.S. market.

We then compared the selling functions performed by MS Galati on its CEP sales (after deductions) to the selling functions it provided in the home market. We found that MS Galati performs more selling functions for its home-market sales than those it provides to its U.S. affiliate, MSNA. MS Galati reported that it provided minimal selling functions and services for the CEP level of trade and that, as a result, the home-market level of trade is more advanced than the CEP level of trade. Based on our analysis of the channels of distribution and MS Galati's selling functions for sales in the home market and CEP sales in the U.S. market, we preliminarily find that the home-market level of trade is at a more advanced stage of distribution when compared to CEP sales because MS Galati provides many selling functions in the home market at a higher level of service as compared to selling functions it performed for its CEP sales.

We examined whether a level-of-trade adjustment or CEP offset may be appropriate. In this case, MS Galati sold at one level of trade in the home market. Therefore, there is no information available to determine a pattern of consistent price differences between the sales on which we base normal value and the home-market sales at the level of trade of the export transaction, in accordance with our normal methodology as described above. See 19 CFR 351.412(d). We do not have record information which would allow us to examine pricing patterns based on MS Galati's sales of other products, and there are no other respondents or other record information on which such as analysis could be based. Accordingly, because the data available do not provide an appropriate basis for making a level-of-trade adjustment but the level of trade in the home market is at a more advanced state of distribution than the level of trade of the CEP transactions, we have made a CEP-offset adjustment to normal value in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).

To calculate the CEP offset, we deducted the home-market indirect selling expenses from normal value for home-market sales that we compared to U.S. CEP sales. As such, we limited the deduction for home-market indirect selling expenses by the amount of the indirect selling expenses we deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

Currency Conversion

We made currency conversions pursuant to 19 CFR 351.415 based on

the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the weighted-average dumping margin for MS Galati during the period November 1, 2005, through October 31, 2006, is 11.02 percent.

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. If requested, a hearing will be held at the main Department building. We will notify parties of the exact date, time, and place for any such hearing.

Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties may be filed no later than 30 days after publication of this notice. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to the issues raised in case briefs, may be submitted no later than five days after the deadline for filing case briefs. See 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue and a brief summary of the argument with an electronic version included.

The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in the case briefs, within 120 days from the date of publication of these preliminary results.

Assessment Rate

The Department will determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate. The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. We intend to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review. See 19 CFR 351.212(b)(1).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. See *Notice of Policy Concerning Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (Assessment-Policy Notice). This clarification will apply to entries of subject merchandise during the period of review produced by MS Galati for which MS Galati did not know that the merchandise it sold to an intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the 17.84 percent all-others rate if there is no rate for the intermediary involved in the transaction. See the Assessment-Policy Notice for a full discussion of this clarification.

Cash-Deposit Requirements

The following cash-deposit rates will be effective upon publication of the final results of this review for all shipments of certain hot-rolled carbon steel flat products from Romania entered, or withdrawn from warehouse, for consumption on or after publication date, as provided by section 751(a)(2)(C) of the Act: (1) For MS Galati, the cash-deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original antidumping duty investigation but the manufacturer is, the cash-deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous administrative review or in the original less-than-fair-value investigation, the cash-deposit rate will be 17.84 percent, the ''All Others'' rate made effective on June 14, 2005. See *Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review,* 70 FR 34448 (June 14, 2005).

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 2, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–15573 Filed 8–8–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–813]

Polyethylene Retail Carrier Bags from Malaysia: Final Results of Antidumping DutyAdministrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 10, 2007, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Malaysia. The review covers exports of this merchandise to the United States by Euro Plastics Malaysia Sdn. Bhd. (Euro Plastics) for the period of review August 1, 2005, through July 31, 2006. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments and the revised cost information we received from Euro Plastics, we have made changes in the margin calculation for the final results of this review. The final weighted–average margin is listed below in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: August 9, 2007.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun at (202) 482–5760 or Richard Rimlinger at (202) 482–4477, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 2007, the Department of Commerce (the Department) published the preliminary results of review and invited parties to comment. *See Polyethylene Retail Carrier Bags from Malaysia: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 26600 (May 10, 2007) (*Preliminary Results*). On June 11, 2007, Euro Plastics filed a case brief in which the company alleged two ministerial errors in the calculation. The

petitioners[1] did not file a case or rebuttal brief.

Scope of the Order

The merchandise subject to this antidumping duty order is PRCBs which may be referred to as t–shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non–sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches (15.24 cm) but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end–uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash–can liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Sales Below Cost in the Home Market

The Department conducted an investigation to determine whether Euro Plastics made home–market sales at prices below the cost of production. See *Preliminary Results*, 72 FR at 26601. As a result of its investigation, the Department disregarded certain below–cost home–market sales for the preliminary results. As discussed below, Euro Plastics has submitted a more recent financial statement since we published the *Preliminary Results*. The Department has incorporated this financial statement into its below–cost analysis and continues to find that Euro Plastics made sales below cost during the period of review. Therefore, in accordance with section 773(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department has disregarded certain below–cost home–market sales for these final results.

Changes Since the Preliminary Results

For the preliminary results, we used Euro Plastics's cost data based on its audited 2005 financial statement because its audited 2006 financial statement was not available. Because the period of review covers five months in 2005 and seven months in 2006, we stated our intent to use Euro Plastics's cost data based on its audited 2006 financial statement once the audited 2006 financial statement became available. See *Preliminary Results*, 72 FR at 26601–02. On June 4, 2007, Euro Plastics submitted its general and administrative expense rate and net interest expense rate based on its audited 2006 financial statement. See Euro Plastics's June 4, 2007, supplemental cost information, Exhibits 3 and 4. We used Euro Plastics's revised cost data to re–calculate its general and administrative expense and net interest expense.

In its case brief, Euro Plastics identified two clerical errors. We agree with Euro Plastics that we made two inadvertent computer–code errors in the preliminary antidumping–duty margin calculation for Euro Plastics and have corrected them for the final results. For more details, see the Euro Plastics final analysis memorandum dated August 2, 2007.

Final Results of Review

As a result of our review, we determine that a margin of 0.00 percent exists for Euro Plastics for the period of review August 1, 2005, through July 31, 2006.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will issue importer–specific assessment instructions for entries of subject merchandise during the period of review. The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review. See also section 751(a)(2)(C) of the Act.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by Euro Plastics for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of PRCBs entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) the cash–deposit rate for Euro Plastics will be 0.00 percent; (2) for previously investigated companies not listed above, the cash–deposit rate will continue to be the company–specific rate published in the *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia*, 69 FR 34128, 34129 (June 18, 2004) (*Final Determination*); (3) if the exporter is not a firm covered in this review or the less–than-fair–value investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash–deposit rate will be 84.94 percent, the ''all others'' rate for this proceeding published in the *Final Determination*. *Id.* These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

[1] The Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the APO itself. See also 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 2, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–15570 Filed 8–8–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 6, 2006, the Department of Commerce published the preliminary results of the 2005–2006 administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC''). This review covers three exporters.[1] The period of review (''POR'') is February 1, 2005, through January 31, 2006.

Based on our analysis of the comments received, we have made changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* August 9, 2007.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or Terre Keaton Stefanova, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers the following three exporters: (1) China Processed Food Import & Export Company (''COFCO'') and its affiliates China National Cereals, Oils & Foodstuffs Import & Export Corporation, COFCO (Zhangzhou) Food Industrial Co., Ltd. (''COFCO Zhangzhou''), Fujian Yu Xing Fruits & Vegetable Foodstuff Development Co. (''Yu Xing''), and Xiamen Jiahua Import & Export Trading Co., Ltd. (''Xiamen Jiahua'') (hereinafter collectively to referred to as ''the COFCO entity''[2]; (2) Guangxi Eastwing Trading Co., Ltd. (''Guangxi Eastwing''); and (3) Primera Harvest (Xiangfan) Co., Ltd. (''Primera Harvest''). The POR is February 1, 2005, through January 31, 2006.

On November 6, 2006, the Department of Commerce (''the Department'') published the preliminary results of this administrative review of the antidumping duty order on certain preserved mushrooms from the PRC. *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 64930 (November 6, 2006) (''*Preliminary Results*''). We invited interested parties to comment on the *Preliminary Results*.

On November 9, 2006, the COFCO entity requested that the Department extend the deadlines to submit new factual information, publicly available information (''PAI''), and case and rebuttal briefs, as well as the deadline for the final results. On November 17, 2006, we notified the COFCO entity and the other interested parties in this review that although we did not find it necessary at the time to extend the final results, we would extend the deadline to submit new factual information and PAI until January 26, 2007, and extend the deadlines for submitting case and rebuttal briefs until February 9 and 14, 2007, respectively.

On January 22, 2007, the COFCO entity submitted a second request to further extend the deadline for submitting new factual information, PAI, and case and rebuttal briefs, and also requested that the Department fully extend the final results. On January 24, 2007, we notified the COFCO entity and the other interested parties in this review that the Department would provide new deadlines for submitting PAI, case and rebuttal briefs once the Department issued a **Federal Register** notice postponing the final results.

On January 29, 2007, we partially extended the time limit for the final results in this review until August 3, 2007. *See Notice of Partial Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China,* 72 FR 5268 (February 5, 2007).

On January 31, 2007, the Department provided the COFCO entity and the other interested parties in this review revised deadlines for submitting PAI and case and rebuttal briefs.

On February 5, 2007, the Department placed on the record a revised non-market-economy (''NME'') wage rate applicable to the PRC for consideration in the final results.[3]

On March 19, 2007, the Department placed on the record an additional brokerage and handling surrogate value for consideration in the final results.[4]

On March 30, 2007, the COFCO entity submitted PAI for consideration in the final results. No other party submitted PAI.

The COFCO entity filed its case brief on April 13, 2007. No other party (including the petitioner[5]) filed case or rebuttal briefs in the review. No party requested a hearing.

On June 29, 2007, the Department placed on the record information obtained from the Web site of an Indian producer of the subject merchandise and provided an opportunity for the

[1] This figure does not include those companies which did not respond to the Department's requests for information. *See* ''Facts Available'' section of this notice for further discussion.

[2] In the *Preliminary Results*, we determined it appropriate to treat COFCO and its affiliates, China National, COFCO Zhangzhou, Xiamen Jiahua and Yu Xing, as one entity for margin calculation purposes because they met the regulatory criteria for collapsing. *See* October 31, 2006, Memorandum from the Team to The File, entitled ''Certain Preserved Mushrooms from the People's Republic of China: Whether to Continue to Collapse COFCO with Some or All of Its Affiliates.'' No party objected to this preliminary determination. Therefore, we have continued to treat these affiliated companies as one entity in the final results.

[3] *See* Memorandum from Brian Smith, Team Leader, to The File, entitled ''Antidumping Duty Administrative Review on Certain Preserved Mushrooms from the People's Republic of China: Revised Non-Market-Economy Wage Rate Applicable to the PRC,'' dated February 5, 2007.

[4] *See* Memorandum from Brian Smith, Team Leader, to The File, entitled ''Antidumping Duty Administrative Review on Certain Preserved Mushrooms from the People's Republic of China: Additional Brokerage and Handling Surrogate Value Placed on the Record,'' dated March 19, 2007.

[5] The petitioner is the Coalition for Fair Preserved Mushroom Trade, which includes the following domestic companies: L.K. Bowman, Inc., Monterey Mushrooms, Inc., Mushroom Canning Company, and Sunny Dell Foods, Inc.

parties to comment on that information.[6] No comments were filed.

We have conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Certain Preserved Mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[7]

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case brief submitted by the COFCO entity in this antidumping duty administrative review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated August 3, 2007, which is hereby adopted by this notice. A list of the issues that the COFCO entity has raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memo are identical in content.

Facts Available

In the Preliminary Results, the Department found that Gerber Food (Yunnan) Co., Ltd. (''Gerber'') and Green Fresh Foods (Zhangzhou) Co., Ltd. (''Green Fresh'') were uncooperative because Gerber did not respond to supplemental requests for information relevant to its no-shipment claim, whereas Green Fresh failed to file its response to the Department's quantity and value questionnaire in accordance with the Department's regulations. As a result, the Department considered the information both companies provided either incomplete, unreliable, or improperly filed. Moreover, the Department found that Guangxi Hengxian Pro-Light Foods, Inc. (''Guangxi Hengxian'') and Guangxi Yulin Oriental Food Co., Ltd. (''Guangxi Yulin'') were uncooperative as well because Guangxi Hengxian did not respond to the Department's antidumping duty questionnaire and Guangxi Yulin did not respond to the Department's quantity and value questionnaire. Because all four of these companies failed to provide responses to the Department's questionnaires, the Department could not determine whether they were eligible for a separate rate in this review and, therefore, treated them as part of the PRC-wide entity. In the *Preliminary Results,* the Department based the margin for the PRC-wide entity, including the four companies mentioned above, on total adverse facts available (''AFA'') because of the PRC-wide entity's failure to cooperate by not acting to the best of its ability in providing responses to the Department's request for information. As AFA, the Department applied the prior PRC-wide entity rate of 198.63 percent. *See Preliminary Results,* 71 FR at 64933.

A complete explanation of the selection, corroboration, and application of the AFA rate can be found in the *Preliminary Results. See Preliminary Results,* 71 FR at 64933. The Department did not receive comments with regard to its preliminary findings that Gerber, Green Fresh, Guangxi Hengxian, and Guangxi Yulin are part of the PRC-wide entity. Further, no information was submitted since the *Preliminary Results* that calls into question the reliability of the Department's selection, corroboration, and application of AFA in this review. Accordingly, for the final results, we continue to apply AFA to the PRC-wide entity, including Gerber, Green Fresh, Guangxi Hengxian, and Guangxi Yulin, consistent with our *Preliminary Results.*

Changes From the Preliminary Results

Based on the information submitted and our analysis of the comments received, we have made certain changes to the margin calculations for the COFCO entity as follows.

(1) We used the COFCO entity's January 26, 2007, revised factors of production database in our margin calculations.

(2) To value fresh mushrooms, we used data contained in the 2005–2006 financial report of Agro Dutch Industries Limited (''Agro Dutch''). *See* Decision Memo at Comment 1 for further discussion.

(3) To value spawn, we used data contained in the 2004–2005 financial report of Agro Dutch. *See* Decision Memo at Comment 3 for further discussion.

(4) To value foreign brokerage and handling, we used Agro Dutch's publicly summarized data submitted in the 2004–2005 administrative review of certain preserved mushrooms from India. *See* Decision Memo at Comment 4 for further discussion.

(5) We calculated average surrogate percentages for factory overhead, selling, general, and administrative expenses, and profit using the 2005–2006 financial reports of Agro Dutch and Flex Foods Limited. *See* Decision

[6] *See* Memorandum from Brian Smith, Team Leader, to The File, entitled ''Antidumping Duty Administrative Review on Certain Preserved Mushrooms from the People's Republic of China: Additional Data Placed on the Record for Comment,'' dated June 29, 2007.

[7] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* ''Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. *See Tak Fat* v. *United States,* 396 F.3d 1378 (Fed. Cir. 2005).

Memo at Comment 5 for further discussion.

(6) We used the most recently calculated NME wage rate for the PRC of 0.83 U.S. dollars per hour in our normal value calculations in accordance with Department practice (*see, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews,* 72 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2).

(7) Consistent with our regression-based PRC wage rate calculation, we have treated the bonuses and gratuity line items noted in the surrogate producers' financial reports as part of direct labor and included these expense items in the calculation of the denominator [8] used to derive the factory overhead ratio.

See Memorandum from Brian Smith, Senior Case Analyst, to The File, entitled ''7th Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People's Republic of China: Surrogate Values for the Final Results,'' dated August 3, 2007, for further details.

Final Results of Review

We determine that the following weighted-average margin percentages exist:

Manufacturer/exporter	Margin (percent)
China Processed Food Import & Export Company (which includes its affiliates China National Cereals, Oils & Foodstuffs Import & Export Corporation, COFCO (Zhangzhou) Food Industrial Co., Ltd., Xiamen Jiahua Import & Export Trading Co., Ltd., and Fujian Yu Xing Fruit & Vegetable Foodstuff Development Co.) [9]	19.02
Primera Harvest (Xiangfan) Co., Ltd	19.02
Guangxi Eastwing Trading Co., Ltd [10]	19.02
PRC-Wide Rate (which includes Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin and Fujian Zishan Group Co., Ltd. (''Fujian Zishan'') [11])	198.63

[8] The denominator includes costs for direct materials, labor, energy and material freight costs.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b). The Department will issue appropriate appraisement instructions directly to CBP 15 days after publication of these final results of review. In accordance with 19 CFR 351.106(c), we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, is not less than 0.50 percent *ad valorem*). For entries made by the COFCO entity, the respondent was unable to provide the entered value. Therefore, we calculated the importer-specific-per-unit duty assessment rate by aggregating the total amount of antidumping duties calculated for the examined sales and divided this amount by the total quantity of those sales. To determine whether the per-unit duty assessment rate is *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated an importer-specific *ad valorem* ratio based on the estimated entered value. For Guangxi Eastwing and Primera Harvest (*i.e.*, respondents which are being assigned the margin calculated for the COFCO entity), we will instruct CBP to assess antidumping duties on entries from these companies equal to the margin these companies received in the final results, regardless of the importer or customer.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates indicated above; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate established in the final results of this review; and (4) the cash deposit rate for any non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

[9] For this review, we consider COFCO, COFCO Zhangzhou, Xiamen Jiahua, and Yu Xing to constitute a single entity.

[10] The margin assigned to Primera Harvest (Xiangfan) Co., Ltd. (''Primera Harvest'') and Guangxi Eastwing Trading Co., Ltd. (''Guangxi Eastwing''), the two non-mandatory respondents in this review, which demonstrated their entitlement to a separate rate, is based on the weighted average of the calculated margins of the mandatory respondents which are not *de minimis* or based on AFA, in accordance with Department practice (*i.e.*, the margin calculated for the COFCO entity which is the only mandatory respondent entitled to a separate rate in this case). *See Preliminary Results,* 71 FR at 64930–64931, 64937.

[11] As discussed in the *Preliminary Results,* 72 FR at 64934, Fujian Zishan is neither subject to this review nor entitled to a separate rate, as it is no longer part of the COFCO entity.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221.

Dated: August 3, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix—List of Issues

Comment 1: Selection of Fresh Mushroom Value
Comment 2: Selection of Glass Jar Value
Comment 3: Selection of Spawn Value
Comment 4: Selection of Brokerage and Handling Value
Comment 5: Selection of Financial Statements
Comment 6: Reclassification and Adjustments to Certain Financial Data

Comment 7: Method of Adjusting U.S. Prices for Glass Jars/Caps Provided Free-of-Charge

[FR Doc. E7–15575 Filed 8–8–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–844]

Steel Concrete Reinforcing Bars from South Korea: Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 1, 2006, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty (''AD'') order on steel concrete reinforcing bars (''rebar'') from South Korea. Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the International Trade Commission (''ITC'') determined that revocation of this order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1)(iii), the Department is revoking the AD order on rebar from South Korea.

EFFECTIVE DATE: September 7, 2006.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Audrey Twyman, AD/CVD Operations Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0182, (202) 482–3534, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2001, the Department issued the AD order on rebar from South Korea. *See Antidumping Duty Orders: Steel Concrete Reinforcing Bars From Belarus, Indonesia, Latvia, Moldova, People's Republic of China, Poland, Republic of Korea and Ukraine*, 66 FR 46777 (September 7, 2001). On August 1, 2006, the Department initiated, and the ITC instituted, a sunset review of the order on rebar from South Korea. *See Initiation of Five-year (''Sunset'') Reviews*, 71 FR 43443 (August 1, 2006); and *Steel Concrete Reinforcing Bars From Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine*, Investigations Nos. 731–TA–873–875, 877–880, and 882 (Review), 71 FR 43523 (August 1, 2006).

As a result of the sunset review of this order, the Department found that revocation of the order would be likely to lead to the continuation or recurrence of dumping. *See Steel Concrete Reinforcing Bars from Moldova, the People's Republic of China, South Korea, Indonesia, Poland, and Belarus; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70509 (December 5, 2006). The Department notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked.

On August 1, 2007, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Steel Concrete Reinforcing Bars From Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine*, Investigations Nos. 731–TA–873–875, 877–880, and 882 (Review), 72 FR 42110, (August 1, 2007).

Scope of the Order

The product covered by this order is all steel concrete reinforcing bars sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7214.20.00, 7228.30.8050, 7222.11.0050, 7222.30.0000, 7228.60.6000, 7228.20.1000, or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non–deformed or smooth bars) and rebar that has been further processed through bending or coating.

HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

Determination

As a result of the determination by the ITC that revocation of the order is not likely to lead to the continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d) of the Act, is revoking the order on rebar from South Korea. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is September 7, 2006 (*i.e.*, the fifth anniversary of the date of publication in the **Federal Register** of the order). The Department will notify U.S. Customs and Border Protection to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after September 7, 2006, the effective date of revocation of the order. The Department will complete any pending administrative reviews of the order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This five-year sunset review and notice are in accordance with section 751(d)(2) and published pursuant to section 777(i)(1) of the Act.

Dated: August 2, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–15571 Filed 8–8–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–822–804, A–560–811, A–449–804, A–841–804, A–570–860, A–455–803, A–823–809]

Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland and Ukraine: Continuation of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 1, 2006, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty (''AD'') orders on steel concrete reinforcing bars (''rebar'') from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland and Ukraine. As a result of the determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty orders on steel concrete reinforcing bars (''rebar'') from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland and Ukraine would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of these antidumping duty orders.

EFFECTIVE DATE: August 9, 2007.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3534 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2001, the Department issued the orders on rebar from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland and Ukraine. *See Antidumping Duty Orders: Steel Concrete Reinforcing Bars From Belarus, Indonesia, Latvia, Moldova, People's Republic of China, Poland, Republic of Korea and Ukraine*, 66 FR 46777 (September 7, 2001). On August 1, 2006, the Department initiated and the ITC instituted sunset reviews of the antidumping duty orders on rebar from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland and Ukraine pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Reviews*, 71 FR 43443 (August 1, 2006); and *Steel Concrete Reinforcing Bars From Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine*, Investigations Nos. 731–TA–873–875, 877–880, and 882 (Review), 71 FR 43523 (August 1, 2006).

As a result of its reviews, the Department found that revocation of the AD orders would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of the margins likely to prevail were the orders to be revoked. *See Steel Concrete Reinforcing Bars from Latvia; Final Results of the Sunset Review of Antidumping Duty Order*, 72 FR 16767 (April 5, 2007); *Steel Concrete Reinforcing Bars from Ukraine; Final Results of the Sunset Review of Antidumping Duty Order*, 72 FR 9732 (March 5, 2007), and *See Steel Concrete Reinforcing Bars from Moldova, the People's Republic of China, South Korea, Indonesia, Poland, and Belarus; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70509 (December 5, 2006).

On August 1, 2007, the ITC determined pursuant to section 751(c) of the Act, that revocation of the AD orders on rebar from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland and Ukraine would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Steel Concrete Reinforcing Bars From Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine*, Investigations Nos. 731–TA–873–875, 877–880, and 882 (Review), 72 FR 42110 (August 1, 2007).

Scope of the Orders

The product covered by these orders is all steel concrete reinforcing bars sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7214.20.00, 7228.30.8050, 7222.11.0050, 7222.30.0000, 7228.60.6000, 7228.20.1000, or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non–deformed or smooth bars) and rebar that has been further processed through bending or coating.

HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the orders is dispositive.

Determination

As a result of the determinations by the Department and the ITC that revocation of these antidumping duty orders would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD orders on rebar from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland and Ukraine. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of these orders not later than July 2012.

These five-year (sunset) reviews and this notice are in accordance with section 751(c) of the Act. This notice is published pursuant to 751(c) and 771(i) of the Act and 19 CFR 351.218(f)(4).

Dated: August 2, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–15572 Filed 8–8–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Mission Statement; Secretarial Business Development Mission to Vietnam, November 2007

AGENCY: Department of Commerce, ITA.

ACTION: Notice.

Mission Description

Secretary of Commerce Carlos M. Gutierrez will lead a senior-level U.S. business delegation to Hanoi and Ho Chi Minh City, Vietnam, from November 4–8, 2007, to promote U.S. exports to Vietnam's leading industry sectors. The mission will focus on assisting U.S. companies doing business with Vietnam increase their current level of exports as well as helping U.S. companies that are experienced exporters enter the Vietnamese market for the first time. The mission will help participating firms gain market information, make business and government contacts, solidify business strategies, and advance specific projects, towards the goal of helping U.S. firms expand their exports to Vietnam. The mission will include business-to-business matchmaking appointments with local companies, as well as meetings with key government officials, and American and local chambers of commerce. The mission will additionally provide a platform for policy and commercial issues—including transparency, rule of law, trading/distribution rights and intellectual-property rights protection—that U.S. companies face in the Vietnamese market. The delegation will be comprised of U.S. firms representing a cross section of U.S. industries with commercial interests in Vietnam.

Senior representatives of the U.S. Trade Development Agency (USTDA), the Export-Import Bank of the United States (Ex-Im), and the Overseas Private Investment Corporation (OPIC) will be invited to participate (as appropriate), to provide information and counseling on their programs as they relate to the Vietnamese market.

Commercial Setting

With a GDP of $61 billion and a young population of 84 million, Vietnam is one of the fastest growing economies in Asia (8.2% in 2006) and the newest member of the World Trade Organization (WTO) (January 11, 2007). Since the signing of the U.S.-Vietnam Bilateral Trade Agreement in 2001, two-way trade has increased from about $1.5 billion (2001) to $9.7 billion (2006). Total U.S. merchandise exports to Vietnam in 2006 were $1.1 billion. Year-to-date (through May 2007) U.S. exports have grown 65.1% over last year.

Industrial production continues to grow at 14–15% per annum, as the country follows an increasingly sophisticated foreign investment- and export-led growth strategy in such industries as agriculture and aquaculture, furniture, textiles and now

consumer electronics. Over the past five years, multilateral development banks have expanded loan portfolios to fund aggressive infrastructure (transportation, energy, telecommunications) growth and will continue to do so into the foreseeable future. New WTO market-opening commitments will continue to be phased in through 2015, making it easier for U.S. companies to open businesses and sell and distribute products in most major sectors. The telecommunications, power production, and oil and gas equipment markets are well above $2.0 billion each and growing significantly each year. IT infrastructure, financial services, environmental products, aviation and airport equipment, security, mining, medical devices and franchising present further lucrative selling opportunities for U.S. exporters. Also, industrial inputs ranging from raw materials to sophisticated manufacturing technology are needed to fuel the Vietnam Government's export-led growth strategy. Rising incomes in Ho Chi Minh City and Hanoi, which tend to be four times the national average, are opening visible new selling opportunities for consumer goods producers and service-sector providers.

The Vietnam Government has successfully privatized a few small State-Owned Enterprises (SOEs), and will continue to do so. However, in the major economic sectors, such as energy, banking, telecommunications, oil and gas, and shipping the Vietnam Government will ''equitize'' (offer shares of large state corporations to investors while maintaining a majority stake) SOEs over the next five to ten years. While challenges remain for U.S. companies doing business in Vietnam, evolving and improving regulatory and commercial law regimes are beginning to address business corruption, weak intellectual property rights enforcement and a lack of transparency and consistency. The mission is designed to assist U.S. companies to identify and capture these opportunities and address such challenges.

Mission Goals: The Business Development Mission to Vietnam will assist U.S. businesses to initiate or expand their exports to Vietnam's leading industry sectors by making business-to-business introductions, providing market access information, and providing access to government decision makers. The Mission aims to:

- Assist U.S. companies already doing business with Vietnam to increase their business there;
- Assist U.S. companies that are experienced exporters to enter Vietnam for the first time;
- Address obstacles to trade with Vietnam, including transparency, rule of law, trading/distribution rights and intellectual property rights protection;
- Provide information on U.S. Government trade financing programs, through the inclusion of representatives from USTDA, Ex-Im, and OPIC (as appropriate).

Mission Scenario: The Business Development Mission to Vietnam will include stops in Hanoi and Ho Chi Minh City. In each city, participants will:

- Meet with high-level government officials;
- Meet with potential buyers, agents/distributors and partners; and
- Attend briefings conducted by Embassy officials on the economic and commercial climates.

Receptions and other business events will be organized to provide mission participants with further opportunities to speak with local business and government representatives, as well as U.S. business executives living and working in the region.

MISSION TIMETABLE

November 4, 2007, Sunday	Mission Begins (Late Afternoon/Evening) Commercial Briefing by Government Officials Welcome Event.
November 5, 2007, Monday	Official Meetings Business Delegation Matchmaking AmCham Event Reception hosted by Ambassador.
November 6, 2007, Tuesday	Official Meetings Business Delegation Matchmaking Travel to Ho Chi Minh City Reception hosted by Consul General.
November 7, 2007, Wednesday	Official Meetings Business Delegation Matchmaking.
November 8, 2007, Thursday	Business Delegation Matchmaking Mission Concludes.

Criteria for Participation and Selection: All parties interested in participating in the Vietnam Business Development Mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. Between 20 and 30 companies will be selected to participate in the mission from the applicant pool.

Fees and Expenses: After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $7,000.00 per firm, which includes one principal representative. The fee for each additional firm representative is $2,100.00. Expenses for travel, lodging, and incidentals will be the responsibility of each mission participant.

Selection Criteria: An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's: Products and/or services, primary market objectives, and goals for participation. If we receive an incomplete application, we may either reject the application or take the lack of information into account when we evaluate the applications.

- Each applicant must also:

—Certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content;

—Certify that the export of the products and services that it wishes to export through the mission would be in

compliance with U.S. export controls and regulations;

—Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department of Commerce that may present the appearance of a conflict of interest;

—Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

—Sign and submit an agreement that it and its affiliates (1) Have not and will not engage in the bribery of foreign officials in connection with company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

Selection will be based on the following criteria in decreasing order of importance.

• Demonstrated export experience in Vietnam and/or globally;

• Suitability of a company's products or services to the Vietnamese market and likelihood of a participating company's increasing exports to Vietnam within a year as a result of this mission; and

• Rank/seniority of the designated company representative.

Additional factors, such as diversity of company size, type, location, demographics, and traditional under-representation in business, may also be considered during the review process.

Referrals from political organizations and any documents, including the application, containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications: Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The Office of Business Liaison and the International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies. Applications for the Mission will be made available July 30, 2007 through September 12, 2007. Applications can be completed on-line on the Vietnam Business Development Mission Web site at *http://www.export.gov/vietnammission* or can be obtained by contacting the U.S. Department of Commerce Office of Business Liaison (202–482–1360 or *vietnammission@doc.gov*).

The application deadline is September 12, 2007. Completed applications should be submitted to the Office of Business Liaison. Applications received after September 12, 2007 will be considered only if space and scheduling constraints permit.

Contact Information: Pat Kirwan, Trade Promotion Coordinating Committee. U.S. Department of Commerce, Washington, DC 20230, Tel: (202) 482–1360, E-mail: *vietnammission@doc.gov.*

Pat Kirwan,

Trade Promotion Coordinating Committee.

[FR Doc. E7–15576 Filed 8–8–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB83

Marine Mammals; Pinniped Removal Authority

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

ACTION: Notice.

SUMMARY: NMFS announces the establishment of a Pinniped-Fishery Interaction Task Force (Task Force) under the Marine Mammal Protection Act (MMPA) in response to an application from Oregon, Washington, and Idaho requesting authorization to intentionally take, by lethal methods, individually identifiable California sea lions (*Zalophus californianus*) that prey on Pacific salmon and steelhead (*Onchorhynchus* spp.) listed as threatened or endangered under the Endangered Species Act (ESA) in the Columbia River in Washington and Oregon. The Task Force will be convened at its first meeting, which is open to the public.

DATES: The first public meeting of the Task Force is September 4–5, 2007, beginning at 9:30 a.m.

ADDRESSES: The Task Force meeting will be held at the Double Tree Lloyd Center, Executive Meeting Center, 1000 NE Multnomah, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, (503) 231–2005, or Tom Eagle, (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Electronic Access

The states' application, associated **Federal Register** notices, and background information on pinniped predation on listed salmonids and on non-lethal efforts to address the predation are available via the Internet at the following address: *http://www.nwr.noaa.gov*.

Background

On December 5, 2006, NMFS received an application co-signed by the Washington Department of Fish and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW) and the Idaho Department of Fish and Game (IDFG) requesting authorization to intentionally take, by lethal methods, individually identifiable California sea lions in the Columbia River, which are having a significant negative impact on the recovery of threatened and endangered Pacific salmon and steelhead. The application describes studies conducted by the U.S. Army Corps of Engineers, Fisheries Field Unit that document pinniped predation in the Bonneville Dam tailrace, including dates, numbers of pinnipeds present, numbers of salmonids consumed, and the estimated proportion of all salmonids passing Bonneville that are taken by pinnipeds foraging in the tailrace of the dam. In accordance with section 120 of the MMPA (16 U.S.C. 1361, *et seq.*) NMFS reviewed the states' application and determined that it provided sufficient evidence to warrant the establishment of a Task Force, whose purpose is to recommend whether NMFS should authorize the intentional lethal taking of California sea lions that prey on ESA-listed salmonids in the Columbia River. NMFS published a notice of receipt and acceptance of the states' application, along with an explanation of the section 120 process, in the **Federal Register** on January 30, 2007 (72 FR 4239) with a request for public comments. The public comment period closed on April 2, 2007. NMFS received 288 comments in response to the notice and 29 Task Force nominations.

NMFS announces that, effective September 4, 2007, the Task Force will be established and will consist of 18 members including designated employees of the Department of Commerce, scientists who are knowledgeable about the pinniped-fishery interactions, representatives of affected conservation and fishing

community organizations, Indian Treaty Tribes, the states, and the U.S. Army Corps of Engineers, which operates the dam. Under section 120, within 60 days, and after reviewing public comments in response to the **Federal Register** notice, the Task Force shall:

(1) Recommend to NMFS whether to approve or deny the proposed intentional lethal taking of pinnipeds, including along with the recommendation a description of the specific pinniped individuals, the proposed location, time and method of such taking, criteria for evaluating the success of the action and the duration of the intentional lethal taking authority; and

(2) Suggest non-lethal alternatives, if available and practicable, including a recommended course of action.

In considering whether to recommend approval or disapproval of the states' application the Task Force is to consider:

(1) Population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;

(2) Past efforts to deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable non-lethal steps without success;

(3) The extent to which such pinnipeds are causing undue injury to, or imbalance with, other species in the ecosystem, including fish populations; and

(4) The extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

All Task Force meetings will be open to the public, but the public will not be allowed to discuss or debate issues with Task Force members at the meetings. NMFS intends to have a predesignated, limited amount of time at the Task Force's first meeting and, if practicable, at subsequent meetings, to allow the public to provide new or relevant information that may assist the Task Force in its deliberations. Subsequent meetings will be determined by the Task Force. Public notice of subsequent meetings of the Task Force will be announced through NOAA Press Releases and postings on the NMFS Northwest Region website (see Electronic Access). The public may contact the NOAA Public Affairs Office in Seattle at 206–526–6172 to obtain more detailed information on the Task Force meeting dates, times and locations.

Within 60 days of its first meeting, the Task Force is to provide recommendations based on its review of the available information as listed in the statute and outlined above, comments received from the public and full discussion of alternatives for addressing the pinniped-fishery interaction below Bonneville Dam. The Task Force will be asked to develop recommendations that document the points of consensus reached by the group as well as reporting the alternate points of view when consensus is not reached. All recommendations submitted by the Task Force should fairly reflect the full range of opinion and diversity of the group. To enhance this process, NMFS has contracted with a professional facilitator to manage the Task Force, record meeting notes, and assist the group in assembling its recommendations.

The Task Force should address those considerations outlined above in formulating its recommendations. In addition, NMFS will request that the Task Force answer the following questions when preparing its recommendation for approval or disapproval of the states' application to lethally remove pinnipeds.

1. What criteria does the Task Force recommend to assist NMFS in the interpretation of ''significant negative impact'' and the extent to which pinnipeds are causing undue injury or impact to, or imbalance with listed species?

2. If available and practicable, what non-lethal measures does the Task Force recommend be taken prior to implementing lethal removal?

3. If lethal removal is included in its recommendations, what criteria did the Task Force use to individually identify the specific animals to be removed and which animals meet those criteria at the time the Task Force completed its deliberations?

4. If lethal removal is included in its recommendations, does the Task Force recommend a limit to the number of sea lions that may be removed and if so what is the justification for that limit?

5. If lethal removal is included in its recommendations, what limitations (if any) would the Task Force recommend on timing, location, take methods or duration of the authorization?

6. For purposes of post-implementation evaluation, what criteria does the Task Force recommend for evaluating whether the implementation of the Task Force recommendations has been successful in addressing the pinniped-fishery interaction?

7. Regardless of the outcome of this process, what might be the most effective means to achieve a long-term resolution to the pinniped-fishery conflict?

Once the Task Force has completed its deliberations and submitted its recommendations, NMFS will determine a course of action informed by the Task Force recommendations. The ultimate decision to approve or deny the states' application, and any terms or conditions applied to any approval, lies solely with NMFS.

If the application for lethal removal authority is approved, the MMPA requires that the Task Force evaluate the effectiveness of the permitted intentional lethal taking or alternative actions implemented. Accordingly, the Task Force may need to meet again after actions to address the pinniped-fishery interaction have been implemented. If implementation is found to be ineffective in eliminating the problem interaction, NMFS will ask the Task Force to recommend additional actions. If the implementation is effective, the Task Force shall so advise NMFS and the Task Force will be disbanded.

In accordance with the MMPA, upon receipt of the recommendations from the Task Force, NMFS will have 30 days to decide whether to approve or deny the states' application for lethal removal. Notice of NMFS' final decision will be published in the **Federal Register**.

Dated: August 3, 2007.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–15516 Filed 8–8–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB84

Atlantic Highly Migratory Species (HMS); Exempted Fishing Permits

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

ACTION: Notice.

SUMMARY: NMFS is not issuing, at this time, an exempted fishing permit (EFP) requested by Blue Water Fishermen's Association to collect data on the performance of circle hooks with regard to target catch and bycatch rates, among other variables, associated with pelagic longline (PLL) fishing activities inside the existing Charleston Bump and Florida East Coast PLL closed areas.

NMFS is investigating additional means of obtaining this data.

FOR FURTHER INFORMATION CONTACT: Russell Dunn, 727–824–5399; fax: 727–824–5398; or Chris Rilling, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: EFPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic Highly Migratory Species.

The Blue Water Fishermen's Association requested exemptions from certain regulations applicable to the harvest and landing of Atlantic HMS in order to collect data on the performance of mandatory circle hooks with regard to target catch and bycatch rates, hooking location, and mortality of fish at haul back. The proposal included data collection in the existing Charleston Bump and Florida East Coast pelagic longline closed areas. After considering public comment received, as requested in the **Federal Register** (72 FR 11327, March 13, 2007);(72 FR 18208, April 11, 2007); (72 FR 25748, May, 7, 2007), the Agency has decided not to issue a permit as requested by the current application. Specifically, the proposal did not discuss anticipated effort levels or the spatio-temporal distribution of effort, did not identify ''control'' fishing locations, and did not justify the number of vessels proposed to participate in the fishery. Absence of this information limits the ability of the Agency to evaluate the potential effectiveness of the data collection program and to analyze its impacts.

NMFS supports collecting such data under controlled circumstances and as part of a program with a scientifically rigorous study design. These data are critical to evaluating the efficacy of bycatch mitigation efforts, including required bycatch reduction gears and time/area closures in the Atlantic pelagic longline fishery. As such, NMFS is actively considering under what circumstances and how best to conduct scientific research that is necessary to evaluate the effectiveness of current bycatch reduction measures.

Dated: August 3, 2007.

Alan Risenhoover,

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

[FR Doc. E7–15511 Filed 8–8–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: This Notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). The topic of the meeting on September 11–13, 2007 are to review new start and continuing research and development projects requesting Strategic Environmental Research and Development Program funds in excess of $1M. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

DATES: September 11–12, 2007 from 9 a.m. to 4:30 p.m. and September 13 from 9 a.m. to 12 p.m.

ADDRESSES: SERDP Program Office Conference Center, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Sharee Malcolm, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

Dated: August 3, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–3880 Filed 8–8–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Modify a Draft Environmental Impact Statement for Water Conservation Area 3 Decompartmentalization and Sheet-flow Enhancement in Broward County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent; modification.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District, previously published a Notice of Intent (NOI) to prepare an integrated Project Implementation Report/Environmental Impact Statement (PIR/EIS) for the Water Conservation Area 3 Decompartmentalization and Sheet-flow Enhancement Project (DECOMP), Part 1 on December 4, 2003 (68 FR 67841). Following publication of the NOI, the scope of this initial part of DECOMP was altered to focus specifically on the alternatives to reduce barriers to sheet-flow within WCA 3A. Modification of eastern Tamiami Trail, south of WCA 3, will be considered in future efforts. The project's collaborator, intent, authorization, plan formulation process, and issues to be addressed remain as described in the original NOI.

DATES: The meeting dates are:

1. August 21, 2007, 6 p.m. to 8:30 p.m., West Palm Beach, FL.
2. August 23, 2007, 6 p.m. to 8:30 p.m., Pembroke Pines, FL.

ADDRESSES: The meeting locations are:

1. South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406.
2. Southwest Regional Library, 16835 Sheridan Street, Pembroke Pines, FL 33331.

FOR FURTHER INFORMATION CONTACT: U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019; Attn: Mr. Ernest Clarke or by telephone at 904–232–1199 or e-mail at *ernest.clarke@saj02.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

a. *Authorization:* Section 601 of the Water Resources Development Act of 2000 (Pub. L. 106–541) authorized the implementation of the DECOMP Project.

b. *Study Area:* The study area includes the WCA 3 and the northeast section of Everglades National Park, in Broward and Miami-Dade Counties. While the project area and area of anticipated benefits is located almost entirely within WCA 3A, the potential area of impacts is broader. Therefore, the study area considered in the report will extend from the southern end of Lake Okeechobee to the north through WCA 3A and 3B to just south of the Tamiami Trail (US 41).

c. *Project Scope:* The scope includes conducting an assessment of the study area and continuing plans for restoring sheet flow through WCA 3A. The evaluation of the alternatives and selection of a recommended plan will be documented in the PIR/DEIS. The alternative plans will be reviewed under provisions of appropriate laws and regulations, including the Endangered Species Act, Fish and Wildlife Coordination Act, Clean Water Act, and Farmland Protection Policy Act.

d. *Preliminary Alternatives:* The study includes two components of the Central & South Florida Comprehensive Everglades Restoration Plan: Backfilling

the Miami Canal and with a simultaneous increase in the conveyance capacity of the North New River Canal to compensate for lost flood damage reduction and water supply capabilities. Different scales of backfilling and alternate conveyance routes will be considered.

e. *Issues:* The DPIR/EIS will address the following issues: impacts to aquatic and wetland habitats; water flows; hazardous and toxic waste; water quality; flood damage reduction; the impacts of land acquisition on the tax base; aesthetics and recreation; fish and wildlife resources, including protected species; cultural resources; and other impacts identified through scoping, public involvement and interagency coordination.

f. *Scoping:* A scoping letter and multiple public workshops will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals. Two identical scoping meetings are planned for this project (see **DATES** and **ADDRESSES**). Future meetings will be announced in public notices, local newspapers, and on *http://www.evergladesplan.org.*

g. *PIR/EIS Preparation:* The PIR/EIS is currently estimated for publication in July 2009.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–3876 Filed 8–8–07; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Chief of Naval Operations (CNO) Executive Panel will report on the findings and recommendations of the Navy Civilian Workforce Subcommittee to the Chief of Naval Operations. The meeting will consist of the final report to Chief of Naval Operations regarding the internal personnel rules and practices supporting effective Navy civilian workforce management and will discuss anecdotal and specific personal information about individuals employed by the Department of the Navy.

DATES: The meeting will be held on September 19, 2007 from 10 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in CNA Corporation Building, 4825 Mark Center Drive, Alexandria, VA 22311, 2nd Floor Idea Center.

FOR FURTHER INFORMATION CONTACT: Mr. Kip Blecher, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703–681–4909.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute sensitive information that is specifically authorized to be kept private. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(6) of Title 5, United States Code.

Individuals or interested groups interested may submit written statements for consideration by the Chief of Naval Operations Executive Panel at any time or in response to the agenda of a scheduled meeting. All requests must be submitted to the Designated Federal Officer at the address detailed below.

If the written statement is in response to the agenda mentioned in this notice, the statement must be received at least five days prior to the meeting in question in order to be considered by the Panel.

The Designated Federal Officer will review all timely submissions with the Chief of Naval Operations Executive Panel Chairperson and ensure they are provided to members of the Chief of Naval Operations Executive Panel prior to the meeting.

To contact the Designated Federal Officer, write to Executive Director, CNO Executive Panel (N00K), 4825 Mark Center Drive, 2nd Floor, Alexandria, VA 22311–1846.

T.M. Cruz,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–15597 Filed 8–8–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 10, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Nicole Cafarella, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 6, 2007.

James Hyler,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation, and Policy Development

Type of Review: Revision.

Title: Annual Mandatory Collection of Elementary and Secondary Education Data for EDFacts.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 59.

Burden Hours: 105,754.

Abstract: EDFacts is in the implementation phase of a multiple year effort to consolidate the collection of education information about States, Districts, and Schools in a way that improves data quality and reduces paperwork burden for all of the national education partners. In order to minimize the burden on the data providers, EDFacts seeks the transfer of the proposed data as soon as it has been processed each year for State, District, and School use. These data will then be stored in EDFacts and accessed by federal education program managers and analysts as needed to make program management decisions. This process will eliminate redundant data collections while providing for the timeliness of data submission and use.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3334. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–15532 Filed 8–8–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–357–006; CP07–426–000]

Cheniere Creole Trail Pipeline, L.P.; Cheniere Sabine Pass Pipeline, L.P.; Notice of Application for Amendment to Certificate of Public Convenience and Necessity and Application for Abandonment

August 2, 2007.

Take notice that on July 31, 2007, Cheniere Creole Trail Pipeline, L.P., 700 Milam Street, Suite 800, Houston, Texas 77002 (Cheniere Creole Trail) and Cheniere Sabine Pass Pipeline, L.P., 700 Milam Street, Suite 800, Houston, Texas 77002 (Cheniere Sabine Pass), filed with the Federal Energy Regulatory Commission (Commission) in the above-referenced dockets an abbreviated application under section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The applicants seek an order from the Commission: (i) Authorizing Cheniere Sabine Pass to abandon by merger with Cheniere Creole Trail its Certificate of Public Convenience and Necessity issued in Docket Nos. CP04–38–000 and CP04–38–001 for a 16-mile-long, 42-inch-diameter pipeline with appurtenances (Sabine Pass Segment) located in Cameron Parish, Louisiana (currently under construction); (ii) authorizing Cheniere Sabine Pass to abandon its blanket transportation certificate issued in Docket No. CP04–39–000 under Subpart G of Part 284 of the Commission's regulations and its blanket construction certificate issued in Docket No. CP04–40–000 under Subpart F of Part 157 of the Commission's regulations; (iii) authorizing Cheniere Creole Trail to amend its Certificate of Public Convenience and Necessity to include the Sabine Pass Segment such that it will function as an integrated pipeline system with a capacity of 2.0 Bcf per day (Cheniere Creole Trail's pipeline is also currently under construction); (iv) authorizing Cheniere Creole Trail's proposed revised Zone 1 transportation rates based on a revised estimated capital cost of $ 571.6 million; and (v) authorizing certain proposed revisions to Cheniere Creole Trail's *Pro Forma* FERC Gas Tariff in these subjects, Fuel Retainage, Receipt Pressure, Interruptible and Short-Term Firm Services Revenue Crediting, Imbalances, Park & Loan.

Any questions regarding the application should be directed to Patricia Outtrim, Cheniere Creole Trail Pipeline, L.P., 700 Milam Street, Suite 800, Houston, Texas 77002, (713) 659–1361, or Lisa Tonery, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036, (212) 556–2307.

Pursuant to section 157.9 of the Commission's rules, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date shown below. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: 5 p.m. Eastern Time on August 22, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15522 Filed 8–8–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–478–001; RP07–479–001]

Columbia Gulf Transmission Corporation; Columbia Gas Transmission Corporation (Not Consolidated); Notice of Change in Effective Date

August 2, 2007.

Take notice that on August 1, 2007, Columbia Gulf Transmission Corporation (RP07–478–001) and Columbia Gas Transmission Corporation (RP07–479–001) (collectively, Columbia) tendered for filing a request that the Commission approve a change in the effective date of the tariff sheets submitted in the above-referenced proceedings from September 1, 2007, to become effective October 1, 2007, as proposed in Columbia's June 5, 2007 filings.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 8, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15526 Filed 8–8–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–538–000]

Steuben Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

August 2, 2007.

Take notice that on July 31, 2007, Steuben Gas Storage Company (Steuben), tendered for filing as part of its FERC Gas Tariff Original Volume No. 1, First Revised Sheet No. 10, and Second Revised Sheet No. 21, and First Revised Sheet No. 25, all to become effective September 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15521 Filed 8–8–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–85–000]

Notice of Complaint; Midwest Municipal Transmission Group, Complainant v. Interstate Power and Light Company, and Midwest Independent Transmission System Operator, Inc., Respondent

August 2, 2007.

Take notice that on July 31, 2007, Midwest Municipal Transmission Group (MMTG) pursuant to Federal Power Act § 206, 18 U.S.C. 824e and 18 CFR 385.206, tendered for filing a complaint regarding a stated component of the formula rate used in determining the annual transmission revenue requirement (ATRR) of Interstate Power and Light Company (IPL), and the resulting rates charged by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) for network transmission service to unbundled transmission customers serving loads located in its ''Alliant West'' zone. The Complaint is Part I, specifically, it concerns the return on equity used by IPL for that particular ATRR and zone. In Part II, MMTG moves for consolidation with Docket Nos. EC07–89 and ER07–887. Contact information and a description of MMTG is provided in Part III. MMTG states that it is also presenting an Offer of Settlement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date.

The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 20, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15523 Filed 8–8–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–16–000]

Notice of Complaint; Tesoro Refining and Marketing Company, Complainant v. Calnev Pipe Line, L.L.C., Respondent

August 2, 2007.

Take notice that on August 1, 2007, Tesoro Refining and Marketing Company (Tesoro) filed a formal complaint against Calnev Pipe Line, L.L.C. (Calnev) pursuant to Rule 206 of the Rules of Practice and Procedure of the Commission's regulations, 18 CFR 385.206; the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2, 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act, 49 U.S.C. App. 1(5), 8, 9, 13, 15 and 16 (1984); and section 1803 of the Energy Policy Act of 1992 (EPAct).

Complainant alleges that Calnev has consistently over-recovered its cost of service since at least 2004 and, therefore, was not entitled to increase its rates using indexation methodology in 2005, 2006, and 2007. Complainant requests that the Commission determine that the rates established by Calnev are unjust and unreasonable; prescribe new rates that are just and reasonable for the shipment of refined petroleum products from Colton, CA to McCarran International Airport and North Las Vegas, NV; determine that Calnev overcharged Tesoro for shipments of jet fuel from Colton, CA to McCarran nternational Airport, NV from at least July 1, 2005, to the present date and is continuing to overcharge Tesoro for such shipments; order Calnev to pay refunds, reparations and damages, plus interest, to Tesoro for shipments made by Tesoro under each of the relevant tariffs; determine that section 1803 of the EPAct does not prevent Tesoro from filing its Complaint or the Commission from ordering the relief requested; and grant Tesoro such other, different or additional relief as the Commission may determine to be appropriate.

Tesoro certifies that copies the complaint were served on the contacts for Calnev as list on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 21, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15524 Filed 8–8–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

August 3, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–97–002.

Applicants: Ecofin Holdings Limited; Ecofin Limited; Ecofin, Inc.; Ecofin Fund Management Limited; Ecofin General Partner Limited; Ecofin North American General Partner Limited; Ecofin Water & Power Opportunities Plc; Ecofin Global Utilities Hedge Fund Limited; Ecofin Global Utilities Hedge Fund LP; Ecofin Global Utilities Master Fund Limited; Ecofin Special Situations Utilities Fund Ltd; Ecofin Special Situations Utilities Fund LP; Ecofin Special Situations Utilities Master Fund Ltd; Ecofin North American Utilities Hedge Fund Limited; Ecofin North American Utilities Hedge Fund, L.P.; Ecofin North American Utilities Master Fund Limited; HFR HE Ecofin Master Trust.

Description: Ecofin Holdings Limited *et al.* submit a further amendment to its Application filed on May 24, 2007.

Filed Date: July 31, 2007.

Accession Number: 20070802–0113.

Comment Date: 5 p.m. Eastern Time on Friday, August 10,

Docket Numbers: EC07–121–000.

Applicants: TNAI Holdings LLC; Thermal North America, Inc.; Trigenst Louis Energy Corp; Veolia Energy North America Holdings, Inc.

Description: TNAI Holdings LLC, Thermal North America Inc *et al* submit a joint application for authorization to transfer facilities under section 203 of the Federal Power Act.

Filed Date: July 31, 2007.

Accession Number: 20070802–0126.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER94–1188–042; ER99–1623–011; ER98–4545–011; ER98–1279–013.

Applicants: LG&E Energy Marketing Inc.; Louisville Gas & Electric Company;

Kentucky Utilities Company; Western Kentucky Energy Corporation.

Description: Kentucky Utilities Company, *et al.* informs that parent company E. ON U.S. LLC has established a wholly-owned subsidiary E. ON U.S. Natural Gas Trading, Inc that will engage in financial & physical trading of natural gas etc.

Filed Date: August 1, 2007.

Accession Number: 20070801–5045.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 22, 2007.

Docket Numbers: ER01–1363–008; ER96–25–030.

Applicants: Coral Energy Management, LLC Coral Power, L.L.C.

Description: Coral Power LLC and Coral Energy Management LLC submit a notice of change in status pursuant to the requirements of Order 652.

Filed Date: July 31, 2007.

Accession Number: 20070802–0107.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER02–237–008.

Applicants: J. Aron & Company.

Description: J Aron & Company submits notice of non-material change in status, in compliance with reporting requirements adopted in FERC's Order.

Filed Date: August 1, 2007.

Accession Number: 20070802–0202.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 22, 2007.

Docket Numbers: ER03–793–003.

Applicants: New England Power Company.

Description: New England Power Co submits a revised service agreement with AES Londonderry, LLC.

Filed Date: August 1, 2007.

Accession Number: 20070802–0200.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 22, 2007.

Docket Numbers: ER06–541–001.

Applicants: Old Lane Commodities, LP.

Description: Old Lane Commodities, LP's Notice of Non-Material Change in Status Regarding Market-Based Rate Authority.

Filed Date: July 31, 2007.

Accession Number: 20070731–5005.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER06–1014–003.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits Price Validation Informational Report which details the corrections that NYISO has made to erroneous locational based marginal prices for the period January 1, 2007—June 30, 2007.

Filed Date: July 31, 2007.

Accession Number: 20070802–0112.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER07–424–003; ER06–456–012; ER06–954–008; ER06–1271–007

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an amendment to the compliance filing made on May 21, 2007.

Filed Date: July 26, 2007.

Accession Number: 20070730–0360.

Comment Date: 5 p.m. Eastern Time on Thursday, August 16, 2007.

Docket Numbers: ER07–1162–001.

Applicants: Avista Corporation.

Description: Avista Corp submits an amendment of revised tariff sheets for its pending FERC Electric Tariff revised Volume 4.

Filed Date: July 31, 2007.

Accession Number: 20070802–0092.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER07–1216–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits the Interconnection Agreement with PacifiCorp in accordance with section 205(d) of the Federal Power Act, 16 U.S.C.

Filed Date: July 31, 2007.

Accession Number: 20070802–0111.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER07–1217–000.

Applicants: Sunoco, Inc.

Description: Sunoco, Inc submits its proposed FERC Electric Tariff, Original Volume 1.

Filed Date: July 31, 2007.

Accession Number: 20070802–0093.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER07–1218–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed revised service agreement for Network Integration Transmission Service with Associated Electric Cooperative, Inc.

Filed Date: July 31, 2007.

Accession Number: 20070802–0104.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER07–1219–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc, agent for Alabama Power Company *et al* submits an amended Southern Companies' Open Access Transmission Tariff, FERC Electric Tariff, Fourth Revised Volume 5.

Filed Date: July 31, 2007.

Accession Number: 20070802–0105.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER07–1220–000.

Applicants: Southwest Power Pool.

Description: Southwest Power Pool Inc submits an executed revised service agreement for Network Integration Transmission Service with Oklahoma Municipal Power Agency.

Filed Date: July 31, 2007.

Accession Number: 20070802–0106.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER07–1221–000.

Applicants: Rensselaer Cogeneration LLC

Description: Rensselaer Cogeneration LLC submits a Notice of Succession to reflect a name change on its market-based rate tariff from Rensselaer Plant Holdco LLC.

Filed Date: July 31, 2007.

Accession Number: 20070801–0135

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER07–1222–000.

Applicants: CR Clearing, LLC

Description: CR Clearing LLC submits an application for market-based rate authority, certain waivers and blanket authorizations, to become effective August 30, 2007.

Filed Date: July 31, 2007.

Accession Number: 20070801–0134.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER07–1223–000.

Applicants: Cow Branch Wind Power, LLC.

Description: Cow Branch Wind Power LLC submits an application for market-rate authority, certain waivers and blanket authorization to become effective August 30, 2007.

Filed Date: July 31, 2007.

Accession Number: 20070801–0133.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER07–1224–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Wabash Valley Power Association, Inc submits Distribution Agreement for Electric Service implementing Industrial Load Rate Schedule 1 pursuant to section 205 of the Federal Power Act.

Filed Date: August 10, 2007.

Accession Number: 20070801–0157.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 22, 2007.

Docket Numbers: ER07–1225–000.

Applicants: ISO New England Inc.

Description: New England's Participating Transmission Owners

submits supporting materials which identify updated rate for regional transmission & scheduling, system control & dispatch services effective as of June 1, 2007.

Filed Date: July 31, 2007.

Accession Number: 20070802–0203.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER07–1226–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revised pages to its Open Access Transmission Tariff intended to implement rate changes for Westar Energy, Inc and Oklahoma Gas & Electric.

Filed Date: July 31, 2007.

Accession Number: 20070801–0158.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER07–1228–000.

Applicants: California Independent System Operator Corporation

Description: California Independent System Operator Corp provides notice regarding the revised transmission access charges for eleven consecutive periods.

Filed Date: July 31, 2007.

Accession Number: 20070801–0159.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ER07–1229–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation agent for AEP Operating Companies submits Fourth Service Agreement 1252 and Local Delivery Agreement with the Blue Ridge Power Authority.

Filed Date: August 1, 2007.

Accession Number: 20070801–0160.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 22, 2007.

Docket Numbers: ER07–1230–000.

Applicants: American Electric Power Service Corp.

Description: Ohio Power Co and Columbus Southern Power Co submits a Tenth Revised Interconnection and Local Delivery Service Agreement with Buckeye Power, Inc.

Filed Date: August 1, 2007.

Accession Number: 20070802–0024.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 22, 2007.

Docket Numbers: ER07–1231–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits supplements to their July 13, 2007 filing and submits pro forma Second Revised Sheet 137 and 140 of the Open Access Transmission Tariff.

Filed Date: August 1, 2007.

Accession Number: 20070802–0023.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 22, 2007.

Docket Numbers: ER07–1232–000.

Applicants: UniSource Energy Development Company.

Description: UniSource Energy Development Co submits a market-based rate tariff for the sale of electric energy and capacity designated as FERC Electric Tariff, Original Volume 1.

Filed Date: August 1, 2007.

Accession Number: 20070802–0201.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 22, 2007.

Docket Numbers: ER07–1233–000; OA07–56–001.

Applicants: Midwest Independent Transmission System Operator Inc.

Description: Midwest Independent Transmission System Operator Inc. submits information in support of continuing zonal transmission rates for existing facilities in the Midwest ISO footprint under its Open Access Transmission.

Filed Date: August 1, 2007.

Accession Number: 20070802–0225.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 22, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–51–000.

Applicants: Mississippi Power Company.

Description: Form 523—Request for Permission to Issue Securities of Mississippi Power Company.

Filed Date: July 31, 2007.

Accession Number: 20070731–5013.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ES07–52–000.

Applicants: Northern Indiana Public Service Company.

Description: Form 523—Request for Permission to Issue Short-Term Debt of Northern Indiana Public Service Company.

Filed Date: July 31, 2007.

Accession Number: 20070731–5037.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Docket Numbers: ES07–53–000.

Applicants: Entergy Services, Inc.

Description: Joint Application Requesting Recession of Certain Section 204 Authorization of Entergy Services, Inc.

Filed Date: July 31, 2007.

Accession Number: 20070731–5068.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 21, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7–15530 Filed 8–8–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2030–113]

Portland General Electric Company; Confederated Tribes of the Warm Springs Reservation of Oregon; Notice of Application and Soliciting Comments, Motions to Intervene, and Protests

August 2, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan (SMP).

b. *Project No:* 2030–113.

c. *Date Filed:* July 11, 2007.

d. *Applicant:* Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS).

e. *Name of Project:* Pelton Round Butte Hydroelectric Project.

f. *Location:* The project is located on the Deschutes River in Jefferson County, Oregon. The project occupies 3,503.74 acres of federal and tribal lands administered by the U.S. Forest Service (USFS), U.S. Bureau of Land Management (BLM), and U.S. Bureau of Indian Affairs (BIA).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Julie A. Keil, Director of Hydro Licensing, Portland General Electric Company, 121 SW Salmon, Portland, OR 97204, (503) 464–8864.

i. *FERC Contact:* Any questions on this notice should be addressed to Lesley Kordella at (202) 502–6406, or by e-mail: *lesley.kordella@ferc.gov.*

j. *Deadline for filing comments and/or motions:* September 4, 2007.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, DHAC, PJ–12.1, 888 First Street, NE., Washington, DC 20426. Please include the project number (p–2030–113) on any comments or motions filed. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

k. *Description of Proposal:* The licensees submitted a revised SMP as required by article 428 of the project license. The SMP was developed to guide development and resource protection on Lake Billy Chinook and Lake Simtustus. It is intended to provide a tool to manage new shoreline development within the project boundary, protect public health and safety, recognize existing uses of the shoreline, and achieve a balance of the interests of the licensees and private and commercial property owners and recreational users, while allowing the licensees to efficiently manage the project's power generating facilities and fulfill the project purposes.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free 1–866–208–3676, or for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''Comments,'' ''Recommendations for Terms and Conditions,'' ''Protest,'' or ''Motion To Intervene,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15525 Filed 8–8–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD07–12–000]

Reliability Standard Compliance and Enforcement in Regions With Independent System Operators and Regional Transmission Organizations; Second Notice of Technical Conference

August 2, 2007.

As announced on June 15, 2007, the staff of the Federal Energy Regulatory Commission will hold a technical conference in the above-referenced proceeding on September 18, 2007, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC. It will be held in the Commission Meeting Room (Room 2C) from 9:30 a.m. until 1 p.m. (EDT).

All interested parties are invited.

The conference will explore issues associated with the cost recovery of penalties for Reliability Standard violations assessed against independent system operators (ISOs) and regional transmission organizations (RTOs) in the United States, as set forth in *Midwest Independent Transmission System Operator, Inc.,* 119 FERC ¶ 61,222 (May 31, 2007) in Docket Nos. ER07–701–000 and AD07–12–000. In that Order, the following topics were identified for discussion:

1. How each ISO's or RTO's regional tariffs and other operational agreements and protocols allocate reliability responsibilities among the parties;

2. What provisions exist in those tariffs, agreements, and protocols to establish responsibility for penalty costs associated with Reliability Standard violations, and do those provisions result in uniform responsibility for such penalty costs;

3. What provisions exist that may prevent an entity from being registered for compliance with relevant Reliability Standards if, notwithstanding its registration status, such entity's failure to perform under tariffs, agreements, and protocols could lead to a violation of Reliability Standards; and

4. What policies for any pass-through of penalty costs associated with Reliability Standard violations by ISOs

and RTOs would both best provide due process for entities that may ultimately be required to pay these penalty costs and also avoid redundant investigations and litigation of Reliability Standard violations.

There will be three panels. The first panel will consist of RTOs and ISOs. The second panel will consist of representative entities potentially subject to paying penalties incurred by the RTOs or ISOs, either through the general allocation of an RTO or ISO penalty or through the direct assignment of a penalty by an RTO or ISO on the grounds such entity did not perform reliability functions that led to the penalty. The third panel will consist of the North American Electric Reliability Corporation and the Regional Entities.

Topics for discussion in each panel are as follows:

Panel One

Panelists should be prepared to address Commission Topics 1, 2, 3 and 4. In addition, panelists are requested to consider the following:

A. Should penalties associated with Reliability Standard violations by RTOs or ISOs be allocated to all of its members, customers, owners or participants (collectively, members)? If so, should this allocation be handled by tariff or by contract? What allocation method would fairly apportion the cost burden amongst an RTO's or ISO's members?

B. If an RTO or ISO is permitted to pass on to its members the reliability penalties assessed against it, how should the Commission ensure that the RTO/ISO has adequate incentives to comply with the Reliability Standards?

C. Should an RTO or ISO be permitted to directly assign to one or more or a group of specific members, reliability penalties assessed against it but that were caused by the members? If so, who should investigate these entities to determine the degree of culpability, how will these entities be given due process and how can duplicative proceedings that overlap the ERO or Regional Entity penalty proceedings be avoided?

D. Should only non-monetary penalties be applied to RTOs and ISOs (and other non-profit organizations)?

Panel Two

Panelists should be prepared to address Commission Topics 1, 2, 3 and 4. In addition, panelists are requested to consider the following:

A. Should an RTO or ISO be permitted to allocate to its members reliability penalties assessed against it pursuant to section 215 of the FPA? If so, should this be handled by tariff or by contract? What allocation method would fairly apportion the cost burden?

B. If an RTO or ISO is not permitted to pass on reliability penalty costs assessed against it, what source of funds is suggested for payment?

C. Should an RTO or ISO be permitted to directly assign to specific members reliability penalties assessed against it, and if so, how should duplicative proceedings be avoided and due process ensured?

Panel Three

Panelists should be prepared to address Commission Topics 3 and 4. In addition, panelists are requested to consider the following:

A. Would the ERO or Regional Entity investigation of an alleged Reliability Standard violation by an RTO or ISO incorporate an investigation of any RTO or ISO members that have been alleged to contribute to the violation both in the instance where these members are registered in the ERO's compliance registry and in the instance where these members are not registered? If these members are investigated, would there be an assessment of the extent each of the members and the RTO or ISO contributed to the violation?

B. How would Regional Entities and the ERO address in enforcement proceedings assessment of penalties for matters in which an RTO or ISO and one or more members violated the same Reliability Standard, different Reliability Standards or multiple Reliability standards?

C. Should the Regional Entity identify not just the entity that violated a Reliability Standard, but also any entities which may have contributed to the RTO's or ISO's Reliability Standard violation? Should the Regional Entity also quantify the degree to which each entity contributed to the violation?

D. If an RTO or ISO asserts that an entity that is not listed in NERC's compliance registry is responsible for the RTO's or ISO's violation of a Reliability Standard, in an enforcement hearing pursuant to section 215 of the FPA, will Regional Entities or NERC inquire if the root cause of the violation lies with that entity and provide the entity an opportunity to participate in the proceeding?

Participants on the panels will be announced in a subsequent notice. There is *no* registration fee to attend. A free webcast of this event will be available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts and offers access to the meeting via a phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Transcripts of the meeting will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). They will be available for free on the Commission's eLibrary system and on the events calendar approximately one week after the meeting.

FERC conferences and meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

Questions about the conference should be directed to Don LeKang by e-mail at *donald.lekang@ferc.gov* or by phone at 202–502–8127.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15527 Filed 8–8–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0225; FRL–8452–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Populations, Usage and Emissions of Nonroad Diesel Equipment in EPA Region 7; EPA ICR No. 2156.01, OMB Control No. 2060–0553

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on November 30, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 9, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0225, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0225. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: James Warila, Office of Transportation and Air Quality, (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4951; fax number: 734–214–4939; e-mail address: *warila.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0225, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

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

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply To

[Docket ID No. EPA–HQ–OAR–2003–0225]

Affected entities: Entities potentially affected by this action are construction establishments employing at least one person during the previous twelve months (NAICS code 23).

Title: Mobile-Source Emission Factors: Emissions and Usage of Nonroad Equipment

ICR numbers: EPA ICR No. 2156.01, OMB Control No. 2063–0553.

ICR status: This ICR is currently scheduled to expire on November 30, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract

In response to recommendations from the National Research Council of the National Academy of Sciences, EPA is conducting systematic data collection designed to improve the methods and

tools used by the Agency to estimate emissions from nonroad equipment. Data to be collected include usage rates (activity) and ''in-use'' or ''real-world'' emission rates.

The collection is a survey, to be conducted by the Office of Transportation and Air Quality (OTAQ) in the Office of Air and Radiation (OAR). Development of rapid in-use instrumentation promises to substantially reduce the cost of emissions measurement for nonroad equipment. This study combines rapid in-use measurement capability with statistical survey design to improve the representation of nonroad engine populations. The goal is to conduct a survey designed to develop methods and protocols needed to collect data on activity and in-use emissions of diesel nonroad equipment. Response to the survey is voluntary.

The target population includes nonroad equipment used by commercial establishments in the construction sector. The study area for this collection will be EPA Region 7. To estimate the prevalence of equipment ownership in the target sectors, establishments will be requested to respond to brief interviews regarding their equipment ownership and use. For a subset of establishments, emissions and usage will be measured using portable on-board electronic instrumentation. Emissions instrumentation will measure carbon dioxide (CO_2) and several air pollutants on an instantaneous basis during normal operation over a period of one to three days. Air pollutants to be measured include carbon monoxide (CO), total hydrocarbons (THC), oxides of nitrogen (NO_X) and particulate matter (PM). The usage instrument will measure engine on/off over a period of approximately one month. Data will be collected during normal operation at the respondents' facilities or work sites.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.15 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR submitted for renewal will provide a detailed explanation of the Agency's estimate, which is briefly summarized here:

Estimated Total Number of Potential Respondents: 4,020.

Frequency of Response: On occasion.

Estimated Total Average Number of Responses for Each Respondent: One.

Estimated Total Annual Burden Hours: 580.

Estimated Total Annual Costs: $52,000. This includes an estimated burden cost of $52,000 and an estimated cost of $0.0 for capital investment or maintenance and operational costs.

What Is the Next Step in the Process for This ICR

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 2, 2007.

Chester J. France,

Director, Assessment and Standards Division.

[FR Doc. E7–15601 Filed 8–8–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8452–7]

Gulf of Mexico Program Management Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting Date Change.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a change of the date for the Gulf of Mexico Program (GMP) Management Committee Meeting (MC) published in the **Federal Register** on July 30, 2007 (72 FR 41506).

For information on access or services for individuals with disabilities, please contact Gloria Car, U.S.EPA, at (228) 688–2421 or *car.gloria@epa.gov.* To request accommodation of a disability, please contact Gloria Car, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

DATES: The meeting will be held on Thursday, August 23, 2007, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Mississippi Department of Marine Resources, 1141 Bayview Avenue, Biloxi, Mississippi 39530, (228) 688–3726.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: The proposed agenda includes the following topics: Gulf of Mexico Program Alliance—Status Brief; Report on Important Emerging Legislative Actions Relevant to the Alliance and/or Gulf Program; Coastal America Update: Designation of Veracruz Aquarium and J.L. Scott Marine Education Center as Coastal Ecosystem Learning Centers (CELCs); Binational Harmful Algal Bloom Veracruz Monitoring Pilot; NASA Remote Sensing—Gulf of Mexico Alliance Applications Initiative; Wastewater to Wetlands; USGS/DOI Alliance Coordination; and Gulf Regional Sediment Management Master Plan.

The meeting is open to the public.

Dated: August 2, 2007.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. E7–15605 Filed 8–8–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Green Sea Logistics, Arag Chamber, 3rd FL, 68 Agrabad C/A, Chittagong 4100, Bangladesh. *Officers:* Mohammed Abul Hashem, Managing Partner (Qualifying Individual), Mohammad Zonaid, Partner.

T & T Shipping Services of New York, Inc., 820 Glenmore Avenue, Brooklyn, NY 11208. *Officers:* Corny C. Francis, Vice President (Qualifying Individual), Patrick Turner, President.

HJM International of NY, Inc., 153–39 Rockaway Blvd., Jamaica, NY 11434. *Officers:* Raymond Mandil, President (Qualifying Individual), Mireille Drabmann, Secretary.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Advance Cargo Corporation, 7921 NW 66th Street, Miami, FL 33166. *Officer:* Gabriela Olivera, President (Qualifying Individual).

Freight Brokers Italia, Inc., 32 Raymond Avenue, Chestnut Ridge, NY 10977. *Officer:* Rosario Vizzari, President (Qualifying Individual).

Express International Freight, LLC., 8385 NW 74 Street, Miami, FL 33166. *Officers:* Ana Aguilar, Manager (Qualifying Individual), Waldo Ordonez, Director.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Auto Transport USA, Inc., 3020 Lions Ct., Kissimmee, FL 34744–1539. *Officers:* Manuel Mercado, President (Qualifying Individual).

Doris M. Mercado, Vice President, Planet Freight Services, Inc., 1744 NW 82 Avenue, Doral, FL 33126. *Officer:* Marco Antonio Oliverira, President (Qualifying Individual).

IVI International Corp dba IVI International Freight Forwarders, 8075 NW. 68th Street, Miami, FL 33166. *Officer:* Ivan Israel Chavarria, President (Qualifying Individual).

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–15564 Filed 8–8–07; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974; New System of Records

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice; correction.

SUMMARY: The Health Resources and Services Administration published a document in the **Federal Register** of June 20, 2007. The document pertaining to the HRSA Information Center (IC) entitled ''Privacy Act of 1974: New System of Record'' Integrated Clearinghouse System (ICS), HHS/HRSA/OC No. 09–15–0067, was inadvertently omitted as the attachment for the notice.

Correction

In the **Federal Register** of June 20, 2007, in FR Doc. 07–3052, on page 34018, in the second column, add the attachment for the notice.

Dated: July 20, 2007.

Elizabeth M. Duke,

Administrator.

09–15–0067

SYSTEM NAME:

HRSA Information Center (IC) Integrated Clearinghouse System (ICS), HHS/HRSA/OC

SECURITY CLASSIFICATION:

Low.

SYSTEM LOCATION:

HRSA IC, Circle Solutions, Inc., 8280 Greensboro Drive, Suite 300, McLean, VA 22102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the public who request information or publications from the HRSA IC.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes: names, addresses, and telephone numbers of individuals who have placed orders via telephone, web, or written request for a 12-month period within receipt of the request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552.

PURPOSE(S):

To facilitate the delivery of publications and the response to questions pertaining to HRSA programs as requested by members of the general public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the records of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) The United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or, (c) Any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions 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 regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

STORAGE:

All records are maintained in computer data files on servers maintained by the HRSA IC.

RETRIEVABILITY:

Records are maintained for ready retrieval and customer quality assurance by HRSA IC staff by requestor name for orders placed within the previous rolling 12-month period.

SAFEGUARDS:

1. *Authorized Users:* Access to records is limited to designated HRSA IC staff. The HRSA IC maintains current lists of authorized users. All computer equipment and files are stored in areas where fire and life safety codes are

strictly enforced. All automated documents are protected on a 24-hour basis. Perimeter security includes intrusion alarms, key card controls, and receptionist controlled area. No hard copy files are maintained. Computer files are password protected and are accessible only by use of computers which are password protected.

2. Physical Safeguards:

3. Procedural safeguards: A password is required to access computer files. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised area. All authorized users sign a nondisclosure statement. All passwords, keys and/or combinations are changed when a person leaves or no longer has authorized duties. Access to records is limited to those authorized personnel trained in Government privacy procedures.

RETENTION AND DISPOSAL:

Records of orders placed with the HRSA IC are maintained for 12 months, after which the records are purged from the system. Orders received by mail are shredded after the required information is entered into ICS.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Communications, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 14–45, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

Individuals may learn about personal information maintained in the system by contacting the system manager at the address above.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also provide a reasonable description of the record being sought. Requesters may also request an accounting of disclosures that have been made of their records if any.

CONTESTING RECORD PROCEDURES:

Contact the system manager as identified above, and reasonably identify the record contested, the corrective action sought, and the reason for seeking the information to show how the record is inaccurate or incomplete.

RECORD SOURCE CATEGORIES:

Members of the general public who voluntarily make publication or information requests.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 07–3873 Filed 8–8–07; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–27793]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0002, 1625–0017, 1625–0030, 1625–0072, and 1625–0078

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard is forwarding five Information Collection Requests (ICRs), abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) requesting an extension of their approval for the following collections of information: (1) 1625–0002, Application for Vessel Inspection, Waiver, and Continuous Synopsis Record; (2) 1625–0017, Various International Agreement Safety Certificates and Documents; (3) 1625–0030, Oil and Hazardous Materials Transfer Procedures; (4) 1625–0072, Waste Management Plans, Refuse Discharge Logs, and Letters of Instruction for Certain Persons-in-Charge (PIC); and (5) 1625–0078, Licensing and Manning Requirements for Officers on Towing Vessels. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before September 10, 2007.

ADDRESSES: To make sure your comments and related material do not enter the docket [USCG–2007–27793] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. (b) By mail to OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room W12–140 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 or (b) OIRA at (202) 395–6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System (DMS) at *http://dms.dot.gov.* (b) By e-mail to *nlesser@omb.eop.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of complete ICRs are available through this docket on the Internet at *http://dms.dot.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is (202) 475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone (202) 475–3523 or fax (202) 475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collections of information to determine if collections are necessary in the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the ICRs addressed. Comments to DMS must contain the docket number of this request, [USCG 2007–27793]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before September 10, 2007.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov.* They will include any personal information you provide. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2007–27793], indicate the specific section of this document or the ICR to which each comment applies, providing a reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice (72 FR 18483, April 12, 2007) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request

1. *Title:* Application for Vessel Inspection, Waiver and Continuous Synopsis Record.

OMB Control Number: 1625–0002.

Type of Request: Extension of a currently approved collection.

Affected Public: Vessel owner, operator, agent, master, or interested U.S. Government agency.

Forms: CG–2633, CG–3752, and CG–6039.

Abstract: This collection of information requires the vessel owner, operator, agent, or master of a vessel to apply in writing to the Coast Guard before the commencement of an inspection for certification (46 CFR 31.01–15, 91.25–5, 126.420, 169.205, and 189.25–5), when a waiver is desired from the requirements of navigation and vessel inspection (33 CFR 19.01 and 46 CFR 6.01), or to request a Continuous Synopsis Record (33 CFR 104.297).

Burden Estimate: The estimated burden has decreased from 979 hours to 848 hours a year.

2. *Title:* Various International Agreement Safety Certificates and Documents.

OMB Control Number: 1625–0017.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of SOLAS vessels.

Forms: CG–967, CG–968, CG–968A, CG–969, CG–3347, CG–3347B, CG–4359, CG–4360, CG–4361, CG–5643, CG–5679, CG–5679A, CG–5680, CG–6038, and CG–6038A.

Abstract: These 15 forms are based on the United States' adoption of the International Convention for Safety of Life at Sea, (SOLAS) 1974. The 15 forms are evidence of compliance with this convention for U.S. vessels on international voyages. Without the proper certificates or documents, a U.S. vessel could be detained in foreign ports. The applicable requirements are found at 46 CFR 2.01–25.

Burden Estimate: The estimated burden has increased from 96 hours to 126 hours a year.

3. *Title:* Oil and Hazardous Materials Transfer Procedures.

OMB Control Number: 1625–0030.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels.

Forms: None.

Abstract: The collection of information requires vessels with a cargo capacity of 250 barrels or more of oil or hazardous materials to develop and maintain transfer procedures (see 33 CFR 155.720—155.820). Transfer procedures provide basic safety information for operating transfer systems with the goal of pollution prevention.

Burden Estimate: The estimated burden has increased from 89 hours to 133 hours a year.

4. *Title:* Waste Management Plans, Refuse Discharge Logs, and Letters of Instruction for Certain Persons-in-Charge (PIC).

OMB Control Number: 1625–0072.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners, operators, masters, and PIC of vessels.

Forms: None.

Abstract: This information is needed to ensure that: (1) Certain U.S. ocean-going vessels develop and maintain a waste management plan (33 CFR 151.55); (2) certain U.S. ocean-going vessels maintain refuse discharge records (33 CFR 151.57); and (3) certain individuals acting as PIC for the transfer of fuel, receive a letter of instruction for pollution prevention (33 CFR 155.710; 155.715).

Burden Estimate: The estimated burden has increased from 55,484 hours to 67,030 hours a year.

5. *Title:* Licensing and Manning Requirements for Officers on Towing Vessels.

OMB Control Number: 1625–0078.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators towing vessels.

Forms: None.

Abstract: Licensing and manning requirements found in 46 CFR part 10 ensure that towing vessels operating on the navigable waters of the U.S. are under the control of licensed officers who meet certain qualification and training standards.

Burden Estimate: The estimated burden has increased from 17,159 hours to 19,764 hours a year.

Dated: August 1, 2007.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E7–15482 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2007–28839]

National Boating Safety Advisory Council; Vacancy

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Boating Safety Advisory Council (NBSAC). NBSAC advises the Coast Guard on matters related to recreational boating safety.

DATES: Application forms should reach us on or before September 7, 2007.

ADDRESSES: You may request an application form by writing to Commandant, Office of Boating Safety (CG–3PCB–1), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–372–1062; or by faxing 202–372–1932. Send your application in written form to the above street address. This notice and the application form are available on the Internet at: *http://www.uscgboating.org/nbsac/nbsac.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Ludwig, Executive Secretary of NBSAC, telephone 202–372–1062, fax 202–372–1932, or e-mail: *jeffrey.a.ludwig@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council (NBSAC) is a Federal advisory committee under 5 U.S.C. App. (Pub. L. 92–463). It advises the Coast Guard regarding regulations and other major boating safety matters. NBSAC's 21 members are drawn equally from the following three sectors of the boating community: State officials responsible for State boating safety programs, recreational boat and associated equipment manufacturers, and national recreational boating organizations and the general public. Members are appointed by the Secretary of the Department of Homeland Security.

NBSAC normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

We will consider applications received in response to this notice for the following position which was vacated on June 26, 2007: One representative of recreational boat and associated equipment manufacturers. The appointee for this position will serve the remainder of the previous member's term, which expires December 31, 2008.

Applicants are considered for membership on the basis of their particular expertise, knowledge, and experience in recreational boating safety. Applicants from previous years should submit an updated application to ensure consideration for the vacancy announced in this notice. Applicants for the vacancy notice published on April 26, 2007 in 72 FR 20862 do not need to submit any additional application materials. Members may serve consecutive terms. In support of the policy of the U.S. Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: August 1, 2007.

F.J. Sturm,

Captain, U.S. Coast Guard, Director of Inspections and Compliance (Acting).

[FR Doc. E7–15505 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. CGD08–07–016]

Houston/Galveston Navigation Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working groups will meet to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Thursday, September 13, 2007 at 9 a.m. The meeting of the Committee's working groups will be held on Tuesday, August 21, 2007 at 9 a.m. Members of the public may present written or oral statements at either meeting. Requests to make oral presentations or distribute written materials should reach the Coast Guard five (5) working days before the meeting at which the presentation will be made. Requests to have written materials distributed to each member of the committee in advance of the meeting should reach the Coast Guard at least ten (10) working days before the meeting at which the presentation will be made.

ADDRESSES: The full Committee will be held at the Houston Pilots Association, 8150 South Loop East, Houston, Texas 77011–1747, (713)–645–9620. The working groups meeting will be held at Foret Enterprises, Inc., 15201 East Freeway, Suite 109, Channelview, Texas 77530, (281) 452–9940. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander Hal Pitts, Executive Secretary of HOGANSAC, telephone (713) 671–5164, or Lieutenant Sean Hughes, Assistant to the Executive Secretary of HOGANSAC, telephone (713) 678–9001, e-mail *sean.p.hughes@uscg.mil.* Written materials and requests to make presentations should be sent to Commanding Officer, Sector Houston/Galveston, Attn: LT Hughes, 9640 Clinton Drive, Houston, TX 77029.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App (Pub. L. 92–463).

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Whitehead) or the Committee Sponsor's representative, Executive Director (CAPT Diehl) and Chairperson (Ms. Patricia Clark).

(2) Approval of the 22 May, 2007 minutes.

(3) Old Business:

(a) Navigation Operations (NAVOPS)/Maritime Incident Review subcommittee report;

(b) Deep Draft Entry Facilitation (DDEF) subcommittee report;

(c) Dredging subcommittee report;

(d) Technology subcommittee report;

(e) Area Maritime Security Committee (AMSC) Liaison's report;

(f) Harbor of Safe Refuge subcommittee report;

(g) HOGANSAC Outreach report;

(h) Maritime Awareness subcommittee report.

(4) New Business:

(a) Introduction and appointment of new HOGANSAC members—Commander Hal Pitts, USCG.

Working Groups Meeting. The tentative agenda for the working groups meeting includes the following:

(1) Presentation by each working group of its accomplishments and plans for the future;

(2) Review and discuss the work completed by each working group;

(3) Put forth any action items for consideration at full committee meeting.

Procedural. Working groups have been formed to examine the following issues: dredging and related issues, electronic navigation systems, AtoN knockdowns, impact of passing vessels on moored ships, boater education issues, facilitating deep draft movements, mooring infrastructure, and safe refuge during hurricanes. Not all working groups will provide a report at this session. Further, working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility. All meetings are open to the public. Members of the public may make presentations, oral or written, at either meeting. Requests to make oral or written presentations should reach the Coast Guard five (5) working days before the meeting at which the presentation will be made. If you would like to have written materials distributed to each member of the committee in advance of the meeting, you should send your request along with nineteen (19) copies of the materials to the Coast Guard at least ten (10) working days before the meeting at which the presentation will be made.

Information on Services for the Handicapped: For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Secretary or Assistant to the Executive Secretary as soon as possible.

Dated: July 25, 2007.

Joel R. Whitehead,

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

[FR Doc. E7–15513 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, September 20, 2007.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on September 20, 2007 at 9 a.m. at the Department of Environmental Management at 235 Promenade Street, Providence, RI.

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Thomas Ross, Acting Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Thomas E. Ross, Acting Executive Director of the Commission at the aforementioned address.

Thomas E. Ross,

Acting Executive Director, BRVNHCC.

[FR Doc. E7–15428 Filed 8–8–07; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Modoc National Wildlife Refuge, Modoc County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Modoc National Wildlife Refuge (Refuge) located in Modoc County of California. This notice advises the public that the Service intends to gather information necessary to prepare a CCP and EA pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended, and the National Environmental Policy Act (NEPA). The public and other agencies are encouraged to participate in the planning process by sending written comments on management actions that the Service should consider. The Service is also furnishing this notice in compliance with the Service CCP policy to obtain suggestions and information on the scope of issues to include in the CCP and EA. Opportunities for public input will be announced throughout the CCP/EA planning and development process.

DATES: To ensure that the Service has adequate time to evaluate and incorporate suggestions and other input into the planning process, comments should be received on or before September 30, 2007.

ADDRESSES: Send written comments or requests to be added to the mailing list to the following address: Jackie Ferrier, Refuge Planner, Sacramento National Wildlife Refuge, 752 County Road 99W, Willows, CA 95988. Written comments may also be faxed to (530) 934–7814, or sent by electronic mail to *jackie_ferrier@fws.gov.* You may find additional information concerning the Refuge at the Internet site *http://www.fws.gov/modoc/.*

FOR FURTHER INFORMATION CONTACT: Jackie Ferrier, Refuge Planner, at (530) 934–2801 or Steve Clay, Refuge Manager, at (530) 233–3572.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a CCP for each National Wildlife Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife, plants and their habitats, the CCP will identify compatible wildlife-dependent recreational opportunities available to the public. The recreational opportunities that will receive priority consideration are hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The planning process will consider many other elements, including cultural resource protection, environmental effects, and administrative resources. Public input into this planning process is very important. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

Comments received will be used to help develop goals and objectives, as well as identify key issues evaluated in the NEPA document. All comments

received, including names and addresses, will become part of the administrative record and may be made available to the public. Opportunities for public participation will occur throughout the process.

The Service will send Planning Updates to people who are interested in the CCP process. These mailings will provide information on how to participate in the CCP process. Interested federal, state, and local agencies, organizations, and individuals are invited to provide input. The Service expects to complete the CCP in 2009.

Background

The 7,021 acre Modoc National Wildlife Refuge is located southeast of Altuas, California. The Refuge was established in 1961 pursuant to the Migratory Bird Conservation Act (16 U.S.C. 715d) and the Refuge Recreation Act (16 U.S.C. 460k–460K.4). Lands within the Refuge have been set aside for use as an inviolate sanctuary, and other management purposes, for migratory birds, for incidental fish and wildlife-oriented recreational development, for the protection of natural resources, and for the conservation of endangered species or threatened species.

Located near the confluence of the north and south forks of the Pit River, the Refuge conserves, protects, and manages a mosaic of freshwater lakes and ponds, seasonal wetlands, irrigated meadows, grasslands, and sagebrush/juniper upland habitats. These habitats provide important resting, feeding, and nesting areas for ducks, geese, and other migratory birds including the greater sandhill crane.

The Service anticipates a draft CCP and EA to be available for public review and comment in 2008.

Dated: August 3, 2007.

Ken McDermond,

Acting Manager, CA/NV Operations, Sacramento, California.

[FR Doc. E7–15603 Filed 8–8–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–920–07–5101–ER–J108; UTU–79766, NVN–82385]

Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Liquid Petroleum Products Pipeline From Woods Cross, UT, to Northeast Las Vegas, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) and initiate public scoping for UNEV, LLC's proposal to construct and operate a liquid petroleum products pipeline from Woods Cross, Utah, to northeast Las Vegas, Nevada.

SUMMARY: Pursuant to 42 U.S.C. 4332, the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM) will be directing the preparation of an EIS and conducting public scoping meetings for the proposed construction of a 12'' liquid petroleum products pipeline. UNEV, LLC was established by Holly Corporation to construct and operate the pipeline. The proposed route for the UNEV Pipeline is approximately 400 miles in length and would, except for the northernmost portion of the route, generally follow the existing Kern River pipeline corridor. The pipeline inlet would be located near Holly Corporation's Woods Cross, Utah, refinery, which announced last year its intent to upgrade its crude oil processing capabilities, enabling the refinery to process high value, low priced black wax crude oil and heavy Canadian crude oils.

The outlet terminals for the proposed pipeline would be located northwest of Cedar City, Utah, and northeast of Las Vegas, Nevada. In addition to the inlet pumping station, one additional pumping station is proposed with pressure reduction stations located at the terminals. The corridor contains two Kern River Pipeline Company natural gas pipelines, the newest of which was constructed in 2003. The Kern River Pipeline Environmental Impact Statement was completed in 2002. In Utah the proposed UNEV Pipeline would originate in Davis County and cross Salt Lake, Tooele, Juab, Millard, Beaver, Iron, and Washington Counties. In Nevada the pipeline would cross Lincoln County and terminate in Clark County. A map of the proposed project is available for viewing at *http://www.blm.gov/ut/st/en/prog/more/lands_and_realty/unev_pipeline_eis.html* and the Utah and Nevada State Offices.

The UNEV Pipeline project as proposed would function as a ''common carrier'' pipeline. In general terms, common carrier is an entity that transports goods or products and offers its transportation services to others. This means that the UNEV Pipeline would provide an alternative means of transportation from other modes, *i.e.*, truck or rail, etc., for refined products from other refineries in the area as well as Holly's refinery.

DATES: This notice initiates the 30-day public scoping process. Those having concerns, issues, or alternatives for consideration in the EIS should submit written comments by September 10, 2007. The BLM will host public scoping meetings in the following locations: Salt Lake City, Delta, and Cedar City, Utah, and Las Vegas, Nevada. Times and dates of these meetings will be announced through the Utah BLM Web site listed above, press releases, local newspapers, and other local media. At the scoping meetings, the public is invited to submit comments and resource information, and identify issues or concerns to be considered in the NEPA process. All comments received at the public scoping meetings or through written comments submitted will aid the BLM in identifying alternatives and mitigating measures and will help assure that all issues are analyzed in the EIS. The BLM will announce public meetings and other opportunities to submit comments on this project at least 15 days prior to the event.

ADDRESSES: Written comments and issues related to the proposed EIS should be mailed to Rhonda Flynn, Bureau of Land Management, Utah State Office, Bureau of Land Management, Division of Lands and Minerals, P.O. Box 45155–0155, Salt Lake City, Utah 84145–0155. Comments may also be transmitted by facsimile to the attention of Rhonda Flynn at: (801) 539–4200, sent via e-mail to: *UT_UNEV_Pipeline_EIS@blm.gov* or delivered by hand to the: Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah; Fillmore Field Office, 35 East 500 North, Fillmore, Utah; Cedar City Field Office, 176 East D.L. Sargent Drive, Cedar City, Utah; St. George Field Office, 345 East Riverside Drive, St. George, Utah; Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah; Ely Field Office, 702 N. Industrial Way, Ely, Nevada; Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada; or the Nevada State Office, 1340 Financial Blvd., Reno,

Nevada. E-mails should include ''UNEV Pipeline EIS'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Joe Incardine at the Utah State Office, Bureau of Land Management, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; by phone: (801) 539–4118; or by e-mail: *Joe_Incardine@blm.gov*.

SUPPLEMENTARY INFORMATION: The EIS will assess the potential impacts of granting a right-of-way (ROW) authorizing subsequent construction, installation, and operation of a liquid petroleum products pipeline and facilities in Davis, Salt Lake, Tooele, Juab, Millard, Beaver, Iron, and Washington Counties in Utah and Lincoln and Clark Counties in Nevada to increase the capacity and improve the efficiency of the fuel delivery system into southern Utah and the Las Vegas, Nevada, area. The pipeline will be available to accept shipments of refined products from multiple refineries in the Salt Lake City, Utah, area, as well as refineries in Wyoming and Montana.

Summary of the Proposed Project

UNEV, LLC is seeking a ROW grant to undertake the following activities:

- Install 400 miles of 12-inch-diameter petroleum products line from Woods Cross, Utah, to Las Vegas, Nevada.
- Construct an inlet pumping station, one additional pumping station about midway along the line, and pressure reduction stations and terminals at Cedar City and Las Vegas.
- Install mainline valves at or near the existing valve locations on the existing Kern River pipeline, where feasible. New valves would be installed on the pipeline to reduce the distance between existing valves for operational and maintenance reasons.
- Install scraper stations, used for launching and receiving the cleaning and inspection ''pigs.'' New electrical service will be installed at each station.
- Install cathodic protection test stations at approximately 1-mile intervals to maintain and monitor the mechanical integrity of the pipeline.
- Install visible pipeline markers at intervals to mark the approximate location of the pipeline centerline.

The EIS Process

NEPA requires the BLM to take into account the environmental impacts of its actions. The BLM will use the EIS to consider the environmental impacts that could result if a ROW grant for the proposed action is issued pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185). The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. With this NOI, the BLM is requesting public comments on the scope of the issues to be addressed in the EIS. All comments received will be considered during preparation of the EIS.

The EIS will discuss direct, indirect, and cumulative impacts that could occur as a result of the construction, operation, maintenance, and abandonment of the proposed project under these general headings:

- Geology and Minerals
- Soils
- Water Resources
- Biological Resources
- Threatened and Endangered Species
- Rangeland Resources
- Wilderness, Wilderness Study Areas, and Areas of Critical Environmental Concern
- Land Use and Access
- Recreation and Visual Resources
- Environmental Justice
- Socioeconomics
- Cultural and Paleontological Resources
- Native American Concerns
- Air Quality and Noise
- Hazardous and Solid Waste
- Transportation
- Public Safety

The BLM will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on affected resources.

Analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to affected federal, state, and local government agencies; elected officials; landowners; environmental and public interest groups; Indian tribes and regional Native American organizations; commenters; and other interested parties. A 45-day comment period will be allotted for review of the draft EIS. The BLM will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this NOI.

This EIS may also analyze a plan amendment for the Pony Express Resource Management Plan, should there be federal lands in the proposed action or alternatives not within a designated utility corridor.

Public Participation

Public scoping meetings are planned at five locations. The meetings will provide the public an opportunity to present comments or issues for consideration in the EIS. The meetings will be held in an ''open house format'' beginning at 5 p.m. and ending at 8 p.m. Specific dates and locations for the public scoping meetings will be provided as noted above in the **DATES** section.

Comments concerning the Proposed Action and EIS should address relevant issues, feasible alternatives, possible mitigation, and information having a bearing on the Proposed Action.

Your response is important and will be considered in the EIS process. If you respond, the BLM will keep you informed of the availability of environmental documents that address impacts that might occur from this proposal.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Selma Sierra,

State Director.

[FR Doc. E7–15580 Filed 8–8–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU79263, UTU79265, UTU79266]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases, Utah

August 3, 2007.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), Quaneco LLC timely filed a petition for reinstatement of oil and gas leases UTU79263, UTU79265, and UTU79266 for lands in Kane County, Utah, and it was accompanied by all required rentals and royalties accruing from May 1, 2007, the date of termination.

FOR FURTHER INFORMATION CONTACT: Kent Hoffman, Deputy State Director, Division of Lands and Minerals at (801) 539–4080.

SUPPLEMENTARY INFORMATION: The Lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee for the lease has

been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the leases, effective May 1, 2007, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Kent Hoffman,

Deputy State Director, Division of Lands and Minerals.

[FR Doc. E7–15584 Filed 8–8–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–6334–bj: GP07–0152]

Filing of Plats of Survey: Oregon/Washington

AGENCY: U.S. Department of the Interior, Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands were officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on May 25, 2007.

Willamette Meridian

Washington

T. 28 N., R. 38 E., accepted March 29, 2007.
T. 28 N., R. 38 E., accepted March 30, 2007.
T. 27 N., R. 39 E., accepted March 30, 2007.
T. 27 N., R. 38 E., accepted March 30, 2007.
T. 28 N., R. 39 E., accepted March 30, 2007.

Oregon

T. 15 S., R. 7 W., accepted March 30, 2007.

The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Washington

T. 21 N., R. 4 W., accepted May 10, 2007.
T. 3 N., R. 19 E., accepted May 10, 2007.
T. 33 N., R. 15 W., accepted June 1, 2007.
T. 33 N., R. 14 W., accepted June 1, 2007.
T. 17 N., R. 10 E., accepted June 1, 2007.
T. 21 N., R. 11 W., accepted June 6, 2007.
T. 22 N., R. 11 W., accepted June 14, 2007.
T. 15 N., R. 11 E., accepted June 21, 2007.

Oregon

T. 6 S., R. 30 E., accepted June 6, 2007.
T. 1 S., R. 7 W., accepted June 6, 2007.
T. 17 S., R. 2 W., accepted June 6, 2007.
T. 13 S., R. 6 W., accepted June 14, 2007.
T. 27 S., R. 10 W., accepted June 21, 2007.
T. 29 S., R. 8 W., accepted June 27, 2007.
T. 16 S., R. 2 W., accepted June 27, 2007.

A copy of the plats may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Sciences, Bureau of Land Management, (333 SW. 1st Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: July 25, 2007.

Fred O'Ferrall,

Branch of Lands and Minerals Resources.

[FR Doc. E7–15559 Filed 8–8–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0107).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The new title of this information collection request (ICR) is ''30 CFR Part 218, Collection of Monies Due the Federal Government.'' The form associated with this collection is Form MMS–4425, Designation Form for Royalty Payment Responsibility. The previous title of this ICR was ''30 CFR Part 218, Subpart A—General Provisions, 218.42 Cross-lease netting in calculation of late-payment interest; Subpart B—Oil and Gas, General, 218.52 How does a lessee designate a Designee? (Form MMS–4425, Designation Form for Royalty Payment Responsibility) and 218.53 Recoupment of overpayments on Indian mineral leases; and Subpart E—Solid Minerals—General, 218.203 Recoupment of overpayments on Indian mineral leases.''

We revised this ICR in order to enable program-wide review of all information collections for solid minerals and geothermal resources. We removed 218.203, which relates to solid minerals, from this ICR and included 218.203 in the solid minerals ICR 1010–0120 (expires October 31, 2007).

DATES: Submit written comments on or before October 9, 2007.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service or wish to hand-carry your comments, our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, or e-mail *sharron.gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 218, Collection of Monies Due the Federal Government.

OMB Control Number: 1010–0107.

Bureau Form Number: Form MMS–4425.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

Public laws pertaining to mineral royalties are on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.* Applicable citations of the laws pertaining to mineral leases include the following:

1. Public Law 97–451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982 [FOGRMA]);

2. Public Law 104–185—Aug. 13, 1996 (Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 [RSFA]), as corrected by Public Law 104–200—Sept. 22, 1996); and

3. Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*).

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are paid appropriately.

Designation of Designee

The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Public Law 104–185, as corrected by Public Law 104–200, established that lessees (owners, primarily, of operating rights, or secondarily, lease record title) are responsible for making royalty and related payments on Federal oil and gas leases. These RSFA requirements are codified at 218.52. It is common, however, for a payor rather than a lessee to make these payments. When a payor makes payments on behalf of a lessee, RSFA section 6(g) requires that the lessee designate the payor as its designee and notify MMS of this arrangement in writing. The MMS designed Form MMS–4425, Designation Form for Royalty Payment Responsibility, to request all the information necessary for lessees to comply with these RSFA requirements when they choose to designate an agent to pay for them.

Cross-Lease Netting in Calculation of Late-Payment Interest

Regulations at 218.54 require MMS to assess interest on unpaid or underpaid amounts. The MMS distributes these interest revenues to states, Indians, and the U.S. Treasury, based on financial lease distribution information. Current regulations at 218.42 provide that an overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine the net payment subject to interest, when certain conditions are met. This is called cross-lease netting. However, RSFA sections 6(a), (b), and (c) require MMS to pay interest on lessees' Federal oil and gas overpayments made on or after February 13, 1997 (6 months after the August 13, 1996 enactment of RSFA). The MMS implemented this RSFA provision in 1997 and began calculating interest on both underpayments and overpayments for Federal oil and gas leases, making the cross-lease netting provisions at 218.42 no longer applicable for these leases. The MMS is developing regulations [MRM1] to amend 218.42 to limit its applicability to payments made under Indian tribal leases and Federal leases for minerals other than oil and gas. The MMS estimates that in about seven cases per year, lessees must comply with the provisions of 218.42(b) and (c) for Indian tribal leases or Federal leases other than oil and gas, demonstrating that cross-lease netting is correct by submitting production reports, pipeline allocation reports, or other similar documentary evidence. This information is necessary for MMS to determine the correct amount of interest owed by the lessee and to ensure proper value is collected.

Tribal Permission for Recoupment on Indian Leases

In order to report cross-lease netting on Indian leases, lessees must also comply with regulations at 218.53(b), allowing only lessees with written permission from the tribe to recoup overpayments on one lease against a different lease for which the tribe is the lessor. The payor must furnish MMS with a copy of the tribe's written permission. Generally, a payor may recoup an overpayment against the current month's royalties or other revenues owed on the same tribal lease. For any month, a payor may not recoup more than 50 percent of the royalties or other revenues owed in that month, under an individual allotted lease, or more than 100 percent of the royalties or other revenues owed in that month, under a tribal lease. Lessees use Form MMS–2014, Report of Sales and Royalty Remittance (burden hours covered under ICR 1010–0140, which expires November 30, 2009), for oil and gas lease recoupments. The MMS requires tribal permission to ensure tribes [MRM2] receive correct revenues from production on their leases.

The MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 1,612 Federal and Indian lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 1,219 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR part 218	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Subpart A—General Provisions—Cross-lease netting in calculation of late-payment interest				
218.42(b) and (c)	Cross-lease netting in calculation of late-payment interest. (b) Royalties attributed to production from a lease or leases which should have been attributed to production from a different lease or leases may be offset * * * if * * * the payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information * * *. (c) If MMS assesses late-payment interest and the payor asserts that some or all of the interest is not owed * * * the burden is on the payor to demonstrate that the exception applies * * *.	2	7	14
Subpart B—Oil and Gas, General—How does a lessee designate a Designee?				
218.52(a), (c), and (d)	How does a lessee designate a Designee? (a) If you are a lessee under 30 U.S.C. 1701(7), and you want to designate a person to make all or part of the payments due under a lease on your behalf * * * you must notify MMS * * * in writing of such designation * * *. (c) If you want to terminate a designation * * *. you must provide [the following] to MMS in writing * * * (d) MMS may require you to provide notice when there is a change in the percentage of your record title or operating rights ownership. The MMS currently uses Form MMS–4425, Designation Form for Royalty Payment Responsibility, to collect this information.	0.75	1,600	1,200
Subpart B—Oil and Gas, General—Recoupment of overpayments on Indian mineral leases				
218.53(b)	Recoupment of overpayments on Indian mineral leases. (b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed * * * under other leases * * *. A copy of the tribe's written permission must be furnished to MMS * * *.	1	5	5
Total burden			1,612	1,219

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour cost'' burden associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with

requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: August 6, 2007.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. E7–15590 Filed 8–8–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Ecological Restoration Plan, Final Environmental Impact Statement, Bandelier National Monument, New Mexico

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Ecological Restoration Plan, Bandelier National Monument.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of a Final Environmental Impact Statement for the Ecological Restoration Plan for Bandelier National Monument, New Mexico. Alternative B was selected as the park's preferred alternative; it maximizes work efficiency and minimizes resource impacts by implementing restoration treatments in the most systematic and timely fashion possible given available funding. The purpose of the Ecological Restoration Plan is to re-establish healthy, sustainable vegetative conditions within the pinon-juniper woodland and to mitigate soil erosion that threatens the cultural resources for which Bandelier National Monument was established and specifically set aside to preserve.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for public review and comment online at *http://parkplanning.nps.gov* and in the office of the Superintendent, Darlene Koontz, Bandelier National Monument, 15 Entrance Road, Los Alamos, New Mexico 87544, 505–672–3861, extension 502.

FOR FURTHER INFORMATION CONTACT: John Mack, Chief of Resource Management, Bandelier National Monument, 15 Entrance Road, Los Alamos, New Mexico 87544, 505–672–3861, extension 540, *john_mack@nps.gov*.

Dated: July 31, 2007.

John T. Crowley,

Acting Regional Director, Intermountain Region, National Park Service.

[FR Doc. E7–15562 Filed 8–8–07; 8:45 am]

BILLING CODE 4312–EW–P

DEPARTMENT OF THE INTERIOR

National Park Service

Jackson Hole Airport Use Agreement Extension, Environmental Impact Statement, Grand Teton National Park, Wyoming

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Jackson Hole Airport Use Agreement Extension, Grand Teton National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service is preparing an Environmental Impact Statement (EIS) for the Jackson Hole Airport Use Agreement Extension, Grand Teton National Park, Wyoming. This effort addresses a request from the Jackson Hole Airport Board to amend the use agreement between the Department of the Interior and the Airport Board in order to ensure that the airport remains eligible for funding through the Federal Aviation Administration (FAA). Alternatives to be considered include *Alternative 1: No Action*—The airport would continue operations under the existing use agreement which currently has an expiration date of April 27, 2033; *Alternative 2: Extend Agreement*—Jackson Hole Airport Board proposal to extend the use agreement for an additional two 10–year terms, bringing the expiration date to April 27, 2053; and *Alternative 3: Update and Extend Agreement*—Extend the use agreement for an additional two 10-year terms with minor modifications as mutually agreed to by the NPS and the Airport Board.

The Jackson Hole Airport is located on 533 acres of land within Grand Teton National Park. The airport operates under the terms and conditions of a 1983 use agreement between the Department of the Interior and the Jackson Hole Airport Board. The 1983 agreement was for a primary term of 30 years, with options for two 10-year extensions, both of which have been exercised. The agreement also includes a provision that further extensions, amendments, or modifications could be negotiated by the parties on mutually satisfactory terms, and that the parties agree that upon expiration of the agreement, a mutually satisfactory extension could be negotiated.

The FAA requires that airports have use agreements of 20 years or more in order to remain eligible for Airport Improvement Program funds. An extension of the existing use agreement is needed to provide assurance that the airport will remain eligible for funding beyond the year 2013.

In November 2006, a public scoping notice soliciting public comments was circulated describing the purpose and need for the project. Based on comments received and subsequent data gathered, the NPS has determined the preparation of an EIS is warranted. Preliminary EIS impact topics include: Natural soundscape, air quality, water quality, wildlife/T&E species, visual quality/dark skies, public health and safety, visitor use & experience, transportation planning, socioeconomics, park & airport operations.

DATES: The National Park Service will conduct further scoping for the draft alternatives and EIS for a period of 30-

days beyond publication of this Notice of Intent. Previous scoping comments submitted will be considered and need not be resubmitted.

ADDRESSES: You may mail comments to: Jackson Hole Airport Use Agreement Extension, Superintendent's Office, Grand Teton National Park, PO Drawer 170, Moose, WY 83012. Electronic comments can be made online at *http://parkplanning.nps.gov/grte.*

FOR FURTHER INFORMATION CONTACT: Gary Pollock, Grand Teton National Park, PO Drawer 170, Moose, Wyoming 83012–0170, (370) 739–3428, *gary_pollock@nps.gov*.

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 27, 2007.

Michael D. Snyder,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. E7–15561 Filed 8–8–07; 8:45 am]

BILLING CODE 4312–CX–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a proposed consent decree in *United States* v. *Cook Development Corp., et al.,* Civil Action No. 3:06–CV–617, was lodged on August 1, 2007 with the United States District Court for the District of Oregon. The United States filed this action pursuant to the Clean Air Act seeking civil penalties and injunctive relief for violations of the National Emissions Standards for Hazardous Air Pollutants governing the removal and disposal of asbestos. The United States alleges that the Defendant Birch Creek Construction renovated the Commodore Apartments in The Dalles, Oregon without complying with the work standards set forth in 40 CFR 61.141–61.156.

The Consent Decree resolves the United States' claims against Birch Creek Construction by requiring that defendant pay a civil penalty of $7,500 and a commitment not to engage in any asbestos demolition or renovation activity in the future.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Cook Development Corp.,* DOJ Ref. #90–5–2–1–08803.

The proposed consent decree may be examined at the office of the United States attorney, 100 SW. Third Avenue, Suite 600, Portland, OR 97204–2904, and at the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101. During the public comment period, the proposed consent decree may also be examined on the Department of Justice Web site, at *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–3866 Filed 8–8–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Order Under the Clean Water Act

Notice is hereby given that on August 2, 2007, a proposed Consent Order in *United States* v. *Country Acres Farm, Inc.,* Civil Action No. 07–07–B–W was lodged with the United States District Court for the District of Maine.

In this action the United States sought civil penalties and injunctive relief relating to alleged violations of the Clean Water Act, 33 U.S.C. 1251, *et seq.,* arising out of Country Acres Farm's operation of a concentrated animal feeding operation, located in Dixmont, Maine. Country Acres Farm's dairy operations generated significant amounts of process-generated waste water which was alleged in the Complaint to have discharged to waters of the United States. The Consent Order requires the implementation of remedial work to clean up manure storage lagoons and other activities, which will minimize or eliminate the risk of additional discharges at the Country Acres Farm Site, by memorializing Defendant's commitment to effect the remediation. The Consent Order provides a mechanism through which EPA may evaluate the performance of Defendant's independent contractor and retains the Court's exercise of jurisdiction over issues relating to Defendant's performance of the remediation and (with EPA's approval of completion of the remediation) purges Defendant and its president of an Order for Contempt, entered by the Court on July 24, 2007. The Consent Order does not resolve the United States' claims for final injunctive relief or for payment of a civil penalty.

In light of the importance of concluding the remedial work as soon as possible, the Department of Justice will receive for a period of fourteen (14) days from the date of this publication comments relating to the Consent Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Country Acres Farm, Inc.,* D.J. Ref. 90–5–1–1–09068.

The Consent Order may be examined at the Office of the United States Attorney, District of Maine, 100 Middle Street Plaza, East Tower Sixth Floor, and at U.S. EPA Region 1, One Congress Street–SEL, Boston, MA 02114. During the public comment period, the Consent Order may also be examined on the following Department of Justice Web site:

http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Order may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.50 (25 cents per

page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–3867 Filed 8–8–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 26, 2007, a proposed settlement agreement in *In re Marcal Paper Mills, Inc.* Case No. 06–21886(MS), was lodged with the United States Bankruptcy Court for the District of New Jersey.

The proposed settlement agreement resolves claims asserted by the United States, on behalf of the United States Environmental Protection Agency (''EPA''), the United States Department of Interior (''DOI''), and the National Oceanic and Atmospheric Administration of the United States Department of Commerce (''NOAA''), against the debtor Marcal Paper Mills, Inc., under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 USC 9601 *et seq.* The claims were contained in a Proof of Claim filed with the Court on June 14, 2007 and sought to recover response costs incurred and to be incurred and natural resource damages at the Diamond Alkali Superfund Site in New Jersey. The proposed settlement agreement stipulates that the United States' unsecured claim shall be treated as an allowed claim in the amount of $3,000,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Marcal Paper Mills, Inc.* D.J. Ref. 90–11–3–07683/5.

During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.50 (25 cents per page reproduction cost) payable to the ''U.S. Treasury'' or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald G. Gluck

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 07–3865 Filed 8–8–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Clean Water Act

Notice is hereby given that on July 31, 2007, a proposed Final Consent Decree in *United States* v. *City of San Diego*, Civil Action No. 01–CV–0550B (POR), was lodged with the United States District Court for the Southern District of California. The United States' action is consolidated with *San Diego Baykeeper, et al.* v. *City of San Diego* and *State of California* v. *City of San Diego*.

In this action the United States seeks penalties and injunctive relief to address sanitary sewer overflows and other violations of the Clean Water Act and the City of San Diego's National Pollutant Discharge Elimination System Permit. The Final Consent Decree includes requirements that have already been initiated but not yet completed under previous settlements.

This Final Consent Decree requires the City to continue to take action to create programs and maintain and upgrade the sewer infrastructure to include, among other things; (1) Comprehensive cleanings of the collection system; (2) inspection of manholes; (3) completion of specified capital projects; (4) repair, rehabilitation or replacement of pipeline; (5) completion of canyon economic and environmental analyses; (6) securing of manhole covers; and (7) completed CCTV inspections. Further, the Final Consent Decree commits the City to implement an additional six year program to improve the City's system and reduce spills.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Final Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcommentees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of San Diego*, D.J. Ref. 90–5–1–1–4364/1.

The Final Consent Decree may be examined at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Final Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent__Decrees.html.* A copy of the Final Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $16.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ellen Mahan,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–3868 Filed 8–8–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on June

15, 2007, Alcan Packaging-Bethlehem, 2400 Baglyos Circle, Bethlehem, Pennsylvania 18020, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Nabilone (7379) a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for packaging and distribution.

Any bulk manufacturer who is presently, or are applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than September 10, 2007.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975 (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 31, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–15498 Filed 8–8–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on June 18, 2007, Almac Clinical Services Inc., (ACSI), 2661 Audubon Road, Audubon, Pennsylvania 19403, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Oxycodone (9143)	II
Fentanyl (9801)	II

The company plans to import small quantities of the listed controlled substance in dosage form to conduct clinical trials.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than September 10, 2007.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 31, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–15512 Filed 8–8–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2) authorizing the importation of such substances, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on May 17, 2007, Aptuit (Allendale), Inc., 75 Commerce Drive, Allendale, New Jersey 07401, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Noroxymorphone (9668), a basic class of controlled substance listed in schedule II.

The company plans to import the basic class of controlled substance for clinical trials and research.

Any manufacturer who presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537; or any being sent via express mail should be sent to, Drug

Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than September 10, 2007.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–15553 Filed 8–8–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 11, 2007, Cambrex North Brunswick, Inc., Technology Centre of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
N-Ethylamphetamine (1475)	I
Tetrahydrocannabinols (7370)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Phenylacetone (8501)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 9, 2007.

Dated: July 31, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–15500 Filed 8–8–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on June 11, 2007, Cambrex North Brunswick, Inc., Technology Centre of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance to manufacture amphetamine.

Any bulk manufacturer who is presently, or are applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than September 10, 2007.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: August 1, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–15510 Filed 8–8–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 29, 2007, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following

basic classes of controlled substances listed in schedule II:

Drug	Schedule
Lisdexamfetamine (1205)	II
Remifentanil (9739)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a). Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537; or any being sent via express mail should be sent to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 9, 2007.

Dated: July 31, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–15499 Filed 8–8–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 17, 2007 and published in the **Federal Register** on April 30, 2007, (72 FR 21298), Noramco Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Raw Opium (9600)	II
Concentrate of Poppy Staw (9670).	II

The company plans to import the listed controlled substances to manufacture other controlled substances.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Noramco, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: August 1, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–15514 Filed 8–8–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated May 10, 2007 and published in the **Federal Register** on May 18, 2007, (72 FR 28077), Penick Corporation, 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Coca Leaves (9040)	II
Raw Opium (9600)	II
Poppy Straw (9650)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances to manufacture bulk controlled substance intermediates for sale to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code (U.S.C.) § 823(a) and § 952(a) and determined that the registration of Penick Corporation to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Penick Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Title 21, U.S.C. 952(a) and 958(a), and in accordance with Title 21, Code of Federal Regulations (CFR) § 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: July 31, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–15515 Filed 8–8–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 9, 2007, and published in the **Federal Register** on March 23, 2007 (72 FR 13825), Sigma Aldrich Research, Biochemicals, Inc., 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I:

Drug	Schedule
Psilocybin (7437)	I
5-Methoxy-N,N-diisopropyltyptamine (7439).	I

The company plans on manufacturing reference standards for research purposes only.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code (U.S.C.) 823(a) and determined that the registration of Sigma Aldrich Research, Biochemicals, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Sigma Aldrich Research, Biochemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection

and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Title 21, U.S.C. 823, and in accordance with Title 21, Code of Federal Regulations (CFR) 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: August 1, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–15507 Filed 8–8–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,414]

Bemis Company, Inc. Paper Packaging Division Including On-Site Leased Workers of Westaff, Peoria, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 8, 2006, applicable to workers of Bemis Company, Inc., Paper Packaging Division, Peoria, Illinois. The notice was published in the **Federal Register** on July 14, 2006 (71 FR 40159).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of industrial consumer package materials including multi-wall bags.

New information shows that leased workers of Westaff were employed on-site at the Peoria, Illinois location of Bemis Company, Inc., Paper Packaging Division. The Department has determined that the Westaff workers were sufficiently under the control of Bemis Company, Inc. to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Westaff working on-site at the Peoria, Illinois location of the subject firm.

The intent of the Department's certification is to include all workers employed at Bemis Company, Inc., Paper Packaging Division, including on-site leased workers of Westaff, Peoria, Illinois who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–59,414 is hereby issued as follows:

All workers of Bemis Company, Inc., Paper Packaging Division, including on-site leased workers of Westaff, Peoria, Illinois, who became totally or partially separated from employment on or after April 25, 2005, through June 8, 2008, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC this 1st day of August 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–15536 Filed 8–8–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 20, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 20, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 31st day of July 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 7/23/07 and 7/27/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61853	Everbrite (State)	Garden Grove, CA	07/23/07	07/12/07
61854	Gampco (Wkrs)	North Adams, MI	07/23/07	07/20/07
61855	Chadron Shop Colorado Custom Hardware (Wkrs)	Chadron, NE	07/23/07	07/17/07
61856	Kilpsch Audio Technologies (Wkrs)	Hope, AR	07/23/07	07/23/07
61857	Hypertronics Corporation (Comp)	Hudson, MA	07/23/07	07/19/07
61858	Spectralink Corp/Polycom Inc. (State)	Boulder, CO	07/23/07	07/19/07

APPENDIX—Continued

[TAA petitions instituted between 7/23/07 and 7/27/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61859	Dura Automotive Systems, Inc. (Comp)	Brownstown, IN	07/23/07	07/22/07
61860	Laser Die & Engineering (Comp)	Kentwood, MI	07/23/07	07/20/07
61861	De-Sta-Co (CPL Products, Inc.) (State)	Charlevoix, MI	07/23/07	07/20/07
61862	OEM/Erie, Inc. (Comp)	Erie, PA	07/23/07	07/20/07
61863	GE Ravenna Lamp Plant (Wkrs)	Ravenna, OH	07/24/07	07/10/07
61864A	Syroco, Inc. (Comp)	Corona, CA	07/24/07	07/23/07
61864B	Syroco, Inc. (Comp)	Lake Wales, FL	07/24/07	07/23/07
61864	Syroco, Inc. (Comp)	Baldwinsville, NY	07/24/07	07/23/07
61865	Overland Custom Coach US, Inc. (Comp)	Brown City, MI	07/24/07	07/16/07
61866	STMicroelectronics (Comp)	Carrollton, TX	07/24/07	07/23/07
61867	Non-Metallic Components, Inc. (Wkrs)	Rib Lake, WI	07/24/07	07/18/07
61868	Mittal Steel (UAW)	Ferndale, MI	07/24/07	07/23/07
61869	San Jose Mercury News (Comp)	San Jose, CA	07/24/07	07/20/07
61870	Goodrich/Landing Gears (Wkrs)	Cleveland, OH	07/24/07	07/23/07
61871	Dirigo Paper Company (Comp)	Gilman, VT	07/24/07	07/23/07
61872	Memphis Hardwood Flooring Company (State)	Grenada, MS	07/24/07	07/12/07
61873	Sasol North America Inc. (Comp)	Baltimore, MD	07/24/07	07/18/07
61874	Automotive Resources Inc. (Wkrs)	Philadelphia, PA	07/24/07	07/09/07
61875	Willowbrook Hosiery Co., LLC (Wkrs)	Burlington, NC	07/25/07	07/23/07
61876	Neenah Paper FR, LLC (Comp)	Urbana, OH	07/25/07	07/24/07
61877	Family Entertainment (Wkrs)	Conyers, GA	07/25/07	07/24/07
61878	Meadwestvaco Consumer & Office Products Group (Union)	Garden Grove, CA	07/25/07	07/24/07
61879	RemyReman LLC (Comp)	Taylorsville, MS	07/25/07	07/20/07
61880	Little Me Children's Wear LLC (Wkrs)	Cumberland, MD	07/25/07	07/24/07
61881	Southern Weaving Company (Wkrs)	Tarboro, NC	07/25/07	07/18/07
61882	Magnetics Division of Spang & Co. (Comp)	Pittsburgh, PA	07/25/07	07/11/07
61883	Pottery Collaborative (State)	Haverhill, MA	07/25/07	07/10/07
61884	Crystal Lite Manufacturing Company (Wkrs)	Tualatin, OR	07/25/07	07/05/07
61885	Littelfuse, Inc. (Comp)	Des Plaines, IL	07/25/07	07/20/07
61886	O'Sullivan Industries, Inc. (Comp)	Lamar, MO	07/26/07	07/24/07
61887	AZ Automotive/Saturn (Comp)	Roseville, MI	07/26/07	07/24/07
61888	J. M. Huber Corporation (Wkrs)	Macon, GA	07/26/07	07/18/07
61889	Flint Group (Wkrs)	Holland, MI	07/26/07	07/02/07
61890	Pioneer/Seaboard Paper Company (Wkrs)	Carlstadt, NJ	07/26/07	07/11/07
61891	Duerr Tool & Die Company, Inc. (Wkrs)	North Union, NJ	07/27/07	07/14/07
61892	Centrilift (Wkrs)	Claremore, OK	07/27/07	06/28/07

[FR Doc. E7–15534 Filed 8–8–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,828]

Freightliner, LLC, Cleveland Truck Plant; Cleveland, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 16, 2007 in response to a worker petition filed by a company official on behalf of workers of Freightliner, LLC, Cleveland Truck Plant, Cleveland, North Carolina.

The Department issued a negative determination (TA–W–61,437) applicable to the petitioning group of workers on June 12, 2007. No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 30th day of July 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–15533 Filed 8–8–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,385]

The Nielsen Company; Fond Du Lac, WI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at The Nielsen Company, Fond du Lac, Wisconsin. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–61,385; The Nielsen Company, Fond du Lac, Wisconsin (July 24, 2007).

Signed at Washington, DC this 30th day of July 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–15538 Filed 8–8–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,999]

Paxar Corporation Graphics Division, Huber Heights, OH; Now a Subsidiary of Avery Dennison Corporation Now Located In Miamisburg, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 14, 2006, applicable to workers of Paxar Corporation, Graphics Division, Huber Heights, Ohio. The notice was published in the **Federal Register** on September 26, 2006 (71 FR 56172).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of printed paper tags and other printed products that are used for apparel identification.

New information shows that on June 15, 2007, Paxar Corporation merged with Avery Dennison and is now known as Paxar Corporation, a subsidiary of Avery Dennison Corporation. Information also shows that the subject firm previously located in Huber Heights, Ohio has relocated to Miamisburg, Ohio.

Workers separated from employment at the subject firm will continue to have their wages reported under the unemployment insurance (UI) tax account for Paxar Corporation through 2007. Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Paxar Corporation, Graphics Division, now a subsidiary of Avery Dennison Corporation, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–59,999 is hereby issued as follows:

All workers of Paxar Corporation, Graphics Division, Huber Heights, Ohio, now known as Paxar Corporation—a subsidiary of Avery Dennison Corporation, and now located in Miamisburg, Ohio, who became totally or partially separated from employment on or after August 31, 2005, through September 14, 2008, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC this 1st day of August 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–15537 Filed 8–8–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *July 23 through July 27, 2007*.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,815; Quaker Fabric Corporation of Fall River, Plant A/B 700, Fall River, MA: April 28, 2007.

TA–W–61,815A; Quaker Fabric Corporation of Fall River, Plant C–710, Fall River, MA: April 28, 2007.

TA–W–61,815B; Quaker Fabric Corporation of Fall River, Plant J–720, Fall River, MA: April 28, 2007.

TA–W–61,815C; Quaker Fabric Corporation of Fall River, Tupelo Sales Office, Tupelo, MS: July 10, 2006.

TA–W–61,815D; Quaker Fabric Corporation of Fall River, Distribution Center and Warehouse in Verona, Verona, MS: July 10, 2006.

TA–W–61,815E; Quaker Fabric Corporation of Fall River, Los Angeles Distribution Center, City of Industry, CA: July 10, 2006.

TA–W–61,815F; Quaker Fabric Corporation of Fall River, High Point Sales Office, High Point, NC: July 10, 2006.

TA–W–61,815G; Quaker Fabric Corporation of Fall River, Hickory Sales Office, Hickory, NC: July 10, 2006.

TA–W–61,815H; Quaker Fabric Corporation of Fall River, Chicago Sales Office, Wilmette, IL: July 10, 2006.

TA–W–61,479; Maui Pineapple Company, Ltd., Cannery Division, Kahului, HI: May 8, 2006.

TA–W–61,497; Sentinel Consumer Products, Inc., Mentor, OH: May 10, 2006.

TA–W–61,498; Sentinel Consumer Products, Inc., Anniston, AL: May 10, 2006.

TA–W–61,499; Sentinel Consumer Products, Inc., Clearfield, UT: May 10, 2006.

TA–W–61,626; Citizens Gas and Coke Utility, Manufacturing Division, Indianapolis, IN: June 5, 2006.

TA–W–61,693; Parker Hannifin Corporation, Mobile Climate Systems Division, Booneville, MS: June 13, 2006.

TA–W–61,726; Autolign Manufacturing, Milan, MI: June 20, 2006.

TA–W–61,729; North American Molded Products Corp., Hartville, OH: June 21, 2006.

TA–W–61,749; Syroco Industries, Inc., Siloam Springs, AR: June 25, 2006.

TA–W–61,864; Syroco, Inc., Baldwinsville, NY: July 23, 2006.

TA–W–61,864A; Syroco, Inc., Corona, CA: July 23, 2006.

TA–W–61,864B; Syroco, Inc., Lake Wales, FL: July 23, 2006.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W61,684; Eaton Corporation, Fluid Power Group Division, Vinita, OK: August 2, 2007.

TA–W–61,707; Dana Corporation, Torque Traction Manufacturing, Inc., Cape Girardeau, MO: July 30, 2007.

TA–W–61,768; QST Industries, Inc., Leased Workers From Temporary Resources, Mocksville, NC: June 28, 2006.

TA–W–61,805; Fry Metals, Inc., dba Alpha Metals, Inc., A Cookson Electronics Company, Jersey City, NJ: July 10, 2006.

TA–W–61,814; Eaton Corporation, Automotive—Engine Air Management Operations, Saginaw, MI: July 10, 2006.

TA–W–61,839; AstenJohnson, Inc., Dryer Division, Walterboro, SC: July 18, 2006.

TA–W–61,752; WestPoint Home, Inc., Bed Products Division, Clemson, SC: February 10, 2007.

TA–W–61,770; JDSU, Los Coches Assembly and Test Group, Milpitas, CA: June 29, 2006.

TA–W–61,822; Weave Corporation, Denver, PA: July 11, 2006.

TA–W–61,832; Magnecomp Corporation, Temecula, CA: July 10, 2006.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–61,388; Domtar Industries, Inc., Baileyville, ME.

TA–W–61,821; Hanes Brands, Inc., Forest City, NC.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–61,668; Camaco, LLC, Marianna Division, Marianna, AR.

TA–W–61,745; Ampac Fine Chemicals, LLC, Rancho Cordova, CA.

TA–W–61,783; H. Koch and Sons Company, A Wholly Owned Subsidiary of Cobham, Anaheim, CA.

TA–W–61,808; Dako Colorado, Eridan Pathology Instrumentation Division, Ft. Collins, CO.

TA–W–61,835; Caraustar Mill Group, Reading Paperboard, Sinking Spring, PA.

TA–W–61,777; Intersil Corporation, Palm Bay, FL.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–61,652; Bank of America, Global Foreign Exchange Operations, Concord, CA.

The investigation revealed that criteria of section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *July 23 through July 27, 2007.* Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 2, 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–15535 Filed 8–8–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''National Compensation Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before October 9, 2007.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Compensation Survey (NCS) is an ongoing survey of earnings and benefits among private firms, State, and local government. The NCS is the integration of the sampling, collection, and processing for the Employment Cost Index (ECI), the Employee Benefits Survey (EBS), and the Locality Pay Surveys (LPS) into a single, unified program of compensation statistics. This integration improves data for policymakers and researchers, reduces respondent burden, improves the utilization of BLS resources, and enhances the published measures of compensation. Data from the integrated program include estimates of wages by job levels covering broad groups of related occupations, and data that directly links benefit plan costs with detailed plan provisions. The integrated program's single sample also produces both time-series indexes and cost levels for industry and occupational groups, thereby increasing the analytical potential of the data. Benefits of the integrated sample include: Improved measures of trends, better integration of benefit costs and plan provisions, data for narrow occupations, and broad regional and occupational coverage. The NCS employs probability methods for selection of occupations. This ensures that sampled occupations represent all occupations in the workforce, while minimizing the reporting burden on respondents. Data from the NCS are critical for setting Federal white-collar salaries, determining monetary policy (as a Principal Federal Economic Indicator), and for compensation administrators and researchers in the private sector.

The survey collects data from a sample of employers. These data will consist of information about the duties, responsibilities, and compensation (earnings and benefits) for a sample of occupations for each sampled employer.

Data will be updated on either an annual or quarterly basis. The updates will allow for production of data on change in earnings and total compensation.

II. Current Action

Office of Management and Budget clearance is being sought for the National Compensation Survey.

The NCS collects earnings and work level data on occupations for the nation and selected localities. The NCS also collects information on the cost, provisions, and incidence of all the major employee benefits through its benefit cost and benefit provision programs and publications.

The NCS data on benefit costs is used to produce the ECI and Employer Costs for Employee Compensation. The data

provided will be the same, and the series will be continuous.

The NCS will continue to provide employee benefit provision and participation data. These data include estimates of how many workers receive the various employer-sponsored benefits. The data also will include information about the common provisions of benefit plans.

The NCS is revising the update collection forms from two (one benefits and one wages), to six forms by having unique private industry and government update collection forms and versions for: Benefits only collection, wages only collection, and combined benefit and wage collection. NCS update collection forms give respondents their previously reported information and the dates they expected change to occur to these data and space for reporting these changes.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: National Compensation Survey.

OMB Number: 1220–0164.

Affected Public: Businesses or other for-profit; not-for-profit institutions; and State, local, and tribal government.

Total Respondents: 39,904 (three-year average).

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

All figures in the table below are based on a three-year average. The total respondents in the table are greater than the figure shown above because many respondents are asked to provide information relating to more than one form.

Form	Total respondents per form	Frequency	Total annual responses	Avg. minutes for the predominant form use**	Total hours
Establishment collection form (NCS Form 04–1G).	(*)		(*)	19	(*)
Establishment collection form (NCS Form 04–1P).	6,065	Annual	6,065	19	1,921
Earnings form (NCS Form 04–2G)	(*)		(*)	20	(*)
Earnings form (NCS Form 04–2P)	6,065	Annual	6,065	20	2,022
Wage only—Government	2,272	Annual or quarterly	2,526	20	842
Wage only—Private Industry	15,042	Annual or quarterly	20,486	20	6,828
Work Level Form (NCS Form 04–3G)	(*)		(*)	25	(*)
Work Level Form (NCS Form 04–3P)	6,065	Annual	6,065	25	2,527
Work Schedule Form (NCS 05–4G)	(*)		(*)	10	(*)
Work Schedule Form (NCS 04–4P)	6,065	Annual	6,065	10	1,011
Benefits Collection Form (NCS 04–5G)	(*)		(*)	177	(*)
Benefits Collection Form (NCS 04–5P)	3,032	Annual	3,032	177	8,944
Index benefits summary only—Government	108	Quarterly	362	19	115
Index benefits summary only—Private industry	2,316	Quarterly	7,759	19	2,457
Index wage and benefits—Government	2,055	Quarterly	6,884	39	4,475
Index wage and benefits—Private industry	9,266	Quarterly	31,040	39	20,176
Collection not tied to a specific form for private industry and government (testing, QA/QM, etc.).	5,204	Unknown	6,819	38	4,319
Totals	63,555		103,168		55,637

* Most NCS Government forms (NCS 04–XG), are only used for government sample initiations, but if any new metropolitan or non-metropolitan areas are added during collection period NCS Government initiation forms would be used. A non-substantive change request will be submitted to OMB if any new areas need to be added during the collection period.

** Collection forms can have multiple uses. The table above shows the average collection times for the predominant uses of the forms. Record checks (for quality assurance and measurement) are done on a sub-sample of respondents verifying responses for pre-selected sections of the forms.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 6th day of August 2007.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E7–15540 Filed 8–8–07; 8:45 am]

BILLING CODE 4510–24–P

MILLENNIUM CHALLENGE CORPORATION

[MCC 07–08]

Notice of Quarterly Report (April 1, 2007–June 30, 2007)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the

quarter April 1, 2007 through June 30, 2007 with respect to both assistance provided under Section 605 of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D (the Act)), and transfers of funds to other federal agencies pursuant to Section 619 of that Act. The following report shall be made available to the public by means of publication in the **Federal Register** and on the Internet Web site of the MCC (*www.mcc.gov*) in accordance with Section 612(b) of the Act.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Madagascar Year: 2007 Quarter 3 Total Obligation: $109,773,000 Entity to which the assistance is provided: MCA Madagascar Total Quarterly Disbursement: 3,485,000				
Land Tenure Project	$37,803,000	Increase Land Titling and Security.	$2,279,000	Legislative proposal (''loin de cadrage'') reflecting the PNF submitted to Parliament and passed. Percentage of land documents inventoried, restored, and/or digitized. Average time and cost required to carry out property-related transactions at the local and/or national land services offices. Time/cost to respond to information request, issue titles and to modify titles after the first land right. Number of land disputes reported and resolved in the target zones and sites of implementation. Percentage of land in the zones that is demarcated and ready for titling. Promote knowledge and awareness of land tenure reforms among inhabitants in the zones (surveys).
Finance Project	$35,888,000	Increase Competition in the Financial Sector.	$1,495,000	Submission to Parliament and passage of new laws recommended by outside experts and relevant commissions. CPA Association (CSC) list of accountants registered. Maximum check clearing delay. Volume of funds in payment system and number of transactions. Public awareness of new financial instruments (surveys). Report of credit and payment information to a central database. Number of holders of new denomination T-bill holdings, and T-bill issuance outside Antananarivo as measured by Central Bank report of redemption date. Volume of production covered by warehouse receipts in the zones. Volume of MFI lending in the zones. MFI portfolio-at-risk delinquency rate. Number of new bank accounts in the zones.
Agricultural Business Investment Project.	$17,683,000	Improve Agricultural Projection Technologies and Market Capacity in Rural Areas.	$2,607,000	Number of rural producers receiving or soliciting information from ABCs about the opportunities. Zones identified and description of beneficiaries within each zone submitted. Number of cost-effective investment strategies developed. Number of plans prepared. Number of farmers and business employing technical assistance received.
Program Administration* and Control, Monitoring and Evaluation.	$18,399,000	.....	$8,076,000	
Pending Subsequent Report **	.....	.....	$3,499,000	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Honduras Year: 2007 Quarter 3 Total Obligation: $215,000,000 Entity to which the assistance is provided: MCA Honduras Total Quarterly Disbursement: $3,497,000				
Rural Development Project	*$72,195,000	Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees.	$5,264,000	Hours of technical assistance delivered to Program Farmers (thousands). Funds lent by MCA-Honduras to financial institutions (cumulative). Hours of technical assistance to financial institutions (cumulative). Lien Registry equipment installed. Kilometers of farm-to-market road upgraded (cumulative).
Transportation Project	$125,700,000	Reduce transportation costs between targeted production centers and national, regional and global markets.	$478,000	Kilometers of highway upgraded. Kilometers of secondary road upgraded. Number of weight stations built.
Program Administration* and Control, Monitoring and Evaluation.	$17,105,000	.....	$1,253,000	
Pending Subsequent Report **	.....	.....	$2,290,000	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Cape Verde Year: 2007 Quarter 3 Total Obligation: $110,078,000 Entity to which the assistance is provided: MCA Cape Verde Total Quarterly Disbursement: $2,077,000				
Watershed and Agricultural Support.	$10,848,000	Increase agricultural production in three targeted watershed areas on three islands.	$247,000	Productivity: Horticulture (tons per hectare). Value-added for farms and agribusiness (millions of dollars).
Infrastructure Improvement	$78,760,000	Increase integration of the internal market and reduce transportation costs.	$4,084,000	Volume of goods shipped between Praia and other islands (tons). Mobility Ratio: Percentage of beneficiary population who take at least 5 trips per month. Savings on transport costs from improvements (million dollars).
Private Sector Development	$7,200,000	Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.	$88,000	Value added in priority sectors above current trends (escudos) Volume of private investment in priority sectors above current trends.
Program Administration* and Control, Monitoring and Evaluation.	$13,270,000	.....	$4,979,000	
Pending Subsequent Report **	.....	.....	$3,815,000	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Nicaragua Year: 2007 Quarter 3 Total Obligation: $174,925,000 Entity to which the assistance is provided: MCA Nicaragua Total Quarterly Disbursement: $2,300,000				
Property Regularization Project	$26,400,000	Increase Investment by strengthening property rights.	$685,000	Automated registry-cadastre database installed. Number of parcels with a registered title, rural and urban (total of 21,000 and 22,000, rural and urban, respectively). Projected areas demarcated. Number of projected area management plans implemented. Number of conflicts resolved by program mediation.
Transportation Project	$92,800,000	Reduce transportation costs between Leon and Chinandega and national, regional and global markets.	$58,000	N–1 Road: Kilometers of road upgraded. Secondary Roads: Kilometers of secondary road upgraded.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Rural Business Development Project.	$33,500,000	Increase the value added of farms and enterprises in the region.	$1,623,000	Rural business development centers: Value of TA and support services delivered to program businesses. Improvement of water supply for farming and forest production: Watershed Management Action Plan. Funds disbursed for improvement of water supply for farming and forest production projects.
Program Administration*, Due Diligence, Monitoring and Evaluation.	$22,225,000	.....	$2,700,000	
Pending Subsequent Report **	$0	.....	$2,445,000	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Georgia Year: 2007 Quarter 3 Total Obligation: $294,693,000 Entity to which the assistance is provided: MCA Georgia Total Quarterly Disbursement: $3,500,000				
Regional Infrastructure Rehabilitation.	$211,700,000	Key Regional Infrastructure Rehabilitated.	$13,330,000	Reduction in journey time: Akhalkalaki-Ninotsminda-Teleti (hours). Reduction in vehicle operating costs (cumulative). Increase in internal regional traffic volumes (cumulative). Decreased technical losses. Reduction in the production of greenhouse gas emissions measured in tons of CO_2 equivalent. Increased in collection rate of GGIC. Number of household beneficiaries served by RID projects (cumulative). Actual operations and maintenance expenditures (USD).
Regional Enterprise Development.	$47,500,000	Enterprises in Regions Developed.	$6,439,000	Increase in annual revenue in portfolio companies (in 1,000 USD) Increase in number of portfolio company employees and number of local suppliers. Increase in portfolio companies'' wages and payments to local suppliers (in 1,000 USD). Jobs created. Increase in aggregate incremental net revenue to project assisted firms (in 1,000 USD and cumulative over five years). Direct household net income (in 1,000 USD cumulative over five years). Direct household net income for market information initiative beneficiaries (in 1,000 USD cumulative over five years). Number of beneficiaries.
Program Administration*, Due Diligence, Monitoring and Evaluation.	$35,493,000	.....	$4,806,000	
Pending Subsequent Report **	$0	.....	$4,462,000	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Vanuatu Year: 2007 Quarter 3 Total Obligation: $65,690,000 Entity to which the assistance is provided: MCA Vanuatu Total Quarterly Disbursement: $0				
Transportation Infrastructure Project.	$60,690,000	Facilitate transportation to increase tourism and business development.	$2,000	Traffic volume (average annual daily traffic). Days road is closed (number per annum). Number of S-W Bay, Malekula flights cancelled due to flooding (per annum). Time of wharf (hours/vessel).

Projects	Obligated	Objective	Cumulative disbursements	Measures
Program Administration*, Due Diligence, Monitoring and Evaluation.	$5,000,000	.....	$1,035,000	
Pending Subsequent Report **	.....	.....	$684,000	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Armenia Year: 2007 Quarter 3 Total Obligation: $235,150,000 Entity to which the assistance is provided: MCA Armenia Total Quarterly Disbursement: $2,157,000				
Irrigated Agriculture Project	$145,680,000	Increase agricultural productivity and Improve Quality of Irrigation.	$2,496,000	Increase in hectares covered by HVA crops (i.e., vegetables, potato, fruits, grapes). Percentage of respondents satisfied with irrigation services. Share of WUA water charges compared WUA annual operations and maintenance cost (percentage). Number of farmers using better on-farm water management: drip irrigation; ET Gage, and soil moisture monitoring. Loans provided under the project (USD in thousands).
Rural Road Rehabilitation Project.	$67,100,000	Better access to economic and social infrastructure.	$445,000	Annual increase in irrigated land in Project area (hectares). State budget expenditures on maintenance of irrigation system (AMD in millions). Reduction in Kilowatt hours used (thousand KWh). Share of water losses compared to total water intake (percentage). Share of WUA water charges compared to WUA annual operations and maintenance cost (percentage).
Program Administration*, Due Diligence, Monitoring and Evaluation.	$22,370,000	.....	$1,382,000	
Pending Subsequent Report **	$0	.....	$1,425,000	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Benin Year: 2007 Quarter 3 Total Obligation: $305,761,000 Entity to which the assistance is provided: MCA Benin Total Quarterly Disbursement: $1,872,000				
Access to Financial Services	$19,650,000	Expand Access to Financial Services.	$271,000	Strengthen capacity of select financial institutions. Strengthen monitoring capacity of Supervisory Authority. Total incremental increase in value of new credit extended and savings received by financial institutions participating in the project. Share value of all loans outstanding that have one or more installments of principal past due over 30 days. Total number of loans guaranteed by land titles, per year.
Access to Justice	$34,270,000	Improved Ability of Justice System to Enforce Contracts and Reconcile Claims.	$76,000	Increase efficiency and improved services of courts and the arbitration center. Increase access to court system. Improve enterprise registration center.
Access to Land	$36,020,000	Strengthen property rights and increase investment in rural and urban land.	$45,000	Value of investments made to rural land parcels per year; land investment data will come from self-reported data through EMICoV. Value of investments made to urban land parcels per year; land investment data will come from self-reported data through EMICoV.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Access to Markets	$168,020,000	Improve Access to Markets through Improvements to the Port of Cotonou.	$4,000	Total volume of exports and imports passing through Port of Cotonou, per year in million metric tons.
Program Administration*, Due Diligence, Monitoring and Evaluation.	$22,370,000		$2,770,000	
Pending Subsequent Report **	$0		2,159,000	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Ghana Year: 2007 Quarter 3 Total Obligation: $536,639,000 Entity to which the assistance is provided: MCA Ghana Total Quarterly Disbursement: $2,174,000				
Agriculture Project	$239,552,000	Enhance Profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.	$0	Number of hectares irrigated. Number of days to conduct a land transaction. Number of land disputes in the pilot registration districts. Registration of land rights in the pilot registration districts. Volume of products passing through post-harvest treatment (metric tons). Portfolio-at-risk of agriculture loan fund. Value of loans disbursed to clients from agricultural loan fund (US$). Number of additional loans. Vehicle operating costs (on roads requiring minor, medium and major rehabilitation).
Rural Development	$101,288,000	Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.	$0	Time/quality per procurement. Score card of citizen satisfaction with services. Gross enrollment rates. Gender parity in school enrollment. Distance to collect water. Time to collect water. Distance to sanitation facility. Travel time to sanitation facility. Incidence of guinea worm, diarrhea or bilharzias. Average number of days lost due to guinea worm, diarrhea or bilharzias. Percentage of households, schools, and agricultural processing plants in target districts with electricity. Number of inter-bank transactions. Value of deposit accounts in rural banks.
Transportation	$136,804,000	Reduce the transportation costs affecting agriculture commerce at sub-regional levels.	$0	Volume capacity ratio. Vehicles per hour at peak hour. Travel time at peak hour. International roughness index. Annual average daily traffic. Travel time for walk-on passengers and small vehicles. Travel time for trucks.
Program Administration*, Due Diligence, Monitoring and Evaluation.	$22,370,000		$0	
Pending Subsequent Report **			$2,915,000	

* Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.
** Pending subsequent report amounts represent funds that have been disbursed to the country for specific projects and activities that will be reported by project in the subsequent quarterly.

619 Transfer funds

U.S. agency to which funds were transferred	Amount	Description of program or project
	$0	

Dated: August 3, 2007.

Frances C. McNaught,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

[FR Doc. 07–3879 Filed 8–8–07; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (07–055)]

Notice of Centennial Challenges 2007 Tether Challenge

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Centennial Challenges 2007 Tether Challenge

SUMMARY: This notice is issued in accordance with 42 U.S.C. 2451 (314) (d). The 2007 Tether Challenge is now scheduled, and teams that wish to compete may now register. The NASA Centennial Challenges Program is a program of prize contests to stimulate innovation and competition in space exploration and ongoing NASA mission areas. The 2007 Tether Challenge is a prize contest designed to develop very strong tether material for use in various structural applications. The 2007 Tether Challenge is being administered for NASA by the Spaceward Foundation. Their Web site is: *http://www.spaceward.org.* The Centennial Challenges Web site is *http://www.centennialchallenges.nasa.gov.*

DATES: The 2007 Tether Challenge will be held on the dates of October 19–21, 2007.

ADDRESSES: The location of the 2007 Tether Challenge will be held at the Davis County Event Center just outside of Salt Lake City, Utah. Questions and comments regarding the NASA Centennial Challenges Program should be addressed to Mr. Ken Davidian, Centennial Challenges Program, Innovative Partnerships Program Office, NASA Headquarters, 20546–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Davidian, Centennial Challenges Program, Innovative Partnerships Program Office, NASA Headquarters, 20546–0001, (202) 358–0748, *kdavidian@nasa.gov.* To register for and get additional information regarding the 2007 Tether Challenge, visit: *http://www.elevator2010.org/site/competitionTether2007.html.*

SUPPLEMENTARY INFORMATION:

Summary

The purpose of the 2007 Tether Challenge is to develop very strong tether material for use in various structural applications. The competition requires a 50% improvement in breaking force from year to year, starting with a commercially available tether in 2006. Additional requirements (such as operating temperature range, vacuum compatibility, and controlled electrical conductivity) will be added in future years.

I. Challenge Basis and Prize Amount

The complete 2007 Tether Challenge purse is $500,000. The 2007 Tether Challenge will be conducted in two rounds. The first round will pit tethers from two teams directly against each other to determine the team with the strongest tether. The second round will determine if the first-round winner(s) is/are at least 50% stronger than a house tether that represents off-the-shelf materials. If it is (or they are), that/those team(s) will win the competition and share the prize purse.

II. Eligibility

The Centennial Challenges Program has established the following language in the 2007 Tether Challenge Team Agreement governing eligibility. For this section, challenge is the 2007 Tether Challenge.

A team is an individual or private entity, or a group of individuals or private entities, that register to participate in challenge. A team is comprised of a team leader and team members. A team leader is, by definition, also a team member.

Team members are participants on the team that are not the team leader. To be eligible to win the challenge prize, an individual or entity, (a) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and (b) in the case of an individual, whether participating individually or as a member of a group, shall be a citizen or permanent resident of the United States.

A team leader is a single private entity or individual which is the sole agent representing a team regarding its participation in challenge. In the case of the team leader that is a private entity, it must appoint an individual who is an officer of the private entity to represent the team leader. All team members will apply to register for the challenge through team leader and must receive written concurrence by Spaceward.

All team members must execute an ''Adoption of Agreement'' committing to all terms of this agreement. By signing below, team leader represents that all team members have executed the Adoption of Agreement and that no one else will become a member of the team or participate in the challenge until such new team member has signed this agreement. Spaceward may disqualify any team if it discovers that a person is acting as a team member who has not signed this agreement. Team leader will provide Spaceward with a copy of the ''Adoption of Agreement'' signed by each team member.

Any U.S. Government organization or organization principally or substantially funded by the Federal Government, including Federally Funded Research and Development Centers, Government-owned, contractor operated (GOCO) facilities, and University Affiliated Research Centers, are ineligible to be a team leader or team member.

Rules

The rules for the 2007 Tether Challenge can be found at: *http://www.elevator2010.org/site/competitionTether2007.html.*

Dated: July 31, 2007.

Douglas A. Comstock,

Director, Innovative Partnerships Program Office.

[FR Doc. E7–15518 Filed 8–8–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (07–056)]

Notice of Centennial Challenges 2007 Beam Power Challenge

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Centennial Challenges 2007 Beam Power Challenge.

SUMMARY: This notice is issued in accordance with 42 U.S.C. 2451 (314)(d).

The 2007 Beam Power Challenge is now scheduled and teams that wish to compete may now register. The NASA Centennial Challenges Program is a program of prize contests to stimulate innovation and competition in space exploration and ongoing NASA mission areas. The 2007 Beam Power Challenge is a prize contest designed to promote the development of new power distribution technologies.

The 2007 Beam Power Challenge is being administered for NASA by the Spaceward Foundation. Their Web site is: *http://www.spaceward.org.* The Centennial Challenges Web site is *http://www.centennialchallenges.nasa.gov.*

DATES: The qualifying rounds of the 2007 Beam Power Challenge will start on October 15, and the final competition

event will be open to the public between the dates of October 19–21.

ADDRESSES: The location of the 2007 Beam Power Challenge will be held at the Davis County Event Center just outside of Salt Lake City, Utah. Questions and comments regarding the NASA Centennial Challenges Program should be addressed to Mr. Ken Davidian, Centennial Challenges Program, Innovative Partnerships Program Office, NASA Headquarters, 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding the NASA Centennial Challenges Program should be directed to Mr. Ken Davidian, Centennial Challenges Program, Innovative Partnerships Program Office, NASA Headquarters, 20546–0001, (202) 358–0748, *kdavidian@nasa.gov.*

To register for and get additional information regarding the 2007 Beam Power Challenge, visit: *http://www.elevator2010.org/site/competitionClimber2007.html.*

SUPPLEMENTARY INFORMATION:

Summary

The 2007 Beam Power Challenge is designed to promote the development of new power distribution technologies. These technologies can be applied to many aspects of space exploration, including surface- or space-based point-to-point power transmission or delivery for robotic and/or human expeditions to planetary surfaces. This challenge may also support the development of far-term space infrastructure concepts such as space elevators and solar power satellites.

This challenge requires teams to design and build a climber (a machine that can go up and down a tether ribbon) while carrying a payload. Power will be beamed from a transmitter to a receiver on the climber.

I. Challenge Basis and Prize Amount

The 2007 Beam Power Challenge total purse is $500,000. Each climber must climb to a specified height traveling at a minimum speed of 1 meter per second. The teams with the highest score (the product of average velocity and payload mass normalized by the climber mass) will win the competition.

II. Eligibility

The Centennial Challenges Program has established the following language in the 2007 Beam Power Challenge Team Agreement governing eligibility. For this section, CHALLENGE is the 2007 Beam Power Challenge.

A TEAM is an individual or private entity, or a group of individuals or private entities, that register to participate in CHALLENGE. A TEAM is comprised of a TEAM LEADER and TEAM MEMBERS. A TEAM LEADER is, by definition, also a TEAM MEMBER.

TEAM MEMBERS are participants on the TEAM that are not the TEAM LEADER. To be eligible to win the CHALLENGE prize, an individual or entity, (a) in the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and (b) in the case of an individual, whether participating individually or as a member of a group, shall be a citizen or permanent resident of the United States.

A TEAM LEADER is a single private entity or individual which is the sole agent representing TEAM regarding its participation in CHALLENGE. In the case of the TEAM LEADER that is a private entity, it must appoint an individual who is an officer of the private entity to represent the TEAM LEADER.

All TEAM MEMBERS will apply to register for the CHALLENGE through TEAM LEADER and must receive written concurrence by SPACEWARD.

All TEAM MEMBERS must execute an ''Adoption of AGREEMENT'' committing to all terms of this AGREEMENT. By signing below, TEAM LEADER represents that all Team Members have executed the Adoption of Agreement and that no one else will become a member of the TEAM or participate in the CHALLENGE until such new TEAM MEMBER has signed this Agreement. SPACEWARD may disqualify any TEAM if it discovers that a person is acting as a TEAM MEMBER who has not signed this Agreement. TEAM LEADER will provide SPACEWARD with a copy of the ''Adoption of Agreement'' signed by each team member.

Any U.S. Government organization or organization principally or substantially funded by the Federal Government, including Federally Funded Research and Development Centers, Government-owned, contractor operated (GOCO) facilities, and University Affiliated Research Centers, are ineligible to be a TEAM LEADER or TEAM MEMBER.

U.S. Government employees may not participate in the CHALLENGE as TEAM LEADER or TEAM MEMBER.

TEAM MEMBERS may participate in CHALLENGE on more than one TEAM.

III. Rules

The rules for the 2007 Beam Power Challenge can be found at: *http://www.elevator2010.org/site/documents/climber_rulebook_2007.current.pdf.*

Dated: July 31, 2007.

Douglas A. Comstock,

Director, Innovative Partnerships Program Office.

[FR Doc. E7–15519 Filed 8–8–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request use of a voluntary survey of museum visitors at each Presidential library. The information will provide feedback about our visitors' experiences at the libraries. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before October 9, 2007 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this

collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Presidential Libraries Museum Visitor Survey.

OMB number: 3095–00XX.

Agency form number: N/A.

Type of review: Regular.

Affected public: Individuals who visit the museums at the Presidential libraries.

Estimated number of respondents: 75,000.

Estimated time per response: 15 minutes.

Frequency of response: On occasion (when an individual visits a Presidential Library or Museum.)

Estimated total annual burden hours: 18,750 hours.

Abstract: The survey will be comprised of a set of questions designed to allow for a statistical analysis that will ultimately provide actionable information to NARA. The survey includes questions that measure the visitor's satisfaction in general and with specific aspects of their visit. These questions serve as dependent variables for analytical purposes. Other questions provide attitudinal, behavioral, and demographic data that are used to help understand variation in the satisfaction variables. Using statistical analyses, Harris Interactive will determine the factors that drive the visitor's perceptions of quality and satisfaction with the Library they visited. Additionally, natural groupings of visitors defined by similarity based on these attitudinal, behavioral, and demographic variables can be developed and targeted for outreach purposes. The information collected through this effort will inform program activity, operation, and oversight, and will benefit Library and NARA staff and management in making critical decisions about resource allocation, museum operation and program direction.

Dated: August 2, 2007.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E7–15609 Filed 8–8–07; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 10, 2007 (Note that the new time period for requesting copies has changed from 45 to 30 days after publication). Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: requestschedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending (Note that the new time period for requesting copies has changed from 45 to 30 days after publication):

1. Department of Agriculture, Cooperative State Research, Education, and Extension Service (N1–540–07–3, 18 items, 18 temporary items). Records of the Office of Extramural Program Policy and Oversight, including audit, investigation, review, and reporting records; rulemaking records, opinions, and commentaries; policies, procedures, terms and conditions, memoranda of understanding, agreements, and requests for proposals relating to the awarding of grants; internal administrative policies and procedures; and working files. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of Agriculture, Food Safety and Inspection Service (N1–462–05–7, 9 items, 9 temporary items). Records of the Environmental, Health and Safety Branch relating to emergency planning records. Included are emergency occupant plans, lockout and tagout procedures, health hazard reports, air contaminants monitoring exposure reports, industrial hygiene surveys, hearing conservation and hazard communication programs records, log reports on unsafe and unhealthful working conditions, and safety and workplace inspections.

3. Department of State, Bureau of Overseas Buildings Operations (N1–59–07–7, 1 item, 1 temporary item). Background information files used to analyze and monitor operations and prepare final internal review reports.

4. Department of State, Office of Civil Rights (N1–59–07–10, 3 items, 3 temporary items). Photographs, audio tapes, and video tapes relating to notables, and fragmentary textual files.

5. Environmental Protection Agency (N1–412–06–12, 2 items, 2 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to records series regardless of the recordkeeping medium. Included are site-specific grants and other program support agreements to which the agency is a party and which support the Superfund program. Paper recordkeeping copies of these files were previously approved for disposal.

6. Environmental Protection Agency (N1–412–06–15, 5 items, 5 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to records series regardless of the recordkeeping medium. Included are records created by laboratories relating to chemical analysis services performed to support Superfund remedial and removal site-specific activities. Paper recordkeeping copies of these files were previously approved for disposal.

7. Environmental Protection Agency (N1–412–06–17, 3 items, 3 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to records series regardless of the recordkeeping medium. Included are Superfund site-specific contract management files, including correspondence and related records pertaining to requests for proposals, procurement award and administration, receipt, inspection and payment of contracts, and other contract matters. Paper recordkeeping copies of these files were previously approved for disposal.

8. Environmental Protection Agency (N1–412–06–18, 1 item, 1 temporary item). This schedule authorizes the agency to apply the existing disposition instructions to records series regardless of the recordkeeping medium. Included are site-specific records relating to activities undertaken to secure response costs from responsible parties at Superfund remedial and removal sites and oil spills. Records include compilations of documentation that describe technical aspects of the response action and cost accounting information necessary to document the costs incurred to implement the response action. Paper recordkeeping copies of these files were previously approved for disposal.

9. Environmental Protection Agency (N1–412–06–19, 2 items, 1 temporary item). This schedule authorizes the agency to apply the existing disposition instructions to records series regardless of the recordkeeping medium. Included are Superfund site-specific case files, covering such actions as injunctive relief, natural resource damage actions, remedial investigation/feasibility study special notices, administrative and judicial cost recovery settlements, administrative orders, and other matters. Paper recordkeeping copies of these files were previously approved for disposal. Proposed for permanent retention are landmark cases, including cases resulting in a legal precedent that establishes or affirms agency policy with respect to environmental actions of national importance, for which paper recordkeeping copies previously were approved as permanent.

10. Environmental Protection Agency (N1–412–07–25, 4 items, 2 temporary items). This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium. Included are Superfund and Brownfields site assessment files, comprising site-specific records, including site discovery, preliminary assessment, site investigation and hazard ranking system package documents and other records, related to sites investigated for listing on the National Priorities List and the Brownfields program. Proposed for permanent retention are files for sites placed on the National Priorities List and for sites warranting a removal action, for which paper recordkeeping copies previously were approved as permanent.

11. National Archives and Records Administration, Government-wide (N1–GRS–07–1, 3 items, 3 temporary items). Addition to the General Records Schedules covering records relating to the planning, implementation, operation, audit or monitoring, reorganization or termination, and transaction interoperability of a public key infrastructure (PKI) system.

12. National Archives and Records Administration, Government-wide (N1–GRS–07–4, 11 items, 7 temporary items). Revision to General Records Schedule 20, Items 2, 3, and 11. The schedule revises Item 2a to provide disposal authority for non-electronic documents that are used to create electronic records, and also records not created solely for that purpose, such as reports, correspondence, memorandums, and other records that are scanned into an electronic recordkeeping system. Proposed revised Item 3 provides coverage for electronic records that replace temporary hard copy records covered by previously approved schedules that do not explicitly *exclude* electronic records. Revised GRS 20, Item 11, provides disposition instruction for documentation associated with electronic records. Proposed for permanent retention are hardcopy documents that NARA has specifically designated as permanent records that must be transferred to NARA in hard copy format, even if records have been copies/converted to an electronic format; hardcopy records previously approved as permanent that are converted to electronic records where the electronic records do not meet NARA's transfer standards for permanent electronic records in effect at the time of conversion; electronic records that replace hard copy records approved as permanent in a previously approved schedule; and documentation relating to electronic records that are scheduled for permanent retention in the GRS or in a NARA-approved agency schedule.

13. Social Security Administration, Office of Disability and Income Security

Programs (N1–47–07–1, 1 item, 1 temporary item). Eligibility records accumulated after a determination for Medicare benefits has been made. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

Dated: August 1, 2007.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E7–15610 Filed 8–8–07; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3098–MLA; ASLBP No.: 07–856–02–MLA–BD01]

Atomic Safety and Licensing Board; In the Matter of Shaw Areva MOX Services (Mixed Oxide Fuel Fabrication Facility); Notice of Oral Argument and of Opportunity To Make Limited Appearance Statements

August 3, 2007.

Before Administrative Judges: Michael C. Farrar, Chairman, Nicholas G. Trikouros, Lawrence G. McDade.

This proceeding involves the September 2006 application of Shaw AREVA MOX Services (MOX Services, or Applicant) for a license to possess and use byproduct, source, and special nuclear materials at the Mixed Oxide Fuel Fabrication Facility (MFFF) at the Department of Energy's Savannah River Site, which lies south of Aiken, South Carolina, and extends to the Georgia border. This Atomic Safety and Licensing Board hereby gives NOTICE that it will, on Wednesday, August 22, 2007, in Augusta, Georgia, be hearing oral argument from the formal participants in the proceeding regarding the petition to intervene that has been submitted by three organizations. Information about that oral argument appears in Section A below.

In addition, the Board gives notice that, in accordance with 10 CFR 2.315(a), it will entertain oral ''limited appearance'' statements from members of the public in North Augusta, South Carolina, on the evening of Tuesday, August 21, 2007. Information about these statements appears in Section B below.

This matter began on March 15, 2007, when the Commission published a notice of acceptance for docketing of the MOX Services license application and a notice of opportunity to request a hearing on the application. 72 FR 12,204 (Mar. 15, 2007). Thereafter, a ''Petition for Intervention and Request for Hearing'' (hereinafter Petition) was timely filed on May 14, 2007, by a group of three organizations (collectively, Petitioners): The Blue Ridge Environmental Defense League (BREDL), Nuclear Watch South (NWS),[1] and the Nuclear Information Service (NIRS).

On June 5, 2007, this Atomic Safety and Licensing Board was established to conduct this adjudication.[2] As part of that process, this Board will now hear oral argument on the standing of the Petitioners to intervene in this proceeding and on the admissibility of the five contentions they submitted as part of the petition to intervene.

A. Nature, Timing, and Location of Oral Argument

The oral argument is currently scheduled to cover two categories of issues: Standing and contention admissibility. The Petitioners have claimed representational standing on behalf of their members who reside within 50 miles of the proposed facility, a claim that is disputed by the Applicant and by the NRC Staff. The Petitioners have also submitted five contentions, which they list in summary as follows:

(1) Whether MOX Services' License Application and/or EIS meet the relevant requirements in the National Environmental Policy Act and/or the Clean Air Act because of failures to address critical aspects regarding limits on emissions of hazardous air pollutants necessary for the protection of public health and safety;

(2) Whether MOX Services License Application meets the relevant requirements of the Atomic Energy Act because of its failure to prepare and submit an emergency plan to the NRC for potential radioactive releases to the public;

(3) Whether the Final Environmental Impact Statement on the construction and operation of a plutonium fuel factory is adequate to satisfy the requirements of NEPA and NRC implementing regulations because it fails to address new and significant information showing that neither MOX Services nor the U.S. Department of Energy (''DOE'') has any concrete plans for the Waste Solidification Building (''WSB'') that was proposed in the EIS and, as a result, high-alpha liquid waste from the proposed facility may have to be stored onsite posing hazards which have not been addressed by the NRC in the EIS;

(4) Whether the License Application for the proposed plutonium processing facility is inadequate because it does not address safety and public health risks posed by indefinite storage of liquid high-alpha waste at the site or contain measures for the safe storage of that waste; and

(5) Whether the Final Environmental Impact Statement for the proposed plutonium processing facility meets the relevant requirements of NEPA because it does not evaluate the environmental impacts of a terrorist attack on the proposed factory.

Petition at 5–6. The Board will hear argument from counsel for the Applicant and for the NRC Staff and from *pro se* representatives of the Petitioners regarding the Petitioners' standing claim and the admissibility of these contentions under 10 CFR 2.309(f)(1).

The specific date, time, and location of the oral argument is as follows:

Dates: Wednesday, August 22, 2007.

Location: Courtroom # 2 (Second Floor), Augusta Federal Courthouse, 600 James Brown Blvd., Augusta, Georgia 30901.

Time: 9 a.m. to 11:30 a.m (EDT).

Members of the public are welcome to attend the oral argument as spectators (this session is a formal adjudicatory proceeding open to public observation but not to public participation those who wish to participate in other aspects are invited to offer limited appearance statements as provided in Section B, below.) Conduct of members of the public at NRC adjudicatory proceedings is governed by 66 FR 31,719 (June 12, 2001), an excerpt from which follows this notice. In addition, normal federal courthouse security procedures will be followed.

Attendees are strongly advised to arrive sufficiently early to allow time to pass through a security screening checkpoint. Further, in the interest of permitting prompt access to the hearing room, attendees are requested to refrain from bringing any unnecessary hand-carried items. (Items such as packages, briefcases, and backpacks may need to be examined individually, and items that could readily be used as weapons will not be permitted in the hearing room.) There will be no facilities available for storing any items outside the hearing room, and attendees with items requiring inspection may be delayed in obtaining entry.

B. Oral Limited Appearance Statement Session

1. Date, Time, and Location

The Board will conduct a session to provide members of the public with an opportunity to make oral limited appearance statements on the following date at the specified location and time:

Dates: Tuesday, August 21, 2007.

[1] Nuclear Watch South was previously known as Georgians Against Nuclear Energy (GANE) and participated in the prior proceeding related to this facility under that name.

[2] 72 FR 32,139 (June 11, 2007). The Board was subsequently reconstituted, pursuant to 10 CFR 2.313(c), due to the unavailability of one of the judges. 72 FR 40,344 (July 24, 2007).

Location: Banquet Room A–2, North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina 29861.

Time: 5–8 p.m. (EDT).

2. Participation Guidelines for Oral Limited Appearance Statements

Any person not party to the proceeding has the opportunity, as specified below, to make an oral statement setting forth his or her position on matters of concern relating to this proceeding. These statements will be transcribed and will become part of the record of the proceeding for future reference, and they may (if focused on the contentions under consideration—assist the Board in formulating questions to ask the parties during oral argument or prompt the parties to address particular matters at the argument or in some other fashion. They do not, however, constitute evidence upon which a decision may be based.

Oral limited appearance statements will be entertained during the hours specified above, although a lesser time period may be sufficient to accommodate the speakers who are present. If all scheduled and unscheduled speakers present at a session have made a presentation, the Licensing Board reserves the right to terminate the session before the ending time listed above.

In order to accommodate as many speakers as feasible, the time allotted for each statement normally will be no more than three minutes, and speakers should prepare accordingly. That time limit may be altered, depending on the number of written requests that are submitted in accordance with subsection 3 below, and/or the number of persons present at the designated time. The same security guidelines applicable to the oral argument will be applicable to the limited appearance session as well, although limited appearance sessions are not deemed to be ''adjudicatory proceedings'' within the meaning of those guidelines.

3. Submitting a Request to Make an Oral Limited Appearance Statement

Persons wishing to make an oral statement who have submitted a timely written request to do so will be given priority over those who have not filed such a request. In order to be considered timely for priority purposes, a written request to make an oral statement must be mailed, faxed, or sent by e-mail so as to be received at NRC Headquarters by noon, EDT on Friday, August 17, 2007. In light of possible mail delivery delays, persons able to do so may wish to use fax or e-mail to assure that their requests are timely received.

These written requests to make an oral statement are to be submitted in one of the following fashions:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–1101 (verification (301) 415–1966).

E-mail: hearingdocket@nrc.gov.

In addition, using the same method of service, a copy of the request must be sent to the Licensing Board as follows:

Mail: MOX Limited Appearance Box, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–5599 (verification (301) 415–7550).

E-mail: pah@nrc.gov and *mxc7@nrc.gov.*

Phone requests to make limited appearance statements will not be accepted.

4. Submitting Written Limited Appearance Statements

A written limited appearance statement (in lieu of or in addition to an oral presentation) may be submitted at any time. Such statements should be sent to the Office of the Secretary using the methods prescribed above, with a copy to the Licensing Board as noted above.

* * * * * * * *

Documents relating to the MOX facility license application at issue in this proceeding are on file at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20850, and may also be obtained electronically through ADAMS, the Agencywide Documents Access and Management System, accessible through the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located therein should contact the PDR reference staff by telephone at 800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Any updated/revised scheduling information regarding the oral argument or the limited appearance session can be found on the NRC Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

For the Atomic Safety and Licensing Board.

Rockville, Maryland, August 3, 2007.

Michael C. Farrar,

Chairman, Administrative Judge,

Copies of this notice were sent this date by Internet e-mail transmission to (1) Counsel for Applicant Shaw AREVA MOX Services and for the NRC Staff; and (2) each of the individuals who entered an appearance on behalf of Petitioners Blue Ridge Environmental Defense League (BREDL), Nuclear Watch South (NWS), and the Nuclear Information Service (NIRS).

Excerpt from **Federal Register** notice published on June 12, 2001 (66 FR 31,719):

In order to balance the orderly conduct of government business with the right of free speech, the following procedures regarding attendance at NRC public meetings and hearings have been established:

Visitors (other than properly identified Congressional, press, and government personnel) may be subject to personnel screening, such as passing through metal detectors and inspecting visitors' briefcases, packages, etc.

Signs, banners, posters and displays will be prohibited from all NRC adjudicatory proceedings (Commission and Atomic Safety and Licensing Board Panel hearings) because they are disruptive to the conduct of the adjudicatory process. Signs, banners, posters and displays not larger than 18″ × 18″ will be permitted at all other NRC proceedings, but cannot be waved, held over one's head or generally moved about while in the meeting room. Signs, banners, posters and displays larger than 18″ × 18″ will not be permitted in the meeting room because they are disruptive both to the participants and the audience. Additionally, signs, banners, posters, and displays affixed to any sticks, poles or other similar devices will not be permitted in the meeting room.

The presiding official will note, on the record, any disruptive behavior and warn the person to cease the behavior. If the person does not cease the behavior, the presiding official may call a brief recess to restore order and/or ask one of the security personnel on hand to remove the person.

[FR Doc. E7–15557 Filed 8–8–07; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Routine Use; Request for Public Comment

SUMMARY: The Peace Corps proposes to adopt a new routine use that would permit disclosure of Peace Corps records governed by the Privacy Act when reasonably necessary to respond to, prevent, minimize, or remedy, harm that may result from an agency data breach or compromise.

DATES: The deadline for public comments is September 24, 2007. Comments received after that date will be considered at the Peace Corps' discretion.

ADDRESSES: You may submit comments by e-mail to *sglasow@peacecorps.gov.* Include Privacy Act System of Records Routine Use in the subject line of the message. You may also submit comments by mail to Suzanne Glasow, Office of the General Counsel, Peace Corps, Suite 8200, 1111 20th Street, NW., Washington, DC 20526. Contact Suzanne Glasow for copies of comments.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Associate General Counsel, 202–692–2150, *sglasow@peacecorps.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, this document provides public notice that the Peace Corps is proposing to adopt a new ''routine use'' that will apply to all Peace Corps records systems covered by the Privacy Act of 1974. The Act applies to agency systems of records identified in the list below (including number of system, system name, volume number in the **Federal Register**, and the date(s) of publication). The new routine use would be added to the list of General Routine Uses, which describes routine uses that apply to all Peace Corps Privacy Act records systems listed below.

PC system number	System name	Date published	FR volume number
PC–1	Accounts Receivable (Collection of Debts Claims Records)	09–05–00	65 FR 53772
PC–2	Congressional Files	09–05–00	65 FR 53772
PC–3	Contractors and Consultants Files	09–05–00	65 FR 53772
PC–4	Discrimination Complaint Files	09–05–00	65 FR 53772
PC–5	Employee Occupational Injury and Illness Reports	09–05–00	65 FR 53772
PC–6	Employee Pay and Leave Records	09–05–00	65 FR 53772
PC–7	Peace Corps Volunteers: Reasons for Resignation	09–05–00	65 FR 53772
PC–8	Legal Files—Staff, Volunteers and Applicants	09–05–00	65 FR 53772
PC–9	Payment Records: Transportation, Travel Authorizations, and Household Storage	09–05–00	65 FR 53772
PC–10	Office of Private Sector Cooperation and International Volunteerism Database	09–05–00	65 FR 53772
PC–11	Personal Services Contracts	09–05–00	65 FR 53772
PC–12	Property Records	09–05–00	65 FR 53772
PC–13	Personnel Security Records	09–05–00	65 FR 53772
PC–14	Administrative Grievance Records	09–05–00	65 FR 53772
PC–15	Overseas Executive Selection and Support	09–05–00	65 FR 53772
PC–16	Travel Files	09–05–00	65 FR 53772
PC–17	Peace Corps Volunteer Database Management System	01–14–85	50 FR 1950
PC–18	Former Peace Corps Volunteers and Staff Database	09–05–00	65 FR 53772
PC–19	Office of Inspector General Investigative Records	09–05–00	65 FR 53772
PC–20	Building Management, Parking, and Metro Pool	09–05–00	65 FR 53772
PC–21	Crisis Corps Database	09–05–00	65 FR 53772
PC–22	Financial Management System	05–04–07	72 FR 25343
PC–23	Health Benefits Program for Peace Corps Volunteers	09–05–00	65 FR 53772
PC–24	Privacy and Freedom of Information Act Requests	09–05–00	65 FR 53772
PC–25	Early Termination and Special Action	09–05–00	65 FR 53772
PC–26	Peace Corps Computer Systems Activity and Access Records	07–29–02	67 FR 49048
PC–27	Antimalaria Tolerance Survey	07–16–04 updated 10–03–05	69 FR 42784 70 FR 57630
PC–28	Applications for Employment	09–23–05	70 FR 55929
PC–29	World Wise Schools	05–25–07	72 FR 29357

This new routine use is needed in order to allow for disclosure of records to appropriate persons and entities for purposes of response and remedial efforts in the event of a breach of data contained in the protected systems. This routine use will facilitate an effective response to a confirmed or suspected breach by allowing for disclosure to individuals affected by the breach, in cases, if any, where such disclosure is not otherwise authorized under the Act. This routine use will also authorize disclosures to others who are in a position to assist in response efforts, either by assisting in notification to affected individuals or otherwise playing a role in preventing, minimizing, or remedying harms from the breach.

The Privacy Act authorizes the agency to adopt routine uses that are consistent with the purpose for which information is collected and subject to that Act. 5 U.S.C. 552a(b)(3); *see also* 5 U.S.C. 552a(a)(7). The Peace Corps believes that it is consistent with the collection of information pertaining to such individuals to disclose Privacy Act records when, in doing so, it will help prevent, minimize or remedy a data breach or compromise that may affect such individuals. The Peace Corps believes that failure to take reasonable steps to help prevent or minimize the harm that may result from such a breach or compromise would jeopardize, rather than promote, the privacy of such individuals. Accordingly, the Peace Corps concludes that it is authorized under the Privacy Act to adopt a routine use permitting disclosure of Privacy Act records for such purposes.

In accordance with the Privacy Act, see 5 U.S.C. 552a(e)(4) and (11), the Peace Corps is publishing notice of this routine use and giving the public a 30-day period to comment before adopting it as final. The Peace Corps is also providing at least 40 days advance notice of this proposed system notice amendment to OMB and the Congress, as required by the Act, 5 U.S.C. 552a(r), and OMB Circular A–130, Revised, Appendix I. We note that the text of this routine use is taken from the routine use that has already been published in final form by the Department of Justice and the Federal Trade Commission after public comment. *See* 72 FR 3410 (Jan. 25, 2007); 72 FR 31835 (June 8, 2007). Similarly, after taking into account

comments, if any, received by the Peace Corps, the Peace Corps intends to publish its proposed routine use as final after the period for OMB and Congressional review is complete.

Accordingly, the Peace Corps hereby proposes to amend General Routine Uses of its Privacy Act system notices, as published at 65 FR 53,772 (September 5, 2000), by adding the following new routine use:

* * * * *

General Routine Use M: To all appropriate agencies, entities, and persons when (1) The Peace Corps suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Peace Corps has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Peace Corps or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Peace Corps' efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Dated: August 3, 2007.

Wilbert Bryant,

Associate Director—Management.

[FR Doc. E7–15602 Filed 8–8–07; 8:45 am]

BILLING CODE 6015–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2007–3; Order No. 22]

Premium Forwarding Service

AGENCY: Postal Regulatory Commission.

ACTION: Notice and order.

SUMMARY: This document announces a formal docket to consider changing the status of Premium Forwarding Service (PFS) from experimental to permanent. It describes the Postal Service's proposal and makes several preliminary administrative decisions. Issuance of this document meets legal publication requirements and informs interested persons about key details, including opportunities for public participation and the decisionmaking timetable.

DATES: 1. *August 21, 2007:* Deadline for intervention.

2. *August 22, 2007:* Deadline for response to motion for waiver.

3. *August 28, 2007:* Prehearing conference (10 a.m.).

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION: On July 31, 2007, the Postal Service filed a request seeking a recommended decision approving a change in the Domestic Mail Classification Schedule (DMCS) making Premium Forwarding Service (PFS) permanent.[1] The request, which was filed pursuant to chapter 36 of title 39, United States Code, includes five attachments.[2] In support of the Request, the Postal Service has filed Direct Testimony of Laraine B. Hope (USPS–T–1), Abdulkadir M. Abdirahman (USPS–T–2) and Gregory Dawson (USPS–T–3).

For two years the Postal Service has been offering experimental PFS in accordance with the Commission's Recommended Decision Approving the Stipulation and Agreement in Docket No. MC2005–1 and the Governor's Decision of May 10, 2005, approving the recommendation. Based on the results of the experiment, the Postal Service has concluded that PFS is an attractive supplement to pre-existing options for customers who temporarily relocate. Request at 1–2.

The Postal Service concurrently filed a conditional motion for waiver of certain filing requirements.[3] The Postal Service claims that its submissions comply with the Commission's filing requirements through incorporation by reference. It also acknowledges that it has supplemented materials developed for this request by incorporating documentation submitted by the Postal Service in the most recently concluded omnibus rate proceeding, Docket No. R2006–1. Accordingly, the Service requests a waiver of certain filing requirements pursuant to 39 CFR 3001.22, 3001.54(r), and 3001.64(h)(3) if the Commission finds that materials incorporated from Docket No. R2006–1 are not sufficient. Motion for Waiver at 2–3.

The Postal Service also has filed United States Postal Service Request for Establishment of Settlement Procedures, August 2, 2007 (Settlement Request). The Postal Service contends that the testimony of its three witnesses in support of the Settlement Request is straightforward and the proposal to make PFS permanent would not change the terms of the existing service or its prices. Further, it maintains that PFS customer benefits and minor financial impact may increase the likelihood of settlement. *Id.* at 1. Thus, the Postal Service requests the Commission's assistance in establishing settlement procedures for this proceeding. *Id.* at 3.

The Request, accompanying testimony and other related material can be accessed electronically, via the Internet, on the Commission's Web site (*http://www.prc.gov*).

I. Proposed Premium Forwarding Service

The Postal Service proposes to make Premium Forwarding Service permanent. PFS is intended for residential customers. When residential customers temporarily relocate to another domestic address this service reships all of their mail once a week. After a customer enrolls in PFS and his or her application is accepted, the Postal Service bundles and reships the mail to a temporary address. The customer's mail is reshipped via Priority Mail in a Priority Mail package. PFS is available for a period of at least two weeks and no longer than one year (per application). This service also allows customers to specify whether to include the mail of the entire household or merely an individual addressee. *Id.* at 2. The Postal Service proposes that the existing application and weekly prices be retained.

The fee for mail reshipped by PFS includes a $10.00 enrollment fee for the service and a weekly reshipment fee of $2.85. The customer also will be charged the Priority Mail postage appropriate for a 3-pound parcel to zone 6, currently $9.10. Altogether, customers will pay $11.95 for the weekly reshipment of their mail.

The Postal Service asserts that permanent PFS would advance the general policies of the Postal Reorganization Act by reducing the time between entry of mail and recipients' access to its valuable contents.

[1] Request of the United States Postal Service for a Recommended Decision on Premium Forwarding Service, July 31, 2007 (Request).

[2] Attachment A contains the proposed Domestic Mail Classification Schedule language changes; Attachment B sets forth proposed Fee Schedule 937 for PFS; Attachment C is the Compliance Statement composed of responses to the Commission's filing requirements; Attachment D is an index of testimony; and Attachment E is the certification required by Commission rule 54(p).

[3] Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, July 31, 2007 (Motion for Waiver).

II. Commission's Response

Intervention. Those wishing to be heard in this matter are directed to file a notice of intervention on or before August 21, 2007. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site (*http://www.prc.gov*), unless a waiver is obtained for hardcopy filing. 39 CFR 3001.9(a) and 10(a).

Settlement. The Commission will authorize settlement negotiations in this proceeding and appoint Postal Service counsel as settlement coordinator. In this capacity, Postal Service counsel shall file periodic reports on the status of settlement discussions. The Commission authorizes the settlement coordinator to hold a settlement conference, and will make its hearing room available for this purpose upon request. Authorization of settlement discussions does not constitute a finding on the necessity of hearings in this case.

Prehearing conference. A prehearing conference will be held August 28, 2007, at 10 a.m. in the Commission's hearing room. Participants shall be prepared to identify any issues(s) that would indicate a need to schedule a hearing, along with other matters referred to in this order.

Conditional Motion for Waiver. Participants may comment on the Postal Service's conditional motion to waive certain filing requirements. Responses to the Postal Service's Motion for Waiver are due on or before August 22, 2007.

Representation of the general public. In conformance with section 3624(a) of title 39, the Commission designates Kenneth E. Richardson, acting director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Mr. Richardson will direct the activities of Commission personnel assigned to assist him and, upon request, will supply their names for the record. Neither Mr. Richardson nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

It is ordered:

1. The Commission establishes Docket No. MC2007–3, Premium Forwarding Service, to consider the Postal Service Request referred to in the body of this order.

2. The Commission will sit *en banc* for this proceeding.

3. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding.

4. Kenneth E. Richardson, acting director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

5. The deadline for filing notices of intervention is August 21, 2007.

6. A prehearing conference will be held August 28, 2007 at 10 a.m. in the Commission's hearing room.

7. Responses to the Postal Service's Conditional Motion for Waiver of certain filing requirements are due on or before August 22, 2007.

8. The Secretary shall arrange for publication of this notice and order in the **Federal Register.**

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E7–15529 Filed 8–8–07; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27921; File No. 812–13353]

Sentinel Variable Products Trust, et al.; Notice of Application

August 3, 2007.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an exemption pursuant to section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'') from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: Sentinel Variable Products Trust (the ''Trust''), Sentinel Asset Management, Inc. (''SAM'') (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 6(c) of the 1940 Act, exempting each life insurance company separate account supporting variable life insurance contracts (''VLI Accounts'') (and its insurance company depositor) that may invest in shares of the Trust or a ''future trust'' as defined below, from the provisions of sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit such VLI Accounts to hold shares of the Trust or a future trust when one or more of the following other types of investors also hold shares of the Trust or a future trust: (1) A life insurance company separate account supporting variable annuity contracts (a ''VA Account''), (2) a VLI Account of a life insurance company that is not an affiliated person of the insurance company depositor of any other VLI Account, (3) the general account of an insurance company depositor of a VLI Account (representing seed money investments in the Trust or future trust), (4) the Trust's or future trust's investment adviser (representing seed money investments in the Trust or future trust), or (5) trustees of group qualified pension and group retirement plans (hereinafter, a ''Plan'') outside the separate account context. As used herein, a ''future trust'' is any investment company (or investment portfolio or series thereof), other than the Trust, shares of which are sold to VLI Accounts and to which Applicants or their affiliates may in the future serve as investment advisers, investment sub-advisers, investment managers, administrators, principal underwriters or sponsors. Investment portfolios or series of the Trust or any future trust are referred to herein as ''Insurance Funds.''

FILING DATE: The application was filed on December 21, 2006, and amended on July 30, 2007.

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 Secretary of the Commission 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 August 28, 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 may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Kerry A. Jung, National Life Insurance Company, 1 National Life Drive, Montpelier, Vermont 05604; copies to David S. Goldstein, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2404.

FOR FURTHER INFORMATION CONTACT: Ellen J. Sazzman, Senior Counsel, at (202) 551–6762, or Harry Eisenstein, Branch Chief, at (202) 551–6795, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Washington, DC 20549 ((202) 551–8090).

Applicants' Representations

1. The Trust was formed as a Delaware business trust on March 14, 2000. The Trust is registered under the Act as an open-end management investment company. The Trust is a series investment company as defined by Rule 18f–2 under the 1940 Act and is currently comprised of six series: Sentinel Variable Products Common Stock Fund, Sentinel Variable Products Mid Cap Growth Fund, Sentinel Variable Products Small Company Fund, Sentinel Variable Products Balanced Fund, Sentinel Variable Products Bond Fund, Sentinel Variable Products Money Market Fund. The Trust issues a separate series of shares of beneficial interest for each Fund and has filed a registration statement under the Securities Act of 1933 (the ''1933 Act'') on Form N–1A (File No. 333–35832) to register such shares. The Trust may establish additional Funds in the future and additional classes of shares for such Funds.

2. The Trust and future trusts may offer each series of their shares to: VLI Accounts and VA Accounts of various life insurance companies (''Participating Insurance Companies''); Participating Insurance Company depositors of VLI Accounts investing seed money in one or more Funds through their general accounts; SAM, as a seed money investment in one or more Funds; an investment adviser of a future trust investing seed money in one or more Insurance Funds; and Plans. The VLI Accounts, VA Accounts, Participating Insurance Companies, Plans, and SAM are described below.

3. Each VLI Account and VA Account is or will be established as a segregated asset account by a Participating Insurance Company pursuant to the insurance law of the insurance company's state of domicile. As such, the assets of each will be the property of the Participating Insurance Company, and that portion of the assets of such an Account equal to the reserves and other contract liabilities with respect to the Account will not be chargeable with liabilities arising out of any other business that the insurance company may conduct. The income, gains and losses, realized or unrealized from such an Account's assets will be credited to or charged against the Account without regard to other income, gains or losses of the Participating Insurance Company. If a VLI Account or VA Account is registered as an investment company, it will be a ''separate account'' as defined by Rule 0–1(e) (or any successor rule) under the 1940 Act and will be registered as a unit investment trust. For purposes of the 1940 Act, the life insurance company that establishes such a registered VLI Account or VA Account is the depositor and sponsor of the Account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

4. The Participating Insurance Companies are National Life Insurance Company (''National Life'') and various other life insurance companies that are not affiliated persons of National Life. National Life is an affiliated person of SAM and the Trust. At the current time, the following VLI Accounts and VA Accounts of National Life invest in the Trust: (2) National Variable Life Insurance Account, and (2) National Variable Annuity Account II.

5. SAM serves as the investment adviser to the Trust and each of its Funds. SAM is a Delaware corporation and is registered as an investment adviser under the Investment Advisers Act of 1940. It is a wholly owned subsidiary of NLV Financial Corporation and an affiliate of National Life Insurance Company. Under the supervision of the Trust's board of trustees, SAM is responsible for making all investment decisions for the Funds.

6. The Trust proposes to offer and sell its shares (and a future trust would offer and sell its shares) to VLI Accounts and VA Accounts of various Participating Insurance Companies as an investment medium to support variable life insurance contracts (''VLI Contracts'') and variable annuity contracts (''VA Contracts'') (together, ''Variable Contracts'') issued through such Accounts. As described more fully below, the Trust (or a future trust) will only sell its shares to registered VLI Accounts and registered VA Accounts if each Participating Insurance Company sponsoring such a VLI Account or VA Account enters into a participation agreement with the Trust (or a future trust). The participation agreements will define the relationship between the Trust (or a future trust) and a Participating Insurance Company and will memorialize, among other matters, the fact that, except where the agreement specifically provides otherwise, the Participating Insurance Company will remain responsible for establishing and maintaining any VLI Account or VA Account covered by the agreement and for complying with all applicable requirements of state and federal law pertaining to such Accounts and to the sale and distribution of Variable Contracts issued through such Accounts. The participation agreements also will memorialize, among other matters, the fact that, unless the agreement specifically states otherwise, the Trust (or a future trust) will remain responsible for establishing and maintaining any Insurance Fund covered by the agreement, for complying with all applicable requirements of state and federal law pertaining to such Funds and to the offer and sale of its shares to VLI Accounts and VA Accounts covered by the agreement, and for compliance with the conditions stated in this application.

7. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI Accounts and VA Accounts of the same Participating Insurance Company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as ''mixed funding.'' The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI Accounts and/or VA Accounts of two or more Participating Insurance Companies that are not affiliated persons of each other, is referred to herein as ''shared funding.''

8. The Trust (or a future trust) may sell its shares directly to the Plans (i.e., not to VLI Accounts or VA Accounts supporting Variable Contracts issued to Plans). As described below, federal tax law permits investment companies such as the Insurance Funds to increase their net assets by selling shares to Plans.

9. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying Variable Contracts, such as those in each Insurance Fund. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) that established diversification requirements for Variable Contracts, which require the separate accounts upon which these Contracts are based to be diversified as provided in the Treasury Regulations. In the case of separate accounts that invest in underlying investment companies, the Treasury Regulations provide a ''look through'' rule that permits the

separate account to look to the underlying investment company for purposes of meeting the diversification requirements, provided that the beneficial interests in the investment company are held only by the segregated asset accounts of one or more insurance companies. However, the Treasury Regulations also contain certain exceptions to this requirement, one of which permits shares in an investment company to be held by a Plan without adversely affecting the ability of shares in the same investment company to also be held by separate accounts funding Variable Contracts (Treas. Reg. section 1.817–5(f)(3)(iii)). Another exception allows the investment adviser of the investment company (and certain companies related to the investment adviser) to hold shares of the investment company representing seed capital.

10. Plans may invest in shares of an investment company as the sole investment under the Plan, or as one of several investments. Plan participants may or may not be given an investment choice depending on the terms of the Plan itself. The trustees or other fiduciaries of a Plan may vote investment company shares held by the Plan in their own discretion or, if the applicable Plan so provides, vote such shares in accordance with instructions from participants in such Plans. Applicants have no control over whether trustees or other fiduciaries of Plans, rather than participants in the Plans, have the right to vote under any particular Plan. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustee or trustees.

11. Applicants propose that any Insurance Fund also be permitted to sell shares to its investment adviser. The Treasury Regulations permit such sales as long as the return on shares held by the adviser is computed in the same manner as shares held by VLI Accounts and VA Accounts, the adviser does not intend to sell the shares to the public, and sales to an investment adviser are only made in connection with the creation or management of the Insurance Fund for the purpose of providing seed capital.

12. Applicants propose that any Insurance Fund also be permitted to sell shares to the general account of a Participating Insurance Company. The Treasury Regulations also permit such sales as long as the return on shares held by general accounts are computed in the same manner as shares held by VLI Accounts and VA Accounts, and the Participating Insurance Company does not intend to sell the shares to the public. Applicants anticipate that sales of shares may be made to general accounts of Participating Insurance Companies in return for seed money.

13. The promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations permitting the shares of Insurance Funds to be held by a Plan, an adviser for the Fund, or the general account of a Participating Insurance Company without adversely affecting the ability of the VLI Account to also hold shares.

14. The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI Accounts, VA Accounts, Plans, investment advisers and general accounts of Participating Insurance Companies is referred to herein as ''extended mixed funding.''

Applicants' Legal Analysis

1. Section 9(a)(2) of the 1940 Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any investment company, including a unit investment trust, if an affiliated person of that company is subject to disqualification enumerated in section 9(a)(1) or (2) of the 1940 Act. Sections 13(a), 15(a), and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares.

2. Rule 6e–2(b)(15) under the Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to VLI Accounts supporting scheduled premium VLI Contracts and to their life insurance company depositors. The exemptions granted by the Rule are available, however, only where an Insurance Fund offers its shares *exclusively* to VLI Accounts of the same Participating Insurance Company and/or of Participating Insurance Companies that are affiliated persons of the same Participating Insurance Company and then, only where *scheduled* premium VLI Contracts are issued through such VLI Accounts. Therefore, VLI Accounts, their depositors and their principal underwriters may not rely on the exemptions provided by Rule 6e–2(b)(15) if shares of the Insurance Fund are held by a VLI Account through which flexible premium VLI Contracts are issued, a VLI Account of an unaffiliated Participating Insurance Company, an unaffiliated investment adviser, any VA Account or a Plan. In other words, Rule 6e–2(b)(15) does not permit a scheduled premium VLI Account to invest in shares of a management investment company that serves as a vehicle for mixed funding, extended mixed funding or shared funding.

3. Accordingly, Applicants request an order of the Commission granting exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit a scheduled premium VLI Account to hold shares of Insurance Funds when one or more of the following types of investors also hold shares of the Insurance Funds: (1) VA Accounts, (2) VLI Accounts supporting flexible premium VLI Contracts, (3) VA Accounts or VLI Accounts of Participating Insurance Companies that are not affiliated persons of the depositor of the scheduled premium VLI Account, (4) the general account of a Participating Insurance Company, (5) the investment adviser (or an affiliated person of the investment adviser) of an Insurance Fund, or (6) a Plan.

4. Rule 6e–3(T)(b)(15) under the 1940 Act provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to VLI Accounts supporting flexible premium variable life insurance contracts and their life insurance company depositors. The exemptions granted by the Rule are available, however, only where an Insurance Fund offers its shares *exclusively* to VLI Accounts (through which either scheduled premium or flexible premium VLI Contracts are issued) of the same Participating Insurance Company and/or of Participating Insurance Companies that are affiliated persons of the same Participating Insurance Company, VA Accounts of the same Participating Insurance Company or of affiliated Participating Insurance Companies, or the general account of the same Participating Insurance Company or of affiliated Participating Insurance Companies. Therefore, VLI Accounts, their depositors and their principal underwriters may not rely on the exemptions provided by Rule 6e–3(T)(b)(15) if shares of the Insurance Fund are held by a VLI Account of an unaffiliated Participating Insurance Company, a VA Account of an unaffiliated Participating Insurance Company, the general account of an unaffiliated Participating Insurance Company, an unaffiliated investment adviser, or a Plan. In other words, Rule 6e–3(T)(b)(15) permits VLI Accounts supporting flexible premium VLI Contracts to invest in shares of a management investment company that serves as a vehicle for mixed funding but does not permit such a VLI Account to invest in shares of a management

investment company that serves as a vehicle for extended mixed funding or shared funding.

5. Accordingly, Applicants request an order of the Commission granting exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rule 6e–3(T)(b)(15) (and any comparable permanent rule) thereunder, to the extent necessary to permit a flexible premium VLI Account to hold shares of Insurance Funds when one or more of the following types of investors also hold shares of the Insurance Funds: (1) VA Accounts, (2) VA Accounts or VLI Accounts of Participating Insurance Companies that are not affiliated persons of the depositor of the flexible premium VLI Account, (3) the general account of a Participating Insurance Company, (4) the investment adviser (or an affiliated person of the investment adviser) of an Insurance Fund, or (5) a Plan.

6. As explained below, Applicants maintain that there is no public policy reason why VLI Accounts and their Participating Insurance Company depositors (or principal underwriters) should not be able to rely on the exemptions provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) just because shares of Insurance Funds held by the VLI Accounts are also held by a Fund's investment adviser (or affiliated person), the general account of the Participating Insurance Company (or another Participating Insurance Company), or a Plan (''Eligible 817(h) Purchasers''). Rather, Applicants assert that the proposed sale of Insurance Fund shares to Plans may allow for the development of larger pools of assets, resulting in the potential for greater investment and diversification opportunities and decreased expenses at higher asset levels. Similarly, Applicants believe that the proposed sale of Insurance Fund shares to investment advisers (or their affiliates) and general accounts of Participating Insurance Companies for seed money may result in the creation of more Insurance Funds as investment options for certain VA Contracts and VLI Contracts than would otherwise be the case.

7. Applicants maintain that the reason the Commission did not grant more extensive relief in the area of mixed and shared funding when it adopted Rule 6e–3(T) is because of the Commission's uncertainty in this area with respect to issues such as conflicts of interest. Applicants believe, however, that the Commission's concern in this area is not warranted here. For the reasons explained below, Applicants have concluded that investment by Eligible 817(h) Purchasers in the Insurance Funds should not increase the risk of material irreconcilable conflicts between owners of VLI Contracts and other types of investors or between owners of VLI Contracts issued by unaffiliated Participating Insurance Companies.

8. Pursuant to the Commission's authority under section 6(c) of the 1940 Act to grant exemptive orders to a class or classes of persons and transactions, Applicants request exemptions for a class of parties consisting of VLI Accounts, their Participating Insurance Company depositors and their principal underwriters.

9. In the context of mixed funding, extended mixed funding and shared funding, the Commission has granted numerous orders of exemption covering a class composed of registered VLI Accounts, their insurance company depositors and principal underwriters. Applicants assert that the scope of the exemptions and the conditions proposed in their Application are largely identical to these precedents. Applicants believe that the same policies and considerations that led the Commission to grant such exemptions to other similarly situated applicants are present should apply here.

10. Section 6(c) of the 1940 Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act, or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The Applicants submit that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

11. Section 9(a)(3) of the 1940 Act provides, among other things, that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed funding, extended mixed funding and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in management of the underlying investment company.

12. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person that is disqualified under sections 9(a)(1) or (2) of the Act to serve as an officer, director, or employee of the life insurance company, or any of its affiliates, as long as that person does not participate directly in the management or administration of the underlying investment company. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) under the 1940 Act permits the life insurance company to serve as the underlying investment company's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) participates in the management or administration of the investment company.

13. In effect, the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of section 9 of the 1940 Act limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Those rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to all individuals in a large insurance complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply section 9(a) of the 1940 Act to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Funds as investment vehicles for VLI Accounts and VA Accounts. Applicants maintain there is no regulatory purpose served in extending the monitoring requirements to embrace a full application of section 9(a)'s eligibility restrictions because of mixed funding, extended mixed funding or shared funding. The Participating Insurance Companies and Plans are not expected to play any role in the management of the Insurance Funds. Those individuals who participate in the management of the Insurance Funds will remain the same regardless of which VA Accounts, VLI Accounts, Plans or other Eligible 817(h) Purchasers invest in the Insurance Funds. Applicants assert that applying the

monitoring requirements of section 9(a) of the Act because of investment by VLI Accounts would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs could reduce the net rates of return realized by owners of VLI Contracts and Plan participants.

14. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from pass-through voting requirements with respect to several significant matters, assuming the limitations on mixed funding, extended mixed funding and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its variable life insurance contract owners with respect to the investments of an underlying investment company, or any contract between such an investment company and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T)).

15. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that an insurance company may disregard the voting instructions of owners of its variable life insurance contracts if such owners initiate any change in an underlying investment company's investment policies, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B) and (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T)).

16. In the case of a change in the investment policies of the underlying investment company, the insurance company, in order to disregard contract owner voting instructions, must make a good faith determination that such a change either would: (1) Violate state law, or (2) result in investments that either (a) would not be consistent with the investment objectives of its separate account, or (b) would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company, or of an affiliated life insurance company with similar investment objectives.

17. Both Rule 6e–2 and Rule 6e–3(T) generally recognize that a variable life insurance contract is primarily a life insurance contract containing many important elements unique to life insurance contracts and subject to extensive state insurance regulation. In adopting subparagraph (b)(15)(iii) of these Rules, the Commission implicitly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters.

18. Applicants assert that the sale of Insurance Fund shares to Eligible 817(h) Purchasers will not have any impact on the exemptions requested herein regarding the disregard of pass-through voting rights. Shares sold to Plans will be held by such Plans. Applicants believe that the exercise of voting rights by Plans, whether by trustees, participants, beneficiaries, or investment managers engaged by the Plans, does not raise the type of issues respecting disregard of voting rights that are raised by VLI Accounts. With respect to Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Under section 403(a) of the Employee Retirement Income Security Act of 1974 (''ERISA''), shares of a portfolio of an investment company sold to a Plan must be held by the trust(s) funding the Plan. Section 403(a) also provides that the trustee(s) of such trusts must have exclusive authority and discretion to manage and control the Plan, with two exceptions: (1) When the Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA, and (2) when the authority to manage, acquire, or dispose of assets of the Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting investment company shares (or related proxies) held by their Plan.

19. Where a Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among the Variable Contract owners and Plan participants with respect to voting of the respective Insurance Fund shares. Accordingly, unlike the circumstances surrounding VLI Accounts and VA Accounts, because Plans are not required to pass through voting rights to participants, Applicants believe that the issue of resolution of material irreconcilable conflicts of interest should not arise with respect to voting Insurance Fund shares.

20. In addition, if a Plan were to hold a controlling interest in an Insurance Fund, Applicants do not believe that such control would disadvantage other investors in such Insurance Fund to any greater extent than is the case when any institutional shareholder holds a majority of the shares of any open-end management investment company. In this regard, Applicants submit that investment in an Insurance Fund by a Plan will not create any of the voting complications occasioned by VLI Account investments in the Fund. Unlike VLI Account investments, Plan voting rights cannot be frustrated by veto rights of Participating Insurance Companies or state insurance regulators.

21. Where a Plan provides participants with the right to instruct the trustee(s) as to how to vote Insurance Fund shares, Applicants see no reason why such participants generally or those in a particular Plan, either as a single group or in combination with participants in other Plans, would vote in a manner that would disadvantage VLI Contract owners. Applicants believe that the purchase of shares by Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

22. Similarly, an investment adviser to an Insurance Fund (or its affiliates) and the general accounts of Participating Insurance Companies are not subject to any pass-through voting requirements. Accordingly, Applicants submit that, unlike the circumstances surrounding VLI Account and VA Account investments in Insurance Fund shares, investment in such shares by Eligible 817(h) Purchasers should not raise issues of resolution of material irreconcilable conflicts of interest with respect to voting.

23. Applicants recognize that the Commission's primary concern with respect to mixed funding, extended mixed funding and shared funding issues is the potential for irreconcilable conflicts between the interests of owners of variable life insurance contracts and those of other investors in an open end investment company serving as an investment vehicle for such contracts. Applicants submit that the prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When Rule 6e–2 was first adopted, variable annuity separate accounts could invest in mutual funds whose shares were also offered to the general public. Therefore, the Commission staff may have been

concerned with the potentially different investment motivations of public shareholders and owners of variable life insurance contracts. Applicants submit there also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly available mutual fund and the investment decisions of public shareholders.

24. For reasons unrelated to the 1940 Act, however, Revenue Ruling 81–225 (Sept. 25, 1981) effectively deprived variable annuity contracts funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment vehicle for both variable annuity contracts and variable life insurance contracts. In particular, section 817(h) of the Code, in effect, requires that the investments made by both variable annuity and variable life insurance separate accounts be ''adequately diversified.'' If such a separate account is organized as part of a ''two-tiered'' arrangement where the account invests in shares of an underlying open-end investment company (*i.e.*, an underlying fund), the diversification test will be applied to the underlying fund (or to each of several underlying funds), rather than to the separate account itself, but only if ''all of the beneficial interests'' in the underlying fund ''are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts.'' Accordingly, a separate account that invests in a publicly available mutual fund will not be adequately diversified for these purposes. As a result, any underlying fund, including any Insurance Fund that sells shares to VA Accounts or VLI Accounts, would, in effect, be precluded from also selling its shares to the public. Consequently, the Insurance Funds may not sell their shares to the public.

25. Applicants submit that the rights of an insurance company or a state insurance regulator to disregard the voting instructions of owners of Variable Contracts is not inconsistent with either mixed funding or shared funding. The National Association of Insurance Commissioners Variable Life Insurance Model Regulation (the ''NAIC Model Regulation'') suggests that it is unlikely that insurance regulators would find an underlying fund's investment policy, investment adviser or principal underwriter objectionable for one type of Variable Contract but not another type. The NAIC Model Regulation has long permitted the use of a single underlying fund for different separate accounts. Moreover, Article VI, section 3 of the NAIC Model Regulation has been amended to remove a previous prohibition on one separate account investing in another separate account. Lastly, the NAIC Model Regulation does not distinguish between scheduled premium and flexible premium variable life insurance contracts. Applicants contend that the NAIC Model Regulation therefore reflects the NAIC's apparent confidence that such combined funding is appropriate and that state insurance regulators can adequately protect the interests of owners of all variable contracts.

26. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulator could require action that is inconsistent with the requirements of other states in which the insurance company offers its contracts. However, Applicants believe that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

27. Applicants submit that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected Participating Insurance Company will be required to withdraw its separate account investments in the relevant Insurance Fund. This requirement will be provided for in the Participation Agreement that will be entered into by Participating Insurance Companies with the relevant Insurance Fund.

28. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the Participating Insurance Company the right to disregard the voting instructions of VLI Contract owners in certain circumstances. This right derives from the authority of state insurance regulators over VLI Accounts and VA Accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), a Participating Insurance Company may disregard VLI Contract owner voting instructions only with respect to certain specified items. Applicants maintain that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter or investment adviser initiated by such Contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the Participating Insurance Company's disregard of voting instructions be reasonable and based on specific good faith determinations.

29. A particular Participating Insurance Company's disregard of voting instructions, nevertheless, could conflict with the voting instructions of a majority of VLI Contract owners. The Participating Insurance Company's action possibly could be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the voting instructions of VLI Contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the relevant Insurance Fund's election, to withdraw its VLI Accounts' and VA Accounts' investments in the relevant Insurance Fund. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the Participation Agreement entered into by the Participating Insurance Companies with the relevant Insurance Fund.

30. Applicants submit that there is no reason why the investment policies of an Insurance Fund would or should be materially different from what these policies would or should be if the Insurance Fund supported only VA Accounts or VLI Accounts, whether flexible premium or scheduled premium VLI Contrasts. Each type of insurance contract is designed as a long-term investment program.

31. Applicants represent that each Insurance Fund will be managed to attempt to achieve its specified investment objective, and not favor or disfavor any particular Participating Insurance Company or type of insurance contract. Applicants contend that there is no reason to believe that different features of various types of Variable Contracts will lead to different

investment policies for each or for different VLI Accounts and VA Accounts. The sale of Variable Contracts and ultimate success of all VA Accounts and VLI Accounts depends, at least in part, on satisfactory investment performance, which provides an incentive for each Participating Insurance Company to seek optimal investment performance.

32. Applicants represent that no single investment strategy can be identified as appropriate to a particular Variable Contract. Each ''pool'' of VLI Contract and VA Contract owners is composed of individuals of diverse financial status, age, insurance needs and investment goals. An Insurance Fund supporting even one type of Variable Contract must accommodate these diverse factors in order to attract and retain purchasers. Applicants contend that permitting mixed and shared funding will provide economic support for the continuation of the Insurance Funds, and will broaden the base of potential Variable Contract owner investors, which may facilitate the establishment of additional Insurance Funds serving diverse goals.

33. Applicants do not believe that the sale of the shares to Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those that would otherwise exist between owners of VLI Contracts and VA Contracts. Applicants submit that either there are no conflicts of interest or that there exists the ability by the affected parties to resolve such conflicts consistent with the best interests of VLI Contract owners, VA Contract owners and Plan participants.

34. Applicants considered whether there are any issues raised under the Code, Treasury Regulations, or Revenue Rulings thereunder, if Plans, VA Accounts, and VLI Accounts all invest in the same Insurance Fund. Section 817(h) of the Code is the culmination of a series of Revenue Rulings aimed at the control of investments by owners of Variable Contracts and discusses insurance company separate accounts. Treasury Regulation 1.817–5(f)(3)(iii), which establishes the diversification requirements for underlying funds, specifically permits, among other things, ''qualified pension or retirement plans,'' separate accounts to invest in the same underlying fund. Applicants have concluded for this reason that neither the Code, nor the Treasury Regulations nor Revenue Rulings thereunder, present any inherent conflicts of interest if Plans, VLI Accounts, and VA Accounts all invest in the same Insurance Fund.

35. Applicants note that, while there are differences in the manner in which distributions from VLI Accounts and Plans are taxed, these differences have no impact on the Insurance Funds. When distributions are to be made, and a VLI Account or Plan is unable to net purchase payments to make distributions, the VLI Account or Plan will redeem shares of the relevant Insurance Fund at its net asset values in conformity with Rule 22c–1 under the Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company will then make distributions in accordance with the terms of its VLI Contract and a Plan will then make distributions in accordance with the terms of the Plan.

36. Applicants considered whether it is possible to provide an equitable means of giving voting rights to VLI Contract owners and Plans. In connection with any meeting of Insurance Fund shareholders, the Fund's transfer agent will inform each Participating Insurance Company and other Eligible 817(h) Purchaser of their share holdings and provide other information necessary for such shareholders to participate in the meeting (e.g., proxy materials). Each Participating Insurance Company then will solicit voting instructions from owners of VLI Contracts and VA Contracts as required by either Rules 6e–2 or 6e–3(T), or section 12(d)(1)(E)(iii)(aa) of the Act, as applicable, and its Participation Agreement with the relevant Insurance Fund. Shares held by a Participating Insurance Company general account will be voted by the Company in the same proportion of shares for which it receives voting instructions from its Variable Contract owners. Shares held by Plans will be voted in accordance with applicable law. The voting rights provided to Plans with respect to the shares would be no different from the voting rights that are provided to Plans with respect to shares of mutual funds sold to the general public. Furthermore, if a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Insurance Fund, to withdraw its investment in the Insurance Fund, and no charge or penalty will be imposed as a result of such withdrawal.

37. Applicants do not believe that the veto power of state insurance commissioners over certain potential changes to Insurance Fund investment objectives approved by owners of VLI Contracts creates conflicts between the interests of such owners and the interests of Plan participants. Applicants note that a basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Their interests and opinions may differ, but this does not mean that inherent conflicts of interest exist between or among such shareholders or that occasional conflicts of interest that do occur between or among them are likely to be irreconcilable.

38. Applicants represent that although Participating Insurance Companies may have to overcome regulatory impediments in redeeming shares of an Insurance Fund held by their VLI Accounts, the Plans and the participants in participant-directed Plans can make decisions quickly and redeem their shares in a Fund and reinvest in another investment company or other funding vehicle without impediments, or as is the case with most Plans, hold cash pending suitable investment. As a result, conflicts between the interests of VLI Contract owners and the interests of Plans and Plan participants can usually be resolved quickly since the Plans can, on their own, redeem their Insurance Fund shares.

39. Finally, Applicants considered whether there is a potential for future conflicts of interest between Participating Insurance Companies and Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of VLI Contract owners (or, for that matter, VA Contract owners) and Plan participants from future changes in the federal tax laws than that which already exists between VLI Contract owners and VA Contract owners.

40. Applicants recognize that the issues described above are not all-inclusive, but rather are representative of issues that they believe are relevant to the application. In light of the above, Applicants believe that the sale of Insurance Fund shares to Plans trustees would not increase the risk of material irreconcilable conflicts between the interests of Plan participants and VLI Contract owners or other investors. Further, Applicants submit that the use of the Insurance Funds with respect to Plans is not substantially dissimilar from each Insurance Fund's anticipated

use, in that Plans, like VLI Accounts, are generally long-term investors.

41. Applicants represent that a potential source of initial capital is an Insurance Fund's investment adviser or a Participating Insurance Company. Either of these parties may have an interest in making a capital investment and in assisting an Insurance Fund in its organization. However, provision of seed capital or the purchase of shares in connection with the management of an Insurance Fund by its investment adviser or by a Participating Insurance Company may be deemed to violate the exclusivity requirement of Rule 6e–2(b)(15) and/or Rule 6e–3(T)(b)(15).

42. Applicants assert that permitting an Insurance Fund to sell its shares to its investment adviser (or the adviser's affiliates) or to the general account of a Participating Insurance Company for the purpose of obtaining seed money will enhance management of each Insurance Fund without raising significant concerns regarding material irreconcilable conflicts among different types of investors.

43. Given the conditions of Treasury Regulation 1.817–5(f)(3) and the harmony of interest between an Insurance Fund, on the one hand, and its investment adviser (or affiliates) or a Participating Insurance Company, on the other, Applicants assert that little incentive for overreaching exists. Furthermore, such investment should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, permitting investments by an investment adviser (or its affiliates), or by general accounts of Participating Insurance Companies, will permit the orderly and efficient creation and operation of an Insurance Fund, and reduce the expense and uncertainty of using outside parties at the early stages of the Insurance Fund's operations.

44. Applicants also submit that, regardless of the type of shareholder in an Insurance Fund, its investment adviser (and the adviser's affiliates) are or would be contractually and otherwise obligated to manage the Insurance Fund solely and exclusively in accordance with that Fund's investment objectives, policies and restrictions, as well as any guidelines established by the its board of trustees (a ''Board''). Thus, each Insurance Fund will be managed in the same manner as any other mutual fund.

45. Applicants do not believe that the ability of an Insurance Fund to sell its shares to its investment adviser (or an affiliated person of the adviser), to Plans, or to the general account of a Participating Insurance Company gives rise to a senior security. A ''Senior Security'' is defined in section 18(g) of the Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under Plans and owners of VLI Contracts, VLI Accounts, VA Accounts, Participating Insurance Companies, Plans, and investment advisers (or their affiliates), only have, or will only have, rights with respect to their respective shares of an Insurance Fund. These parties can only redeem such shares at net asset value. No shareholder of an Insurance Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

46. In addition, Applicants note that the Commission has issued numerous orders permitting mixed funding, extended mixed funding and shared funding. Therefore, Applicants submit that granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of sections 9(a), 13(a), 15(a), or 15(b) of the Act or Rules 6e–2 or 6e–3(T) thereunder.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions which shall apply to the Trust as well as any future trust that relies on the order:

1. A majority of the Board of each Insurance Fund will consist of persons who are not ''interested persons'' of the Insurance Fund, as defined by section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of death, disqualification or bona fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board, (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies, or (c) for such longer period as the Commission may prescribe by order upon application, or by future rule.

2. The Board of each Insurance Fund will monitor the Insurance Fund for the existence of any material irreconcilable conflict between and among the interests of the owners of all VLI Contracts and VA Contracts and participants of all Plans investing in the Insurance Fund, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority, (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities, (c) an administrative or judicial decision in any relevant proceeding, (d) the manner in which the investments of the Insurance Fund are being managed, (e) a difference in voting instructions given by VA Contract owners, VLI Contract owners, and Plans or Plan participants, (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of general account assets in an Insurance Fund), an adviser and its affiliates, and any Plan that executes a Participation Agreement upon its becoming an owner of 10% or more of the net assets of an Insurance Fund (collectively, ''Participants'') will report any potential or existing conflicts to the Board of the Insurance Fund. Each Participant will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Variable Contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their Participation Agreement with an Insurance Fund, and these responsibilities will be carried out with a view only to the interests of the Variable Contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Plans under their Participation Agreement with an Insurance Fund, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of the Board of an Insurance Fund, or a

majority of the disinterested directors/trustees of such Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors/trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of their VLI Accounts or VA Accounts from the Insurance Fund and reinvesting such assets in a different investment vehicle including another Insurance Fund, (b) in the case of a Participating Insurance Company, submitting the question as to whether such segregation should be implemented to a vote of all affected Variable Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, VA Contract owners or VLI Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change, (c) withdrawing the assets allocable to some or all of the Plans from the affected Insurance Fund and reinvesting them in a different investment medium, and (d) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Variable Contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the election of the Insurance Fund, to withdraw such Participating Insurance Company's VA Account and VLI Account investments in the Insurance Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the Insurance Fund, to withdraw its investment in the Insurance Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their Participation Agreement with an Insurance Fund, and these responsibilities will be carried out with a view only to the interests of Variable Contract owners or, as applicable, Plan participants.

For purposes of this Condition 4, a majority of the disinterested directors/trustees of the Board of each Insurance Fund will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will the Insurance Fund or its investment adviser be required to establish a new funding vehicle for any Variable Contract or Plan. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the Contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Plan will be required by this Condition 4 to establish a new funding vehicle for the Plan if: (a) A majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Plan, the Plan trustee makes such decision without a Plan participant vote.

5. The Board of each Insurance Fund's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners whose Contracts are issued through registered VLI Accounts or registered VA Accounts for as long as required by the Act as interpreted by the Commission. However, as to Variable Contracts issued through VA Accounts or VLI Accounts not registered as investment companies under the Act, pass-through voting privileges will be extended to owners of such Contracts to the extent granted by the Participating Insurance Company. Accordingly, such Participating Insurance Companies, where applicable, will vote the shares of each Insurance Fund held in their VLI Accounts and VA Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each of their VLI and VA Accounts investing in an Insurance Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies investing in that Fund.

The obligation to calculate voting privileges as provided in this Application shall be a contractual obligation of all Participating Insurance Companies under their Participation Agreement with the Fund. Each Participating Insurance Company will vote shares of each Insurance Fund held in its VLI or VA Accounts for which no timely voting instructions are received, as well as shares held by its general account or otherwise attributed to it, in the same proportion as those shares for which voting instructions are received. Each Plan will vote as required by applicable law, governing Plan documents and as provided in this application.

7. As long as the Act requires pass-through voting privileges to be provided to Variable Contract owners or the Commission interprets the Act to require the same, an Insurance Fund investment adviser (or its affiliates) or any general account will vote their shares of the Fund in the same proportion as all votes cast on behalf of all Variable Contract owners having voting rights; provided, however, that such an investment adviser (or affiliates) shall vote its shares in such other manner as may be required by the Commission or its staff.

8. Each Insurance Fund will comply with all provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in its shares), and, in particular, the Insurance Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with section 16(c) of the Act (although each Insurance Fund is not, or will not be, one of those trusts of the type described in section 16(c) of the Act), as well as with section 16(a) of the Act and, if and when applicable, section 16(b) of the Act. Further, each Insurance Fund will act in accordance with the Commission's interpretations of the requirements of section 16(a) with respect to periodic elections of directors/trustees and with whatever rules the Commission may promulgate thereto.

9. An Insurance Fund will make its shares available to the VLI Accounts, VA Accounts, and Plans at or about the time it accepts any seed capital from its investment adviser (or affiliates) or from a general account of a Participating Insurance Company.

10. Each Insurance Fund has notified, or will notify, all Participants that disclosure regarding potential risks of mixed and shared funding may be appropriate in VLI Account and VA Account prospectuses or Plan documents. Each Insurance Fund will disclose, in its prospectus that: (a)

Shares of the Fund may be offered to both VA Accounts and VLI Accounts and, if applicable, to Plans, (b) due to differences in tax treatment and other considerations, the interests of various Variable Contract owners participating in the Insurance Fund and the interests of Plan participants investing in the Insurance Fund, if applicable, may conflict, and (c) the Insurance Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflicts.

11. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the Act are amended, or Rule 6e–3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then each Insurance Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, to the extent such rules are applicable.

12. Each Participant, at least annually, shall submit to the Board of each Insurance Fund such reports, materials or data as the Board reasonably may request so that the directors/trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in this Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board of an Insurance Fund. The obligations of the Participants to provide these reports, materials and data to the Board, when it so reasonably requests, shall be a contractual obligation of all Participants under their Participation Agreement with the Insurance Fund.

13. All reports of potential or existing conflicts received by the Board of each Insurance Fund, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

14. Each Insurance Fund will not accept a purchase order from a Plan if such purchase would make the Plan an owner of 10 percent or more of the net assets of the Insurance Fund unless the Plan executes an agreement with the Insurance Fund governing participation in the Insurance Fund that includes the conditions set forth herein to the extent applicable. A Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares.

Conclusions

Applicants submit, for all the reasons explained above, that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15550 Filed 8–8–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56193; File No. SR–Amex–2007–38]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change Amending Preferred Stock Voting Rights

August 2, 2007.

I. Introduction

On April 20, 2007, 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 the minimum voting rights that must be provided to preferred shareholders in order for a preferred stock issue to list on the Amex. The proposed rule change was published for comment in the **Federal Register** on July 7, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Section 124 of the Amex Company Guide, ''Preferred Voting Rights,'' provides that the Exchange may decline to list a preferred stock issue on the Amex if the issuer does not provide certain minimum voting rights to holders of preferred stock. Specifically, under the current rule, the Exchange may decline to list a preferred stock issue unless the preferred shareholders have the right, voting as a class, to vote on: (i) Any change in the rights, privileges or preferences of their preferred shares; and (ii) the creation of any additional class of preferred stock senior to or equal in preference to their preferred shares. The rule provides that any such change in the rights, privileges or preferences of preferred shares and any creation of an additional class of senior preferred stock must be approved by at least two-thirds of the preferred shareholders. Any creation of an additional class of preferred stock equal in preference must be approved by at least a majority of the preferred shareholders.

The Exchange now proposes to modify the minimum preferred voting rights required for listing of a preferred stock issue on the Amex. First, the Exchange proposes to amend the provision relating to changes in the rights, privileges, or preferences of preferred shareholders, to provide that holders of at least two-thirds of the outstanding shares of a preferred stock issue should be required for the adoption of any charter or by-law amendment that would materially affect existing terms of the preferred stock. The amended rule would also provide that, if all series of a class of preferred stock are not equally affected by a proposed change to the terms of the preferred stock, two-thirds approval of both the class and the series that will have a diminished status should be required to authorize such change. The Exchange also proposes to require that an issuer's charter not hinder the preferred shareholders' right to alter the terms of their stock by limiting modification to specific items, *e.g.,* interest rate, redemption price.

With respect to the creation of a senior issue, the amended rule would continue to provide that the creation of a senior issue should require approval of at least two-thirds of the outstanding preferred shares. However, the Exchange proposes to amend the rule to also provide that a vote by an existing series of preferred stock is not required for the board of directors of an issuer to create a senior series of preferred stock if shareholders authorized such action when the existing series was created. Further, a vote by an existing class is not required for the creation of a senior issue if the existing class received adequate notice of redemption to occur within 90 days and the existing issue is not being retired with proceeds from the sale of the new issue.

The amended rule would also provide that an increase in the authorized

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55963 (June 26, 2007), 72 FR 36081.

amount of a class of preferred stock or the creation of a pari passu issue is required to be approved by a majority of the outstanding shares of the class or classes to be affected by such change. However, a majority vote would not be required if, at the time a class of preferred stock was created, the preferred shareholders gave the board of directors the authority to increase the authorized amount of a series of preferred stock or create an additional series of preferred stock equal in preference.

III. Discussion

After careful review, 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 and, in particular, with section 6(b)(5) of the Act,[4] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.[5]

The Commission notes that the proposed rule change will make Amex's listing requirements relating to minimum preferred voting rights substantially similar to those of the New York Stock Exchange LLC (''NYSE'').[6] The Commission believes that the proposed rule change may provide additional flexibility to issuers of preferred stock with regard to their ability to raise capital, while at the same time, ensuring that preferred shareholders will retain important voting rights. The proposal also ensures that the rights and privileges of the preferred shareholders are protected and cannot be changed without prior approval of the preferred shareholders.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–2007–38) be, and hereby is, approved.

[4] 15 U.S.C. 78f(b)(5).

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] *See* Section 313.00(C) of the NYSE Listed Company Manual.

[7] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15541 Filed 8–8–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56194; File No. SR–BSE–2007–32]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Existing Fee Schedule

August 2, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 5, 2007, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The BSE has designated this proposal as one changing a due, fee, or other charge under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. On July 20, 2007, BSE filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend certain transaction fees set forth in the Boston Equities Exchange (''BeX'') fee schedule. The text of the proposed rule change is available at *http://www.bostonstock.com*, at the BSE, and at the Commission's Public Reference Room.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] In Amendment No. 1, the Exchange replaced the term Intermarket Sweep Order (''ISO'') with the phrase ''order routed as a part of an NMS Cross Order'' and the term ''Reg NMS cross'' with the phrase ''NMS Cross Order''. In addition, the Exchange updated the BeX fee schedule to reflect these changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 20, 2006, the BSE filed File No. SR–BSE–2006–44,[6] a rule filing that amended the existing BSE fee schedule and established a fee schedule for the BeX, a facility of the Exchange. On March 5, 2007, a subsequent filing, SR–BSE–2007–13,[7] was made to add a new Smart Order Routing fee. On June 28, 2007, the Exchange filed an additional fee filing, SR–BSE–2007–29[8] to lower the rate for this service.

In this filing, the Exchange is proposing to implement a fee for orders routed as a part of an NMS Cross Order,[9] which the Exchange has developed to help firms comply with the trade-through requirements of Regulation NMS. An NMS Cross Order consists of a priced cross with two quantities: (i) The quantity that the customer wants to cross; and (ii) the ''disinterest'' quantity, which is the additional single-sided amount that the customer is willing to add in order to fulfill Regulation NMS obligations.

When this new order type is received, the Exchange will look at the best bids and offers at all Regulation NMS venues and route orders, as needed, up to the disinterest quantity. The cross will then be executed and reported back to the customer, along with any executions from the routed orders. If the disinterest quantity is not large enough to satisfy the size of the total trade-through on all markets, no orders will be routed and the entire cross will be rejected.

[6] *See* Securities Exchange Act Release No. 54795 (November 20, 2006), 71 FR 68850 (November 28, 2007).

[7] *See* Securities Exchange Act Release No. 55529 (March 26, 2007), 72 FR 15734 (April 2, 2007).

[8] *See* Securities Exchange Act Release No. 56129 (July 25, 2007), 72 FR 42157 (August 1, 2007).

[9] *See* Securities Exchange Act Release No. 55903 (June 13, 2007), 72 FR 33792 (June 19, 2007) (SR–BSE–2007–24).

The orders routed as a result of an NMS Cross Order will be added to the Exchange's other order routing products and will be charged at a rate of $0.0020 per share if a firm uses its own give-up on another market center and $0.0060 per share if a firm used a BeX provided give-up on another market center.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of section 6(b) of the Act,[10] in general, and furthers the objectives of section 6(b)(4) of the Act,[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using Exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[12] and Rule 19b–4(f)(2) thereunder,[13] because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2007–32 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BSE–2007–32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2007–32 and should be submitted on or before August 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15545 Filed 8–8–07; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56190; File No. SR–CBOE–2007–04]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Amending Its Obvious Error Rule for Equity Options

August 2, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 21, 2007, 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. On July 2, 2007, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 6.25, which is the Exchange's rule applicable to the nullification and adjustment of transactions in equity options, to revise its obvious error provision related to ''no bid'' series. The Exchange is also proposing to make a non-substantive change by adding a cross-reference within the text of Rule 6.25.

Below is the text of the proposed rule change. Proposed new language is in italics and proposed deletions are in [brackets].

Chicago Board Options Exchange, Incorporated Rules

Rule 6.25—Nullification and Adjustment of Equity Options Transactions

RULE 6.25. This Rule governs the nullification and adjustment of transactions involving equity options. Rule 24.16 governs the nullification and adjustment of transactions involving index options and options on ETFs and HOLDRs. Paragraphs (a)(1), [and] (2)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supersedes and replaces the original filing in its entirety. The substance of Amendment No. 1 is incorporated into this notice.

and (5) of this Rule have no applicability to trades executed in open outcry.

(a) Trades Subject to Review

A member or person associated with a member may have a trade adjusted or nullified if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1) No change.

(2) No Bid Series. Electronic transactions in series quoted no bid *on the Exchange* will be nullified provided:

(i) The bid in that series immediately preceding the execution was, and for five seconds prior to the execution remained, zero; and

(ii) at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid at the time of execution.

For purposes of subparagraphs (a)(2)(i) and (a)(2)(ii), bids and offers of the parties to the subject trade that are in any of the series in the same options class shall not be considered. In addition, each group of series in an options class with a non-standard deliverable will be treated as a separate options class.

(3)–(5) No change.

(b)–(e) No change.

* * * Interpretations and Policies:

.01–.03 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 6.25, which is its obvious error rule pertaining to equity options, in order to modify the nullification provisions for no bid series. Currently, the Rule simply provides that electronic transactions in series that are quoted no bid on the Exchange are subject to nullification provided that at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid at the time of execution. Under the revised Rule, additional criteria and clarifying language would be added. Specifically, an electronic transaction in a series quoted no bid on the Exchange would be subject to nullification provided: (i) The bid in that series immediately preceding the execution was, and for five (5) seconds prior to the execution remained, zero; and (ii) at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid at the time of execution. Thus, for example, if a trade occurs in the ABC 45 call option series when the series was quoted $0.00–$0.10, the trade may be nullified if: (i) The bid was at $0.00 for at least five (5) seconds prior to the execution; and (ii) at least one call option series in ABC with a strike below 45 (*e.g.*, the ABC 30, 35 or 40 call option series) had a bid of $0.00 at the time of execution.

The revised no bid provision would also provide that, when determining the Exchange's quotes in the relevant series for purposes of (i) and (ii) above, bids and offers of the parties to the subject trade that are in any of the series in the same options class shall not be considered. The revised rule would also provide that each group of series in an options class with a non-standard deliverable will be treated as a separate options class. Thus, for example, if due to a reorganization, certain of the series in the ABC option class have a deliverable of 150 shares per options contract (as compared to the standard 100 shares per option contract), all ABC option series that are subject to the 150 contract delivery requirements would be considered separately from the ABC option series that are subject to the 100 contract delivery requirements for purposes of applying the no bid provision. Finally, the revised Rule would clarify that the no bid provision is intended to apply to series quoted no bid on the Exchange (as opposed to series for which the national best bid is quoted no bid).[4]

The Exchange states that the proposed changes to the no bid provision are intended to address the Exchange's experience in applying the provision to particular trading scenarios that have occurred. The Exchange believes that the additional criteria and clarifications are reasonable and objective, and would serve to better identify instances where the no bid provision is intended to apply.

The Exchange is also proposing to make a revision to the introductory language in Rule 6.25 in order to cross reference paragraph (a)(5), which pertains to erroneous trades resulting from an erroneous quote in the underlying, as one of the three obvious error provisions that have no applicability to trades executed in open outcry.[5] The Exchange is proposing to include the cross-reference in the introductory language in Rule 6.25 for consistency and completeness. The Exchange asserts that this proposed change is non-substantive because the text of paragraph (a)(5) already explicitly provides that the provision is not applicable to trades executed in open outcry.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or

[4] Consistent with the existing provisions, for a nullification to be granted, any member or person associated with a member that believes it participated in a transaction that falls within the no bid series parameters must also satisfy the notification procedures set forth in paragraph (b) of Rule 6.25.

[5] The other two obvious error provisions that have no applicability to trades executed in open outcry pertain to obvious price errors and no bid series. *See* introductory language to Rule 6.25 and paragraphs (a)(1) and (2) thereunder.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

(ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change or;

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–04 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–2007–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–04 and should be submitted on or before August 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15543 Filed 8–8–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56191; File No. SR–CBOE–2007–79]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Eliminate Position and Exercise Limits for Options on the Russell 2000 Index, and To Specify That Reduced-Value Options on Broad-Based Security Indexes for Which Full-Value Options Have No Position and Exercise Limits Similarly Have No Position and Exercise Limits

August 2, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1]1and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2007, 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 CBOE. On August 2, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate position and exercise limits for options on the Russell 2000 Index (''RUT''), a broad-based securities index that is multiply-listed and heavily traded. The Exchange also proposes to amend CBOE Rules 24.4(a) and 24.5 to specify that reduced-value options on broad-based security indexes for which full-value options have no position and exercise limits similarly have no position and exercise limits. In addition, the Exchange proposes to make technical changes to Rules 24.4, 24.5, and 24A.7. The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.org/legal*), at CBOE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate position and exercise limits for options on RUT, a broad-based securities index that is multiply-listed and heavily traded.[4] The Exchange also proposes to amend Rules 24.4(a) and 24.5 to specify that reduced-value options on broad-based security indexes for which full-value options have no position and exercise limits similarly have no position and exercise limits. In addition, the Exchange proposes to make technical changes to Rules 24.4, 24.5, and 24A.7 to specify that there are no position and exercise limits for European-Style Exercise S&P 100 Index options (''XEO'') and to add ''XEO'' to the position reporting and margin rules.

Eliminate Position and Exercise Limits for RUT Options

The Exchange believes that the circumstances and considerations relied

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made minor corrections to the rule text and purpose section of the proposed rule change.

[4] The current position and exercise limits for RUT options are 50,000 contracts, with no more than 30,000 of such contracts in a series in the nearest expiration month, were established almost 15 years ago when the Commission approved the rule change that provided for the listing and trading of RUT options and have since remained unchanged. *See* Securities Exchange Act Release No. 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (SR–CBOE–1992–02). *See also* Rule 24.4, Position Limits for Broad-Based Index Options, and Rule 24.5, Exercise Limits, (providing that exercise limits for index option contracts are equivalent to prescribed position limits).

upon by the Commission in approving the elimination of position and exercise limits for other heavily traded broad-based index options (*e.g.*, options on the S&P 500 Index (''SPX''), the S&P 100 Index (''OEX''), the Dow Jones Industrial Average Index (''DJX''), and the Nasdaq-100 Index (''NDX'')) equally apply to the current proposal relating to RUT position and exercise limits.[5]

In approving the elimination of position limits for SPX, OEX, DJX, and NDX options, the Commission considered the enormous capitalization of each of these indexes and the deep and liquid markets for the securities underlying each index significantly reduced concerns of market manipulation or disruption in the underlying markets. The Commission also noted the active trading volume for options on the respective indexes. CBOE believes that RUT shares these factors in common with the SPX, OEX, DJX, and NDX. As of the date of this rule filing, the approximate market capitalizations of the SPX, OEX, DJX, and NDX were $13.95 trillion, $8.06 trillion, $4.4 trillion and $2.36 trillion, respectively, the average daily trading volumes (''ADVs'') for all underlying components of the indexes were 1.27 billion, 540 million, 240 million, and 400 million shares, respectively, and the ADV for options on the indexes were 610,000 contracts, 60,000 contracts, 34,000 contracts, and 58,000 contracts respectively.[6] CBOE believes that RUT has very comparable characteristics. The market capitalization for RUT is $1.73 trillion dollars, the ADV for the underlying securities is 535 million shares, and the ADV for the option is 79,000 contracts.

In approving the elimination of position and exercise limits for SPX, OEX, DJX, and NDX options, the Commission also noted that the financial requirements imposed by both the Exchange and the Commission serve to address any concerns that a CBOE member or its customer(s) may try to maintain an inordinately large unhedged position in the indexes. These identical financial requirements would also apply to RUT options. Under CBOE rules, the Exchange has the authority to impose additional margin and/or assess capital charges and is further able to monitor accounts to determine when such action is warranted.[7]

Finally, the Commission relied heavily on the Exchange's ability to provide surveillance and reporting safeguards to detect and deter trading abuses arising from the elimination of position and exercise limits in options on these indexes. The Exchange represents that it monitors trading in RUT options in much the same manner as trading in SPX, OEX, DJX, and NDX options and that the current CBOE surveillance procedures are more than adequate to continue monitoring RUT options. In addition, the Exchange intends to impose a reporting requirement on CBOE members (other than CBOE market-makers) or member organizations that trade RUT options. This reporting requirement, which is currently imposed on members who trade SPX, OEX, and NDX options, would require members or member organization who maintain in excess of 100,000 RUT contracts on the same side of the market, for their own accounts or for the account of customers, to report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in a manner and form required by the Exchange's Department of Market Regulation.[8] The Exchange also may specify other reporting requirements, as well as the limit at which the reporting requirement may be triggered.[9]

In the interest of consistency, the Exchange also proposes to amend Exchange Rules relating to the trading of FLEX broad-based index options to reflect that there shall be no exercise or position limits on RUT options and to adopt the 100,000 contract reporting requirements for FLEX RUT options.[10]

In order to reflect the above-referenced proposed changes, the Exchange proposes to specify ''RUT'' in the text of Rules 24.4, Position and Limits for Broad-Based Index Options, and 24.5, Exercise Limits, as an option class on a broad-based index for which there are no position and exercise limits. Similarly, the Exchange proposes deleting the listing of ''Russell 2000'' from the chart contained in Rule 24.4(a). In addition, the Exchange proposes adding ''RUT'' to the text of Interpretation and Policy .03 to Rule 24.4, Reporting Requirements, and to the text of Interpretation and Policy .04 to Rule 24.4, Margin and Clearing Firm Requirements. Finally, the Exchange proposes adding ''RUT'' to the text of Rule 24A.7, Position Limits for FLEX narrow-Based Index Options; Reporting Requirements for Flex Broad-Based Index Options and Flex Equity Options.

The Exchange believes that eliminating position and exercise limits for RUT options and FLEX options is consistent with CBOE rules relating to similar broad-based indexes and also allows CBOE members and their customers greater hedging and investment opportunities.

No Position and Exercise Limits for Reduced-Value Options on Broad-Based Indexes for Which There Are No Position and Exercise Limits for Full-Value Options

The Exchange lists and trades several reduced-value options on broad-based indexes for which the Exchange also lists and trades full-value options (*e.g.*, Mini-SPX Index (''XSP'') options, Mini-Russell 2000 Index (''RMN'') options and Mini-Nasdaq-100 Index (''MNX'') options). When the Exchange received approval to list and trade reduced-value options on broad-based indexes, the proscribed position and exercise limits were equivalent to the reduced-value contract factor (*e.g.*, 10) multiplied by the applicable position and exercise limits for the full-value option on the same broad-based index.[11] For example, the position and exercise limits for RMN options (1/10th RUT value) are 500,000 contracts, which is equal to the applicable factor (10) multiplied by the position limit for RUT options (50,000). In other words, the Exchange's existing rules applicable to position and exercise limits for full-value broad-based index options are used to calculate the position and exercise limits for reduced-value options.[12]

[5] *See* Securities Exchange Act Release Nos. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (SR–CBOE–2001–22) (order granting permanent approval to the elimination of position and exercise limits on SPX, OEX and DJX options); and 52650 (October 21, 2005), 70 FR 62147 (October 28, 2005) (SR–CBOE–2005–41) (order approving the elimination of position and exercise limits on NDX options). The Exchange also notes that there are no position and exercise limits for volatility index options based on the SPX, DJX and NDX.

[6] ADVs are calculated over the previous three months of trading.

[7] *See* Interpretation and Policy .04 to Rule 24.4 and also Rule 15c3–1 under the Act.

[8] *See* Interpretation and Policy .03 to Rule 24.4. The reporting requirements for DJX options are triggered at 1 million contracts.

[9] *Id.*

[10] *See* Rules 24A.7 and 24A.8. These rules are the subject of a pending rule filing, SR–CBOE–2006–99 (proposal to adopt rules related to FLEX Hybrid Trading System). Given the potential timing of the effectiveness of these two filings, the Exchange notes that an amendment may need to be submitted in order to reconcile the text of the two proposals.

[11] *See* Securities Exchange Act Release Nos. 32893 (September 14, 1993), 58 FR 49070 (September 21, 1993) (order approving SR–CBOE–1993–12 to list and trade XSP options); 43000 (July 10, 2000), 65 FR 42409 (July 30, 2000) (order approving SR–CBOE–2000–15 to list and trade MNX options); and 51220 (February 17, 2005), 70 FR 9398 (February 25, 2005) (order approving SR–CBOE–2004–89 to list and trade RMN options and other reduced-value options on the Russell 2000 Index).

[12] *See* Rule 24.4(d) (''Positions in reduced-value index options shall be aggregated with positions in full-value indices. For example, if an index is reduced by one-tenth, ten (10) reduced-value contracts shall equal one contract. If an index is

Continued

Conversely, when the Exchange's rules specifically state that certain full-value broad-based index options have no position and exercise limits, the same equally applies to reduced-value options on those same broad-based indexes.[13] In order to codify this provision, the Exchange proposes to amend Rules 24.4, Position Limits for Broad-Based Index Options, and 24.5, Exercise Limits, by adding the parenthetical phrase, ''including reduced-value option contracts'' prior to the identification of those full-value broad-based index options for which there are no position and exercise limits.

To reflect that there are no position limits for reduced-value options on the Russell 2000 Index and the Nasdaq-100 Index, the Exchange proposes deleting the listing of ''Nasdaq 100 Index (1/10th) (MNX),'' and ''Russell 2000 Index (1/10th)'' from the chart contained in Rule 24.4(a). Similarly, the Exchange proposes deleting the listing of ''Nasdaq 100 Stock Index (1/10th value (MNX),'' ''Russell 2000 Index (1/10th),'' and ''Russell 2000 Index (1/5th)'' from the chart contained in Interpretation and Policy .01(e) to Rule 24.4.[14]

In addition, because position and exercise limits for reduced-value options are aggregated with full-value options for purposes of determining compliance with position and exercise limits, the Exchange proposes amending Interpretation and Policy .03 to Rule 24.4 and Rule 24A.7 to reflect that such aggregation will apply when calculating reporting requirements.[15] Specifically, the Exchange proposes to add the sentence, ''[i]n calculating the applicable contract-reporting amount, reduced-value contracts will be aggregated with full-value contracts and counted by the amount by which they equal a full-value contract (*e.g.*, 10 XSP options equal 1 SPX full-value contract).''

Technical XEO Option Changes

Lastly, the Exchange proposes to make technical changes to Rules 24.4 and 24.5 to specify that there are no position and exercise limits for XEO options.[16] The Exchange proposes to reflect this by adding ''XEO'' to the text of Rules 24.4 and 24.5. In addition, the Exchange proposes to add ''XEO'' to the text of Interpretation and Policy .03 to Rule 24.4, Reporting Requirement, and the text of Interpretation and Policy .04 to Rule 24.4, Margin and Clearing Firm Requirements. Finally, the Exchange proposes to add ''XEO'' to the text of Rule 24A.7, Position Limits for FLEX narrow-Based Index Options; Reporting Requirements for Flex Broad-Based Index Options and Flex Equity Options.

2. Statutory Basis

Because this rule proposal will place position and exercise limits for RUT options that are multiply-listed and heavily-traded on an equal basis with other similar and heavily-traded broad-based index options and because it will make the Exchange's rules more explicit with respect to position and exercise limits and other reporting and margin requirements, the Exchange believes the rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[17] Specifically, the Exchange believes that the proposed rule change is consistent with the section 6(b)(5) Act[18] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Number SR–CBOE–2007–79 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–2007–79. 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

reduced by one-fifth, five (5) reduced-value contracts shall equal one contract.'').

[13] *See e.g.*, Securities Exchange Act Release No. 50759 (November 30, 2004), 69 FR 70728 (December 7, 2004) (SR–CBOE–2004–74) (immediately effective proposal to list, among other things, reduced-value options on the XEO for which there are no position and exercise limits because XEO has no position and exercise limits).

[14] The Exchange inadvertently neglected to request the Commission's approval to delete the text listing MNX options in these rules when the Exchange eliminated position and exercise limits for NDX options. *See* Securities Exchange Act Release No. 52650 (October 21, 2005), 70 FR 62147 (October 28, 2005) (order approving elimination of position and exercise limits for NDX options).

[15] *See also* Rule 24.4(d).

[16] *See* Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (order approving SR–CBOE–2001–22 and granting permanent approval to the elimination of position and exercise limits on SPX, OEX, and DJX options). The only difference between OEX and XEO options is the manner in which the respective contracts are exercised (*i.e.*, American-style versus European-style).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2007–79 and should be submitted on or before August 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15544 Filed 8–8–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56197; File No. SR–CBOE–2007–91]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status Access Fee

August 3, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 26, 2007, 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 prepared by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adopt a monthly access fee for persons granted temporary CBOE membership status pursuant to Interpretation and Policy .01 under CBOE Rule 3.19 (''Rule 3.19.01''). The text of the proposed rule change is provided below. Changes are indicated by *italics,* and deletions are [bracketed].

* * * * *

Chicago Board Options Exchange, [INC.] Incorporated

Fees Schedule July [2]*26,* 2007.

1.–4. Unchanged.

Footnotes: (1)–(16) Unchanged.

5.–21. Unchanged.

*22. TEMPORARY MEMBERSHIP STATUS ACCESS FEE $4700 per month**

*This access fee is assessed to each person granted temporary CBOE membership status under CBOE Rule 3.19.01. The access fee is due and payable for each calendar month on the first day of that calendar month. The first month for which the access fee will be assessed is September 2007. The access fee is non-refundable except as specified below. The access fee and any other applicable monthly fees will be assessed for a calendar month unless the person provides written notice to the Membership Department at least five business days prior to the start of that month that the person is relinquishing temporary membership status effective on a date prior to the start of that month. The access fee will be assessed through the integrated billing system. The access fee will terminate when the SEC takes final action on SR–CBOE–2006–106. All access fees shall be payable to and held in an interest-bearing escrow account maintained by the Exchange until the SEC takes such final action. The Exchange will retain such fees if the SEC approves SR–CBOE–2006–106, and such fees will be returned to the payor, with interest, if the SEC disapproves SR–CBOE–2006–106.

Remainder of Fee Schedule: Unchanged.

* * * * *

Chicago Board Options Exchange, Incorporated

Rules

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Rule 3.19. Termination from Membership

Rule 3.19. No change.

* * * *Interpretations and Policies:*

.01 If the proposed merger between Chicago Mercantile Exchange Holdings, Inc. and CBOT Holdings, Inc. (''CME/CBOT Transaction''), the parent company of the Board of Trade of the City of Chicago, Inc. (''CBOT''), is consummated and if such consummation occurs before the Securities and Exchange Commission (''Commission'') takes final action on SR–CBOE–2006–106, a person who is a member of CBOE (an ''exerciser member'') pursuant to paragraph (b) of Article Fifth of the CBOE Certificate of Incorporation (''Article Fifth(b)'') as of July 1, 2007 will be granted temporary membership status at the Exchange, until the Commission takes final action on SR–CBOE–2006–106, if and only if such person (i) Remains an exerciser member in good standing as of the close of business on the trading day immediately before the consummation of the CME/CBOT Transaction, (ii) thereafter remains in good standing and continues to pay all applicable fees, dues, assessments and other like charges that are assessed against CBOE members, and (iii) pays to the Exchange, for each month starting in the *second* month after the CME/CBOT Transaction is consummated, a monthly access fee [based on the then current monthly lease fees being paid to lessors of the interest that CBOT denominates as a full CBOT membership, with such fee to be] set by the Exchange [on a monthly basis based on published lease fee information]. Such access fee shall be due and payable in *accordance with the provisions of the Exchange Fee Schedule* [advance of each calendar month that the person decides to retain the temporary membership status granted pursuant to this paragraph]. All such access fees shall be payable to and held in an interest-bearing escrow account maintained by the Exchange until the Commission takes final action on SR–CBOE–2006–106. The Exchange will retain such fees if the Commission approves SR–CBOE–2006–106, and such fees will be returned to the payor*, with interest,* if the Commission disapproves SR–CBOE–2006–106. The temporary membership status granted pursuant to this paragraph shall be subject to the regulatory jurisdiction of CBOE under the Act, the Constitution and the Rules, including CBOE's disciplinary jurisdiction under Chapter XVII.

* * * * *

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. CBOE 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

Rule 3.19.01 granted temporary CBOE membership status to certain persons in the event that the proposed merger between Chicago Mercantile Exchange Holdings, Inc. and CBOT Holdings, Inc. (''CME/CBOT Transaction''), the parent company of the Board of Trade of the City of Chicago, Inc. (''CBOT''), were to be consummated before the Commission took final action on CBOE's pending rule filing SR–CBOE–2006–106.[5]

Subsequent to the adoption of Rule 3.19.01, the CME/CBOT Transaction was consummated on July 12, 2007. As a result, there are currently persons who have temporary CBOE membership status under Rule 3.19.01 until such time that the Commission takes final action on SR–CBOE–2006–106.

Specifically, under Rule 3.19.01, each person who was a member of the Exchange pursuant to paragraph (b) of Article Fifth of the CBOE Certificate of Incorporation (an ''exerciser member'') on July 1, 2007 and who satisfies the following conditions has been granted temporary CBOE membership status until the Commission takes final action on SR–CBOE–2006–106: (1) The person was an exerciser member in good standing as of the close of business on the trading day immediately before the consummation of the CME/CBOT Transaction; (2) the person remains in good standing and continues to pay all applicable fees, dues, assessments, and other like charges that are assessed to CBOE members; and (3) the person pays a monthly access fee to the Exchange.

In CBOE rule filing SR–CBOE–2007–77[6] which adopted Rule 3.19.01, the Exchange stated that it was going to submit a subsequent rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] to specify the access fee to be charged under Rule 3.19.01 or the methodology for determining it.

The purpose of this rule filing is to specify the access fee to be charged under Rule 3.19.01.

The Exchange proposes to set the access fee for those granted temporary CBOE membership status under Rule 3.19.01 at $4700 per month. The Exchange indicated in SR–CBOE–2007–77 that the access fee would be based on the then current monthly lease fees being paid to lessors of what CBOT denominates as a full CBOT membership as reflected in published lease fee information. Consistent with the foregoing, the Exchange set the access fee to closely approximate the rate published by CBOT on its Web site as the average lease rate as of June 28, 2007 for the month of July 2007 to lease all of the interests that composed a full CBOT membership as of that date (which is $4711.40 per month).

The Exchange has determined to have this rate remain in effect until such time that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] to modify the access fee or the Commission takes final action on SR–CBOE–2006–106.[9] Therefore, the Exchange is proposing to delete the current provisions of Rule 3.19.01 which indicate that the Exchange will set the access fee on a monthly basis based on the then current monthly lease fees being paid to lessors of what CBOT denominates as a full CBOT membership.

The Exchange believes that the proposed access fee of $4700 per month is appropriate because it closely approximates an average of the lease rates that exerciser members were paying during the month in which the CME/CBOT Transaction was consummated and temporary CBOE membership status under Rule 3.19.01 was granted. The Exchange removed the requirement that the access fee be re-set each month based upon then current CBOT lease rates because those rates could be impacted by the implementation of Rule 3.19.01 and may not reflect what those rates would have been in the absence of Rule 3.19.01. At the same time, the Exchange will retain the flexibility to adjust the access fee in the future through a rule filing submitted under Section 19(b)(3)(A)(ii) of the Act[10] if the Exchange determines that it would be appropriate to do so taking into consideration factors and circumstances prevailing at that time.

The Exchange is also proposing to amend Rule 3.19.01 to delete the provision that the access fee will be due and payable in advance of each calendar month, and instead, to more fully address in the CBOE Fee Schedule the manner in which the access fee will be assessed. This approach is consistent with CBOE's general approach regarding Exchange fees, which is to include the details regarding fee assessment in the Fee Schedule instead of in rules.

Accordingly, the Exchange is proposing to amend the CBOE Fee Schedule to specify the amount of the access fee and to add an explanatory provision setting forth the details regarding its assessment.

First, the explanatory provision states that the access fee is due and payable for each calendar month on the first day of that calendar month. Rule 3.19.01 previously provided that the access fee would be due and payable in advance of each calendar month. The time at which the access fee will be assessed has been changed to the beginning of the month because that is more consistent with CBOE's general billing practices under which monthly fees are generally assessed at the beginning of a month rather than in advance of a month.

Second, the explanatory provision provides that the first month for which the access fee will be assessed is September 2007, and the Exchange proposes to make a corresponding change to Rule 3.19.01. Rule 3.19.01 previously provided that the access fee would be assessed for each month starting in the month after consummation of the CME/CBOT Transaction (which would have been August 2007). In order to effectuate this change, Rule 3.19.01 is proposed to be revised to provide that the access fee will be assessed for each month starting in the second month after consummation of the CME/CBOT Transaction rather than in the first month following its completion. The Exchange is making this change in the interest of fairness so that there is an appropriate transition time for persons granted temporary CBOE membership status under Rule 3.19.01.

Third, the explanatory provision indicates that the access fee is non-refundable except as specified below. This is consistent with how other

[5] *See* Securities Exchange Act Release No. 55190 (January 29, 2007), 72 FR 5472 (February 6, 2007) (SR–CBOE–2006–106).

[6] *See* Securities Exchange Act Release No. 56016 (July 5, 2007), 72 FR 38106 (July 12, 2007) (SR–CBOE–2007–77).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] The Exchange will remove the access fee and the text describing it from the CBOE Fee Schedule when the Commission takes final action on SR–CBOE–2006–106.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

Exchange fees are generally assessed. For example, CBOE Rule 2.20 provides that CBOE membership dues are assessed on a non-refundable basis.

Fourth, the explanatory provision states that the access fee and any other applicable monthly fees will be assessed for a calendar month unless a person with temporary CBOE membership status provides written notice to the CBOE Membership Department at least five business days prior to the start of that month that the person is relinquishing that status effective on a date prior to the start of that month. The purpose of this requirement is to allow time for the Exchange to process such a change within its membership and billing systems prior to the beginning of the next month.

Fifth, the explanatory provision indicates that the access fee will be assessed through the integrated billing system. This is consistent with how Exchange fees are generally assessed pursuant to CBOE Rule 3.23.

Finally, consistent with the provisions of Rule 3.19.01, the explanatory provision indicates that the access fee will terminate when the SEC takes final action on SR–CBOE–2006–106 (at which time the Exchange will also remove the access fee and the text describing it from the CBOE Fee Schedule); that all access fees shall be payable to and held in an interest-bearing escrow account maintained by the Exchange until the Commission takes such final action; that the Exchange will retain such fees if the Exchange approves SR–CBOE–2006–106; and that such fees will be returned to the payor, with interest, if the Commission disapproves SR–CBOE–2006–106. In addition to stating in the explanatory provision that such fees will be returned to the payor with interest if the Commission disapproves SR–CBOE–2006–106, Rule 3.19.01 is also proposed to be revised to make more explicit that a return of these fees will be with interest. The Exchange believes that the return of these fees with interest in the event the Commission disapproves SR–CBOE–2006–106 was already provided for under Rule 3.19.01 and is making the foregoing change to Rule 3.19.01 solely to eliminate any potential for ambiguity in this regard.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(4) of the Act,[12] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (f)(2) of Rule 19b–4[14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2007–91 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–2007–91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2007–91 and should be submitted on or before August 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15547 Filed 8–8–07; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56199; File No. SR–FINRA–2007–001]

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Reporting of Foreign Equity Securities to the Order Audit Trail System

August 3, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2007, the Financial Industry Regulatory

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Authority, Inc. (''FINRA'') (f/k/a the National Association of Securities Dealers, Inc. (''NASD'')) 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 FINRA. 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

FINRA is proposing to amend Rule 6952 to exclude certain orders and transactions in foreign equity securities from the Order Audit Trail System (''OATS'') recording and reporting requirements. The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and *http://www.finra.org.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

NASD Rules 6950 through 6958 (''OATS Rules'') impose obligations on member firms to record in electronic form and report to OATS on a daily basis certain information regarding orders in Nasdaq-listed equity securities originated, received, transmitted, modified, canceled, or executed by members.[3] FINRA integrates the OATS information with quote and transaction information to create a time-sequenced record of orders, quotes, and transactions.

Currently, a member has recording and reporting obligations under the OATS Rules only with respect to orders in Nasdaq-listed equity securities. On October 10, 2006, the Commission approved SR–NASD–2005–101, which amended the OATS Rules and extended the OATS obligations to include orders in OTC equity securities.[4] As amended by SR–NASD–2005–101, Rule 6951 defines the term ''OTC equity security'' to mean ''any equity security that: (1) Is not listed on a national securities exchange; or (2) is listed on one or more regional stock exchanges and does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.'' This broad definition of ''OTC equity security'' encompasses essentially all foreign equity securities, except those that are listed on a U.S. national securities exchange.

After the Commission's approval of SR–NASD–2005–101 and the publication of NASD *Notice to Members* 06–70 in December 2006, numerous member firms and industry organizations raised issues with FINRA staff regarding the breadth of the application of the OATS Rules to foreign equity securities. The issues that were raised included the lack of U.S. symbols for many foreign securities, the programming difficulties associated with tracking trades in foreign symbols and currencies, and the fact that, for many firms, orders for foreign securities are handled by foreign affiliates that are not currently set up to record and report OATS information. In addition, many trades in foreign equity securities are routed to foreign broker-dealers and executed on a foreign stock exchange. Consequently, although FINRA would receive OATS information regarding the order origination and routing for such orders, FINRA would not receive execution reports, and FINRA would not have trade reporting data to consolidate with the OATS data.[5]

In response to these concerns, FINRA reconsidered the issues associated with extending the OATS recording and reporting obligations to all foreign equity securities in light of the regulatory benefit provided by the information. FINRA has filed the proposed rule change to strike an appropriate balance between ensuring that FINRA can effectively monitor members' compliance with their order handling obligations (*e.g.*, best execution and limit order protection) and avoiding overly burdensome reporting requirements. FINRA has concluded that the appropriate balance would be achieved by requiring firms to record and report order information regarding foreign equity securities only in those instances where any resulting execution is subject to the transaction reporting requirements in Rule 6620. This will provide FINRA with order information for the same transactions for which FINRA receives trade reporting information, thus allowing FINRA to review a complete audit trail of those transactions. At the same time, firms will not be required to record and submit information to FINRA for orders in a foreign equity security that do not result in a trade report to FINRA.

At least two situations can arise in connection with orders for foreign equity securities that trade in the U.S. and abroad that may raise questions as to how these orders should be reported to OATS. In some circumstances, an order for a foreign equity security that is traded in the U.S. and abroad may be broken up and executed in multiple markets. If a firm breaks up an order and, as a result, part of the order is executed in the U.S. and part of the order is executed in a foreign market, the firm should report the entire order to OATS. The part of the order that was executed abroad should be reported as a route to a foreign broker-dealer or a foreign market (*i.e.*, the firm is a member of the foreign market and is able to route the order directly to the foreign market), and the part of the order that was executed in the U.S. would be reported the same way as any other reportable order event.

Similarly, with respect to foreign equity securities that trade in the U.S. and abroad, a firm may receive an order for such a security in the U.S. symbol and, at the time the order is received, the firm is uncertain whether the order will be executed in the U.S. or in the foreign market. In some cases, the trade may not be executed the day it is received. If the order is not executed before the firm is required to submit its OATS information for that day, the firm would not know whether it was

[3] Beginning on February 4, 2008, members also will be required to record and report order information regarding all OTC equity securities, as defined in NASD Rule 6951. *See* Securities Exchange Act Release No. 54585 (October 10, 2006); 71 FR 61112 (October 17, 2006) (SR–NASD–2005–101); NASD *Notice to Members* 06–70 (December 2006); *see also* Securities Exchange Act Release No. 55440 (March 9, 2007), 72 FR 12852 (March 19, 2007) (SR–NASD–2007–019).

[4] *See* Securities Exchange Act Release No. 54585 (October 10, 2006); 71 FR 61112 (October 17, 2006) (SR–NASD–2005–101); NASD *Notice to Members* 06–70 (December 2006). The effective date of these amendments to the OATS Rules is February 4, 2008. *See* Securities Exchange Act Release No. 55440 (March 9, 2007), 72 FR 12852 (March 19, 2007) (SR–NASD–2007–019).

[5] Trade reporting requirements under NASD Rule 6620 do not extend to a member's transactions in foreign equity securities executed on and reported to a foreign securities exchange or transactions executed over-the-counter in a foreign country that are reported to the regulator of securities markets for that country. *See* NASD Rule 6620(g); Securities Exchange Act Release No. 55745 (May 11, 2007), 72 FR 27891 (May 17, 2007) (SR–NASD–2007–030).

required to report the receipt of the order to OATS because the firm would not yet have a trade reporting obligation. In such a case, because the security had a U.S. symbol and the customer placed the order in the U.S. symbol, the firm should report the new order to OATS as though it were going to be executed in the U.S. (and, thus be subject to the trade reporting requirements).[6] If the order is later executed in a foreign market, the firm would submit a route report indicating that the order was routed to a foreign broker-dealer or foreign market, as applicable. Of course, if a firm receives an order and executes that order the same day in a foreign market, no OATS report would be necessary if the firm was not required to report the transaction under Rule 6620.

Reportable Order Events for Foreign Equity Securities With No U.S. Symbol

When a firm has a trade reporting obligation in a foreign equity security that does not have a U.S. symbol assigned to it at the time of the trade, the firm is required to: (1) Promptly request a symbol so that it can comply with its trade reporting obligations; and (2) comply with the OATS recording requirements under Rule 6954. Once a symbol is assigned, the member must report the trade to FINRA and report all applicable order information to OATS in accordance with Rule 6955. When reporting the information to OATS, the firm must properly code the report to indicate that the reported event occurred prior to the date of the OATS report. In these situations, if normal electronic trade reporting submission is not possible (*e.g.*, the trade reporting facility will not accept a report because the foreign equity security had not been assigned a valid U.S. symbol on the actual trade date), the firm is required to report the transaction as soon as practicable on Form T.[7]

In these instances where a Form T is used for trade reporting purposes, FINRA intends to provide firms the option of reporting the required OATS information through the firm's normal OATS reporting channels or as part of the Form T submission. In this way, firms will be able to fulfill both the firm's trade reporting and OATS obligations through its Form T submission.[8] The ability to use a Form T to report OATS information will be available only for trades in foreign equity securities that do not have a U.S. symbol assigned at the time the OATS information would ordinarily be reported.

The operative date of the proposed rule change will be February 4, 2008, to coincide with the implementation date for the amendments to the OATS Rules requiring members to record and report order information for OTC Equity Securities.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change achieves a proper balance between reporting requirements that improve FINRA's ability to monitor members' order handling obligations and that have reasonable parameters regarding those orders that are subject to the requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

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 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 Number SR–FINRA–2007–001 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–FINRA–2007–001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2007–001 and should be submitted on or before August 30, 2007.

[6] If the security had no U.S. symbol, the firm could not report the information to OATS until a U.S. symbol is assigned. If the security has both a U.S. and foreign symbol and the order is received from the customer in the foreign symbol, the member would not be required to report the order to OATS unless the order is executed and trade reported to FINRA pursuant to Rule 6620 on the same day the order was received from the customer.

[7] *See e.g.*, NASD Rule 6620(a)(4) (regarding the use of Form T for trades reported to the OTC Reporting Facility).

[8] The revised *OATS Reporting Technical Specifications* that will be published following Commission approval of the proposed rule change will detail the precise procedures a firm may use to file the OATS report(s) in this situation.

[9] 15 U.S.C. 78o–3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15551 Filed 8–8–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56189; File No. SR–FICC–2007–07]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule To Make Technical Changes To Update and Align Provisions With Current Practice

August 2, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 21, 2007, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. FICC filed the proposal pursuant to section 19(b)(3)(A)(i) and (ii) of the Act[2] and Rule 19b–4(f)(1) and (2)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the rule change is to make technical changes to certain provisions of the Government Securities Division (''GSD'') rules and the Mortgage-Backed Securities Division (''MBSD'') rules to update and to align them with current practice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Off-the-Market Transactions

The definition of Off-the-Market Transactions in the GSD rules is outdated and does not allow for adjustments in market conditions. FICC proposes to amend this definition by (i) Deleting the reference to ''option exercises'' so that they are no longer automatically considered to be Off-the-Market Transactions, (ii) establishing a System Price[5] as the basis for determining whether a transaction will be an Off-the-Market Transactions, and (iii) allowing FICC to establish the percentage, based on factors such as market conditions, by which the price of a transaction must exceed or fall short of the System Price in order to constitute an Off-the-Market Transaction.

(2) The Bond Market Association

The Bond Market Association (''BMA'') has merged with the Securities Industry Association to form the Securities Industry and Financial Markets Association (''SIFMA''). FICC is proposing to revise the MBSD Clearing Rules and MBSD EPN Rules to replace references to the BMA and BMA Guidelines with references to SIFMA and SIFMA Guidelines.

(3) Omnibus Account Fees and Access Fees

MBSD's EPN Schedule of Charges currently provides for Omnibus Account fees and for Access fees. These fees no longer exist. FICC is proposing to amend the MBSD EPN Schedule of Charges to delete the reference to Omnibus Account fees and Access fees.

The proposed rule change is consistent with section 17A of the Act,[6] as amended, because it constitutes technical changes that do not adversely affect the safeguarding of securities or funds in the custody or control of FICC or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A)(i) and (ii) of the Act[7] and Rule 19b–4(f)(1) and (2)[8] thereunder because the proposed rule change constitutes a stated policy and interpretation with respect to the meaning of existing FICC rules and changes a fee imposed by FICC. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FICC–2007–07 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.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(i) and (ii).

[3] 17 CFR 240.19b–4(f)(1) and (2).

[4] The Commission has modified the text of the summaries prepared by FICC.

[5] Rule 1 defines System Price as ''the uniform price (expressed in dollars per unit of par value), not including accrued interest, established by [FICC] on each Business Day, based on current market information, for each Eligible Netting Security with a separate CUSIP Number. Notwithstanding the above, the System Price for the Generic CUSIP Number that underlies a GCF Net Settlement Position shall be equal to principal value.''

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(i) and (ii).

[8] 17 CFR 240.19b–4(f)(1) and (2).

All submissions should refer to File Number SR–FICC–2007–07. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://ficc.com/commondocs/rule.filings/rule.filing.07-07.pdf*. 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–FICC–2007–07 and should be submitted on or before August 30, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15542 Filed 8–8–07; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56201; File No. SR–ISE–2007–45]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to a Quote Mitigation Plan for Competitive Market Makers

August 3, 2007.

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 June 8, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the ISE. On August 1, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes, on a one-year pilot basis, a quote mitigation plan for the Exchange's Competitive Market Makers (''CMMs''). The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and *http://www.iseoptions.com*.

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 ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing a quote mitigation plan for its CMMs on a pilot basis for one (1) year in no more than twenty (20) securities (''Pilot Program Securities'') designated by the Exchange. With the explosion of quotation traffic—exacerbated by the penny pilot—the Exchange continues to seek ways to mitigate the generation of quotations. At least two exchanges have adopted quote mitigation plans that relieve some market makers of the obligation to quote in every series of every class of options in which they are a market maker.[4]

Under ISE's current rules, a CMM must enter continuous quotations in all the series of at least 60 percent of the options classes for the group or ''bin'' to which it is appointed, or 60 options classes in the Group, whichever is less. Further, once a CMM enters a quote in an options class to which it is appointed, it must continuously quote in all series of that options class until the close of trading that day. ISE proposes to amend its rule so that a CMM will be required to enter continuous quotations in just 60 percent of the series, rather than in all series, of the options classes overlying the Pilot Program Securities, to which the CMM is appointed. Once a CMM enters a quote in a series, it must continue to quote in that series until the close of trading that day. The Exchange notes that ISE Rule 804(e)(2)(iii), which states that a CMM may be called upon to submit quotes in one or more series of options to which it is appointed in the interest of maintaining fair and orderly markets, shall continue to apply under the proposed pilot program.

Under the proposal, the Exchange will issue a circular to CMMs identifying the initial Pilot Program Securities. The Exchange notes that the Pilot Program Securities selected by the Exchange are subject to change based on the quoting activity in these securities. The proposed pilot will consist of up to 20 of the most active classes, in terms of the number of quotes generated, that are in the Exchange's Penny Pilot Program.[5] Each time a change takes place in the Pilot Program Securities, the Exchange will issue circulars to notify CMMs of this change and shall provide them with adequate notice in order for them to make any required systems changes.

The Exchange believes the proposed pilot is a good first step towards adopting an internal quote mitigation plan that is beneficial both to the Exchange and its members without adversely affecting the quality of the Exchange's markets.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] *See* Phlx Rule 1014(b)(ii)(D)(1); *see also* Amex Rule 994(c)(iv).

[5] *See* Securities Exchange Act Release Nos. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62); 56151 (July 26, 2007), 72 FR_____ (August _____, 2007) (SR–ISE–2007–68).

[6] 15 U.S.C. 78f(b).

of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission 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–ISE–2007–45 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–ISE–2007–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site at *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2007–45 and should be submitted on or before August 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15549 Filed 8–8–07; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56195; File No. SR–NYSE–2007–71]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Exclude from Its Earnings Standard Gains or Losses From Extinguishment of Debt Prior to Maturity on a Six Month Pilot Basis

August 2, 2007.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 27, 2007, the New York Stock Exchange LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the earnings standard of section 102.01C(I) of the Exchange's Listed Company Manual (the ''Manual'') on a six-month pilot program basis. The amendment will enable the Exchange to adjust the earnings of companies for purposes of its pre-tax earnings standard by excluding gains or losses recognized in connection with the extinguishment of debt prior to its maturity. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the earnings standard of section 102.01C(I) of the Manual on a six-month pilot

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

program basis (the ''Pilot Program''). The amendment will enable the Exchange to adjust the earnings of companies for purposes of its pre-tax earnings standard by excluding gains or losses recognized in connection with the extinguishment of debt prior to its maturity. The adjustment will relate only to gains or losses incurred in the three-year period under examination for purposes of the earnings standard.

Prior to the promulgation of Statement of Financial Accounting Standards No. 145 (''SFAS No. 145'') in 2002, Financial Accounting Standards Board Statement No. 4 (''FASB No. 4'') required that gains and losses from the extinguishment of debt prior to its maturity that were included in the determination of net income be aggregated and, if material, classified as an extraordinary item, net of related income tax effect. SFAS No. 145 rescinded FASB No. 4 and, as a result, gains or losses in connection with the extinguishment of debt prior to its maturity are now generally included in the calculation of operating earnings under generally accepted accounting principles (''GAAP''). As a result, some companies that would not otherwise be qualified to list may qualify as a result of the inclusion in pre-tax income of gains from the extinguishment of debt prior to its maturity. In addition, some prospective listed companies whose operating earnings would have met the requirements of the Exchange's pre-tax earnings test prior to 2002 are now not qualified to list as they are required to include losses from the extinguishment of debt prior to its maturity in pre-tax income. In the Exchange's experience, these gains and losses are primarily non-cash in nature, and, generally, represent the accelerated accrual of original issue discount, while the losses generally represent the remaining unamortized portion of costs incurred at the time of initial borrowing.

The Exchange believes that it is appropriate to return to its pre-2002 approach of excluding gains and losses from debt extinguishment from pre-tax earnings as calculated for purposes of its earnings standard. The purpose of the earnings standard is to determine the suitability for listing of companies on a forward-looking basis in light of a sustained demonstration of strong earnings. As such, the Exchange does not believe that it is relevant to include in pre-tax earnings gains and losses from the extinguishment of debt prior to its maturity that are principally non-recurring in nature. Additionally, the Exchange notes that the analyst community also routinely exclude these gains and losses from their analyses in making recommendations as to the desirability of investing in companies' publicly-traded equity securities. The Exchange believes that adjusting company earnings for gains and losses from the extinguishment of debt prior to its maturity is consistent with the adjustments that are currently permitted under section 102.01C for a number of other nonrecurring charges to earnings that are included in net income as recorded under GAAP, such as the exclusion of impairment charges on long-lived assets, the exclusion of gains and losses on sales of a subsidiary's or investee's stock and the exclusion of in-process purchased research and development charges. The Exchange also believes that this adjustment is reasonable given the purpose of the earnings standard, which is to determine the suitability for listing of companies on a forward-looking basis.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission hereby grants the request.[11] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is consistent with other adjustments the Exchange makes when evaluating applicants on a forward-looking, post-IPO basis under the existing earnings standard in section 102.01C(I) of the Listed Company Manual, and the proposal will take effect as a Pilot Program, allowing the Commission to evaluate the suitability of the proposal during the pilot period.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–71 on the subject line.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2007–71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–71 and should be submitted on or before August 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15546 Filed 8–8–07; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56200; File No. SR–NYSEArca–2007–77]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Exchange Fees and Charges

August 3, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 2007, NYSE Arca, Inc. (''NYSE Arca'' 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 NYSE Arca. On August 1, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange has designated this proposal as one establishing or changing a due, fee or other charge imposed by the Exchange under section 19(b)(3)(A)[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to amend its Schedule of Fees and Charges for Exchange Services (''Schedule'') in order to revise the operative period for transactions fees that are applicable to issues that trade as part of the Penny Pilot.[5] The text of the proposed rule change is available at *http://www.nysearca.com*, at the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to revise the existing NYSE Arca Schedule in conjunction with the extension of the Penny Pilot. On June 18, 2007, the Exchange filed SR–NYSEArca–2007–56, a proposal to extend the pilot program, under which the Exchange trades options on a limited number of underlying issues that are quoted in one-cent and five-cent increments (''Penny Pilot''). On July 23, 2007, the Exchange filed Amendment No. 1, which replaced the original proposal in its entirety. On July 25, 2007, the Exchange filed Amendment No. 2, which made non-substantive changes to the proposal. The amended proposal, which extends the operative date of the Penny Pilot until September 27, 2007, was effective upon filing.

NYSE Arca charges certain fees on transactions occurring in issues that trade as part of the Penny Pilot. The Exchange now proposes to extend the operative date for these fees until September 27, 2007, to coincide with the dates of the Penny Pilot.

2. Statutory Basis

NYSE Arca believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 55156 (January 23, 2007) 72 FR 4759 (February 1, 2007) (SR–NYSEArca–2006–73).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [8] and subparagraph (f)(2) of Rule 19b–4 thereunder [9] because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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–NYSEArca–2007–77 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–NYSEArca–2007–77. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2007–77 and should be submitted on or before August 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15552 Filed 8–8–07; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56198; File No. SR–Phlx–2007–45]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change To Establish New Procedures To Follow When Trading Halts on the Primary Market for the Underlying Security

August 3, 2007.

On June 14, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Exchange Rules 1047, Trading Rotations, Halts and Suspensions concerning equity options, 1047A, Trading Rotations, Halts or Reopenings concerning index options, and OFPA G–2, Trading Rotations, Halts or Reopenings, to establish new procedures to follow when trading halts on the primary market for the underlying security. The proposed rule change was published for notice and comment in the **Federal Register** on July 3, 2007.[3] The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of section 6(b)(5) of the Act,[5] in that the proposed rule change 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 proposed rule change would permit specialists to halt trading in equity options in the overlying option when trading is halted on the primary market in the underlying security, and in index options when trading on the primary market in underlying securities representing more than 10% of the current index value is halted, before receiving approval from an Options Exchange Official, provided such approval is granted within five minutes following the halt of trading in the option. Because the proposed rule change is intended to reduce the period of time following a trading halt on the primary market in the underlying security before trading the overlying option is halted, thus enabling specialists to halt trading in the overlying option more expeditiously, the Commission believes the proposed rule change is reasonably designed to allow Exchange options specialists and Registered Options Traders to better manage their market risk.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [6], that the proposed rule change (SR–Phlx–2007–45) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15548 Filed 8–8–07; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55958 (June 26, 2007), 72 FR 36538.

[4] 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).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 5878]

60-Day Notice of Proposed Information Collection: Form DS–1998E, Foreign Service Officer Test Registration Form, OMB Control Number 1405–0008

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- Title of Information Collection: Registration for the Foreign Service Officer Test.
- OMB Control Number: 1405–0008.
- Type of Request: Extension of a Currently Approved Collection.
- Originating Office: Human Resources, HR/REE/BEX.
- Form Number: DS–1998E.
- Respondents: Registrants for the Foreign Service Officer Test.
- Estimated Number of Respondents: 20,000.
- Estimated Number of Responses: 20,000.
- Average Hours Per Response: 3 hours.
- Total Estimated Burden: 60,000 hours.
- Frequency: Annually.
- Obligation to Respond: Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from August 9, 2007.

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

- E-mail: *blakesj@state.gov.*
- Mail (paper, disk, or CD–ROM submissions): Stephen Blake, HR/REE/BEX, SA–1, 2401 E Street, NW., H–518, Washington, DC 20522.
- Fax: (202) 261–8843, Attn: Stephen Blake.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Stephen Blake, HR/REE/BEX, SA–1, 2401 E Street, NW., H–518, Washington, DC 20522, who may be reached on (202) 261–8898 or at *blakesj@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

Individuals registering for the Foreign Service Officer Test will complete a Registration Form that consists of an application form and six personal narrative questions about experience and qualifications. This includes information about their name, age, Social Security Number, contact information, ethnicity, education and work history, military experience, and their knowledge, skills and abilities they would bring to the Foreign Service. The information will be used to prepare and issue admission to the Foreign Service Officer Test, to assess registrants' qualifications for selection as a Foreign Service Officer, to provide data useful for improving future tests, and to conduct research studies based on the test results.

Methodology

Responses can be submitted electronically.

Dated: July 16, 2007.

Ruben Torres,

Executive Director, HR/EX, Department of State.

[FR Doc. E7–15574 Filed 8–8–07; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

Notice of Availability of the Draft Environmental Impact Statement for the Proposed TransCanada Keystone Pipeline Project

August 3, 2007.

AGENCY: Department of State.

ACTION: Notice of Availability of the Draft Environmental Impact Statement (EIS) for the Proposed TransCanada Keystone Pipeline Project.

SUMMARY: The staff of the Department of State has prepared a draft Environmental Impact Statement (EIS) for the Proposed TransCanada Keystone Pipeline Project. On April 19, 2006, TransCanada Keystone Pipeline, LLC (''Keystone'') filed an application for a Presidential permit for the construction, operation, and maintenance of pipeline facilities at the border of the U.S. and Canada for the transport of crude oil across the U.S.-Canada international boundary. According to the application, Keystone has requested authorization to construct and operate the border crossing facilities at the U.S.-Canadian border at Cavalier County, North Dakota, in connection with its proposed international pipeline project (the ''Keystone Pipeline Project''), which is designed to transport incremental Canadian crude oil production from the Western Canadian Sedimentary Basin (''WCSB'') to existing terminals in Missouri, Illinois, and potentially Oklahoma.

The Secretary of State is designated and empowered to receive all applications for Presidential permits, as referred to in Executive Order 13337, as amended, for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country. any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Department of State decision on the Keystone proposal, it is important that we receive your comments by no later than September 24, 2007.

SUPPLEMENTARY INFORMATION: The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA) and to evaluate the potential environmental impacts of the proposed pipeline project. The document also evaluates alternatives to the proposal, including system alternatives and pipeline route alternatives.

The Federal cooperating agencies for the development of this EIS are: U.S. Department of Energy; U.S. Army Corp. of Engineers; U.S. Fish and Wildlife Service; U.S. Department of Agriculture—Farm Service Agency, Natural Resources Conservation Service, and Rural Utility Service; U.S. Environmental Protection Agency; and the Advisory Council of Historic Preservation. Cooperating agencies either have jurisdiction by law or special expertise with respect to the environmental impacts assessed in connection with the proposal and are involved in the Department's analysis of those environmental impacts.

The draft EIS addresses the potential environmental effects of the construction and operation of the United States portion of the Keystone Pipeline Project. The Keystone Project initially would have nominal transport capacity of 435,000 barrels per day (bpd) of crude oil from the oil supply hub near Hardisty, Alberta to an existing terminal and refinery at Wood River, Illinois, and on to an existing terminal at Patoka, Illinois. According to Keystone, additional pumping capacity could be added to increase the average throughput to 591,000 bpd, if warranted by future shipper demand and market conditions.

Two pipeline extensions are proposed by Keystone and would be built, if deemed feasible by Keystone, based on shipper demand. The extensions would provide for transporting crude oil from terminals in Ft. Saskatchewan, Alberta to existing facilities in Cushing, Oklahoma. With these extensions, the pipeline would interconnect with existing crude oil pipelines that supply U.S. Gulf Coast refinery markets. TransCanada announced on July 3, 2007, that the proposed Keystone Oil Pipeline project had secured 155,000 bpd of additional firm shipper contracts from Hardisty, Alberta, to Cushing, Oklahoma, with a contract duration averaging 16 years. These commitments were obtained through the successful completion of a binding Open Season held to support an expansion of the proposed pipeline to 590,000 bpd and an extension of the proposed pipeline to Cushing, Oklahoma. According to TransCanada, it has now secured long term contracts for the Keystone project for a total of 495,000 bpd with average contract duration of 18 years.

In total, the Keystone Project would consist of the Mainline Project (approximately 1,845 miles of pipeline, including about 767 miles in Canada and 1,078 miles in the United States) and the Cushing Extension (293.5 miles of pipeline in the United States). Including the Cushing Extension, the total length of pipeline in the United States would be 1,371.5 miles.

In Canada, the Keystone Project would involve the purchase of an existing 537-mile, 34-inch-diameter pipeline currently owned by TransCanada Limited, a related TransCanada entity, and conversion of that pipeline to crude oil service; construction of a new 230-mile pipeline extension from Hardisty to the existing 537-mile pipeline, and construction of a pipeline extension from the existing pipeline to the U.S./Canada border. On February 12, 2007, the Canadian National Energy Board (NEB) approved the transfer at net book value of a portion of TransCanada's Canadian Mainline natural gas transmission facilities to TransCanada Keystone Pipeline GP Ltd. Appropriate regulatory authorities in Canada are conducting an independent environmental review process for the proposed Canadian facilities. The Canadian NEB began public hearings addressing the Canadian portion of the Keystone Pipeline in June 2007.

In the United States, the Mainline Project would comprise a 1,023-mile segment of 30-inch-diameter pipe from the Canadian border to Wood River, Illinois and an approximately 56-mile segment of 24-inch-diameter pipe between Wood River and Patoka, Illinois. The Cushing Extension would consist of 293.5 miles of 36-inch-diameter pipe extending from Steele City, Nebraska, to Cushing, Oklahoma. Keystone has advised the Department of State that construction of the Cushing Extension could occur, if warranted by future shipper demand and market conditions. The draft EIS prepared by the Department of State describes and evaluates the U.S. portion of the proposed Keystone Project, including both the Mainline Project and Cushing Extension, and the additional facilities required to increase throughput capacity to 591,000 bpd.

Keystone intends to construct the 30- and 36-inch-diameter pipelines within a 110-foot-wide corridor, consisting of a temporary 60-foot-wide construction right-of-way (ROW) and a 50-foot-wide permanent ROW. In Illinois, the 24-inch-diameter pipeline segment would be constructed within a 95-foot-wide corridor, consisting of a temporary 45-foot-wide construction ROW and a 50-foot-wide permanent ROW.

The Keystone Project would require construction of pump stations, pigging (cleaning) facilities, delivery facilities, and densitometer sites (for detection of crude oil batch interfaces). Mainline valves (MLVs) would be placed along the pipeline at locations necessary to maintain adequate flow through the pipeline. Keystone has advised the State Department that valves would be installed and located as dictated by the hydraulic characteristics of the pipeline and as required by federal regulations, with the intent to provide for public safety and environmental protection as part of pipeline integrity management practices.

Densitometer sites for detection of crude oil batch interfaces would be located at Steele City (at the junction of the Mainline Project and Cushing Extension), as well as at Wood River and Patoka, Illinois, and Ponca City and Cushing, Oklahoma, where delivery metering and power facilities also would be located. According to Keystone, electrical transmission lines and associated substation upgrades required for Keystone Project would be constructed by local providers, who would be responsible for obtaining any necessary Federal, State, and local approvals or authorizations. Construction and operation of these facilities are considered connected actions under NEPA and therefore are evaluated within this draft EIS.

U.S. States and counties that could possibly be affected by construction of the proposed pipeline, including the proposed Cushing extension, are:

- North Dakota: Pembina, Cavalier, Walsh, Nelson, Steele, Barnes, Ransom, Dickey, and Sargent;
- South Dakota: Marshall, Brown, Day, Clark, Beadle, Kingsbury, Miner, Hanson, McCook, Hutchinson, and Yankton;
- Nebraska: Cedar, Wayne, Stanton, Platte, Colfax, Butler, Seward, Saline, Jefferson, and Gage;
- Kansas: Marshall, Nemaha, Brown, Washington, Clay, Dickinson, Marion, Butler, Cowley, and Doniphan;
- Missouri: Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Audrain, Montgomery, Lincoln, and St. Charles;
- Illinois: Madison, Bond, Fayette, Marion, and Clinton; and
- Oklahoma (under a possible future extension): Kay, Noble, and Payne.

Comment Procedures and Public Meetings: Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Department of State decision on the proposal, it is important that we receive your comments by no later than September 24, 2007.

Options for submitting comments on the Draft EIS are as follows:

- By mail to: Elizabeth Orlando, Keystone Project Manager, U.S. Department of State, OES/ENV Room 2657, Washington, DC 20520. Please note that Department of State mail can be delayed due to security screening.
- Fax to: (202) 647–5947, attention Betsy Orlando.
- E-mail to: *keystoneEIS@state.gov.*
- Comment over the internet via the Keystone EIS Web site: *http://www.keystonepipeline.state.gov.*

Comments received will be included in the public docket without change and may be made available on-line at *http://www.keystonepipeline.state.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential

Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through e-mail. If you send by e-mail, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

In addition to or in lieu of sending written comments, the Department of State invites you to attend the public meetings in the project area to receive comments on the draft EIS. The public meetings will be conducted in a workshop style. A court reporter will be present and will accept comments for the record. Dates and locations for the public meetings are:

- Tuesday, September 4, 2007, 7 to 9 p.m., Carrolton, Missouri, Rupe community Building (Behind Fire Station, park on north side of building, do not block fire station), 710 Harvest Hills Road, Carrollton.
- Wednesday, September 5, 2007, 7 to 9 p.m., St. Charles, Missouri, Days Inn Meeting Room, 2781 Veterans Memorial Parkway (off I–70 South Service Road), St. Charles.
- Thursday, September 6, 2007, 7 to 9 p.m., Collinsville, Illinois, Gateway Center Marquette Room, One Gateway Drive (Highway 157 & Eastport Plaza Drive), Collinsville.
- Tuesday, September 11, 2007, 7 to 9 p.m., Yankton, South Dakota, Minerva Convention Centre at the Best Western Kelly Inn, 1607 East Highway 50, Yankton.
- Tuesday, September 11, 2007, 7 to 9 p.m., Michigan, North Dakota, Michigan Civic Center, 113 Broadway N., Michigan.
- Wednesday, September 12, 2007, 7 to 9 p.m., Stanton, Nebraska, VFW Meeting Hall, 1106 Veteran's Avenue, Stanton.
- Wednesday, September 12, 2007, 7 to 9 p.m., Lisbon, North Dakota, Commons Room, Lisbon High School, 502 Ash Street, Lisbon.
- Thursday, September 13, 7 to 9 p.m., Seward, Nebraska, Seward Civic Center Auditorium, 616 Bradford Street, Seward.
- Thursday, September 13, 2007, 7 to 9 p.m., Clark, South Dakota, Clark Community Center, 120 N. Commercial Street, Clark.
- Monday, September 17, 2007, 7 to 9 p.m., Seneca, Kansas, Nemaha Community Center, 1500 Community Drive, Seneca.
- Tuesday, September 18, 2007, 7 to 9 p.m., Senior Citizens Center, Abilene, Kansas, 100 N. Elm, Abilene.
- Wednesday, September 19, 2007, 7 to 9 p.m., El Dorado, Kansas, El Dorado Civic Center Main Meeting Room, 201 E. Central, El Dorado.
- Thursday, September 20, 2007, 7 to 9 p.m., Ponca City, Oklahoma, Econo Lodge Meeting Room, 212 S. 14th Street, Ponca City.

After comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the Department of State. The final EIS will contain the Department's response to timely comments received on the draft EIS.

Copies of the draft EIS have been mailed to interested Federal, State and local agencies; public interest groups; individuals and affected landowners who requested a copy of the draft EIS or who provided comments during the scoping process; libraries; newspapers; and other stakeholders.

FOR FURTHER INFORMATION CONTACT: The TransCanada Keystone Pipeline application for a Presidential Permit, including associated maps and drawings; the draft EIS; a list of libraries where the draft EIS may be viewed; and other project information is available for viewing and download at the project Web site: *http://www.keystonepipeline.state.gov.*

For information on the proposed project or the draft EIS, contact Elizabeth Orlando, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520, or by telephone (202) 647–4284, or by fax at (202) 647–5947.

David Brown,

Director, Bureau of Oceans and International Environmental and Scientific Affairs/Office of Environmental Policy, U.S. Department of State.

[FR Doc. 07–3872 Filed 8–8–07; 8:45 am]

BILLING CODE 4710–07–M

TENNESSEE VALLEY AUTHORITY

Notice of Determinations on the PURPA Standards Set Forth in the Energy Policy Act of 2005

SUMMARY: At its meeting on August 1, 2007, in Knoxville, Tennessee, the TVA Board made its determinations on the PURPA Standards set forth in the Public Utility Regulatory Policies Act of 1978 (Pub. L. 95–617) as amended by the Energy Policy Act of 2005 (Pub. L. 109–58) (EPAct 2005). The standards considered are listed in subsections 111(d)(11)–(14) of PURPA as amended by EPAct 2005. The TVA Board considered the standards in accordance with PURPA and the objectives and requirements of the Tennessee Valley Authority Act of 1933 (TVA Act), 48 Stat. 58, as amended, 16 U.S.C. 831–831dd (2007).

FOR FURTHER INFORMATION CONTACT: Carl Seigenthaler, Tennessee Valley Authority, 1 Century Place, 26 Century Boulevard, Nashville, TN 37214, (615) 232–6629.

SUPPLEMENTARY INFORMATION: The Public Utility Regulatory Policies Act of 1978 (Pub. L. 95–617) (PURPA), as amended by the Energy Policy Act of 2005 (Pub. L. 109–58) (EPAct 2005), requires TVA to consider adopting for itself and the distributors of TVA power five new PURPA standards. These five standards are identified as Net Metering, Fuel Sources, Fossil Fuel Generation Efficiency, Time-based Metering and Communications (or Smart Metering), and Interconnection. The TVA Board was charged with considering and making determinations on whether or not it is appropriate to implement each standard.

Data, views, and comments were requested from the public as to the need and desirability of adopting the standards. Open house informational sessions were conducted at 5 locations throughout the Valley. In addition to posting notices in the **Federal Register** on August 17, 2006 (71 FR 475567), and January 22, 2007 (72 FR 2721) , which described the standards and solicited public input on the standards, TVA also provided a PURPA Web site (*http://www.tva.com/purpa*) for purposes of educating the public on the standards and soliciting public input. All public input received on the standards was submitted to the official record and made available to the public through the Web site.

TVA's process for considering and making determinations on the new PURPA standards was carried out pursuant to the provisions of (a) PURPA, under which TVA is identified

as the regulatory authority for electric utilities over which TVA has ratemaking authority, and (b) the TVA Act. After consideration of the comments and materials received, TVA staff developed recommendations on each of the standards. These staff recommendations also were made a part of the official record and made available to the public through the Web site.

The TVA Board considered these standards on the basis of the PURPA purposes, which are the (1) conservation of energy, (2) efficient use of facilities and resources, and (3) equity among electric consumers, and the objectives and requirements of the TVA Act. In addition, the Smart Metering standard was considered in light of whether the benefits to the electric utility and its consumers were likely to exceed the costs of new metering and communications. The Board took into account these considerations as well as the official record developed during the consideration process in reaching the determinations below.

The Board's determinations follow.

Standard 11: Net Metering

I. Standard Under Consideration

Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term ''net metering service'' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

II. Observations

In fiscal year 2003, TVA initiated the Generation Partners® pilot program as a response to requests for a net metering program in the TVA service area. After consultation with the Tennessee Valley Public Power Association (TVPPA) and individual power distributors, TVA adopted a dual-meter design under which TVA buys all electricity from eligible consumer-owned renewable generation systems primarily for the Green Power Switch® program. All output of the generator is purchased, and usage by the consumer is billed at the applicable retail rate by the power distributor. Upon adoption of a Net Metering standard, TVA would phaseout the Generation Partners pilot program and offer a program based on the adopted standard.

The primary issues raised with regard to this standard are safety and pricing. The safety requirements of the current Generation Partners design were developed with the input of power distributor advisors and have been well received by participating power distributors. However, some installers and renewable energy advocates view these requirements as unnecessarily expensive and overly redundant. Going forward, TVA will work with renewable energy advocates, contractors, and power distributors in an effort to modify the installation guidelines to reduce cost while continuing to maintain adequate safety.

The second issue is the price per kWh that TVA pays for the generation. The current purchase price under the Generation Partners pilot program is $0.15/kWh, which TVA established as a premium price guaranteed for ten years for the pilot program to promote and acquire onsite, renewable generation. For a Net Metering program, TVA staff (supported by TVPPA) is recommending that new customers be paid at a rate equal to the Green Power Switch® sales rate, which is approximately $0.10/kWh. Rather than a price based on operational economics, the Southern Alliance for Clean Energy advocates a higher purchase price, which it sees as more consistent with TVA's Strategic Plan that supports renewable energy.

Additionally, TVA's full-requirements contractual arrangements with its individual power distributors make a power distributor's purchase of electricity from a supplier other than TVA problematic. Accordingly, a dual-metering program with continued purchase by TVA at a uniform price is most appropriate and desirable in the TVA region.

III. Determination by the TVA Board

The standard under consideration is revised and adopted as follows:

TVA will make available to distributors of TVA power upon request the option to participate in a dual-metering purchase program modeled after TVA's current Generation Partners pilot program. Under this dual-metering purchase program, TVA will purchase all electric energy generated by an electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities, and accordingly, two meters will be used to separately measure electricity usage and electricity production.

Standard 12: Fuel Sources

I. Standard Under Consideration

Each electric utility shall develop a plan to minimize dependence on one fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

II. Observations

TVA's current resource planning process determines the proper mix of supply and demand side resources to achieve an optimal capacity and generation portfolio. In order to meet its growing load and reserve requirements, TVA must construct, purchase, or acquire capacity. Numerous proven technologies and diverse fuel resources, including renewable technologies, are considered in TVA's capacity and generation expansion alternatives. Detailed least-cost, risk-adjusted operational and financial analyses are performed to determine the most optimal expansion portfolio. Fuel and technology diversity, regulatory developments, and prospective current asset retirements, additions, and changes are also considered. Accordingly, TVA's current resource planning process satisfies the Fuel Sources Standard regarding maintaining fuel diversity and is examined regularly to ensure that it continues to maintain fuel diversity.

III. Determination by the TVA Board

The standard under consideration is adopted as written.

Standard 13: Fossil Fuel Generation Efficiency

I. Standard Under Consideration

Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.

II. Observations

As a part of TVA's ongoing efforts to improve the operations of its fossil fuel generation, efforts are under way to maintain and improve the efficiency of its heat rate at several facilities. Heat rate improvements come in the form of eliminating thermal losses (steam leaks, missing or damaged insulation, turbine wear, etc.) and identifying opportunities to install more energy efficient equipment (primarily improved turbine-generator components.) Fossil fuel plants with significant deviations from their expected heat rates have begun programs to systematically troubleshoot plant equipment to identify and eliminate losses. Methods are being

standardized through a collaboration of TVA fossil fuel plant engineering managers to share and implement projects throughout TVA that have been demonstrated to be successful at specific plants.

The evolution of efficiency-improving technology, the current plan for deployment of additional clean air equipment, and the potential for significant regulatory increases, however, make it impractical and inappropriate to implement a 10-year plan for fossil fuel generation efficiency. The Fossil Fuel Generation Efficiency Standard otherwise provides for sound business practices.

III. Determination by the TVA Board

The standard under consideration is revised and adopted as follows:

TVA shall develop and implement a 5-year plan to increase the efficiency of its fossil fuel generation.

Standard 14: Time-Based Metering and Communication

I. Standard Under Consideration

(A) Not later than 18 months after August 8, 2005, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others—

(i) Time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year, based on the utility's cost of generating and/or purchasing such electricity at the wholesale level for the benefit of the consumer. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

(ii) Critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and/or purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption;

(iii) Real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis, reflecting the utility's cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly; and

(iv) Credits for consumers with large loads who enter into pre-established peak load reduction agreements that reduce a utility's planned capacity obligations.

(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively,

(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to August 8, 2005.

(E) In a State that permits third-party marketers to sell electric energy to retail electric consumer, such consumers shall be entitled to receive the same time-based metering and communications device and service as a retail electric consumer of the electric utility.

(F) Notwithstanding subsections (b) and (c) of 16 U.S.C. 2622, each State regulatory authority shall, not later than 18 months after August 8, 2005, conduct an investigation in accordance with 16 U.S.C. 2625(i) and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).

II. Observations

At the present time, TVA and the distributors of TVA power generally serve customers at ''flat'' (non-time differentiated) rates. An optional time-of-day rate for large customers (greater than 5,000 kW) is offered upon request. Customer participation is currently very low.

The Smart Metering Standard consists of the implementation of two components—the time-based rate structure and the installation of advanced metering and communications technology. The objective of the standard is to provide the consumer with the capability to manage energy usage. The standard does not mandate a particular type of time-based rate structure, but it does suggest several alternatives that could be considered. Additionally, this standard recognizes the need for utilities to assess the costs and benefits to the system.

The benefits to TVA of expanding the application of time-based rates include the benefits to the TVA region from prices reflecting more accurately the actual cost of power. Some of the benefits come from the savings to the customers when they respond to time-based pricing structures. Other benefits can come on the supply side, where customer response can help reduce the need for generation transmission capacity and for fuel, which can help reduce environmental emissions.

TVA has surveyed other utilities that have implemented rates and programs like those in the Smart Metering Standard. TVA is also currently pursuing a critical peak pricing pilot program approved by the Board. Further, TVA is open to market tests of other time-based rate structures that TVA and distributors may want to investigate.

However, because of the importance of working with the distributors of TVA power to test certain time-based rate structures to determine their effectiveness in the TVA region and because the wholesale power contract between TVA and the distributors sets forth a rate change process that governs the process by which a change in the current rate structure may be implemented, TVA has committed to its distributors that it will abide by these provisions in considering any change in rate structure based on the determination of this standard. Accordingly, only by taking this process into account is it appropriate to implement this standard.

III. Determination by the TVA Board

The standard under consideration is revised and adopted as follows:

TVA will initiate a rate change in accordance with the provisions of its wholesale power contract with the distributors of TVA power to assess in detail (1) the benefits and cost of implementing a mandatory time-based rate schedule for large retail customers, under which the retail rates reflect seasonal and time-of-day variations in the costs of generating and purchasing electricity, (2) the benefits and cost of implementing advanced metering and communications technology to help the electric consumer manage energy use and costs, and (3) other factors affecting the implementation of such structures as soon as feasible.

Standard 15: Interconnection

I. Standard Under Consideration

Each electric utility shall make available, upon request, interconnection service to any electric consumer that the

electric utility serves. For purposes of this paragraph, the term ''interconnection service'' means service to an electric consumer under which an on-site generating facility on the consumer's premises shall be connected to the local distribution facilities. Interconnection services shall be offered based upon the standards developed by the Institute of Electrical and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time. In addition, agreements and procedures shall be established whereby the services offered shall promote current best practices of interconnection for distributed generation, including but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.

II. Observations

Under the intent of the Interconnection Standard interconnection services are to be offered by utilities based upon certain industry standards and procedures established whereby the services offered shall promote current best practices of interconnection for distributed generation. TVA has developed procedures and provides interconnection service for generators with output of greater than 20 MW. TVA staff has developed procedures and plans to provide, upon request, interconnection service for generators of 20 MW or less. Since generators of 20 MW or less are more likely to connect to a distributor's system than TVA's transmission system, each distributor will need to implement comparable procedures and interconnection service addressing distributor-specific requirements. TVA will work with distributors in developing and implementing such comparable procedures. Accordingly, it is appropriate at this time to implement the Interconnection Standard with modifications.

III. Determination by the TVA Board

The standard under consideration is revised and adopted as follows:

TVA shall make available, upon request, interconnection service for generators with output of 20 MW or less to any electric consumer that it serves. For purposes of this paragraph, the term ''interconnection service'' means service to an electric consumer under which an on-site generating facility on the consumer's premises shall be connected to the local distribution facilities.

TVA shall make such interconnection service available based upon codes and standards to be specified in small generator interconnection procedures, which procedures shall include the standards developed by the Institute of Electric and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time.

Power distributors served by TVA shall also make available, upon request, such small generator interconnection services to any electric consumers that the power distributor serves. In providing such service, the power distributor may at its option adopt procedures comparable to the TVA procedures discussed above, or other, comparable procedures which address distributor-specific safety, reliability, operating, and cost-recovery requirements.

In addition, agreements and procedures shall be established whereby such interconnection services offered by TVA and the distributors of TVA power shall promote current best practices of interconnection for distributed generation. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.

Dated: August 2, 2007.

Maureen H. Dunn,

Executive Vice President & General Counsel.

[FR Doc. E7–15563 Filed 8–8–07; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Des Moines for the Des Moines International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is August 1, 2007.

FOR FURTHER INFORMATION CONTACT: Todd Madison, Federal Aviation Administration, ACE–611F, Room 335, 901 Locust, Kansas City, MO 64106–2325, 816–329–2640.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Des Moines International Airport are in compliance with applicable requirements of Part 150, effective August 1, 2007. Under 49 U.S.C., section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of 14 CFR Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the City of Des Moines. The documentation, ''Des Moines International Airport 14 CFR Part 150 Noise Compatibility Study Noise Exposure Maps Update'' and the companion document, ''Supporting Information On Project Coordination and Local Consultation,'' that constitutes the ''noise exposure maps'' as defined in section 150.7 of Part 150 includes: 2006 Noise Exposure Map, Exhibit 1; 2011 Noise Exposure Map, Exhibit 2. The documentation also contains exhibits, tables, and narrative representations of the data as required by section A150.101 of Part 150, and sections 47503 and 47506 of the Act. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on August 1, 2007. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of 14 CFR Part 150. Such determination

does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Central Region Airports Division, Room 335, 901 Locust, Kansas City, MO 64106–2325; Craig S. Smith, Aviation Director, Des Moines International Airport, Department of Aviation, Room 201, 5800 Fleur Drive, Des Moines, IA 50321–2854. Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Kansas City, Missouri, August 1, 2007

George A. Hendon,

Manager, Central Region Airports Division.

[FR Doc. 07–3883 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Noise Exposure Map Notice: Receipt of Noise Compatibility Program Amendment and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps (NEMs) submitted by City of Springfield for the Springfield-Beckley Municipal Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed notice compatibility program amendment that was submitted for Springfield-Beckley Municipal Airport under 14 CFR Part 150 in conjunction with the NEMs, and that this program will be approved or disapproved on or before December 21, 2007.

DATES: *Effective Date:* The effective date of the FAA's determination on the NEMs and of the start of its review of the associated noise compatibility program amendment is June 25, 2007. The pubic comment period ends August 23, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Brad N. Davidson, Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan, phone number (734) 229–2900. Comments on the proposed notice compatibility program amendment should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the NEMs submitted for Springfield-Beckley Municipal Airport are in compliance with applicable requirements of 14 CFR Part 150, effective June 25, 2007. Further, FAA is reviewing a proposed notice compatibility program update for that airport which will approved or disapproved on or before December 21, 2007. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''The Act''), an airport operator may submit to the FAA NEMs which meet applicable requirements and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted NEMs that are found by FAA to be in compliance with the requirements of FAR, 14 CFR Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth for the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The City of Springfield submitted to the FAA on January 3, 2007 NEMs, descriptions and other documentation that were produced during the Springfield-Beckley Municipal Airport FAR, 14 CFR Part 150 NEMS Update and Noise Compatibility Program Amendment, November 2006. It was requested that the FAA review this material as the NEMs, as described in § 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communications, be approved as a noise compatibility program under § 47504 of the Act.

The FAA has completed its review of the NEMs and related descriptions submitted by the City of Springfield. The specific documentation determined to constitute the NEMs includes: Existing (2006) NEM and Future (2011) NEM as presented in the NEM Update report dated November 2006. The FAR, 14 CFR Part 150 Noise Compatibility Program Amendment contains the required information for § 47503 and section A150.101 including the following specific references: Current and forecast operations in Section 5.1; fleet mix and nighttime operations in Section 5.1; flight patterns in Exhibits 4.3–1, 4.3–2, 4.3–3, 4.3–4, and 4.3–5; and land use in Section 3.2 and Exhibit 3.2–1. The FAA has determined that these maps for Springfield-Beckley Municipal Airport are in compliance with applicable requirements. This determination is effective on June 25, 2007. FAA's determination on an airport operator's NEMs is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR, 14 CFR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours

depicted on a noise exposure map submitted under § 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the NEMs to resolve questions concerning, for example, which properties should be covered by the provisions of § 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR Part 150 or through FAA's review of NEMs. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under § 47503 of the Act. The FAA has relied on the certification by the airport operator, under 14 CFR 150.21, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program amendment for Springfield-Beckley Municipal Airport, also effective on June 25, 2007. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program amendment. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 21, 2007.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR 150.33. The primary considerations in the evaluation process are whether the proposed amendment measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the NEMs, the FAA's evaluation of the maps, and the proposed noise compatibility program amendments are available for examination at the following locations:

Federal Aviation Administration Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174.

City of Springfield, Office of the City Manager, 76 E. High Street, Springfield, Ohio 45502.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Romulus, Michigan: June 25, 2007.

Jack Delaney,

Acting Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 07–3884 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Whiteside County, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed transportation improvements between U.S. Route 30 and IL Route 136 intersection near Fulton, Illinois eastward to the U.S. Route 30 and IL Route 40 intersection in Rock Falls, Illinois.

FOR FURTHER INFORMATION CONTACT: Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600. George F. Ryan, P.E., Deputy Director of Highways, Region Two Engineer, Illinois Department of Transportation, 819 Depot Avenue, Dixon, Illinois 61021, Phone: (815) 284–2271.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation (IDOT), will prepare an environmental impact statement (EIS) on potential transportation improvements along an approximately 24-mile long corridor of U.S. Route 30 in Whiteside County, Illinois. Improvements to the corridor are considered necessary to enhance mobility and improve system continuity.

Primary environmental resources that may be affected are: agricultural land, wetlands, floodplains, and streams. Compatibility with the regional land use plans and context sensitivity will also be important considerations.

Alternatives to be evaluated will include (1) Taking no action: (2) widening portions of the existing two-lane highway to four lanes; and (3) constructing a four-lane limited access highway on new location.

To help ensure that a full range of issues related to this proposed project are identified and addressed, a comprehensive public involvement program is underway. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this project. A series of public informational meetings are being held and additional meetings will be held with community advisory groups, local and State officials, and public interest groups. A project web site and project hotline are established. Comments or questions concerning this proposed action and the EIS are invited from all interested parties and should be directed to the FHWA at the address provided above. A public hearing will be held after the draft EIS is published and made available for public and agency review. Public notice will be given of the time and place of meetings and the public hearing.

(Catalog of Federal of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: August 2, 2007.

Norman R. Stoner,

Division Administrator, Springfield, Illinois.

[FR Doc. 07–3874 Filed 8–08–07; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–98–3637, FMCSA–98–4334, FMCSA–99–5748, FMCSA–00–7006, FMCSA–00–7363, FMCSA–00–7918, FMCSA–00–8203, FMCSA–00–8398, FMCSA–01–9258, FMCSA–02–13411, FMCSA–03–14223, FMCSA–03–14504, FMCSA–05–20027, FMCSA–05–20560]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety

Regulations for 52 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemption renewals will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at *http://dmses.dot.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The Notices were published on April 13, June 13, and June 20, 2007. The comment periods ended on May 14, and July 13, and July 20, 2007, respectively.

Discussion of Comments

FMCSA received the same comment in all three proceedings. The comment was considered and discussed below.

Advocates for Highway and Auto Safety (Advocates) expressed opposition to FMCSA's policy to grant exemptions from the FMCSR, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which FMCSA presents driver information to the public and makes safety determinations; (2) objects to the Agency's reliance on conclusions drawn from the vision waiver program; (3) claims the Agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31136(e) and 31315); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 52 renewal applications, FMCSA renews the Federal vision exemptions for Rodger B. Anders, David F. Bardsley, Sr., Gary A. Barrett, Ivan L. Beal, Johnny A. Beautler, John D. Bolding, Jr., Daniel R. Brewer, James T. Butler, Jr., Darryl D. Cassatt, Brett L. Condon, Mark W. Coulson, Roger K. Cox, Michael P. Curtin, Myron D. Dixon, Albion C. Doe, Richard L. Elyard, Michael R. Forschino, William H. Goss, David R. Gross, James K. Holmes, Thomas E. Howard, John R. Hughes, Daryl A. Jester, Billy L. Johnson, Robert L. Joiner, Jr., James P. Jones, Christopher J. Kane, Clyde H. Kitzan, Larry J. Lang, Dennis D. Lesperance, John W. Locke, Herman G. Lovell, Eugene A. Maggio, Michael L. Manning, Clifford E. Masink, Ronald L. Maynard, William A. Moore, Jr., Kirby G. Oathout, James R. Petre, Danny R. Pickelsimer, Richard C. Rehbein, William E. Reveal, Duane L. Riendeau, Bernard E. Roche, Darrell L. Rohlfs, David E. Sanders, Daniel J. Schaap, David B. Speller, Janusz Tyrpien, Lynn D. Veach, Harry S. Warren, and Michael C. Wines.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: August 2, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–15492 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25854]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption, request for comments.

SUMMARY: FMCSA announces receipt of applications from nine individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy (or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV)) from operating CMVs in interstate commerce. If granted, the exemptions would enable these individuals with seizure disorders to operate CMVs in interstate commerce.

DATES: Comments must be received on or before September 10, 2007.

ADDRESSES: You may submit comments identified by Department of Transportation (DOT) Docket Management System (DMS) Docket Number FMCSA–2006–25854 using any of the following methods:

- *Web Site: http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room W12–

140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; April 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The nine individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness, or any loss of ability to control a commercial motor vehicle.

FMCSA provides medical advisory criteria and guidelines for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in interstate commerce. Currently, FMCSA's medical advisory criteria and guidelines include a recommendation that individuals diagnosed with epilepsy and taking anticonvulsant medication to reduce the likelihood of seizures are at high risk for further episodes and should not be considered for medical certification. Individuals diagnosed with epilepsy and taking anticonvulsant medication which helps them control their seizures may be at low risk of having a seizure. However, CMV drivers are exposed to conditions which place them at increased risk for loss of consciousness and therefore increased risk for seizure occurrence, for example, obtaining or replacing anti-seizure medication if their medications are lost or forgotten. This would place such drivers at some increased risk of seizures. These individuals should not be authorized to drive commercial vehicles. Drivers diagnosed with epilepsy, seizure-free and off medication for 10 years may be medically certified to operate CMVs.

FMCSA further recommends that individuals who experience a single unprovoked seizure, but who do not have epilepsy, per se, are clearly at a higher risk than the general population to have further seizures. Individuals with a single unprovoked seizure, seizure-free for a 5-year period and off medication, should not be restricted from obtaining a license to operate a CMV. The history of the occurrence of febrile seizures in childhood should not be a restriction to licensing to operate a CMV. Seizures, in the context of a systemic metabolic dysfunction, should not be a primary reason for restriction from medical certification to operate a CMV. Any restriction should be based upon the risk of recurrence of the primary condition. There are several conditions in which the risk for unprovoked seizures is sufficiently high, even in the absence of the occurrence of acute seizures, that medical certification should be restricted for variable periods following these incidents (head injury, surgical procedures involving dural penetration, cerebrovascular disease and infections of the central nervous system).

Summary of Application

David L. Basso

Mr. Basso is a route sales truck driver who delivers to local grocery and convenience stores. He states that he has a clinical diagnosis of epilepsy and is currently taking anti-seizure medication. His doctor certified that he has been seizure-free for seventeen years on his current dose of medication. Mr. Basso believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free since 1990.

Halliard V. Brown

Mr. Brown is a store delivery driver whose company is requesting that he should have a federal exemption due to his seizure disorder. He states that he has no clinical diagnosis of epilepsy and has had all necessary testing done. His medical examiner certified that he has been seizure-free for three years on his current dose of medication.

Mr. Brown currently has a State waiver from Ohio, continues to drive in Ohio and has been crash-free for the past five years.

Aaron Gillette

Mr. Gillette is a CMV driver who is presently disqualified to perform his duties because of the anti-seizure medication he is taking. He has had three seizures within the past two years. His doctor certified that he has a history of idiopathic epilepsy that is currently controlled on Lamictal monotherapy; he also noted that Mr. Gillette is approximately 8 to 9 months seizure-free and is compliant on medications. Mr. Gillette believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free.

David P. Losh

Mr. Losh is a CMV driver who has driven in the state of Ohio for over 10 years. At the age of 5 years, he contracted spinal meningitis which eventually led to epileptic seizures beginning at age 9. Mr. Losh underwent experimental surgery in 1991 to remove the focal point (cause) of the seizures. He was licensed to operate a CMV in 1995 and granted an intrastate waiver for his seizure disorder. He has had one seizure since the surgery, on October 16, 1996; he was not taking his medication (Dilantin) at that time. His license was suspended for 6 months due to this incident; he has since resumed taking his medication. Mr. Losh has been seizure-free and crash-free for about 10 years now.

Dorothy R. Pokornowski

Ms. Pokornowski is a CMV driver in the State of Minnesota. She was diagnosed with epilepsy at age 22. Her doctor certified that she has been stable with no seizure activity on medication since 1985. Her doctor also stated that her anti-seizure medication was changed from Phenobarbital to Topimax in 2006 due to concerns for osteoporosis

and fatigue. Ms. Pokornowski has been seizure-free and crash-free for the past twelve years. She believes that she would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because she continues to take her medication as directed by her doctor and also gets her blood levels checked every year.

Brian J. Porter

Mr. Porter is a CMV driver who states that he has been driving in the east coast for about 10 years. His neurologist states that he has a history of seizures but has not had any in the past 20 years. He is currently taking Dilantin and Phenobarbital (anti-seizure medications).

Daniel L. Pulse

Mr. Pulse is a route sales representative with a history of seizures as a child following a head injury. His doctor states that he has a history of seizures but has not had any since 1996. He is currently taking Dilantin (anti-seizure medication). Mr. Pulse states that he has no clinical diagnosis of epilepsy and the medical tests performed by his neurologist on December 12, 2004, certify that ''This is an overall normal electroencephalogram. No epileptiform activity is noted''. Mr. Pulse has been crash-free for over 30 years. He holds a Class B Commercial Driver's License (CDL) from Iowa.

Michael W. Thomas

Mr. Thomas is a driver who was diagnosed with seizure disorder in 1987. His doctor certified he has been seizure-free for over 20 years. He is currently taking Tegretol (anti-seizure medication). His doctor certified that he is very compliant with his treatment and he can safely operate any CMV he is qualified to drive. Mr. Thomas currently has a State waiver from Kansas, continues to drive in Kansas and has been crash-free throughout his commercial driving career. He holds a Class A CDL from New York. Mr. Thomas believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free for over 20 years through stringent medical compliance using the same medication and dosage.

Jay A. Whitehead

Mr. Whitehead is a motor equipment mechanic who works on CMVs. He was diagnosed with epilepsy in 1979 and has used medication since then. He is currently taking Dilantin (anti-seizure medication) and has been on this medication for more than 10 years now. In the past 10 years, he has not had any seizures or loss of consciousness. Following an annual physical examination in 2006, his doctor certified that his seizure disorder is stable and he has no seizure activity; she also recommended that he should continue to take Dilantin and Omeprazole (anti-seizure medications). Mr. Whitehead stated that he would be operating a variety of CMVs after repairing them and that the actual time spent driving would be less than 10% of his 8 hour work day. He holds a Class B CDL from New York.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption application described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: August 2, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–15495 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–28904]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MANITOU.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–28904 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before September 10, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–28904. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MANITOU is:

Intended Use: ''For marriages at dockside, vow renewals and small celebrations.''

Geographic Region: ''South shore of Lake Superior-Bayfield, Apostles Island area.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Dated: August 1, 2007.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E7–15497 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–28907]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SIVE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–28907 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 10, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–28907. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/* . All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket are available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SIVE is:

Intended Use: ''Carry passengers only.''

Geographic Region: ''NY, NJ, CT, RI, MA, FL.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov.*

Dated: August 1, 2007.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E7–15501 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–28905]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WINDSONG.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–28905 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 10, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–28905. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/* . All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WINDSONG is:

INTENDED USE: ''Day and evening cruises.''

GEOGRAPHIC REGION: ''Galveston Bay and Virgin Islands.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Dated: August 2, 2007.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E7–15496 Filed 8–8–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 295X); STB Docket No. AB–866 (Sub-No. 1X)]

Norfolk Southern Railway Company—Abandonment Exemption–in Chowan County, NC; North Carolina & Virginia Railroad Company, Inc., The Chesapeake and Albemarle Division—Discontinuance of Service Exemption–in Chowan County, NC

Norfolk Southern Railway Company (NSR) and North Carolina & Virginia Railway Company, Inc., The Chesapeake and Albemarle Division (NCVA) (collectively, applicants) have jointly filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for NSR to abandon, and for NCVA to discontinue service over, approximately 0.08 miles of railroad between approximately milepost NS 73.50 and milepost NS 73.67 in Edenton, Chowan County, NC. The line traverses United States Postal Service Zip Code 27932, and includes the station of Edenton.

NSR and NCVA have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on September 8, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 20, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 29, 2007, with: Surface Transportation Board, 395 E. Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representatives: James R. Paschall, Three Commercial Place, Norfolk, VA 23510 and Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204–4022.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

NSR and NCVA have filed an environmental and historic report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 14, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by August 9, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 1, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–15346 Filed 8–8–07; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemptions' effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comments concerning an information collection titled ''Bank Secrecy Act/Money Laundering Risk Assessment'' (a.k.a. Money Laundering Risk (MLR) System.

DATES: Comments must be submitted by October 9, 2007.

ADDRESSES: Communications Division, Office of the Comptroller of the

Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0231, 250 E. Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E. Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OMB Desk Officer, 1557–0231, by mail to U.S. Office of Management and Budget, 725 17th St., NW., #10235, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E. Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend the approval for the following information collection:

Title: Bank Secrecy Act/Anti-Money Laundering Risk Assessment.

OMB Number: 1557–0231.

Affected Public: Businesses or other for-profit.

Type of Review: Regular review.

Abstract: The Risk Assessment enhances the ability of examiners and bank management to identify and evaluate any Bank Secrecy Act/Anti-Money Laundering risks associated with the banks' products, services, customers, and locations. As new products and services are introduced, existing products and services change, and the banks expand through mergers and acquisitions, management's evaluation of money laundering and terrorist financing risks must evolve as well. Absent appropriate controls, such as this risk assessment, these lines of business, products, or entities could elevate Bank Secrecy Act/Anti-Money Laundering risks.

Burden Estimates:

Estimated Number of Respondents: 1,750.

Estimated Number of Responses: 1,750.

Frequency of Response: Annually.

Estimated Annual Burden: 13,960 hours.

Comments: All comments will be considered in formulating the subsequent submission and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 20, 2007.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. E7–15502 Filed 8–8–07; 8:45 am]

BILLING CODE 4810–33–P

Federal Register

Thursday,
August 9, 2007

Part II

Securities and Exchange Commission

17 CFR Parts 210 and 240
Definition of the Term Significant Deficiency; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210 and 240

[Release Nos. 33–8829; 34–56203; File No. S7–24–06]

RIN 3235–AJ58

Definition of the Term Significant Deficiency

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are defining the term ''significant deficiency'' for purposes of the Commission's rules implementing Section 302 and Section 404 of the Sarbanes-Oxley Act of 2002.

DATES: *Effective Date:* September 10, 2007.

FOR FURTHER INFORMATION CONTACT: N. Sean Harrison, Special Counsel, Division of Corporation Finance, at (202) 551–3430, or Josh K. Jones, Professional Accounting Fellow, Office of the Chief Accountant, at (202) 551–5300, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rule 12b–2 [1] under the Securities Exchange Act of 1934 (the ''Exchange Act'') [2] and Rule 1–02 [3] of Regulation S–X.[4]

I. Background

On June 27, 2007, the Commission issued interpretive guidance and rule amendments to help public companies strengthen their evaluations and assessments of internal control over financial reporting (''ICFR'') while reducing unnecessary costs.[5] The Interpretive Release provides guidance for management on how to conduct an evaluation of the effectiveness of a company's ICFR under the Commission's rules implementing Section 404 of the Sarbanes-Oxley Act of 2002.[6] The guidance sets forth an approach by which management can conduct a top-down, risk-based evaluation of ICFR. The rule amendments, among other things, provide that an evaluation that complies with the interpretive guidance is one way to satisfy the annual evaluation requirement in Exchange Act Rules 13a–15(c) and 15d–15(c).[7] The Interpretive Release also added a definition of the term ''material weakness'' to the Commission's rules. The term is defined as ''a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the registrant's annual or interim financial statements will not be prevented or detected on a timely basis.'' [8]

As part of the Commission's efforts to provide more guidance to management on ICFR, the Commission initially sought comment on both the terms ''significant deficiency'' and ''material weakness'' in a concept release on ICFR requirements,[9] and then proposed and adopted a definition of the term ''material weakness.'' [10] Several commenters pointed out that while the proposing release for the interpretive guidance [11] referenced the term ''significant deficiency,'' the Commission did not include a definition of the term in the proposal.[12] Certain commenters indicated that the Commission should include a definition of significant deficiency in the Interpretive Release.[13]

In light of the comments received in response to the proposed interpretive guidance, and because Commission rules implementing Section 302(a) of the Sarbanes-Oxley Act require senior management to certify they have communicated significant deficiencies to the audit committee and the external auditors, the Commission solicited additional comment on a definition for ''significant deficiency.'' In a release issued on June 27, 2007, the Commission requested additional comment on the following definition of the term ''significant deficiency:'' [14]

A deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of a registrant's financial reporting.

We received 22 comment letters in response to the request for additional comment.[15] These letters came from accounting firms, professional associations, corporations and other interested parties. We have reviewed and considered all of the comments that we received on the proposed definition. We discuss our conclusions with respect to the comments in more detail in this release.

II. Discussion

A company's principal executive officer and principal financial officer must certify that they have disclosed significant deficiencies in the design or operation of ICFR that are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information, to the external auditor and the audit committee, with the intended result that these parties can more effectively carry out their respective responsibilities with regard to the company's financial reporting.[16] Including a definition of ''significant deficiency'' in Commission rules, in addition to the definition of ''material weakness,'' will enable management to refer to Commission rules and guidance for information on the meaning of these terms rather than referring to the auditing standards.

In developing the definition of ''significant deficiency,'' we considered comments received in response to the Public Company Accounting Oversight Board's proposed auditing standard for audits of internal control over financial reporting. In its proposed auditing standard, the PCAOB proposed to define significant deficiency as ''a control deficiency, or combination of control deficiencies such that there is a reasonable possibility that a significant misstatement of the company's annual or interim financial statements will not be prevented or detected.'' [17] Further,

[1] 17 CFR 240.12b–2.

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 210.1–02.

[4] 17 CFR 210.1–01 *et seq.*

[5] See Release No. 33–8809 (Jun. 20, 2007) [72 FR 35310, Jun. 27, 2007] and Release No. 33–8810 (Jun. 20, 2007) [72 FR 35324, Jun. 27, 2007] (hereinafter ''Interpretive Release'').

[6] 15 U.S.C. 7262.

[7] 17 CFR 240.13a–15(c) and 15d–15(c).

[8] See Rule 1–02(p) of Regulation S–X [17 CFR 210.1–02(p)] and Exchange Act Rule 12b–2 [17 CFR 240.12b–2]. In this release, we are moving the definitions to new paragraph (a)(4) of Rule 1–02.

[9] Release No. 34–54122 (Jul. 11, 2006) [71 FR 40866, Jul. 18, 2006] available at *http://www.sec.gov/rules/concept/2006/34–54122.pdf.*

[10] See Release No. 33–8809 (Jun. 20, 2007) [72 FR 35310, Jun. 27, 2007].

[11] Release No. 33–8762 (Dec. 20, 2006) [71 FR 77635, Dec. 27, 2006].

[12] See, for example, letters from Cardinal Health, Inc. (''Cardinal''), Edison Electric Institute, and Protiviti to Release No. 33–8762, File No. S7–24–06.

[13] See, for example, letters from Cardinal and Protiviti to Release No. 33–8762, File No. S7–24–06.

[14] Release No. 33–8811 (Jun. 20, 2007) [72 FR 35346, Jun. 27, 2007].

[15] The comment letters are available for inspection in the Commission's Public Reference Room at 100 F Street, NE., Washington, DC 20549 in File No. S7–24–06, or may be viewed at *http://www.sec.gov/comments/s7-24-06/s72406.shtml.*

[16] See Section 302(a)(4) of the Sarbanes-Oxley Act (requiring signing officers to certify that they are responsible for establishing and maintaining internal controls and have designed the internal controls to ensure that material information relating to the issuer is made known to the signing officers, and have disclosed any significant deficiencies in internal control to the independent auditors and audit committee) [15 U.S.C 7241].

[17] See PCAOB Proposed Auditing Standard, *An Audit of Internal Control Over Financial Reporting that is Integrated with an Audit of Financial Statements and Related Other Proposals* (PCAOB Release No. 2006–007, Dec. 19, 2006).

the PCAOB proposed to define a significant misstatement as ''a misstatement that is less than material yet important enough to merit attention by those responsible for oversight of the company's financial reporting.'' In response to the comments received on its proposal, the PCAOB, working with the Commission staff, decided to modify its proposed definition to focus the auditor on the communication requirement surrounding the term ''significant deficiency'' and to clarify that auditors should not scope their audit procedures to search for deficiencies that are less severe than a material weakness.

In proposing the definition, we believed that the focus of the term ''significant deficiency'' should be on the communications required to take place among management, audit committees and independent auditors. Therefore, we believed that the framework for the definition of ''significant deficiency'' should vary from that recently adopted for ''material weakness.'' Unlike the definition of the term ''material weakness,'' we did not believe it was necessary for the proposed definition of ''significant deficiency'' to include a likelihood component (that is, reasonable possibility). Rather, we believed that a definition focused on matters that are important enough to merit attention would allow for, and indeed encourage, sufficient and appropriate judgment by management to determine the deficiencies that need to be reported to the independent auditor and the audit committee.

Comments on the Proposal

A majority of commenters expressed their support for the proposed definition,[18] noting that it would further the Commission's objective of improving implementation of the provisions of the Sarbanes-Oxley Act of 2002. These commenters also noted that the definition would permit the exercise of appropriate judgment by management and independent auditors to determine those deficiencies in ICFR that are important enough to merit attention by those responsible for oversight of financial reporting. In addition, they noted that a consistent definition of significant deficiency in the Commission's rules and in the PCAOB's standards was imperative to promoting effective and efficient compliance by management and auditors with respect to their responsibilities to communicate and respond to significant deficiencies in internal control. Some of these commenters also supported the Commission's inclusion of the term within its rules so that management could look to the Commission's rules for the definition.[19]

A number of commenters agreed that the proposed definition of ''significant deficiency'' should not include a likelihood component.[20] However, a few commenters stated the definition should include a likelihood component because they believed that the addition of such a component would enhance management's ability to evaluate deficiencies that need to be communicated to the audit committee.[21] We agree with the commenters who stated that it was not necessary for the definition to include a likelihood component, as it could have the unintended effect of diminishing the use of appropriate judgment by management and independent auditors in performing the evaluation. We believe that excluding a likelihood component from the definition reduces the chance that management or independent auditors will design and implement evaluations or audits for the purpose of identifying deficiencies that are less severe than material weaknesses. Further, we believe the guidance provided in our Interpretive Release and in the PCAOB's Auditing Standard No. 5, *An Audit of Internal Control Over Financial Reporting that is Integrated with an Audit of the Financial Statements* (''Auditing Standard No. 5''), appropriately outlines that the scope of each evaluation is to detect material weaknesses, which is also consistent with comments the Commission received related to Auditing Standard No. 5.[22] Therefore, we decided not to add a likelihood component to the definition as adopted.

Many commenters believed the definition allowed for the appropriate exercise of management and auditor judgment regarding what is important enough to merit attention based on each company's particular facts and circumstances, and that some variability in the nature of items reported to the audit committee and auditors may result.[23] However, these commenters believed that this would be acceptable based on the specific facts and circumstances of the individual registrants, and the fact that significant deficiencies are not required to be disclosed publicly.

Some commenters also requested that further clarification be provided by the Commission related to the proposed definition. One commenter suggested that it should be clarified to allow for management, at its discretion, to communicate deficiencies to the audit committee and the auditor that it does not believe are significant deficiencies in order to provide management with the appropriate flexibility to communicate other matters as it deems appropriate.[24] Other commenters requested additional guidance on determining whether a deficiency is a significant deficiency.[25] Some of these commenters suggested that additional guidance such as providing qualitative and quantitative thresholds to consider in the evaluation, would provide management and auditors a basis to agree on whether a deficiency is a significant deficiency and would minimize unnecessary costs.[26] One of these commenters noted that further guidance with regards to materiality generally was important to provide management and auditors with more clarity when evaluating deficiencies, which would enable a more effective and efficient process.

With respect to the communication requirements associated with significant

[18] See, for example, letters from BDO Seidman, LLP; Center for Audit Quality; Committees on Federal Regulation of Securities and Law and Accounting of the Section of Business Law of the American Bar Association; Deloitte & Touche LLP; Ernst & Young LLP; Financial Executives International—Small Public Company Task Force; Grant Thornton LLP; KPMG LLP; PepsiCo; PricewaterhouseCoopers LLP; The Internal Auditors Division of the Securities Industry and Financial Markets Association; Sprint Nextel Corporation; and The Institute of Internal Auditors.

[19] See, for example, letters from BDO Seidman LLP; Center for Audit Quality; Committees on Federal Regulation of Securities and Law and Accounting of the Section of Business Law of the American Bar Association; Deloitte & Touche LLP; Ernst & Young LLP; Grant Thornton LLP; KPMG LLP; and PricewaterhouseCoopers LLP.

[20] See, for example, letters from BDO Seidman, LLP; Committees on Federal Regulation of Securities and Law and Accounting of the Section of Business Law of the American Bar Association; Deloitte & Touche LLP; Ernst & Young LLP; Grant Thornton LLP; PepsiCo; Society of Corporate Secretaries and Governance Professionals; U.S Chamber Center for Capital Market Competitiveness; and The Institute of Internal Auditors.

[21] See, for example, letters from Financial Executives International—Small Public Company Task Force; PricewaterhouseCoopers LLP; and Simone Heidema and Erick Noorloos.

[22] See comments received for Releases 34–55912 and 34–55876.

[23] See, for example, letters from BDO Seidman, LLP; Deloitte & Touche LLP; Ernst & Young LLP; Financial Executives International—Small Public Company Task Force; Grant Thornton LLP; PepsiCo; and PricewaterhouseCoopers LLP.

[24] See letter from The Society of Corporate Secretaries and Governance Professionals.

[25] See, for example, letters from Keith Bishop; New York State Society of Certified Public Accountants; Sprint Nextel Corporation; and U.S. Chamber Center for Capital Market Competitiveness.

[26] See, for example, letters from New York State Society of Certified Public Accountants; U.S. Chamber Center for Capital Market Competitiveness.

deficiencies, we note that the definition of significant deficiency is used in the context of evaluating the minimum required communications under Sections 302 and 404 of the Sarbanes-Oxley Act of 2002. Neither this definition nor the Commission's rules preclude management from communicating additional deficiencies to the audit committee or the independent auditor. Finally, with regards to requests for additional guidance noted above, including on materiality when evaluating the significance of deficiencies and quantitative and qualitative guidance, we believe that the definition allows management and auditors to appropriately utilize their judgment in determining those deficiencies that are important enough to merit the attention of those responsible for oversight based on their individual facts and circumstances. Further, we do not believe that the definition of significant deficiency is the appropriate forum to address broader questions about materiality, which are fundamental to the federal securities laws.

Final Rule

We are adopting the definition of ''significant deficiency'' substantially as proposed. We believe the definition appropriately emphasizes the communication requirements between management, the audit committee and independent auditors on those matters that are important enough to merit attention and will allow management to use its judgment to determine the deficiencies that need to be reported to the audit committee and the independent auditor. In addition, we believe that it is important that management and auditors use the same definition of ''significant deficiency.'' Therefore, our final rules define a significant deficiency as:

A deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of the registrant's financial reporting.[27]

III. Paperwork Reduction Act

Certain provisions of our ICFR requirements contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''). We submitted these collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA and received approval for the collections of information. We do not believe the adoption of the definition of ''significant deficiency'' will impose any new recordkeeping or information collection requirements, or other collections of information requiring OMB's approval.

IV. Cost-Benefit Analysis

A detailed analysis of the benefits and costs was included in our releases proposing and adopting amendments to rules regarding management's reports on ICFR.[28] The amendments that we are adopting in this release define the term ''significant deficiency.'' We requested comment on whether the amendments would impose any additional benefits or costs on public companies or small entities. No commenter identified any additional costs or burdens that would result from the proposed definition.

Three commenters suggested that the definition would not result in any additional costs,[29] while a number of commenters suggested that the definition may reduce the amount of time needed by management and auditors to evaluate whether or not deficiencies are significant.[30] Several commenters also noted that one of the significant benefits of the proposed definition was the flexibility provided, which allows management and auditors to utilize their judgment to focus on those matters that are important enough to merit attention by those responsible for oversight of financial reporting.[31]

Two commenters expressed concern that companies would have difficulty in applying the definition because they believed more guidance was necessary to allow management and independent auditors to define and calibrate their procedures in order to minimize any unnecessary costs.[32] Most commenters, however, noted that the definition would permit the exercise of appropriate judgment by management and independent auditors to determine those deficiencies in ICFR that are important enough to merit attention by those responsible for oversight of financial reporting. We believe that, on balance, the amendments will allow management to use sufficient and appropriate judgment to determine whether any identified deficiencies need to be reported to the auditor and the audit committee. The flexibility allowed by the definition will enable management and auditors to more efficiently and effectively perform their evaluations based on a company's individual facts and circumstances. In addition, many commenters noted that a consistent definition between the Commission's rules and the PCAOB's standards was imperative to promote effective and efficient compliance by management and auditors with respect to their responsibility to communicate and respond to significant deficiencies in internal control over financial reporting.[33] A consistent definition between the Commission's rules and the PCAOB's audit standards will enable management and independent auditors to more efficiently and effectively perform their responsibilities to communicate significant deficiencies in internal control over financial reporting. Finally, eight commenters expressed their view that the definition would not have any special impact on smaller public companies.[34] We do not believe that these amendments will have much, if any, added impact on the costs to public companies or small entities.

V. Effect on Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act[35] requires the Commission, whenever it engages in rulemaking and is required to consider or determine if an action is necessary or appropriate in the public interest, also to consider whether the action will promote efficiency, competition and capital formation. Section 23(a)(2) of the Exchange Act[36] also requires the Commission, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition,

[27] Rule 1–02(a)(4) of Regulation S–X [17 CFR 210.1–02(a)(4)]. We are adding a new paragraph (a)(4) to the rule to define both the terms ''material weakness'' and ''significant deficiency.'' ''Material weakness'' was previously added to paragraph (p) of Rule 1–02.

[28] See Release No. 33–8762 (December 20, 2006) [71 FR 77635, Dec. 27, 2006] and Release No. 33–8809 (Jun. 20, 2007) [72 FR 35310, Jun. 27, 2007].

[29] See, for example, letters from BDO Seidman, LLP; Committees on Federal Regulation of Securities and Law and Accounting of the Section of Business Law of the American Bar Association; and Deloitte & Touche LLP.

[30] See, for example, letters from BDO Seidman, LLP; PepsiCo; Society of Corporate Secretaries and Governance Professionals; and The Institute of Internal Auditors.

[31] See, for example, letters from BDO Seidman, LLP; Grant Thornton LLP; PricewaterhouseCoopers LLP; and The Institute of Internal Auditors.

[32] See letter from U.S. Chamber Center for Capital Market Competitiveness and New York State Society of Certified Public Accountants.

[33] See, for example, letters from BDO Seidman, LLP; Center for Audit Quality; Deloitte & Touche LLP; Ernst & Young LLP; Grant Thornton LLP; PepsiCo; PricewaterhouseCoopers LLP; and Sprint Nextel Corporation.

[34] See, for example, letters from BDO Seidman, LLP; Committees on Federal Regulation of Securities and Law and Accounting of the Section of Business Law of the American Bar Association; Deloitte & Touche LLP; Ernst & Young LLP; Grant Thornton LLP; PepsiCo; PricewaterhouseCoopers LLP; and The Institute of Internal Auditors.

[35] 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78w(a)(2).

Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission's releases proposing and adopting amendments to rules regarding management's reports on ICFR contained a detailed discussion of the effects of the rule amendments on efficiency, competition and capital formation.[37] We received some comments on the effects of the rule on efficiency. Four commenters on the proposal believed the proposed definition of ''significant deficiency'' would facilitate more efficient certifications of quarterly and annual reports by allowing management to use its judgment in evaluating the severity of an identified deficiency.[38] The flexibility allowed by the definition will enable management and auditors to more efficiently and effectively perform their evaluations based on a company's individual facts and circumstances, which will promote efficiency. In addition, a consistent definition between the Commission's rules and the PCAOB's audit standards will enable management and independent auditors to more efficiently perform their responsibilities to communicate significant deficiencies in internal control over financial reporting. We did not receive any comments on capital formation or competition. We do not believe that the rule amendment will impact capital formation or competition.

VI. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the definition of ''significant deficiency'' will not have a significant economic impact on a substantial number of small entities. We requested comments on the anticipated impact and seven commenters stated that the definition would not have any special impact on smaller public companies.[39] No commenter suggested that there would be a significant impact on any small entities.

VII. Statutory Authority and Text of Rule Amendments

The amendments described in this release are being adopted under the authority set forth in Sections 12, 13, 15, 23 of the Exchange Act, and Sections 3(a) and 404 of the Sarbanes-Oxley Act.

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

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

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

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

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

■ 2. Amend § 210.1–02 by:
■ a. Adding paragraph (a)(4);
■ b. Removing paragraph (p); and
■ c. Redesignating paragraphs (q) through (cc) as paragraphs (p) through (bb).

The addition reads as follows:

§ 210.1–02 Definitions of terms used in Regulation S–X (17 CFR part 210).

* * * * *

(a) * * *

(4) *Definitions of terms related to internal control over financial reporting. Material weakness* means a deficiency, or a combination of deficiencies, in internal control over financial reporting (as defined in § 240.13a–15(f) or 240.15d–15(f) of this chapter) such that there is a reasonable possibility that a material misstatement of the registrant's annual or interim financial statements will not be prevented or detected on a timely basis. *Significant deficiency* means a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of the registrant's financial reporting.

* * * * *

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

■ 3. The authority citation for Part 240 continues to read, in part, as follows:

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

* * * * *

■ 4. Amend § 240.12b–2 by adding the definition of ''Significant deficiency'' in alphabetical order to read as follows:

§ 240.12b–2 Definitions.

* * * * *

Significant deficiency. The term *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of the registrant's financial reporting.

* * * * *

By the Commission.

Dated: August 3, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–15556 Filed 8–8–07; 8:45 am]

BILLING CODE 8010–01–P

[37] See Release No. 33–8762 (December 20, 2006) [71 FR 77635, Dec. 27, 2006] and Release No. 33–8809 (Jun. 20, 2007) [72 FR 35310, Jun. 27, 2007].

[38] See, for example, letters from BDO Seidman, LLP; Grant Thornton LLP; PepsiCo; and PricewaterhouseCoopers LLP.

[39] See for example, letters from BDO Seidman, LLP; Deloitte & Touche LLP; Ernst & Young LLP; Grant Thornton LLP; PepsiCo; PricewaterhouseCoopers LLP; and The Institute of Internal Auditors.

Federal Register

Thursday,
August 9, 2007

Part III

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, and 175
Hazardous Materials; Transportation of Lithium Batteries; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173 and 175

[Docket Nos. PHMSA–02–11989 (HM–224C) and PHMSA–04–19886 (HM–224E)]

RIN 2137–AD48 and RIN 2137–AE05

Hazardous Materials; Transportation of Lithium Batteries

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is amending the Hazardous Materials Regulations (HMR) to tighten the safety standards for transportation of lithium batteries, including both primary (non-rechargeable) and secondary (rechargeable) lithium batteries. Specifically, we are adopting with minor changes the amendments to the HMR published in an interim final rule on December 15, 2004, imposing a limited prohibition on the transportation of primary lithium batteries and cells as cargo aboard passenger-carrying aircraft. In addition, we are adopting many of the proposed changes to the HMR published under the April 2, 2002 NPRM; (1) Eliminating a hazard communication and packaging exception for medium-size lithium cells and batteries of all types transported by aircraft or vessel; (2) revising an exception for small lithium batteries and cells of all types to require testing in accordance with the United Nations Manual of Tests and Criteria; and (3) revising an exception for consumer electronic devices and spare lithium batteries of all types carried by airline passengers and crew. These amendments will enhance transportation safety by reducing fire hazards associated with lithium batteries and harmonizing U.S. and international standards.

DATES: *Effective Date:* The effective date of these amendments is January 1, 2008.

Voluntary Compliance: Voluntary compliance with all of these amendments, including those with a delayed mandatory compliance date, is authorized as of October 1, 2007.

FOR FURTHER INFORMATION CONTACT: John Gale or Arthur Pollack, Office of Hazardous Materials Standards, PHMSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Background
- A. Overview of Lithium Battery Risks
- B. LAX Incident and NTSB Recommendations
- C. Additional Incidents
- D. Recalls
- E. Regulatory Action To Address Transportation Risks Posed by Lithium Batteries of all Types

II. Provision of This Final Rule
- A. Docket HM–224C
- B. Docket HM–224E

III. Rulemaking Analyses and Notices
- A. Statutory/Legal Authority for This Rulemaking
- B. Executive Order 12866 and DOT Regulatory Policies and Procedures
- C. Executive Order 13132 (Federalism)
- D. Executive Order 13175
- E. Regulatory Flexibility Act
- F. Unfunded Mandates Reform Act of 1995
- G. Paperwork Reduction Act
- H. Environmental Assessment
- I. Regulation Identifier Number
- J. Privacy Act

This final rule is the culmination of two rulemaking proceedings initiated by the Research and Special Programs Administration (RSPA), the predecessor agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA), in order to reduce the risks of battery-related fires in transportation and in response to incident reports and recommendations of the Federal Aviation Administration (FAA) and National Transportation Safety Board (NTSB). The final rule continues in force a limited ban on the transportation of certain lithium batteries as cargo aboard passenger aircraft. It tightens other standards for the testing, handling, and packaging of lithium batteries, in each case to reduce the likelihood or consequence of a lithium battery-related fire in transportation. Although we developed these standards in separate rulemaking proceedings, we have combined them for publication in this single final rule in the interests of clarity and consistency and to minimize regulatory burdens.

I. Background

The final rule adopted today is one of several actions PHMSA is taking, in consultation with the FAA, to improve the safety of lithium batteries in transportation. Beyond rulemaking and enforcement, PHMSA and FAA are promoting and advancing non-regulatory solutions through a broad group of public and private sector stakeholders that share our interest in battery and transportation safety. We are working with representatives of the NTSB, the Consumer Product Safety Commission, manufacturers of lithium batteries and battery-powered products, airlines, airline employee organizations, testing laboratories, and the emergency response and law enforcement communities to share and disseminate information about battery-related risks and developments and to promote improvements in industry standards and best practices. We report on these non-regulatory activities through our public Web site at *http://safetravel.dot.gov*.

A. Overview of Lithium Battery Risks

Lithium batteries are considered a hazardous material for purposes of transportation regulation because they can overheat and ignite in certain conditions and, once ignited, can be especially difficult to extinguish. In general, the risks posed by lithium batteries are a function of battery size (the amount of lithium content and corresponding energy density) and the likelihood of short-circuiting or rupture. By comparison to standard alkaline batteries, most lithium-ion batteries manufactured today contain a flammable electrolyte and have a very high energy density. A lithium battery is susceptible to thermal runaway, a chain reaction leading to self-heating and release of its stored energy.

The increasing manifestation of these risks, inside and outside of transportation, drives the need for stricter safety standards. Once used primarily in industrial and military applications, lithium batteries are now found in a variety of popular consumer items, including cameras, laptop computers, and mobile telephones. The numbers, types, and sizes of lithium batteries moving in transportation have grown steadily in recent years with the increasing popularity of these and other portable devices and the corresponding proliferation of battery designs, manufacturers, and applications.

Like other products that contain hazardous materials, lithium batteries can be transported safely, provided appropriate precautions are taken in design, packaging, handling, and emergency response. The rule adopted in this proceeding strengthens the current regulatory framework by imposing stricter and more effective safeguards, including design testing, packaging, and hazard communication measures, for certain types and sizes of lithium batteries in certain transportation contexts.

These adjustments are risk-based and data-driven, reflecting incident reports, laboratory testing, and other information that together promote better understanding of risks and

consequences in relationship to specific risk variables:

Battery technology. In the rulemaking proposals that gave rise to the final rule, we differentiated between ''primary'' (or non-rechargeable) and ''secondary'' (or rechargeable) lithium batteries. This distinction, which is well established in international standards, is related to the battery composition. ''Primary'' (non-rechargeable) lithium batteries generally contain lithium metal, while most ''secondary'' (rechargeable) lithium batteries contain an ionic form of lithium (lithium-ion). The technology used in lithium batteries has a significant impact on the battery application and, all other factors being equal, on corresponding transportation risks.

For purposes of this rulemaking, we use the term ''primary lithium battery'' to refer to a non-rechargeable battery and the term ''secondary lithium battery'' to refer to a rechargeable battery. In most cases, this distinction will differentiate between different battery technologies. Although we understand that the distinction is being called into question by technological and market developments, we believe the regulatory definitions continue to have merit at this time, recognizing that further regulatory refinement will be necessary to respond to further technological developments and our growing understanding of transportation risks.

Transportation mode. The consequence of a lithium battery-related fire depends largely on the transportation context. In weighing the costs and benefits of regulation, we consider the mode of transportation and impose the strictest standards in air transportation, particularly passenger service. Although most battery-related fires have caused only property damage or delays in ground transportation, even a small fire aboard an in-flight aircraft threatens catastrophic consequences.

Battery size. The degree of risk posed by lithium batteries is largely a function of the amount of stored energy, which is in turn a function of the number and relative lithium content of battery cells. These size standards are the accepted categorization of lithium batteries under the United Nations Recommendations and international regulatory bodies such as the International Civil Aviation Organization (ICAO). A cell is a single electro-chemical unit; a battery consists of one or more connected cells. The size of a cell or battery is determined by its lithium content, as summarized in the following chart:

TABLE 1.—BATTERY AND CELL CATEGORY DEFINITIONS

	Small (no more than)	Medium (between)	Large (more than)
Cells:			
Primary	1 g Li.	1 g and 5 g Li.	5 g Li.
Secondary	1.5 g ELC.*	1.5 g and 5 g ELC.	5 g ELC.
Batteries:			
Primary	2 g Li.	2 g and 25 g Li.	25 g Li.
Secondary	8 g ELC.	8 g and 25 g ELC.	25 g ELC.

* ELC (Equivalent Lithium Content).

Quantity. The number of lithium batteries in a shipment can also affect the severity of an incident. For example, several thousand small lithium batteries consolidated together present a higher potential risk than a shipment of a single lithium battery, because one burning primary lithium or secondary lithium battery can produce enough heat and energy to propagate to other lithium batteries in the same overpack, freight container, or cargo hold.

Product Design, Package Integrity, and Transportation Handling. The risks that a lithium battery will short-circuit or rupture are a function of design, packaging, and handling. As with many hazardous materials, the risk of a transportation incident involving lithium batteries can be reduced by strengthening packaging and reducing the likelihood and impact of rough handling. The amendments adopted here include tightened testing standards to ensure that batteries that pose the greatest risk in transportation are designed to withstand normal conditions of transportation and packaged to minimize risks of mishandling or damage in transit.

Emergency Response. In developing the final rule, we paid special attention to the potential consequences of lithium battery-related fires. Although we take fire hazards seriously in all modes, we must be particularly concerned about the possibility of an uncontrolled fire aboard an aircraft.

To evaluate the hazards posed by primary lithium batteries in air transportation, FAA's Technical Center initiated a series of tests to assess their flammability characteristics. FAA published a technical report detailing the results of the tests in June 2004 (DOT/FAAIARI–04/26). The battery tests were designed to test the batteries in an environment that is similar to actual conditions possible in a suppressed cargo fire. The FAA tests showed that the packaging materials delayed the ignition of the batteries, but eventually added to the fire loading and contributed to the battery ignition, even after the original (alcohol) fire had been exhausted. In addition, the packaging material held the batteries together, allowing the plastic outer coating to fuse the batteries together. This enhanced the probability of a burning battery igniting adjacent batteries, increasing the propagation rate. The technical report, which can be found in the docket for this rulemaking, concluded that the presence of a shipment of primary lithium batteries can significantly increase the severity of an in-flight cargo compartment fire.

In addition, the report concluded that primary lithium batteries pose a unique threat in the cargo compartment of an aircraft because primary lithium battery fires cannot be suppressed by means of Halon, the only FAA-certified fire suppression system permitted for use in cargo compartments of a passenger-carrying aircraft operating in the United States.

FAA also conducted a series of test to determine the flammability of secondary lithium batteries and cells and issued a final report detailing the results in September 2006 (DOT/FAA/AR–06/38). This report can be found in the docket for this rulemaking. Flames produced by the batteries are hot enough to cause adjacent cells to vent and ignite. The report also concluded that Halon is effective in suppressing the electrolyte fire and preventing any additional fire from subsequent cell venting. The lithium-ion cells will continue to vent due to high temperatures but will not ignite in the presence of Halon.

B. LAX Incident and NTSB Recommendations

The notices of proposed rulemaking (NPRMs) in these proceedings both tied the need for tighter safety standards to an April 28, 1999 fire at Los Angeles International Airport (LAX). The LAX incident involved a shipment of two pallets of primary lithium batteries that caught fire and burned after being off-loaded from a Northwest Airlines flight originating in Osaka, Japan. The two pallets involved in the fire contained 120,000 small primary lithium batteries that were excepted from domestic and international regulatory requirements applicable to hazard communication (i.e., marking, labeling, and shipping papers) and packaging. The packages on the pallets were damaged during handling at LAX, and this damage is believed to have initiated the subsequent fire. Northwest ground employees initially fought the fire with portable fire extinguishers and a fire hose. Each time the fire appeared to be extinguished, it flared up again.

The LAX incident illustrated the unique transportation safety problems posed by lithium batteries, including the risk of rough handling in transit, resulting short-circuiting, thermal runaway, ignition of adjacent batteries, and the ineffectiveness of halon as an extinguishing agent.

The NTSB conducted a full investigation of the LAX incident. The NTSB's final report, issued November 16, 1999, included five safety recommendations addressed to RSPA:

A–99–80: Together with the Federal Aviation Administration, evaluate the fire hazards posed by lithium batteries in an air transportation environment and require that appropriate safety measures be taken to protect aircraft and occupants. The evaluation should consider the testing requirements for lithium batteries in the United Nation's Transport of Dangerous Goods Manual of Tests and Criteria, the involvement of packages containing large quantities of tightly packed batteries in a cargo compartment fire, and the possible exposure of batteries to rough handling in an air transportation environment, including being or abraded open.

A–99–81: Pending completion of your evaluation of the fire hazards posed by lithium batteries in an air transportation environment, prohibit the transportation of lithium batteries on passenger-carrying aircraft.

A–99–82: Require that packages containing lithium batteries be identified as hazardous materials, including appropriate marking and labeling of the packages and proper identification in shipping documents, when transported on aircraft.

A–99–83: Pending completion of your evaluation of the fire hazards posed by lithium batteries in an air transportation environment, notify the International Civil Aviation Organization's Dangerous Goods Panel (ICAO DGP) about the circumstances of the fire in the Northwest Airlines cargo facility at Los Angeles International Airport on April 28, 1999. Also pending completion of your evaluation of the fire hazards posed by lithium batteries in an air transportation environment, initiate action through the Dangerous Goods Panel to revise the Technical Instructions for the Safe Transportation of Dangerous Goods by Air to prohibit the transportation of lithium batteries on passenger-carrying aircraft.

A–99–84: Initiate action through the Dangerous Goods Panel to revise the Technical Instructions for the Safe Transportation of Dangerous Goods by Air to require that packages containing lithium batteries be identified as hazardous materials when transported on aircraft.

C. Additional Incidents

The April 1999 LAX incident was not an isolated event; numerous incidents involving lithium batteries have been reported in the intervening years, most in the period since we initiated these rulemaking proceedings. Fortunately, none of the aviation-related incidents has resulted in death or serious injury; most of the incidents occurred either before or after flight. Some of these additional incidents are described below:

- On November 3, 2000, in Portland, Oregon, a small primary lithium battery short-circuited, causing a small fire and rupture of the battery. The primary lithium battery burned through its inner packaging and charred an adjacent package. The short-circuited battery had long flexible protruding positive and negative terminals.
- On April 12, 2002, small primary lithium batteries packaged in a fiberboard box ignited during handling in Indianapolis, Indiana.
- On August 9, 2002, a small secondary lithium battery in an electronic handheld device short-circuited, causing surrounding packing materials (bubble wrap) to catch fire.
- On August 7, 2004, large prototype secondary lithium batteries shipped under a competent authority approval from California to Europe apparently started a fire in a unit load device (ULD) during loading for a transatlantic flight (Memphis-Paris). The ULD and many other packages in it were damaged or destroyed by fire.
- On February 11, 2005, an undeclared package containing 18 small primary lithium batteries caught fire during unloading in White Bear Lake, Minnesota. Cargo handlers reported hearing a ''pop'' sound and then seeing the box ''lifted'' off the conveyor belt by the force. The package had been flown from Los Angeles to Minneapolis and was to be trucked to Clear Lake, Wisconsin.
- On or about June 29, 2005, the contents of a ULD caught fire onboard a flight from Shanghai, China to the United States. Airline ground personnel discovered evidence of the fire after the plane landed safely in Ontario, California. A package containing a secondary lithium battery pack was identified as the source of the fire.
- On March 3, 2006, a U.S.-bound package containing secondary lithium batteries ignited in an outbound air transport station in Shenzhen, China.
- On July 17, 2006, a package with no marking or labeling containing 122 secondary lithium batteries of various sizes caught fire while being held in bond for customs clearance in Korea, after transportation by air from Vienna, Austria.
- On February 10, 2007, shortly after takeoff of a commercial flight, a fire ignited in a passenger bag stowed in an overhead bin. Although the fire is still under investigation, preliminary reports indicate both small lithium ion and small primary batteries were involved in the incident.
- On March 1, 2007, a package sent by an eBay vendor via the United States Postal Service, containing 24 primary lithium batteries, caught fire at the Sydney Australia Mail Gateway Facility. The package had been transported to Sydney from Los Angeles on a passenger aircraft.

D. Recalls

In August and October of 2006 and March of 2007, several leading computer manufacturers recalled nearly 10 million notebook computer secondary lithium batteries based on manufacturing defects. The batteries in the 2006 recalls, manufactured by Sony Energy Devices Corporation, were voluntarily recalled in coordination with the U.S. Consumer Product Safety Commission (CPSC). According to CPSC reports, these defective secondary lithium batteries can spontaneously overheat and cause fires. The batteries in the March 2007 voluntary recall were manufactured by Sanyo Electric Company, Ltd. and designed to be extended-life batteries for Lenovo ThinkPad notebook computers. According to CPSC, the Sanyo lithium-ion batteries pose a fire hazard if the battery is struck forcefully on the corner (e.g., a direct fall to the ground).

E. Regulatory Actions To Address Transportation Risks Posed by Lithium Batteries of All Types

As we explained above, the regulatory actions we are taking today are part of

a broader and ongoing effort to address the transportation risks posed by lithium batteries. Even as the measures adopted in this final rule progressed through the rulemaking process, more data surfaced concerning lithium battery risks. These developments have lent further support to the proposed approaches and spurred additional proposals for regulatory and non-regulatory change.

Inevitably, further technological advances, new product development, and market shifts will drive continued change in risks and benefits. We are committed to addressing those changes in a manner that safeguards our transportation systems and the traveling public, while promoting positive technological advances and minimizing regulatory costs and burdens for consumers and industry, including small businesses. To that end, we will continue to collect and analyze data concerning the risks posed by batteries and battery-powered devices of all types. We are committed to working with all affected stakeholders to identify risks and develop solutions, especially including non-regulatory solutions. In keeping with DOT regulatory policies and procedures, we will analyze the effectiveness of our rules over time, with a commitment to updating or eliminating any regulations that become unnecessary or unduly costly with changes in technology or transportation operations.

Recognizing that the risk and benefit profile is and has been dynamic, the final rule adopted today is best understood against the backdrop of existing and ongoing regulatory actions, including the separate rulemaking proposals that gave rise to this consolidated proceeding. By way of background, we begin with a discussion of regulatory requirements in place at the time of the LAX incident and NTSB recommendations.

1. *Regulatory Requirements Prior to Adoption of this Final Rule.* Under the Hazardous Materials Regulations (HMR, 49 CFR Parts 171–180), most lithium batteries and cells of all types and equipment containing or packed with lithium batteries or cells of all types are regulated as a Class 9 (Miscellaneous) hazardous material. A Class 9 material is one that presents a hazard during transportation, but that does not meet the definition of any other hazard class. The HMR require lithium batteries to be tested in accordance with a series of tests in Section 38.3 of the UN Test Manual. The tests are designed to ensure that a battery design type is capable of withstanding conditions encountered in transportation. The tests include: (1) Test T.1 Altitude simulation, (2) Test T.2 Thermal test, (3) Test T.3 Vibration, (4) Test T.4 Shock, (5) Test T.5 External short circuit, (6) Test T.6 Impact, (7) Test T.7 Overcharge, and (8) Test T.8 Forced discharge. In addition, lithium batteries and cells must be: (1) Equipped with an effective means of preventing short circuits; (2) packaged in UN standard packagings meeting the Packing Group II performance level; and (3) identified on shipping papers and by package markings and hazard warning labels. See § 173.185(e).

Section 173.185 of the HMR contains exceptions from the packaging and hazard communication requirements of the HMR for small and medium-size lithium batteries and cells. Small and medium-size lithium batteries and cells must be packaged in strong outer packagings, and in a manner to protect against short circuits, but UN standard packagings are not required, and the requirements in Part 172 of the HMR applicable to shipping papers, marking, labeling, and emergency response information do not apply. Small lithium batteries and cells are also excepted from testing in accordance with the UN Test Manual.

2. *Changes to International Regulations.* Acting on a proposal by the United States, in December 2000, the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods revised the UN Recommendations to: (1) Revise the lithium battery testing requirements in the UN Test Manual to provide more precise descriptions of the testing procedures and criteria and require more extensive testing to measure temperature, altitude, vibration, shock, impact, overcharge, forced discharge and intentional short; (2) eliminate an exception that permitted medium-size lithium batteries to be transported as unregulated material; (3) require testing of small lithium batteries to ensure they can withstand conditions encountered during transportation; (4) impose hazard communication and packaging requirements for small lithium batteries; and (5) provide exceptions for passengers and crew to carry lithium battery-powered equipment aboard an aircraft. These revisions were subsequently included in the 2003–2004 ICAO Technical Instructions. As a result of these revisions to the international regulations, NTSB classified recommendations A–99–83 and –84 as ''Closed-Acceptable Alternate Action.''

3. *HM–224C Rulemaking.* On April 2, 2002, we issued an NPRM (HM–224C; 67 FR 15510) proposing changes to current HMR requirements for the transport of lithium batteries consistent with the changes adopted in the UN Recommendations and ICAO Technical Instructions. These amendments were intended to improve the safety of lithium batteries in transportation and harmonize U.S. and international standards. Specifically, we proposed to: (1) Adopt the revised lithium battery test scheme in the UN Test Manual; (2) eliminate the exception for medium-size lithium batteries; (3) require testing of small lithium batteries; (4) impose hazard communication and packaging requirements for small lithium batteries; and (5) provide exceptions for passengers and crew to carry lithium battery-powered equipment aboard an aircraft.

4. *HM–224E Rulemaking.* Based in part on the June 2004 FAA technical report concerning the flammability characteristics of primary lithium batteries, discussed earlier in this preamble, on December 15, 2004, PHMSA published an interim final rule (IFR; Docket HM–224E; 69 FR 75208) prohibiting the shipment of primary lithium batteries as cargo on passenger-carrying aircraft. The IFR prohibits the offering for transportation and transportation in commerce of primary lithium batteries and cells, and equipment containing or packed with large primary lithium batteries (i.e., batteries containing greater than 25 grams of lithium) as cargo aboard passenger-carrying aircraft. In addition, equipment packed with or containing small or medium-size primary lithium batteries (i.e., batteries containing 25 grams or less of lithium) must be transported in accordance with Special Provisions A101 or A102. Under these Special Provisions, a primary lithium battery or cell packed with or contained in equipment may not exceed a net weight of 5 kg (11 pounds). Finally, the outside of each package that contains a primary lithium battery or cell forbidden for transport aboard passenger carrying aircraft must be marked ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT.''

5. *Additional Recent Amendments to International Regulations.* At the international level, interest in the safe transportation of lithium batteries continues to grow as the number of lithium battery incidents (including non-transportation-related fires and product recalls) increases. The following activities and discussions of the ICAO Dangerous Goods Panel and the UN Sub-Committee of Experts on the Transport of Dangerous Goods signal further safety enhancements to the

ICAO Technical Instructions and UN Recommendations:

At its 2006 meeting (October 25—November 3, 2006), the ICAO Dangerous Goods Panel further considered amendments to the ICAO Technical Instructions concerning lithium battery safety. Based on a recommendation by the Panel, the ICAO Air Navigation Commission agreed to issue an addendum to the ICAO 2007–2008 Technical Instructions to prohibit the transport of lithium batteries that have the potential of producing a dangerous evolution of heat, fire, or short circuit as a result of being damaged or defective (e.g., those being returned to the manufacturer for safety reasons).

In December 2006, the United Nations Committee of Experts on the Transport of Dangerous Goods, based in part on U.S. proposals, revised Special Provision 188 (SP 188) of the UN Recommendations to address the risk that lithium cells and batteries currently excepted from regulation may short circuit in transportation. These revisions (1) require individual packaging of lithium cells or batteries, (2) require protection against short circuits, accidental activation, and outer packaging of lithium battery-powered equipment; (3) eliminate the current exception from marking, documentation, drop testing, and gross weight limit for packages containing less than 24 lithium cells or 12 lithium batteries, and (4) standardize marking requirements for lithium batteries. Additionally, the UN Recommendations were amended to include separate dangerous goods list entries for metallic lithium and lithium ion batteries to assist shippers, transport personnel, and carriers in complying with the applicable regulations.

PHMSA will carefully review any amendments to the international regulation and will consider further rulemaking action based on a robust notice and comment process. As previously stated, we are committed to working with all affected stakeholders to evaluate risks and develop potential solutions, especially non-regulatory solutions.

II. Provisions of this Final Rule

The continuing incidents and recalls and the results of the FAA testing discussed above reinforce the actions we are taking in this final rule and the need for ongoing analysis of the transportation risks presented by lithium batteries. As we explain in the following sections, the provisions of this final rule will provide additional protection against all lithium battery-related fires, regardless of their source, by enhancing hazard communication and emergency response and limiting transportation options based on the availability of effective fire suppression technology. This final rule addresses the proposals advanced in 2002 under Docket HM–224C and the provisions of the 2004 IFR published under Docket HM–224E. The following tables are provided for your convenience:

As a result of HM–224E IFR the following requirements are already in effect:
- Primary lithium batteries are forbidden for transport aboard passenger aircraft.
- Primary lithium batteries transported by any means other than passenger aircraft must be marked "PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT".

The following provision pertaining to lithium batteries is unchanged by this combined final rule:
- Requirements for large lithium batteries (> 25 grams).

The following provisions have been modified as a result of this combined final rule:
- Section 175.10(a)(17) in that the equipment containing batteries and spares must be in carry-on luggage.

The following new requirements will take effect as a result of this combined final rule:
- The exception for medium batteries is eliminated by aircraft and vessel.
- Small battery exception from UN testing is eliminated.
- A new marking paperwork requirement is added for medium batteries shipped as excepted via highway and rail transportation.
- A new marking paperwork requirement is added for small batteries that are shipped excepted.

A. Docket HM–224C

1. Background: Proposed Requirements

As mentioned above, our April 2, 2002, NPRM (67 FR 15510) proposed to: (1) Adopt the revised lithium battery test scheme in the UN Test Manual; (2) eliminate the current exceptions for medium-size lithium batteries of all types; (3) require testing of small lithium batteries of all types; (4) impose hazard communication and packaging requirements for small lithium batteries of all types; and (5) provide exceptions for passengers and crew to carry lithium battery-powered equipment aboard an aircraft.

On June 15, 2005, we published an Initial Regulatory Flexibility Analysis (IRFA) (70 FR 34729) and requested comments on the potential small business impacts of the proposals in our April 2, 2002 NPRM. The issues raised by commenters to the IRFA are addressed in this document and the final regulatory flexibility analysis (FRFA), which can be found in the public docket for this rulemaking.

2. Discussion of Comments to HM–224C

PHMSA received 22 written comments on the NPRM and the IRFA in this proceeding. The following companies, organizations, and individuals submitted comments, which are discussed in detail in this section:

Electronic Industries Alliance (EIA; RSPA–2002–11989–3 and 16)

David Linden (Linden; RSPA–2002–11989–4)
Intel Corporation (Intel; RSPA–2002–11989–5)
National Electrical Manufacturers Association (NEMA; RSPA–2002–11989–6)
FEDCO Electronics, Inc. (FEDCO; RSPA–2002–11989–7, 12, 18, 24)
Argonne National Laboratory (ANL; RSPA–2002–11989–8)
National Transportation Safety Board (NTSB; RSPA–2002–11989–9)
Portable Rechargeable Battery Association (PRBA; RSPA–2002–11989–10, 19, 25)
Air Line Pilots Association International, Inc. (ALPA; RSPA–2002–11989–11)
Air Transport Association of America (ATA; RSPA–2002–11989–13)
Air Line Pilots Association, International (ALPA; RSPA–2002–11989–14)
Mark S. Ditmore (Ditmore; RSPA–2002–11989–15)
Valance Technology, Inc. (Valance; RSPA–2002–11989–20)
SION Power (SION; RSPA–2002–11989–22)
Cramer Law Group on behalf of SkyBitz Inc., (SkyBitz; RSPA–2002–11989–23)
ACR Electronic Inc (ACR; RSPA–2002–11989–26)
David Hadfield (RSPA–2002–11989–27)

a. *Elimination of the Exception for Medium-size Lithium Cells and Batteries*. In the NPRM, we proposed to eliminate the exception from most HMR requirements for medium-size lithium cells (including when packed or contained in equipment) containing 5 grams or less of lithium or lithium alloy and batteries (including when packed or contained in equipment) containing not more than 25 grams of lithium or lithium alloy per battery if they pass tests specified in Section 38.3 of the UN Test Manual. With the elimination of this exception, medium-size lithium batteries and cells of all types would have to be transported as Class 9 hazardous materials and conform to all associated hazard communication and packaging requirements. This exception has already been removed from the IMDG Code and the ICAO Technical Instructions, effectively requiring these lithium batteries to be transported as Class 9 materials when transported internationally by aircraft or vessel and in regulations applicable in other countries and regions throughout the world (e.g. European Road and Rail Agreements (ADR/RID).

Several commenters urge PHMSA to retain this exception for domestic surface transportation. The Portable Rechargeable Battery Association (PRBA) states that retention of the exception for medium-size lithium batteries of all types will have the largest positive effect on reducing the cost impacts on small businesses and recommends PHMSA retain the exception for lithium-ion batteries containing no more than 16 grams of equivalent lithium content shipped at a state of charge of no more than 50%. PRBA states testing data clearly show that the degree to which a lithium-ion cell reacts to abuse is significantly affected by state of charge. PRBA also suggests we should consider retaining the exception for medium-size lithium batteries when the batteries are contained in or packed with equipment and shipped by ground only. PRBA states this exception would substantially reduce costs associated with shipping products as Class 9 materials and cover a significant number of products shipped by small businesses.

In response to the proposal to eliminate the exception of medium sized batteries, Valence Technology, Inc. states PHMSA did not provide sufficient justification for eliminating the exception. SION Power asserts eliminating the exception for medium-size lithium batteries will adversely affect its commercial development and suggests that, in the case of primary lithium batteries, eliminating the exception will limit the size of batteries using smaller cells. SkyBitz favors scaling back the exception for medium-size lithium batteries by limiting the number of cells or batteries per package, rather than eliminating the exception. ACR Electronics, Inc. states PHMSA should retain the exception for medium-size lithium batteries provided they are contained in strong, waterproof safety equipment.

We continue to believe that significant safety benefits can be achieved by requiring medium-size lithium batteries and cells of all types to be shipped with appropriate hazard communication information. As recent incidents demonstrate, the hazards associated with these shipments should be communicated to transport workers and emergency response personnel to ensure safe handling in transportation and appropriate incident response actions. We are not convinced that requiring medium-size batteries to be transported with appropriate hazard communication information will impede the development or marketing of these batteries.

However, the comments raise legitimate concerns about the costs that may be incurred by companies, particularly small businesses, if we were to remove the exception in its entirety. Therefore, in this final rule we are eliminating the exception for medium-size lithium batteries and cells of all types transported by aircraft or vessel, but retaining a limited exception for ground transportation (i.e., motor vehicle and rail car). This action improves overall safety by reducing the risk of lithium battery-related incidents in the transport modes that are inherently most vulnerable to high consequence accidents, while minimizing the costs for businesses that ship lithium batteries by motor carrier or rail.

For medium-size lithium batteries and cells transported by motor carrier or rail, we are imposing more limited, less costly hazard communication requirements. Rather than requiring compliance with the hazard communication and packaging requirements applicable to Class 9 materials, in this final rule, we are adopting, with some revisions, a hazard communication and packaging program developed by industry. Under this program, a package containing medium-size lithium batteries and cells of all types must: (1) Be marked to indicate it contains lithium batteries and special procedures must be followed in the event that the package is damaged; (2) be accompanied by a document indicating the package contains lithium batteries and special procedures must be followed in the event that the package is damaged; (3) weigh no more than 30 kilograms; and (4) be capable of withstanding a 1.2 meter drop test. For those packages that are not prepared for air shipment, (i.e., not offered and transported as a Class 9 material) we are requiring that the package be marked to indicate that they may not be transported by aircraft or vessel. In this final rule, the provisions applicable to the transportation of medium-size lithium batteries of all types are relocated from § 173.185 to Special Provision 189.

b. *Revisions to the Exceptions for Small Batteries.* Section 173.185(b) of the HMR provides significant exceptions from packaging and hazard communication requirements for small lithium cells and batteries. In addition, small lithium cells and batteries are not subject to the UN testing requirements. In the 2002 NPRM, we proposed to require testing of small lithium batteries and cells of all types in accordance with the UN Test Manual. We also proposed to require each package containing more than 24 lithium cells or 12 lithium batteries to be: (1) Marked to indicate that it contains lithium batteries and

that special procedures must be followed in the event that the package is damaged; (2) accompanied by a document indicating that the package contains lithium batteries and that special procedures must be followed in the event that the package is damaged; (3) no more than 30 kilograms gross weight; and (4) capable of withstanding a 1.2 meter drop test in any orientation without shifting of the contents that would allow short-circuiting and without release of package contents.

The NTSB supports the proposal to require all lithium batteries, including small lithium batteries and cells currently excepted from the HMR, to be tested in accordance with the revised UN Test Manual, and to require packages containing more than 12 small lithium batteries or 24 cells to be capable of passing a drop test. The NTSB suggests the proposed rule could be improved by requiring a package containing 12 small lithium batteries or 24 lithium cells to be classed as a Class 9 material, and subject to the labeling and shipping paper requirements of the HMR. The Airline Pilots Association International (ALPA) states it agrees new testing requirements are needed.

The Air Transport Association of America (ATA) supports the proposals in the April 2002 NPRM, but notes a number of its members are particularly concerned about the retention of the exception for small lithium batteries as proposed in the NPRM. ATA states such provisions will be confusing to transport workers involved in accepting, sorting and loading packages in air transportation. According to ATA, air carriers are concerned that an indication on a package that it contains ''lithium batteries'' may cause packages to be removed from the system for clarification or possible rejection. The removal of a package from the system could occur more than once during the transportation cycle.

ATA recommends PHMSA either regulate or deregulate such materials (with no exceptions) and not ''band-aid'' a situation that will present problems in transportation. ATA also states the safety risks associated with the transportation of small lithium batteries and cells are addressed if packages are ''capable of withstanding a 1.2 meter drop test in any orientation without damage to cells or batteries contained in the package, without shifting of the contents that would allow short circuiting and without release of package contents.''

FEDCO states that, including new batteries in active design, it has about twenty 1- and 2-cell primary lithium batteries and 13 new lithium-ion packs containing from 2 to 12 cylindrical cells. FEDCO estimates the cost of having an independent testing facility, such as Underwriters Laboratories, perform the proposed tests would be about $20,000 per battery design. In addition, FEDCO states the testing of its existing 450 primary lithium and secondary lithium battery designs will cost an additional $9 million. FEDCO proposes an exception from the proposed tests for batteries and battery packs consisting of cells that have passed the UN tests; the exception would permit the batteries and battery packs to be transported without further testing.

FEDCO also makes the following recommendations to ease the financial impact on small business:

(1) Except single-cell and two-cell primary lithium batteries from the UN Test Manual provided that the cells in the batteries have already passed those UN tests;

(2) Provide manufacturers with a four-year ''grandfather'' period in which to comply with the new testing requirements for existing battery designs; and

(3) Extend the exception in the UN Recommendations for small production runs of cells or batteries from 100 to 1,000 batteries.

SION Power recommends the following exceptions for small lithium batteries and cells: (1) Except single cell batteries from testing if the cells have already passed the UN tests; and (2) except prototype or small production runs of cells or batteries, defined as no more than 200 cells or 50 batteries, from the UN tests. As a precondition to these exceptions, SION Power suggests requiring that the base cell and battery pack pass a 55 °C short circuit test. SION Power further recommends shipment of prototype or small production runs as Class 9 materials.

PRBA requests the following changes to the NPRM:

(1) Provide a four-year grandfather clause for testing small cells and batteries;

(2) Adopt a 1,000-unit small production run exception from UN testing for certain small primary lithium and lithium-ion cells and batteries; and

(3) Clarify that single-cell batteries do not require UN testing.

PRBA, FEDCO, SION, Valence Technology, ACR, SkyBitz Inc, EIA, and Intel Corporation all suggest an exception, consistent with the international regulations, from marking, packaging, and shipping paper requirements for equipment containing small lithium batteries and cells.

The UN Test Manual's lithium battery test methods are designed to measure the capability of the cells or batteries to maintain their construction integrity against shorts in normal transport environments. Parameters considered include: Temperature, altitude, vibration, shock, impact, overcharge, forced discharge, and intentional short. The test criteria were developed to minimize the risk of lithium cells or batteries becoming an ignition (fire) source during transport. Once ignited, a fire may spread to other lithium batteries in the package. To ensure that small lithium batteries and cells will be transported in commerce only if they are able to withstand normal transport conditions, in this final rule, we are revising the HMR to subject small lithium batteries and cells to the test methods in the UN Test Manual.

Information from an independent testing laboratory, which is currently performing these tests, suggests the cost for performing the tests is $6,000 per lithium battery design, and not $20,000 or more as stated by some commenters. (Subsequent to the completion of our analysis, some testing laboratories have indicated to us that costs of performing the UN Tests have decreased to about $4,000 to $3,000). Further, not all lithium batteries and cells must be tested. In accordance with the UN Test Manual, section 38.3.2.1, only lithium batteries and cells that differ from a tested type by a change of more than 0.1 gram or more than 20% by mass, whichever is greater, to the cathode, to the anode, or to the electrolyte, must be tested.

The UN Test Manual states that a single cell lithium battery should be considered a cell and not a battery, regardless of whether the unit is termed a ''battery'' or a ''single cell battery.'' Thus, a single cell lithium battery consisting of a cell that has passed the appropriate UN tests is a cell and need not be re-tested even if the components of the battery, other than the cell contained therein, are a new design type. Lithium batteries consisting of more than one cell are subject to the tests in the UN Test Manual.

We agree with those commenters who ask us to adopt a small-production-run exception for motor vehicle, rail and vessel transportation similar to the one in Special Provision 310 of the UN Recommendations for small lithium batteries and cells. Thus, we are adopting the following small-production-run exception for small lithium batteries and cells transported by motor vehicle, rail and vessel:

(1) The cells and batteries must be transported in an outer packaging that is a metal, plastic, or plywood drum; or metal, plastic, or wooden box meeting

the criteria for Packing Group I packagings; and

(2) Each cell and battery must be individually packed in an inner packaging inside the outer packaging and surrounded by non-combustible, non-conductive cushioning material.

Consistent with the international standards, the exception will apply to production runs of up to 100 lithium batteries or cells of all types. This exception addresses the need to increase safety standards for these lithium batteries, while not imposing undue costs on the regulated community.

We agree with commenters who request an appropriate transition period for lithium battery manufacturers to test lithium battery designs that are currently on the market. Therefore, in this final rule, we are adopting a two-year compliance date for the testing of small lithium batteries and cells.

PHMSA agrees with the commenters who requested an exception from the marking, packaging and shipping paper requirements for equipment containing small lithium batteries and cells. We are adopting the exception in this final rule.

We continue to believe that the hazards associated with small lithium batteries should be communicated to transport workers so that they can handle packages appropriately. Therefore, in this final rule we are adopting the communication and packaging program developed by the industry, and described above, for small lithium batteries.

In summary, in this final rule, PHMSA is amending the HMR to require that small lithium batteries be tested in accordance with the UN Test Manual. In addition, we have adopted the proposed size standards for small lithium batteries thus eliminating the distinction between liquid and solid cathode lithium batteries. Unless contained in equipment, each package containing more than 24 lithium cells or 12 lithium batteries must also be:

(1) Marked to indicate it contains lithium batteries and special procedures must be followed in the event that the package is damaged;

(2) Accompanied by a document indicating the package contains lithium batteries and special procedures must be followed in the event that the package is damaged;

(3) No more than 30 kilograms gross weight; and

(4) Capable of withstanding a 1.2 meter drop test in any orientation without shifting of the contents that would allow short circuiting, and without release of package contents.

In accordance with § 173.21(c), electrical devices likely to create sparks or generate a dangerous quantity of heat are forbidden for transportation unless packaged in a manner to preclude such an occurrence. In this final rule, we are adding language to clarify that the restrictions in § 173.21 of the HMR apply to lithium batteries of all types.

We note that adoption of hazard communication requirements for shipments of lithium batteries does not ''classify'' or ''declassify'' these materials as hazardous materials. Lithium batteries, regardless of their size (i.e., small, medium and large), are hazardous materials and are subject to applicable requirements in the HMR.

c. *Exceptions for Aircraft Passengers and Crew.* Consistent with amendments to the ICAO Technical Instructions, in the April 2002 NPRM we proposed to allow airline passengers and crew to carry consumer electronic devices containing lithium batteries. In addition, we proposed to allow passengers and crew to carry spare lithium batteries for such devices subject to limits as to lithium content, the number of batteries, and the type of lithium batteries. In the IFR adopted December 15, 2004 (Docket HM–224E), had we not amended § 175.10, airline passengers and crew would have been forbidden to carry consumer electronic devices powered by primary lithium batteries. As amended in the IFR, lithium batteries contained in equipment and spares of all types (primary and secondary) are authorized in carry-on or checked baggage. In this final rule, we are adopting the amendments proposed in the April 2002 NPRM to permit carriage by passengers and crew of lithium battery-powered consumer electronic devices and associated spare lithium batteries. We are also clarifying in this final rule that the proposed battery size limitation for spare batteries also applies to the batteries installed in the device. These amendments also state that spare lithium batteries may only be carried in carry-on luggage and that they must be individually protected against short circuits. Unprotected batteries are susceptible to short circuits when exposed to items typically carried by passengers and crew members, such as car keys and coins. We recommend that passengers protect spare batteries by placing them in protective cases or individual zip-top bags or placing non-conductive tape across exposed terminals. We note that ICAO is considering eliminating the passenger aircraft exception for medium-size (8–25 grams aggregate equivalent lithium content) batteries. If adopted by ICAO, we will consider adopting this in a future rule.

d. *Editorial Changes.* In the 2002 NPRM, we proposed to make several editorial changes to § 173.185 to help users better understand their obligations. First, we proposed to move the definition of ''equivalent lithium content'' and ''lithium content'' from former § 173.185(a) to § 171.8 and eliminate as unnecessary the first sentence of former § 173.185(a). Also, as proposed, we have removed the grandfather provision that was previously provided under § 173.185(d).

PRBA requested revisions to the definition of ''equivalent lithium content'' to provide that a lithium polymer battery based on lithium-ion chemistry or technology is regulated as a lithium-ion battery for purposes of determining equivalent lithium content. PRBA notes that the UN Test Manual definition for a lithium-ion cell or battery states ''a lithium polymer cell or battery that uses the lithium-ion chemistries, as described herein, is regulated as a lithium-ion cell or battery.''

Based on the comment from PRBA on the definition of ''equivalent lithium content,'' in this final rule, we are adding a definition for ''aggregate lithium content.'' Except for some minor differences, the other editorial amendments are adopted as proposed. In addition, we have made editorial amendments to §§ 171.11, 171.12, and 171.12a to address changes in regulatory citations.

We have also moved the provisions applicable to small lithium batteries from § 173.185 to Special Provision 188 for consistency with international regulations. We have also made some editorial changes to the exception related to the prohibition of primary lithium batteries aboard passenger aircraft in order to clarify the requirements. We also clarified the packaging requirements for lithium batteries packed with equipment. We inadvertently proposed to remove the requirement that lithium batteries or cells that are packed with the equipment are required to be packaged in specification packaging.

e. *Shipping Lithium Batteries for Recycling.* PRBA filed a petition for rulemaking on February 8, 2002 (P–1423), asking for an amendment to the HMR requirements for shipping spent lithium batteries for recycling. Currently, under the exception in § 173.185(h), lithium cells and batteries ''for disposal'' may be offered for transportation or transported to a permitted storage facility and disposal site by motor vehicle when they are equipped with an effective means of preventing external short circuits and

packed in a strong outer packaging conforming to the requirements of §§ 173.24 and 173.24a. Lithium batteries transported under this provision are excepted from the performance packaging requirements of Part 178 of the HMR.

Section 173.185(h) does not specifically address the transportation of lithium cells and batteries for recycling. In its comments to the NPRM, PRBA states that failure to include the change in the final rule will have significant implications for the Rechargeable Battery Recycling Corporation's used battery collection and recycling program. We agree with the comments of PRBA and others on expanding the exception for shipping lithium batteries for disposal to include lithium batteries shipped for recycling, and in this final rule have modified § 173.185(d) accordingly.

B. Docket HM–224E

1. Background: IFR Requirements

As explained above, on December 15, 2004, PHMSA published an IFR (Docket HM–224E; 69 FR 75208), prohibiting the shipment of primary lithium batteries as cargo on passenger-carrying aircraft. The IFR prohibits the offering for transportation and transportation in commerce of primary lithium batteries and cells, and equipment containing or packed with large primary lithium batteries (i.e., batteries containing greater than 25 grams of lithium) as cargo aboard passenger-carrying aircraft. In addition, equipment packed with or containing small or medium primary lithium batteries (i.e., batteries containing 25 grams or less of lithium) must be transported in accordance with Special Provisions A101 and A102. Under the IFR, Special Provision A101 specified that a primary lithium battery or cell packed with equipment may not exceed 5 kg (11 pounds) gross weight. On September 28, 2006, we issued a correction to Docket HM–224E, 71 FR 56894, revising Special Provision A101. The correction clarified that we intended the 5 kilogram limit to be net weight. In addition, in accordance with Special Provision A102, primary batteries or cells contained in equipment may not exceed 5 kg (11 pounds) net weight. Further, the IFR requires the outside of each such package that contains a primary lithium battery or cell forbidden for transport aboard passenger carrying aircraft to be marked ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT.''

Under the IFR, for air shipments of non-excepted Class 9 primary lithium batteries and for shipments of equipment that contains or is packed with Class 9 primary lithium batteries, the words ''Cargo Aircraft Only'' must be entered after the basic description on shipping papers. The package must bear a CLASS 9 and a CARGO AIRCRAFT ONLY label, and the package must be otherwise marked as required by the HMR. The IFR applies to both foreign and domestic passenger-carrying aircraft entering, leaving, or operating in the United States and to persons offering primary lithium batteries and cells for transportation as cargo on any passenger-carrying aircraft.

The IFR resulted from an assessment by PHMSA and the FAA of recent lithium battery fires in air transportation, and the FAA technical report, discussed earlier in this preamble, evaluating the flammability of primary lithium batteries and the effect of air carrier fire suppression systems on primary lithium battery fires.

2. Discussion of Comments in HM–224E

On January 27, 2005, PHMSA conducted a public meeting to provide an informal forum for interested persons to offer comments on the IFR. Six persons made oral presentations at the public meeting. In addition, we received 38 written comments from private citizens and the following companies and organizations:

Karin Rindal (RSPA–2004–19886–4)
Delaine Arnold (RSPA–2004–19886–5)
McDowell Research, Ltd. (RSPA–2004–19886–6)
Rollie Herman (RSPA–2004–19886–7)
Homer C. Lambert (RSPA–2004–19886–10)
Portable Rechargeable Battery Association (PRBA; RSPA–2004–19886–39, 44)
Information Technology Industry Council (ITI; RSPA–2004–19886–41)
Solectron Corporation (RSPA–2004–19886–42)
CTIA—The Wireless Association (RSPA–2004–19886–40)
National Electrical Manufacturers Association (NEMA; RSPA–2004–19886–23, 24, 38)
FEDCO Electronics, Inc. (RSPA–2004–19886–12, 13)
Dangerous Goods Advisory Council (RSPA–2004–19886–11)
Liferaft and Marine Safety (RSPA–2004–19886–14)
Anthony Affisio (RSPA–2004–19886–15)
DBC Marine Safety Systems Ltd (RSPA–2004–19886–16)
Lucent Technologies (RSPA–2004–19886–18)
Siemens AG (RSPA–2004–19886–9)
Rockwell Automation (RSPA–2004–19886–20)
Intel Corporation (RSPA–2004–19886–21)
Honeywell Corporate (RSPA–2004–19886–17, 22)
FedEx Express (RSPA–2004–19886–25)
URS Corporation (RSPA–2004–19886–26)
United States Marine Safety Association (RSPA–2004–19886–27)
Federation Industries Electriques (RSPA–2004–19886–28)
ZVEI (RSPA–2004–19886–29, 31)
SAFT America Inc. (RSPA–2004–19886–30, 32)
Air Transport Association of America, Inc. (RSPA–2004–19886–33)
Air Line Pilots Association, International (ALPA; RSPA–2004–19886–34)
Automated Media Systems (RSPA–2004–19886–35)
Switlik Parachute Co. Inc. (RSPA–2004–19886–36)
Fisher Scientific Company, L.L.C. (RSPA–2004–19886–37)
The International Brotherhood of Teamsters Airline Division (Teamsters; RSPA–2004–19886–43)

All comments submitted to the Dockets Management System, under Docket Number PHMSA–04–19886 (HM–224E) and comments received at the public meeting have been considered in developing this final rule. The comments are addressed in detail below. Several commenters submitted comments that were outside the scope of this rulemaking. They are not discussed in this preamble.

a. *Prohibition of Primary Lithium Batteries and Cells Aboard Passenger Aircraft.* The IFR imposed a limited prohibition on offering for transportation and transportation of primary lithium batteries and cells as cargo aboard passenger-carrying aircraft and equipment containing or packed with large primary lithium batteries. Under the IFR, only small or medium-size primary lithium batteries packed with or contained in the equipment for which they are intended to provide power are permitted to be transported as cargo aboard passenger-carrying aircraft.

Several commenters oppose the prohibition adopted in the IFR. For example, NEMA suggests the record does not support the ban of cargo shipments of primary lithium batteries and lithium batteries packed with or contained in equipment aboard passenger aircraft. NEMA requested that the exception for 5 kg (11 pounds) net weight of batteries packed in equipment be extended to shipments of primary

lithium batteries shipped without equipment. NEMA also recommends PHMSA allow, consistent with international requirements, shipments of up to 12 batteries and 24 cells of batteries to be transported in accordance with the exception in § 173.185(b) of the HMR. NEMA states it is unclear how PHMSA could determine shipments of such products packed with or contained in equipment could pose a serious risk in air transportation when there has been no testing of primary lithium batteries in equipment.

Several commenters recommend PHMSA retract the IFR and issue a final rulemaking to harmonize the HMR with standards for transporting lithium batteries in the UN Recommendations or ICAO Technical Instructions. These commenters suggest harmonization would alleviate the confusion caused by the different lithium battery weight limits, exemptions, and testing requirements in the HMR and the international transportation regulations.

Two commenters address the April 28, 1999 LAX incident mentioned in the IFR. These commenters suggest the incident occurred under atypical handling procedures and was the direct result of inadequate packaging. SAFT America states improved packaging requirements, mandatory testing of all primary lithium batteries and cells in accordance with the UN Recommendations, and procedures to quarantine damaged shipments would successfully address the root cause of the incident. This commenter further states all other incidents involving primary lithium batteries and cells involved improper packaging or batteries contained in checked or carry-on baggage; the commenter notes that neither of these situations is addressed in the IFR. FedEx suggests packaging for all battery types must be reviewed and better packaging requirements must be developed to prevent fires and recommends further studies to identify an effective extinguishing agent for lithium batteries.

Several commenters express concern the IFR will result in unacceptable economic burdens on the industry and will adversely affect the efficiency with which primary lithium batteries and cells are transported. FEDCO states the majority of its sales are to distributors and dealers of computer products and to battery retail stores, with major competition from foreign importers of primary lithium batteries. FEDCO expresses concern that most foreign importers of primary lithium batteries are ''under the radar'' in so far as PHMSA is concerned. FEDCO asserts its personnel have seen numerous cases where foreign importers have shipped regulated and hazardous primary lithium batteries by air with inadequate packaging and virtually no insulation that would prevent the batteries from short circuiting. FEDCO suggests PHMSA needs to develop methods of policing the practices of foreign importers of primary lithium batteries before a serious incident occurs.

Fisher Scientific Company, L.L.C. states it has found individual primary lithium batteries, whether shipped installed or with equipment, do not represent a hazard during transportation. Fisher Scientific states it has shipped well over 10,000 shipments of primary lithium batteries over a period of 20 years, with no transportation incidents attributable to the batteries, and it requests an exception from the HMR for single batteries classified as dry (e.g. consumer alkaline), or lithium or lithium ion batteries. Fisher Scientific suggests an exception for small primary lithium batteries would provide an adequate level of safety with a minimum of operational disruption and no negative economic impacts.

We do not agree with those commenters who urge withdrawal of the IFR. Although we are hopeful that intervening technological advances will make lifting the prohibition feasible in the future, until we can be satisfied that primary lithium batteries will not ignite in flight and/or that any such fire could be suppressed by standard fire suppression systems in passenger aircraft cargo compartments, we cannot sanction the shipment of primary lithium batteries as cargo in passenger aircraft. Incident reports and test data indicate primary lithium batteries present unique and serious risks if transported as cargo on passenger-carrying flights. The FAA report concludes that primary lithium batteries self-propagate once the lithium in a single battery begins to burn. Because of this, lithium batteries that are not involved in the initial fire may still ignite and propagate. In addition, the only FAA-certified fire suppression system authorized for use in a passenger-carrying aircraft cannot extinguish or suppress a primary lithium battery fire.

For those reasons, PHMSA and FAA continue to believe the prohibition on the transportation of primary lithium batteries on passenger aircraft is appropriate and well-founded. Although some commenters questioned the original justification for the IFR, intervening developments have buttressed the record, calling further attention to primary lithium battery risks and strengthening the case for final regulatory action. We take these risks seriously, recognizing the potential for catastrophic harm in any passenger airline accident and the relative availability of transportation alternatives. When it comes to safeguarding airline travel, we intend to be proactive, identifying and addressing the most serious safety risks before they result in costly accidents. Although we insist that regulatory actions be data-driven, we will not wait for accidents to address known risks. In the case of primary lithium batteries, although the evidence of transportation-related risks is mounting, no incident has resulted in serious injury or loss of life. Far from demonstrating that the prohibition is unnecessary, this safety record could well reflect the fact that the IFR has been in place for over two years.

We disagree with those commenters who contend that imposing more robust packaging requirements would address the safety risks posed by shipment of primary lithium batteries as cargo aboard passenger planes. These comments do not address the central fact that the fire suppression system in an aircraft cargo compartment is ineffective in suppressing a fire involving lithium batteries. The aircraft cargo compartment fire scenario of concern to PHMSA and FAA is not limited to a fire initiated by the primary lithium batteries, but includes a fire started by an outside source. Increasing packaging integrity and improved compliance do not address this significant concern. As we indicated in the preamble to the IFR, a primary lithium battery involved in a fire in a passenger aircraft cargo compartment could overcome the safety features of the cargo compartment. Further, primary lithium batteries are capable, on their own, of initiating a fire that could have catastrophic consequences. The FAA report on the flammability characteristics of primary lithium batteries raises significant concerns justifying our conclusion that they should be prohibited aboard passenger carrying aircraft.

PHMSA generally agrees with the commenters that the continually increasing amount of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent possible. Harmonization facilitates international transportation, while promoting the safety of people, property and the environment. Our goal is to harmonize without diminishing the level of safety currently provided by the HMR and without imposing undue

burdens on the regulated public. However, we are obligated to impose additional requirements when the international standards do not adequately protect the American public. Over time, we expect increased harmonization of domestic and international standards as both regimes continue to address the transportation risks posed by the growing use of lithium battery technology.

b. *Battery Testing.* The Portable Rechargeable Battery Association (PRBA) expresses concern about the manner in which the FAA tests on primary lithium batteries were conducted, the conclusions reached, and the regulatory steps taken. Specifically, PRBA contends:

(1) PHMSA has not shown that the FAA fire testing of primary lithium batteries and cells represents realistic conditions that could be encountered in air transportation and pose an unreasonable risk to the traveling public.

(2) The FAA test results do not provide a rational basis for the IFR, particularly when compared with other FAA cargo compartment fire tests.

(3) It is unlikely that the pressure rise caused by burning primary lithium batteries would lead to an overpressure of an air craft cargo compartment.

(4) The fire tests are arbitrary and more severe than the other tests used to evaluate the hazards of other chemicals and articles.

(5) The effects of packaging material for shipments of primary lithium batteries were largely ignored in the FAA tests.

(6) Primary lithium batteries were subjected to extreme temperature testing when in a separate proposed rulemaking (Docket HM–224B) PHMSA proposed to subject packaged oxygen cylinders carried in passenger cargo compartments to a temperature of only 400° F.

For the following reasons, we do not agree with the PRBA comments. The FAA tests demonstrated that the lithium output from a single burning primary lithium battery is sufficient to penetrate single-layer cargo linings. Once penetration occurs, the ability of Halon to suppress a fire is reduced, and the fire can spread throughout the cargo compartment. Similarly, most cargo containers used in commercial shipments (roughly 90%) have only a single lining. Small numbers of burning primary lithium batteries can also raise the pressure pulse in a cargo container to the level at which the walls of the containers separate (1 psi). Separation of the cargo container raises the same concerns as perforation of the containers. In the FAA tests, one brand of primary lithium batteries required only three burning batteries to raise the pressure pulse above 1 psi, while the two other brands required only four primary lithium batteries to reach the same psi. The pressure tests were added to the test protocol on the basis of initial test results; the FAA was surprised to see pressure changes in the tested compartment in the single-battery tests. Cargo containers are designed to only support 1 psi because they need to be suitable for depressurization. A more robust cargo compartment would be incompatible with the need for a depressurized environment.

Temperatures in a suppressed cargo compartment fire can be above the auto-ignition temperature for primary lithium batteries. Thus, the lithium batteries do not have to be in close proximity to the fire source in order to experience dangerous elevated temperatures during a cargo compartment fire. The current fire suppression system installed on board an aircraft needs a fire to be activated by a pilot. We note that the Halon system suppresses, but does not extinguish, a fire, thus allowing for the continuous generation of heat by a deep-seated fire. In addition, the temperature and heat flux data collected in the 64 cubic foot test facility cannot be compared to those collected in a full scale fire test like those described in the report ''Minimum Performance Standards (MPS) for Aircraft Cargo Compartment Halon Replacement Fire Suppression Systems'' (DOT/FAA/AR–TN03/6; a copy of which is in the public docket). For example, the ratio of flammable materials to compartment volume is much lower in the battery tests. To get comparable measurements, the battery tests would require a much larger quantity of primary lithium batteries, placed in a full scale cargo compartment along with other combustibles. Peak ceiling temperatures and temperature-time areas could then be compared meaningfully. Aircraft cargo compartments are as air tight as possible, which is necessary to contain the Halon fire suppression gas in the event of a cargo fire and to pressurize the cabin with available engine bleed air. In addition, cargo liners are designed to separate when exposed to a pressure of only 1 psi, in order to rapidly relieve pressure during a rapid cabin depressurization, and prevent the collapse of the cabin floor and possible loss of the aircraft. The pressure rise due to battery ignition is directly related to the size of the compartment. However, the data obtained during the FAA tests indicate that a significant pressure rise can result from ignition of a small quantity of lithium batteries in the $10m^3$ facility and raises legitimate concerns about the rise possible with a full shipment of primary lithium batteries in a larger cargo compartment.

In its comments, PRBA refers to the NPRM published on May 6, 2004 by PHMSA under Docket HM–224B (69 FR 25469), which proposed a requirement for oxygen cylinders to be overpacked in a packaging that would allow the cylinder to withstand a temperature of 400° F for 3 hours. (On January 31, 2007 PHMSA published the HM–224B Final Rule (72 FR 4442).) PRBA questioned why the lithium batteries were subjected to higher temperature tests than the 400° F proposed for oxygen cylinders. Other commenters also question the validity of the tests cited in the IFR and our use of the test results as a basis for prohibiting the air transportation of primary lithium batteries and cells. For example, NEMA questions whether PHMSA has improperly relied on the FAA test report, which addresses a worst-case scenario for bulk shipments of lithium batteries, in limiting the transportation of single batteries or products packed with or contained in equipment. NEMA states that unlike ''bulk shipments'' of primary lithium batteries, batteries packed with or contained in equipment are not close in proximity to each other during transportation.

FedEx states that there appears to have been more problems with non-bulk shipments of primary lithium batteries as opposed to bulk shipments and that the FAA flammability test was conducted only on bulk shipments of primary lithium batteries. FedEx recommends that the FAA examine non-bulk shipments of primary lithium batteries and conduct appropriate tests on these types of primary lithium battery shipments.

Though the focus of the FAA Test Report was the shipment of primary lithium batteries in bulk, the tests performed by the FAA Tech Center provide more then sufficient justification to prohibit smaller shipments of primary lithium batteries. Several of the tests performed by the FAA Tech Center involved as few as four primary lithium batteries. In terms of the effectiveness of the halon suppressions system, the report states ''the halon immediately extinguished the 1-propanol fire and reduced the overall temperature profile in the chamber but did nothing to impede the progress of the primary lithium battery fire once a single primary lithium battery had ignited.'' In terms of the pressure pulse, the report states:

One test was conducted with three Panasonic PL 123A batteries. The conditions were similar to the Sanyo CR2 and Duracell PL 123A battery tests. The pressure rise in the vessel was 1.2 psi (see Figure 17). These results are significant. The cargo compartment is only constructed to withstand a 1-psi pressure differential in order to rapidly equalize pressure in the event of a depressurization. Anything over 1 psi would activate the blowout panels, compromising the cargo compartment's integrity.

As these results indicate, the shipment of even a small number of primary lithium batteries presents a significant risk to a passenger aircraft. Therefore, it is appropriate to rely on the results from the FAA report to prohibit small shipments of primary lithium batteries.

ALPA expresses concern that primary lithium batteries may still be shipped by cargo only aircraft, including bulk primary lithium battery shipments that would continue to be excepted from many of the requirements of the HMR, including stringent packaging standards, quantity limits, and pilot notification. ALPA contends that the current HMR requirements for the shipment of primary lithium batteries by cargo aircraft are inappropriate for a commodity posing a great enough risk to warrant PHMSA's taking emergency action to prohibit the batteries aboard passenger aircraft. ALPA recommends the bulk shipment of primary lithium batteries should be governed by regulations consistent with those in place for commodities that pose a similar risk.

ALPA also suggests the risk associated with primary lithium batteries and cells is unique within the dangerous goods transportation system because an improperly packaged or damaged shipment of batteries can catch fire. ALPA states once a shipment of lithium batteries has been damaged, there is a significant likelihood that the batteries will self-initiate, ignite, and catch fire, overcoming the on-board fire suppression capabilities and likely causing the loss of the aircraft and all passengers and crew aboard. ALPA suggests bulk shipments of primary lithium batteries and cells should only be transported aboard cargo aircraft if they are subject to all of the applicable hazard communication requirements of the HMR and packaged to prevent damage, short circuiting, and in such a way that the batteries withstand the heat from an unsuppressed cargo fire.

The Teamsters state PHMSA failed to address the safety concerns of cargo-only aircraft transporting primary lithium batteries and cells. They state the hazardous properties of primary lithium batteries do not depend on the mode of transportation or (in transportation by air) on the type of aircraft or transportation service. The Teamsters suggest that, until these hazards and the risk they pose can be mitigated by improved packaging standards, specific labeling/marking requirements, strict quantity limitations, and appropriate hazard communications standards (including pilot notification), primary lithium batteries should not be transported aboard either passenger or cargo-only aircraft.

As stated in the IFR, PHMSA and FAA agree the greatest risk to public safety is in passenger carrying operations. For that reason, we did not extend the prohibition in the IFR to cargo-only aircraft. Therefore extending the prohibition to cargo operations is beyond the scope of this rulemaking.

c. *Marking and Labeling Requirements.* The IFR amended § 173.185 of the HMR to require cargo shipments of small and medium primary lithium batteries and cells, which are excepted from classification as Class 9 hazardous materials, to be marked ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT.'' This requirement applies to shipments of small and medium lithium batteries in all modes of transport.

McDowell Research, Ltd (McDowell) asks whether the IFR (and the proposed final rule) permit placement of the ''Cargo Aircraft Only'' label on packages of primary lithium batteries and cells that display the ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'' markings. McDowell states there should be a similar, if not identical, statement on the shipping papers, or more specifically, the air waybill, for all air shipments of primary lithium batteries in this category to prevent such shipments from being inadvertently loaded aboard a passenger aircraft.

FedEx states that if the requirements in the IFR are adopted, PHMSA must require shippers to indicate whether the primary lithium battery shipment is nonrechargeable or rechargeable. FedEx states the proper shipping name for ''Lithium batteries UN 3090'' does not indicate whether the lithium batteries shipments are rechargeable or non-rechargeable. In addition, FedEx requests PHMSA require shippers to indicate whether the primary lithium battery is large or small. FedEx states that currently, the proper shipping names for ''Lithium batteries contained in equipment, UN 3091'' or ''Lithium batteries packed with equipment, UN 3091'' do not indicate whether the lithium battery is large or small. FedEx expresses concern that a carrier has no reasonable way of knowing if the lithium battery is large or small. FedEx is also concerned with the proliferation of markings or other minimal requirements when dangerous goods shipments are otherwise not regulated and are excepted from the regulation. FedEx states marking a package ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'' will only cause confusion, delay shipments and impede commerce. FedEx recommends the use of Cargo Aircraft Only labels for the shipment of lithium batteries subject to the final rule.

URS Corporation suggests PHMSA remove the marking requirement ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'' for packages transported by highway, rail, and vessel with no air transportation involved. URS Corporation states the required markings are not sufficiently visible for transporters to divert packages of primary lithium batteries and cells to cargo aircraft only and that certain transporters that do not accept hazardous materials shipments may refuse to accept packages of equipment containing lithium batteries that are marked ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT.'' Another commenter states that without any identification requirements on the documents, it is quite possible that cargo may be transferred from an intended cargo flight to a passenger flight once the cargo is loaded into a unit load device (ULD). The commenter states that, because much, if not all, cargo within ULDs is no longer visible, the only means to identify prohibited primary lithium batteries is not available.

Under the HMR, an offeror of a hazardous material must provide the aircraft operator with a signed shipping paper containing the quantity and a basic shipping description of the material being offered for transportation (i.e., proper shipping name, hazard class, UN or NA identification number, and packing group); and certain emergency response information (See Part 172, Subparts C and G). Additional information may be required depending on the specific hazardous material being shipped (see § 172.203). Further, when a package containing a hazardous material is offered for transportation by air and the HMR prohibit its

transportation aboard passenger-carrying aircraft, the words ''Cargo aircraft only'' must be entered after the basic description (see § 172.203(f)). A copy of this shipping paper must accompany the shipment it covers during transportation aboard the aircraft (see § 175.35).

In addition to the shipping paper accompanying each hazardous materials shipment, an aircraft operator must provide the pilot-in-command of the aircraft written information about hazardous materials on board the plane (§ 175.33). For each hazardous materials shipment, this information must include: (1) Proper shipping name, hazard class, and identification number; (2) technical and chemical group name, if applicable; (3) any additional shipping description requirements applicable to specific types or shipments of hazardous materials or to materials shipped under ICAO requirements; (4) total number of packages; (5) net quantity or gross weight, as appropriate, for each package; (6) the location of each package on the aircraft; (7) for Class 7 (radioactive) materials, the number of packages, overpacks or freight containers, their transport index, and their location on the plane; and (8) an indication, if applicable, that a hazardous material is being transported under terms of an exemption. This information must be readily available to the pilot-in-command during flight. In essence, the notification of pilot-in-command (NOPC) provides the same information to emergency response personnel as a shipping paper for transportation by rail or public highway.

The HMR provides exceptions from the packaging and hazard communication requirements in the HMR for small and medium-size lithium batteries and cells (when transported by highway or rail). When the lithium content of the battery or cell does not exceed certain limits, the batteries and cells must be packaged in strong outer packagings and in a manner to protect against short circuit; however, such shipments are excepted from all other requirements in the HMR, including hazard communication requirements. Without hazardous communication markings on excepted packages, carriers will be unaware of the presence of primary lithium batteries and cells and may inadvertently transport primary lithium batteries and cells aboard passenger-carrying aircraft.

Applying the current hazard communication standards for an excepted shipment of lithium batteries would have the additional effect of regulating these batteries as a Class 9 material. The marking requirement adopted in the IFR informs properly trained carrier personnel of package transport restrictions for passenger aircraft, even if loaded in a ULD. We continue to believe it is necessary to require the marking for all modes of transport, not just aviation, because the required marking is likely to be the only visible indication that the package is forbidden for transportation by passenger aircraft. The multimodal requirement is necessary because many goods travel in different modes, and package restrictions must be identifiable in case a package is routed to aircraft transportation.

In its comments, FedEx suggests excepted packages of primary lithium batteries should also bear the ''Cargo Aircraft Only'' label so that these packages are more readily identifiable by air carrier employees. Although the HMR provides relief from the labeling requirements of Part 172, Subpart E, nothing precludes a shipper from voluntarily applying the ''Cargo Aircraft Only'' label, because it is not inconsistent with the nature of the shipment. However, the display of the ''Cargo Aircraft Only'' label by itself (without accompanying hazard class labels or a hazardous materials shipping paper) could cause confusion to accepting carriers of all transportation modes. Those who wish to voluntarily apply the ''Cargo Aircraft Only'' label on excepted packages of primary lithium batteries are encouraged to coordinate with all parties in their transportation chain.

NEMA states the labeling requirements for primary lithium batteries and cells impose unreasonable requirements for certain types of lithium battery shipments. For example, NEMA suggests marking of small packages containing one or a few batteries would be impossible with the mandated font size. In addition, marking of packages with multiple languages may lead to difficulty in meeting the mandated font size.

The marking provisions adopted in the IFR and this final rule require the outside of each package containing a primary lithium battery or cell to be marked ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'' on a background of contrasting color, in letters: (i) At least 12 mm (0.5 inch) in height on packages having a gross weight of more than 30 kg (66 pounds); or (ii) At least 6 mm (0.25 inch) on packages having a gross weight of 30 kg (66 pounds) or less. In addition, § 172.304 requires markings to be durable; printed only in English; printed on or affixed to the surface of the package; displayed on contrasting background; unobscured by labels or attachments; and located away from any other marking that could substantially reduce their effectiveness. Consistent with other marking requirements in the HMR, and in order to address the problems associated with marking smaller packages, we have revised the HMR to allow for a more appropriate font for smaller packages. In addition, to provide an alternative mark that is consistent with the adoption of the new shipping description in the international requirements, we are allowing packages to be marked ''LITHIUM METAL BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT.''

d. *Weight Restrictions for Primary Lithium Batteries.* In accordance with the IFR, primary lithium batteries or cells packed with or contained in equipment may be transported aboard passenger carrying aircraft under Special provisions A101 and A102. Special provision A101 and Special Provision A102 state the net weight of the package for a primary (non-rechargeable) lithium battery or cell contained in equipment may not exceed 5 kg (11 pounds).

NEMA recommends PHMSA either eliminate this restriction on products shipped with or contained with primary lithium batteries and cells or clarify the weight restrictions for primary lithium batteries and cells. NEMA also states PHMSA should expand the provision relating to products to cover lithium batteries shipped with accessories or other non-hazardous materials.

Intel Corporation (Intel) recommends PHMSA either rescind or significantly modify the IFR to make it inapplicable to shipments of small primary lithium batteries and cells contained in equipment. Based on its longstanding experience shipping products containing small primary lithium batteries, Intel contends no further restrictions on shipments of primary lithium batteries is warranted. In the alternative, Intel states any further restrictions on shipments of primary lithium batteries on passenger aircraft should include rational thresholds based on the weight of the batteries, not the weight of packages.

The IFR imposed a limited prohibition on offering for transportation and transportation of primary lithium batteries and cells as cargo aboard passenger-carrying aircraft and equipment containing or packed with large primary lithium batteries. We do not believe that any additional exceptions should be provided. We do

concur with those commenters who recommend the exception for primary lithium batteries contained in equipment and batteries packed with equipment should be the same. On September 28, 2006, we issued a correction to Docket HM–224E, 71 FR 56894. In the correction, we revised Special Provision A101 by changing the gross weight limitation to a net weight limitation. Because the requirements in A101 and A102 are now essentially the same, we are removing A102 and replacing references to A102 with A101. We are also clarifying that the net weight limitations in 188, A101, and A104 apply to the total net weight of the lithium batteries in the package.

e. *Secondary Lithium Batteries.* In the IFR, the existing package quantity limitation in § 173.185 of the HMR applicable to secondary lithium batteries or cells packed with or contained in equipment was relocated without change from column 9 of the Hazardous Materials Table (HMT) to Special Provisions A103 and A104. In accordance with Special Provision A103, an inner package of secondary lithium batteries or cells, packed with equipment is authorized aboard passenger carrying aircraft so long as the inner package does not exceed a gross weight of 5 kg (11 pounds). In addition, Special Provision A104 authorizes the transportation of a secondary lithium battery or cell contained in equipment aboard passenger carrying aircraft in packages not exceeding a net weight of 5 kg (11 pounds) of primary lithium batteries.

PRBA and other commenters suggest PHMSA separate the provisions in the HMR governing the transportation of primary lithium cells and batteries from those governing secondary lithium cells and batteries. To alleviate any confusion, PRBA suggests PHMSA incorporate into the HMR a new section specific to secondary lithium cells and batteries.

As noted earlier, the UN Recommendations have been recently revised by adding new shipping names for lithium metal and lithium-ion batteries. PHMSA will take these commenters' suggestions under consideration when it considers adding these new names into the HMR. We believe that it would be premature to adopt new requirements at this time.

f. *Life-Saving Appliances.* Section 173.219(a)(3), as amended by HM–215G (69 FR 76044), requires life-saving appliances containing lithium batteries to be transported in accordance with § 173.185 of the HMR. In accordance with Special Provision A101, a primary lithium battery or cell packed with or contained in equipment is forbidden for transport aboard a passenger carrying aircraft unless: (1) The battery or cell conforms with the requirements and limitations of § 173.185(b)(1), (b)(2), (b)(3), (b)(4) and (b)(6) or § 173.185(c)(1), (c)(2), (c)(3) and (c)(5); (2) the package contains no more than the number of lithium batteries or cells necessary to power the intended piece of equipment; (3) the equipment and the battery or cell are packed in a strong packaging; and (4) the net weight of the batteries in the package does not exceed 5 kg (11 pounds). Packages conforming to the requirements of this Special Provision are excepted from all other requirements of the HMR.

DBC Marine Safety System Ltd. Requests clarification of the exception as it applies to life-saving equipment. Several commenters state the net effect of the IFR is to prohibit the carriage of life saving appliances on passenger aircraft; these commenters recommend a change to § 173.185 to include an exception for this type of device on passenger aircraft. Commenters state they know of no incidents or safety issues involving primary lithium batteries in life-saving appliances that warrant limitations on their transportation. Commenters state that life-saving equipment is carefully stowed, that the batteries are enclosed within the equipment, and, accordingly, that the risk of a mishap is very low.

It was our intent to provide life saving appliances the same exceptions that are provided in Special Provision A101 for equipment packed with or containing lithium batteries. Therefore, in order to clarify the applicability of the HMR for lifesaving appliances, in this final rule we have revised § 173.219 to allow life saving appliances containing lithium batteries to be transported in accordance with § 173.185 of the HMR, and Special Provisions 188, 189, and A101 as applicable.

III. Rulemaking Analysis and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under authority of Federal Hazardous Materials Transportation Law (Federal Hazmat Law; 49 U.S.C. 5101 *et seq.*) and 49 U.S.C. 44701. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. Title Section 44701 authorizes the Administrator of the Federal Aviation Administration to promote safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. Under 49 U.S.C. 40113, the Secretary of Transportation has the same authority to regulate the transportation of hazardous materials by air, in carrying out § 44701, that he has under 49 U.S.C. 5103.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was formally reviewed by the Office of Management and Budget. This final rule also is a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The following sections address the costs and benefits of the measures adopted in this final rule, but separately proposed in Dockets HM–224C and HM–224E.

Docket HM–224C

In conducting the regulatory analysis for Docket HM–224C, we focused on the risks posed by the transport of lithium batteries by aircraft. Because most shipments are transported by air, and many by passenger aircraft, the consequences of a fire caused by, or involving, a lithium batteries shipment could be severe. We determined a market failure exists (that is, the safety risks will not be controlled through economic decision-making) for two reasons: (1) Damages resulting from accidents involving the transportation of lithium batteries by air may be imposed on individuals, such as air crews and passengers, who are not parties to the transactions (externality); and (2) air carriers may have inadequate information to determine the risks and costs associated with accidents involving lithium batteries (inadequate or asymmetric information).

The costs associated with performing the required testing for small lithium batteries and the costs of complying with hazard communication and packaging rules for small and medium-size lithium batteries over the five-year analysis period (in current dollars) for all businesses impacted by the final rule is approximately $26,000,000, or just over $5 million discounted annually.

The benefits of the final rule are less readily quantified. At a minimum, the benefits include enhanced transportation safety, consistency between U.S. and international regulations, increased compliance, timely movement of goods, and consistent emergency response to

hazardous materials incidents. As part of a comprehensive program for promoting the safe movement of hazardous materials, we believe that these benefits exceed the marginal costs of the final rule. Moreover, when we consider the avoided cost of even a single lithium battery fire aboard an in-flight aircraft, the benefits of the final rule vastly exceed its costs. A copy of the complete regulatory evaluation is available for review in the public docket.

Docket HM–224E

The regulatory evaluation for Docket HM–224E reflects the same market failure analysis and considered costs and benefits over a ten-year analysis period. The findings of the benefit-cost analysis are shown in Table 5 of the regulatory evaluation. The cost elements identified include all those related to labeling (materials and labor), alternative transportation costs (delay costs and additional costs associated with shipping batteries and equipment only on cargo aircraft), training costs, and handling costs. These costs will be incurred by both primary lithium battery and equipment manufacturers and distributors. The final rule is expected to impose present-value costs on lithium battery manufacturers and manufacturers of equipment containing lithium batteries of $12.5 million over 10 years.

The principal anticipated benefits associated with the lithium battery IFR are a reduction in incidents on passenger aircraft resulting from lithium battery fires. PHMSA estimated the number of potential passenger aircraft fires involving primary lithium batteries based on an analysis of incident occurrence in the DOT's Hazardous Materials Incident Reporting System. We anticipate present-value benefits over 10 years to total $41 million, for a benefit-cost ratio of 3.3:1.

C. Executive Order 13132

The final rules have been analyzed in accordance with the principles and criteria prescribed in Executive Order 13132 (''Federalism''). This final rule preempts State, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal Hazardous Materials Transportation Law, 49 U.S.C. 5125 expressly preempts inconsistent State, local, and Indian tribe requirements, including requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(5) The design, manufacture, fabrication, marking maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses subject items (1), (2) and (3) described above and, accordingly, State, local, and Indian tribe requirements on these subjects that do not meet the ''substantively the same'' standard will be preempted.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. This effective date of preemption is 90 days after the publication of this final rule in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (Pub. L. 96–354) and to ensure potential impacts of draft rules on small entities are properly considered. The following sections address the small business impacts of the measures adopted in this final rule, but separately proposed in Dockets HM–224C and HM–224E.

Docket HM–224C

The Regulatory Flexibility Act of 1980 requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment a final regulatory flexibility analysis (FRFA) describing the impact of final rules on small entities. Section 603 (b) of the Act specifies the content of a FRFA. Each FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule.

2. A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency issues, and a statement of any changes made in the proposed rule as a result of such comments.

3. A description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

5. A description of the steps the agency has taken to minimize the significant adverse economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency was rejected.

AN FRFA describing the impact of this final rule on small entities is available for review in the public docket. The FRFA projects the total cost over the five-year analysis period (in current dollars) for all small businesses impacted by this rule is $26,463,004. On an annual basis, this is $5,292,601, equating to an average annual cost per lithium battery manufacturer or distributor of $71,285 and an average annual cost to small electronics companies of $2,121. Costs are associated with new testing requirements for certain currently excepted batteries and new hazard communication and packaging

requirements. Considering the danger of a fire aboard an aircraft, the benefits of this rule could likely be in the hundreds of millions of dollars. At a minimum, the benefits of this rulemaking include enhanced transportation safety, consistency between U.S. and international regulations, increased compliance, timely movement of goods, and consistent emergency response to hazardous materials incidents. Summarized below is a brief discussion on each element of the FRFA prepared for this final rule.

Need for the final rule. Since 1999, there have been several incidents involving lithium batteries in air transportation. At least four of those incidents involved lithium battery fires; one incident required medical treatment for two workers. All of these incidents resulted in fires that were discovered either just before or just after transportation aboard aircraft. To address this problem, the United Nations Committee of Experts revised the UN Recommendations on the Transport of Dangerous Goods (UN Recommendations) to require new packaging and hazard communication measures for shipments of lithium batteries and cells. The International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and International Maritime Dangerous Goods Code (IMDG Code) were revised to reflect these changes.

Requiring lithium battery designs to be tested in accordance with the UN Test Manual is the internationally accepted method to ensure that lithium cells and batteries are sufficiently robust to withstand normal conditions of transport. However, the HMR currently provide an exception for testing small lithium batteries. In addition, the HMR provide significant exceptions from packaging and hazard communication requirements for small- and medium-size batteries. (A battery's size is determined by its lithium content.) The incidents referenced above suggest the HMR exceptions for small- and medium-size lithium batteries do not adequately protect against fire risks resulting from short circuits or damage to the batteries. Due to these exceptions, the current requirements do not provide for accurate communication of the hazards associated with lithium batteries.

Summary of comments to the IRFA. FEDCO Electronics, Inc., and PRBA express concern over the IRFA estimate of potential costs to test currently excepted lithium batteries. SkyBitz, FEDCO, and SION Power contend the testing cost per design ranges from $20,000 to $134,000 and the testing for a complete line of batteries would cost between $500,000 and $750,000 for primary lithium batteries and substantially more for rechargeable batteries. Our analysis indicates the costs of the new lithium battery tests are much lower. To obtain information on testing costs, we contacted an independent laboratory currently performing tests on lithium batteries in accordance with the revisions to the UN Test Manual being adopted in this final rule. The laboratory indicated, for a company with multiple battery designs to be tested, the total testing cost per design would be $6,000. It is our understanding the $6,000 cost per design covers all of the separate test components in the revisions to the UN Test Manual, including temperature, altitude, vibration, shock, impact, overcharge, forced discharge, and intentional short.

PRBA, FEDCO, SION, Valence Technology, ACR, SkyBitz Inc., EIA, and Intel Corporation request several exceptions to the testing requirements for small lithium batteries. They ask us to include an exception for single cell lithium batteries, an exception for small production runs, and a delay in the effective date of the rule. Based on these comments, we estimate an exception for single-cell lithium batteries would reduce the testing costs imposed on small lithium battery businesses under this rule by an average of $10,321.61 annually over the 5-year analysis time horizon. An exception tied to small production runs would reduce the estimated costs to small businesses by an average of $17,029 annually over the 5-year analysis time horizon. The IRFA envisioned a two-year implementation period. Allowing industry an additional two years to implement the rule would not reduce the nominal costs incurred by industry, but, due to the discounting of the cost stream, would reduce the present value costs to the average small business by an average of $1,576 annually. In response to the comments, in this final rule, we are adopting exceptions for small lithium batteries and for small production runs of lithium batteries. We are also adopting a two-year implementation period.

PRBA, ACR, SkyBitz, and SION Power ask PHMSA to retain the current HMR exception for medium-size batteries. We determined that retaining the exception would result in the elimination of 80% of shipping costs relating to the Class 9 hazardous material shipping requirements and would reduce shipping costs to small businesses affected by the proposed rule by roughly $1.3 million in real dollars annually during the five-year analysis timeframe. We elected to retain the exception for the transportation of medium-size lithium batteries transported by ground. The retention of this exception for ground transport reduces the cumulative cost of the final rule for small businesses by $68,882 per year.

FEDCO and ACR indicate the number of small businesses identified by the IRFA (60 small businesses) should be much higher. In the FRFA we identify 2,239 small businesses potentially affected by this rule. We used a number of resources, including industry association rosters, online databases, and targeted searches to identify these small businesses. Further searches in Dun & Bradstreet data were used, where appropriate, to confirm the categorization of each entity according to Small Business Administration (SBA) size standards. The FRFA includes the original 60 small businesses as lithium battery and cell manufacturers and 2,179 businesses that either manufacture or distribute electronic equipment requiring lithium batteries. Eighty percent of small electronics businesses (1,743) are not subject to the training costs because they already have employees with required HMR or ICAO training or can ship their products by ground. The remaining 20% of small electronics businesses (436) will be affected by the training costs applicable to Class 9 shipping requirements for medium-size batteries.

PRBA, ACR, SkyBitz, FEDCO, and SION Power indicate the incremental costs associated with hazardous material shipping requirements would average $0.05 per small cell or battery, while the incremental costs tied to medium-size and large batteries and cells would equal $0.31 per battery and $0.26 per cell. According to the commenters, these costs include all packaging and shipping costs tied to the proposed rule, with packaging costs, hazardous material surcharges, and other costs spread over the number of units shipped. In addition, commenters indicate the IRFA references a FedEx Express hazmat surcharge of $30 in the testing costs, but it appears PHMSA did not factor that cost into the routine shipping costs. In the FRFA shipping cost estimates are determined on a per-cell or per-battery basis and include all components, including hazmat surcharges. The FRFA includes all costs listed above.

PRBA and FEDCO indicate the training costs used in the IRFA underestimate the true cost of training. In addition, commenters assert we failed

to include all companies subject to training, such as those companies who incorporate lithium batteries into their products, and those who distribute these products. The training cost analysis considers various scenarios provided by small businesses, including secondary manufacturers and distributors, impacted by the proposed rule. One scenario considered the case when an external trainer was brought on-site and delivered the training course for a fee to employees. Another scenario considered the case where an employee traveled to take a ''train-the-trainer'' course, and returned to deliver the training to on-site employees. A third scenario considered in this study is based on training cost data provided by a single employer that did not share the specifics of its training program. Each cost scenario was impacted by the number of employees requiring training. Companies training a large number of employees typically incurred smaller training costs per employee due to their ability to spread the fixed costs of the ''train-the-trainer'' course or the external trainer visit across a larger number of employees. Based on input from small businesses impacted by the proposed rule, these assumptions appear reasonable, generating a training cost estimate of $828,138 over the 5-year time horizon.

Number of small entities to which the rule will apply. The FRFA projects the changes being adopted by this final rule will affect 60 lithium battery and cell businesses (manufacturers and distributors) and 2,179 small electronics businesses. The number of small businesses affected was based on the size standards developed by the Small Business Administration and codified in 13 CFR 121.201.

Reporting, recordkeeping, and other compliance requirements of the rule. The compliance costs to small businesses subject to this final rule are primarily related to testing battery and cell designs, shipping of both prototypes and final products, and the training required for employees newly classified as hazmat employees. Each of these is discussed separately in the FRFA. Additionally, the FRFA discusses costs for lithium battery and cell businesses and electronics businesses separately. It also discusses the extent to which these additional compliance costs can be passed through the small businesses to their customers.

Steps to minimize the economic impact on small entities. The final rule is designed to increase safety for transportation of lithium batteries and cells. Any alternatives to the final rule should result in similar safety benefits to warrant consideration. We considered the following possible alternatives:

1. Except lithium batteries and cells transported by motor vehicle for the purposes of recycling from Class 9 hazmat requirements.
2. Provide manufacturers with four years, rather than two, to comply with the new testing requirements for existing small lithium battery designs.
3. Adopt a small production run exception.
4. Retain the current exemption from the shipping requirements for medium-size lithium-ion batteries.
5. Increase the lower threshold for medium-size lithium-ion batteries and cells.
6. Except small, single-cell lithium batteries from testing requirements if the cells have already passed the UN T1–T8 tests.
7. Require that small lithium batteries be shipped as Class 9 hazmat but not require testing unless they are being shipped internationally by air.
8. Retain the current exception for medium-size lithium batteries and cells shipped in or with equipment from the Class 9 shipping requirements for all modes.

Out of the eight alternatives listed above, we rejected all but numbers 1, 3, 4, and 6. Our reasons for rejecting four of the eight alternatives hinge on safety concerns and the benefits of harmonization. The adoption of alternatives 1, 3, 4, and 6 will have little to no impact on safety and will provide a cumulative cost savings to the affected small businesses of only $100,000 per year.

Docket HM–224E

The small business impact analysis conducted for Docket HM–224E was included in the regulatory evaluation prepared for the Final Rule and is summarized below. A complete copy of the report is in the public docket for this rulemaking.

Businesses likely to be affected by the final rule in Docket HM–224E are primary lithium battery manufacturers and distributors. For purposes of the small business impact analysis, the definition of ''small business'' has the same meaning as under the Small Business Act.

Based on the analysis in the regulatory evaluation, we estimate that the 60 small businesses will incur the following per package costs to comply with the this final rule: (1) $.20 for labels (including label and associated labor costs); (2) $.80 for alternative transportation costs ($.32/pound × .25 × 10 pounds); (3) $.60 for costs associated with transportation delays; and (4) $.90 for handling and customer service costs). Thus, the total per package cost to a small business to comply with this final rule is estimated to be $2.50.

We believe that overall cost of the rule for small businesses is substantially less than $2.50 per shipment. It is our understanding many of the small businesses included in the study used cargo aircraft operators, not passenger aircraft cargo service, prior to implementation of the prohibition. To the extent that these small businesses were not shipping via passenger cargo service, the estimated $2.50 per package cost impact would only be imposed on a fraction of shipments offered for transportation by the small businesses affected by the final rule.

Based on the above analysis, the PHMSA Administrator certifies that the amendments adopted under Docket HM–224E will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act of 1995

This final rule does not impose any mandate on a State, local, or Native American tribal government and, accordingly, does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. The final rule does not result in costs of $120.7 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

PHMSA currently has an approved information collection under OMB Control Number 2137–0034, (''Hazardous Materials Shipping Papers and Emergency Response Information'' with an expiration date of May 31, 2008. This final rule resulted in a minimal increase in annual burden and costs based on a new information collection requirement regarding the shipment of lithium batteries.

Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a new information collection request that OMB approved based on the requirements in the rule. PHMSA developed burden estimates to reflect changes in this rule. PHMSA estimates the new total information collection and recordkeeping burden resulting from the rule are as follows:

Hazardous Materials Shipping Papers & Emergency Response Information:

OMB Control No. 2137–0034:

Total Annual Number of Respondents: 250,000.

Total Annual Responses: 260,000,000.

Total Annual Burden Hours: 6,500,834.

Total Annual Burden Cost: $6,510,000.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, OMB, at fax number 202–395–6974. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347) requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on any action significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this final rule.

I. Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78), or at *http://dms.dot.gov.*

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and Recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule amending 49 CFR parts 171, 172, 173, and 175 that was published at 69 FR 75207 on December 15, 2004, is adopted as a final rule with the following changes and in consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 1.45 and CFR 1.53; Pub L. 101–410 section 4 (28 U.S.C. 2461); Pub. L. 104–134, section 31001.

■ 2. In § 171.8, definitions for ''Aggregate lithium content'', ''Equivalent lithium content'', and ''Lithium content'' are added in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Aggregate lithium content means the sum of the grams of lithium content or equivalent lithium content contained by the cells comprising a battery.

* * * * *

Equivalent lithium content means, for a lithium-ion cell, the product of the rated capacity, in ampere-hours, of a lithium-ion cell times 0.3, with the result expressed in grams. The equivalent lithium content of a battery equals the sum of the grams of equivalent lithium content contained in the component cells of the battery.

* * * * *

Lithium content means the mass of lithium in the anode of a lithium metal or lithium alloy cell. The lithium content of a battery equals the sum of the grams of lithium content contained in the component cells of the battery. For a lithium-ion cell see the definition for ''equivalent lithium content''.

* * * * *

■ 3. In § 171.12, paragraph (a)(6) is added to read as follows:

§ 171.12 North American Shipments.

(a) * * *

(6) *Primary lithium batteries and cells.* Packages containing primary lithium batteries and cells that meet the exception in § 172.102, Special Provision 188 or 189 of this subchapter must be marked ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'' or ''LITHIUM METAL BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT.'' The provisions of this paragraph do not apply to packages that contain 5 kg (11 pounds) net weight or less of primary lithium batteries cells that are contained in or packed with equipment.

* * * * *

■ 4. In § 171.24, paragraph (d)(1)(ii) is revised to read as follows:

§ 171.24 Additional requirements for the use of the ICAO Technical Instructions.

* * * * *

(d) * * *

(1) * * *

(ii) *Primary lithium batteries and cells.* Primary lithium batteries and cells are forbidden for transportation aboard passenger-carrying aircraft. Equipment containing or packed with primary lithium batteries or cells are forbidden for transport aboard passenger-carrying aircraft except as provided in § 172.102, Special Provision A101 of this subchapter. When transported aboard cargo-only aircraft, packages containing primary lithium batteries and cells transported in accordance with Special Provision A45 of the ICAO Technical Instructions must be marked ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'' or ''LITHIUM METAL BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT.'' This marking is not required on packages that contain 5 kg (11 pounds) net weight or less of primary lithium batteries or cells that are contained in or packed with equipment.

* * * * *

■ 5. In § 171.25, paragraph (b)(3) is added to read as follows:

§ 171.25 Additional requirements for the use of the IMDG Code.

* * * * *

(b) * * *

(3) Packages containing primary lithium batteries and cells that are transported in accordance with Special Provision 188 of the IMDG Code must be marked ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'' or ''LITHIUM METAL BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT.'' This marking is not required on packages that contain 5 kg (11 pounds) net weight or less of primary lithium batteries and cells that are contained in or packed with equipment.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 6. The authority citation for part 172 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

§ 172.101 [Amended]

■ 7. In § 172.101, in the Hazardous Materials Table, the following changes are made:

■ a. For the entry ''Lithium batteries, contained in equipment'', Column (7), Special Provisions, is revised to read ''29, 188, 189, 190, A54, A55, A101, A104'' and Column (9A) is revised to read ''See A101, A104.''

■ b. For the entry ''Lithium batteries packed with equipment'', Column (7), Special Provisions, is revised to read ''29, 188, 189, 190, A54, A55, A101, A103'' and Column (9A) is revised to read ''See A101, A103.''

■ c. For the entry ''Lithium battery'', Column 7, Special Provisions, is revised to read ''29, 188, 189, 190, A54, A55, A100.''

■ 8. In § 172.102, in paragraph (c)(1), in Special Provisions 134 and 157, the phrase ''A102'' is amended to read ''A101'', Special Provision 29 is revised, Special Provisions 188, 189, 190 are added, in paragraph (c)(2) Special Provision A102 is removed and Special Provisions A101, A103, and A104 are revised to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

29 For transportation by motor vehicle, rail car or vessel, production runs (exceptions for prototypes can be found in § 173.185(e)) of not more than 100 lithium cells or batteries are excepted from the testing requirements of § 173.185(a)(1) if—

a. For a lithium metal cell or battery, the lithium content is not more than 1.0 g per cell and the aggregate lithium content is not more than 2.0 g per battery, and, for a lithium-ion cell or battery, the equivalent lithium content is not more than 1.5 g per cell and the aggregate equivalent lithium content is not more than 8 g per battery;

b. The cells and batteries are transported in an outer packaging that is a metal, plastic or plywood drum or metal, plastic or wooden box that meets the criteria for Packing Group I packagings; and

c. Each cell and battery is individually packed in an inner packaging inside an outer packaging and is surrounded by cushioning material that is non-combustible, and non-conductive.

* * * * *

188 *Small lithium cells and batteries.* Lithium cells or batteries, including cells or batteries packed with or contained in equipment, are not subject to any other requirements of this subchapter if they meet all of the following:

a. *Primary lithium batteries and cells.* (1) Primary lithium batteries and cells are forbidden for transport aboard passenger-carrying aircraft. The outside of each package that contains primary (nonrechargeable) lithium batteries or cells must be marked ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'' or ''LITHIUM METAL BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'' on a background of contrasting color. The letters in the marking must be:

(i) At least 12 mm (0.5 inch) in height on packages having a gross weight of more than 30 kg (66 pounds); or

(ii) At least 6 mm (0.25 inch) on packages having a gross weight of 30 kg (66 pounds) or less, except that smaller font may be used as necessary to fit package dimensions; and

(2) The provisions of paragraph (a)(1) do not apply to packages that contain 5 kg (11 pounds) net weight or less of primary lithium batteries or cells that are contained in or packed with equipment and the package contains no more than the number of lithium batteries or cells necessary to power the piece of equipment;

b. For a lithium metal or lithium alloy cell, the lithium content is not more than 1.0 g. For a lithium-ion cell, the equivalent lithium content is not more than 1.5 g;

c. For a lithium metal or lithium alloy battery, the aggregate lithium content is not more than 2.0 g. For a lithium-ion battery, the aggregate equivalent lithium content is not more than 8 g;

d. Effective October 1, 2009, the cell or battery must be of a type proven to meet the requirements of each test in the UN Manual of Tests and Criteria (IBR; see § 171.7 of this subchapter);

e. Cells or batteries are separated so as to prevent short circuits and are packed in a strong outer packaging or are contained in equipment;

f. Effective October 1, 2008, except when contained in equipment, each package containing more than 24 lithium cells or 12 lithium batteries must be:

(1) Marked to indicate that it contains lithium batteries, and special procedures should be followed in the event that the package is damaged;

(2) Accompanied by a document indicating that the package contains lithium batteries and special procedures should be followed in the event that the package is damaged;

(3) Capable of withstanding a 1.2 meter drop test in any orientation without damage to cells or batteries contained in the package, without shifting of the contents that would allow short circuiting and without release of package contents; and

(4) Gross weight of the package may not exceed 30 kg (66 pounds). This requirement does not apply to lithium cells or batteries packed with equipment;

g. Electrical devices must conform to § 173.21 of this subchapter; and

h. Lithium batteries or cells are not authorized aboard an aircraft in checked or carry-on luggage except as provided in § 175.10.

189 *Medium lithium cells and batteries.* Effective October 1, 2008, when transported by motor vehicle or rail car, lithium cells or batteries, including cells or batteries packed with or contained in equipment, are not subject to any other requirements of this subchapter if they meet all of the following:

a. The lithium content anode of each cell, when fully charged, is not more than 5 grams.

b. The aggregate lithium content of the anode of each battery, when fully charged, is not more than 25 grams.

c. The cells or batteries are of a type proven to meet the requirements of each test in the UN Manual of Tests and Criteria (IBR; see § 171.7 of this subchapter). A cell or battery and equipment containing a cell or battery that was first transported prior to January 1, 2006 and is of a type proven to meet the criteria of Class 9 by testing in accordance with the tests in the UN Manual of Tests and Criteria, Third Revised Edition, 1999, need not be retested.

d. Cells or batteries are separated so as to prevent short circuits and are packed in a strong outer packaging or are contained in equipment.

e. The outside of each package must be marked ''LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD AIRCRAFT AND VESSEL'' on a background of contrasting color, in letters:

(1) At least 12 mm (0.5 inch) in height on packages having a gross weight of more than 30 kg (66 pounds); or

(2) At least 6 mm (0.25 inch) on packages having a gross weight of 30 kg (66 pounds) or less, except that smaller font may be used as necessary to fit package dimensions.

f. Except when contained in equipment, each package containing more than 24 lithium cells or 12 lithium batteries must be:

(1) Marked to indicate that it contains lithium batteries, and that special procedures should be followed in the event that the package is damaged;

(2) Accompanied by a document indicating that the package contains lithium batteries and that special procedures should be followed in the event that the package is damaged;

(3) Capable of withstanding a 1.2 meter drop test in any orientation without damage

to cells or batteries contained in the package, without shifting of the contents that would allow short circuiting and without release of package contents; and

(4) Gross weight of the package may not exceed 30 kg (66 pounds). This requirement does not apply to lithium cells or batteries packed with equipment.

g. Electrical devices must conform to § 173.21 of this subchapter.

190 Until the effective date of the standards set forth in Special Provision 189, medium lithium cells or batteries, including cells or batteries packed with or contained in equipment, are not subject to any other requirements of this subchapter if they meet all of the following:

a. *Primary lithium batteries and cells.* (1) Primary lithium batteries and cells are forbidden for transport aboard passenger-carrying aircraft. The outside of each package that contains primary (nonrechargeable) lithium batteries or cells must be marked ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'' or ''LITHIUM METAL BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'' on a background of contrasting color. The letters in the marking must be:

(i) At least 12 mm (0.5 inch) in height on packages having a gross weight of more than 30 kg (66 pounds); or

(ii) At least 6 mm (0.25 inch) on packages having a gross weight of 30 kg (66 pounds) or less, except that smaller font may be used as necessary to fit package dimensions; and

(2) The provisions of paragraph (a)(1) do not apply to packages that contain 5 kg (11 pounds) net weight or less of primary lithium batteries or cells that are contained in or packed with equipment and the package contains no more than the number of lithium batteries or cells necessary to power the piece of equipment.

b. The lithium content of each cell, when fully charged, is not more than 5 grams.

c. The aggregate lithium content of each battery, when fully charged, is not more than 25 grams.

d. The cells or batteries are of a type proven to meet the requirements of each test in the UN Manual of Tests and Criteria (IBR; see § 171.7 of this subchapter). A cell or battery and equipment containing a cell or battery that was first transported prior to January 1, 2006 and is of a type proven to meet the criteria of Class 9 by testing in accordance with the tests in the UN Manual of Tests and Criteria, Third Revised Edition, 1999, need not be retested.

e. Cells or batteries are separated so as to prevent short circuits and are packed in a strong outer packaging or are contained in equipment.

f. Electrical devices must conform to § 173.21 of this subchapter.

* * * * *

Code/Special Provisions

* * * * *

(2) * * *

* * * * *

A101 A primary lithium battery or cell packed with or contained in equipment is forbidden for transport aboard a passenger carrying aircraft unless the equipment and the battery conform to the following provisions and the package contains no more than the number of lithium batteries or cells necessary to power the intended piece of equipment:

(1) The lithium content of each cell, when fully charged, is not more than 5 grams.

(2) The aggregate lithium content of the anode of each battery, when fully charged, is not more than 25 grams.

(3) The net weight of lithium batteries does not exceed 5 kg (11 pounds).

A103 Equipment is authorized aboard passenger carrying aircraft if the gross weight of the inner package of secondary lithium batteries or cells packed with the equipment does not exceed 5 kg (11 pounds).

A104 The net weight of secondary lithium batteries or cells contained in equipment may not exceed 5 kg (11 pounds) in packages that are authorized aboard passenger carrying aircraft.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 9. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 10. Section 173.185 is revised to read as follows:

§ 173.185 Lithium cells and batteries.

(a) *Cells and batteries.* A lithium cell or battery, including a lithium polymer cell or battery and a lithium-ion cell or battery, must conform to all of the following requirements:

(1) Be of a type proven to meet the requirements of each test in the UN Manual of Tests and Criteria (IBR; see § 171.7 of this subchapter). A cell or battery and equipment containing a cell or battery that was first transported prior to January 1, 2006 and is of a type proven to meet the criteria of Class 9 by testing in accordance with the tests in the UN Manual of Tests and Criteria, Third Revised Edition, 1999, need not be retested.

(2) Incorporate a safety venting device or otherwise be designed in a manner that will preclude a violent rupture under conditions normally incident to transportation.

(3) Be equipped with an effective means to prevent dangerous reverse current flow (e.g., diodes, fuses, etc.) if a battery contains cells or series of cells that are connected in parallel.

(4) Be packaged in combination packagings conforming to the requirements of part 178, subparts L and M, of this subchapter at the Packing Group II performance level. The lithium battery or cell must be packed in inner packagings in such a manner as to prevent short circuits, including movement which could lead to short circuits. The inner packaging must be packed within one of the following outer packagings: metal boxes (4A or 4B); wooden boxes (4C1, 4C2, 4D, or 4F); fiberboard boxes (4G); solid plastic boxes (4H2); fiber drums (1G); metal drums (1A2 or 1B2); plywood drums (1D); plastic jerricans (3H2); or metal jerricans (3A2 or 3B2).

(5) Be equipped with an effective means of preventing external short circuits.

(6) Except as provided in paragraph (d) of this section, cells and batteries with a liquid cathode containing sulfur dioxide, sulfuryl chloride or thionyl chloride may not be offered for transportation or transported if any cell has been discharged to the extent that the open circuit voltage is less than two volts or is less than 2/3 of the voltage of the fully charged cell, whichever is less.

(b) *Lithium cells or batteries packed with equipment.* Lithium cells or batteries packed with equipment may be transported as Class 9 materials if the batteries and cells meet all the requirements of paragraph (a) of this section. The equipment and the packages of cells or batteries must be further packed in a strong outer packaging. The cells or batteries must be packed in such a manner as to prevent short circuits, including movement that could lead to short circuits.

(c) *Lithium cells or batteries contained in equipment.* Lithium cells or batteries contained in equipment may be transported as Class 9 materials if the cells and batteries meet all the requirements of paragraph (a) of this section, except paragraph (a)(4) of this section, and the equipment is packed in a strong outer packaging that is waterproof or is made waterproof through the use of a liner unless the equipment is made waterproof by nature of its construction. The equipment and cells or batteries must be secured within the outer packaging and be packed so as to prevent movement, short circuits, and accidental operation during transport.

(d) *Cells and batteries, for disposal or recycling.* A lithium cell or battery offered for transportation or transported by motor vehicle to a permitted storage facility, disposal site or for purposes of recycling is excepted from the specification packaging requirements of paragraph (a)(4) of this section and the requirements of paragraphs (a)(1) and (a)(6) of this section when protected against short circuits and packed in a strong outer packaging conforming to the requirements of §§ 173.24 and 173.24a.

(e) *Shipments for testing (prototypes).* A lithium cell or battery is excepted from the requirements of (a)(1) of this section when transported by motor vehicle for purposes of testing. The cell or battery must be individually packed in an inner packaging, surrounded by cushioning material that is non-combustible and nonconductive. The cell or battery must be transported as a Class 9 material.

(f) A lithium cell or battery that does not comply with the provisions of this subchapter may be transported only under conditions approved by the Associate Administrator.

(g) Batteries employing a strong, impact-resistant outer casing and exceeding a gross weight of 12 kg (26.5 lbs.), and assemblies of such batteries, may be packed in strong outer packagings, in protective enclosures (for example, in fully enclosed wooden slatted crates) or on pallets. Batteries must be secured to prevent inadvertent movement, and the terminals may not support the weight of other superimposed elements. Batteries packaged in this manner are not permitted for transportation by passenger aircraft, and may be transported by cargo aircraft only if approved by the Associate Administrator prior to transportation.

■ 11. In § 173.219, paragraph (b)(3) is revised to read as follows:

§ 173.219 Life-saving appliances.

* * * * *

(b) * * *

(3) Electric storage batteries and lithium batteries (Life saving appliances containing lithium batteries must be transported in accordance with § 173.185, and Special Provisions 188, 189, A101, A103 and A104 as applicable.);

* * * * *

§ 173.220 [Amended]

■ 12. In § 173.220, in paragraph (d), the phrase ''Special Provision A102'' is amended to read ''Special Provision A101''.

PART 175—CARRIAGE BY AIRCRAFT

■ 13. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.53.

■ 14. In § 175.10, paragraph (a)(17) is revised to read as follows:

§ 175.10 Exceptions.

(a) * * *

(17) Except as provided in § 173.21 of this subchapter, consumer electronic and medical devices (watches, calculating machines, cameras, cellular phones, lap-top and notebook computers, camcorders, etc.) containing lithium cells or batteries and spare lithium batteries and cells for these devices, when carried by passengers or crew members for personal use. Each spare battery must be individually protected so as to prevent short circuits (by placement in original retail packaging or by otherwise insulating terminals, e.g., by taping over exposed terminals or placing each battery in a separate plastic bag or protective pouch) and carried in carry-on baggage only. In addition, each installed or spare battery must not exceed the following:

(i) For a lithium metal battery, a lithium content of not more than 2 grams per battery; or

(ii) For a lithium-ion battery, an aggregate equivalent lithium content of not more than 8 grams per battery, except that up to two batteries with an aggregate equivalent lithium content of more than 8 grams but not more than 25 grams may be carried.

* * * * *

Issued in Washington, DC, on July 31, 2007, under authority delegated in 49 CFR Part 1.

Thomas J. Barrett,

Administrator.

[FR Doc. E7–15213 Filed 8–8–07; 8:45 am]

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S. 1927/P.L. 110–55

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H.R. 3311/P.L. 110–56

To authorize additional funds for emergency repairs and reconstruction of the Interstate I-35 bridge located in Minneapolis, Minnesota, that collapsed on August 1, 2007, to waive the $100,000,000 limitation on emergency relief funds for those emergency repairs and reconstruction, and for other purposes. (Aug. 6, 2007; 121 Stat. 558)

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