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Contents

Federal Register

Vol. 72, No. 90

Thursday, May 8, 2008

Agriculture Department
See Commodity Credit Corporation
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26074

Alcohol and Tobacco Tax and Trade Bureau
PROPOSED RULES
Proposed Revision of Distilled Spirits Plant Regulations (2001R-194P), 26200–26307

Army Department
See Engineers Corps
NOTICES
Availability of U.S. Patent Concerning Assembled Hematin, 26085

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26118–26119

Coast Guard
RULES
Safety Zone:
Fourth of July Fireworks, City of Monterey, Monterey, CA., 26019
Hatteras Boat Parade and Firework Display, Trent River, New Bern, NC, 26017–26019
Special Local Regulations:
Delaware River, Big Timber Creek, Westville, NJ, 26002–26004
Delaware River, Philadelphia, PA, 26005–26007
Special Local Regulations; Recurring Marine Events in the Fifth Coast Guard District, 26007–26017
PROPOSED RULES
Anchorage Regulations:
Port of New York and Vicinity, 26054–26056
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26125–26128
Meetings:
Lower Mississippi River Waterway Safety Advisory Committee, 26128

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26076–26077

Commodity Credit Corporation
NOTICES
In-Handling Charges for Commodities Pledged As Collateral for Marketing Assistance Loan, 26074–26075

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 26084–26085

Defense Department
See Army Department
See Engineers Corps
See Navy Department

Education Department
PROPOSED RULES
Privacy Act Regulations, 26056–26059

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Bossier Parish, Louisiana, Flood Risk Management Study, 26085
Cross Lake Water Supply Feasibility Study, Shreveport, LA, 26085–26086
Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies, 26086

Environmental Protection Agency
RULES
Approval and Promulgation of State Implementation Plans:
States of South Dakota and Wyoming; Interstate Transport of Pollution, 26019–26025
National Priorities List, 26025–26026
PROPOSED RULES
Approval and Promulgation of State Implementation Plans:
States of South Dakota and Wyoming; Interstate Transport of Pollution, 26059
NOTICES
Proposed CERCLA Administrative Cashout Settlement:
Elite Laundry Superfund Site; Jaffrey, NH, 26111–26112

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness Directives:
Air Tractor, Inc. AT 400, AT 500, AT 600, and AT 800 Series Airplanes, 25967–25970
Boeing Model 737 100, et al. Series Airplanes, 25970–25974
Boeing Model 737-600, et al. Series Airplanes, 25986–25990
Boeing Model 747 100, 747 100B, 747 100B SUD, 747 200B, 747 200C, 747 200F, 747 300, 747SR, and 747SP Series Airplanes, 25977–25984
Boeing Model 747-200F, et al. Series Airplanes, 25997–25999
Boeing Model 747 400, 400D, and 400F Series Airplanes, 25990–25997
Boeing Model 757 Airplanes, 25974–25977
Dassault Model Mystere Falcon 50 Airplanes, 25984–25986

Empresa Brasileira de Aeronautica S.A. Model EMB 135 Airplanes and Model EMB 145, 145ER, 145MR, et al., 25962–25967
Sikorsky Aircraft Corp. Model S-61A, S-61D, S 61E, and S-61V Helicopters, 25961–25962
Establishment of Class E Airspace:
Rockport, ME, 25999
Swans Island, ME, 25999–26000
PROPOSED RULES
Airworthiness Directives:
Boeing Model 707 Airplanes, and Model 720 and 720B Series Airplanes, 26043–26044
Bombardier Model CL 600 2C10 (Regional Jet Series 700, 701, & 702) Airplanes, Model CL 600 2D15, etc., 26045–26047
Modification of Class E Airspace: Rome, NY, 26047–26048
Proposed Establishment of Class E Airspace:
Fort Collins, CO, 26048–26049
Removal of Regulations Allowing for Polished Frost on Wings of Airplanes, 26049–26054
NOTICES
Approval of Finding of No Significant Impact on a Short Form Environmental Assessment:
Chicago/Rockford International Airport, Rockford, IL, 26185–26186
Submission Deadline for Schedule Information for Chicago O'Hare International Airport for the Winter 2008/2009 Scheduling Season, 26186–26187
Submission Deadlines
Schedule Information for John F. Kennedy International Airport and Newark Liberty International Airport for the Winter 2008/2009 Scheduling Season, 26187
Petition for Exemption; Summary of Petition Received, 26187–26188

Federal Communications Commission
RULES
Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services, etc., 26032–26042
PROPOSED RULES
Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the, etc., 26067–26071
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26112
Closed Auction of Licenses for Cellular Unserved Service Areas Scheduled for June 17, 2008, etc., 26112–26118

Federal Emergency Management Agency
RULES
Changes in Flood Elevation Determinations, 26026–26030
Final Flood Elevation Determinations, 26030–26032
PROPOSED RULES
Proposed Flood Elevation Determinations, 26060–26067
NOTICES
Emergency Declaration:
Illinois, 26128–26129
Major Disaster Declaration:
Arizona, 26129
Arkansas, 26129

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26087–26088
Application Accepted for Filing:
Blue Light Power, LLC, 26090–26091
Pacific Gas and Electric Co. (PG&E), 26092–26093
Application Accepted for Filing; Soliciting Comments, Protests, and Motions to Intervene:
Eagle Crest Energy Co., 26094–26096
Grays Harbor Ocean Energy Co., LLC, 26093–26094
Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests:
Eagle Crest Energy Co., 26089–26090
Grays Harbor Ocean Energy Company, LLC, 26088–26089
Application and Petition for Declaratory Order:
Williston Basin Interstate Pipeline Co., 26096
Applications Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene:
KC LLC, 26096–26097
Combined Notice of Filings, 26097–26102
Complaint:
Union Electric Co., 26102–26103
Dismissing Request for Hearing:
Twin Lakes Canal Co., 26103
Environmental Statements; Availability, etc.:
Leaf River Energy Center LLC, 26103–26104
Leaf River Storage Project, 26104–26105
Errata:
Preventing Undue Discrimination and Preference in Transmission Service, 26105–26106
Form No. 552 Follow-up Workshop, 26106
Issuance of Order:
Endure Energy, L.L.C., 26107–26108
Mountain Wind Power, LLC, 26106, 26108–26109
Panda-Brandywine, L.L.P., 26106–26107, 26109
West Valley Leasing Co., LLC, 26107, 26109–26110
Meetings:
Form No. 552 Follow-Up Workshop, 26110
Applications:
KC LLC, 26110–26111

Federal Housing Enterprise Oversight Office
NOTICES
Privacy Act; Systems of Records, 26136–26138

Fish and Wildlife Service
NOTICES
Endangered Wildlife and Plants; Permits, 26138–26139
Environmental Assessment:
Black Bayou Lake National Wildlife Refuge, Ouachita Parish, LA, 26139–26140
Kenai National Wildlife Refuge, Soldotna, AK, 26140–26142

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26119
Meetings:
Anti-Infective Drugs Advisory Committee, 26119–26120
Oncologic Drugs Advisory Committee, 26120–26121
Science Board, 26121

Foreign-Trade Zones Board
NOTICES
Proposal for Available Alternative Site - Designation and - Management Framework, 26077–26078

Forest Service
NOTICES
Environmental Statements; Availability, etc.:
San Juan National Forest, Columbine Ranger District, CO; Hermosa Land Exchange Analysis, 26075–26076

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services
See U.S. Customs and Border Protection

Housing and Urban Development Department
See Federal Housing Enterprise Oversight Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26134–26136

Indian Affairs Bureau
NOTICES
Land Acquisitions; Mechoopda Indian Tribe, California, 26142–26143

Industry and Security Bureau
RULES
Technical Corrections to the Export Administration Regulations based upon a Systematic Review of the CCL; Correction, 26000–26001

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26188–26190
IRS/VA FFRDC Co-Sponsorship, 26190
Quarterly Publication of Individuals, Who Have Chosen To Expatriate, (as Required by Section 6039G), 26190–26192

International Trade Administration
NOTICES
Antidumping Duty Orders:
Polyethylene Terepthalate Film, Sheet, and Strip from the Republic of Korea, 26078–26079
Polyethylene Terephthalate Film, Sheet and Strip from India and Taiwan, 26079
Countervailing Duty Order:
Polyethylene Terephthalate Film, Sheet, and Strip from India, 26080
Final Results of Antidumping Duty New Shipper Review:
Canned Pineapple Fruit from Thailand, 26080–26081

International Trade Commission
NOTICES
Investigations:
Certain Power Supplies, 26144–26145
Raw Flexible Magnets from China and Taiwan, 26145–26146

Justice Department
NOTICES
Lodging of Consent Decree, 26146–26147

Labor Department
NOTICES
Ensuring Benefits in the Formal Sector in El Salvador, 26147
Strengthening Labor Law Compliance in the United Republic of Tanzania, 26147–26148

Land Management Bureau
NOTICES
Alaska Native Claims Selection, 26143
Realty Action:
Recreation and Public Purposes Act Classification of Public Lands in Fremont County, WY, 26143–26144

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
National Council on the Humanities, 26148

National Highway Traffic Safety Administration
PROPOSED RULES
Confidential Business Information, 26071–26073

National Institutes of Health
NOTICES
Meetings:
Advisory Committee to the Director, 26121–26122
Center for Scientific Review, 26122–26124
National Eye Institute, 26124
National Institute on Aging, 26124–26125

National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26082
Fisheries of the Northeastern United States; Atlantic Herring Fishery; Scoping Process; Intent to Prepare An Environmental Impact Statement (EIS), 26082–26084
General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits, 26084

Navy Department
NOTICES
Meetings:
Naval Research Advisory Committee, 26086–26087

Nuclear Regulatory Commission
NOTICES
Acceptance for Docketing of the Application and Notice of Opportunity For Hearing Regarding Renewal of MIT Research Reactor No. R-37, 26148–26150
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26150
Availability of the Final Interim Staff Guidance COL-ISG-02 on Financial Qualifications of Applicants, 26151
Issuance of License Amendment for Termination of License SNM-00007 Battelle Memorial Institute West Jefferson, Ohio, 26151–26152
Request for Certificate Renewal and Opportunity for Comment:
Paducah Gaseous Diffusion Plant; Portsmouth Gaseous Diffusion Plant; United States Enrichment Corp., 26152–26153

Office of Federal Housing Enterprise Oversight
See Federal Housing Enterprise Oversight Office

Personnel Management Office
NOTICES
Excepted Service, 26153–26154

Postal Service
NOTICES
Privacy Act; Systems of Records, 26155–26158

Presidential Documents
PROCLAMATIONS
Special observances:
Military Spouse Day (Proc. 8252), 26309–26312

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Boston Stock Exchange, Inc., 26159–26174
Chicago Stock Exchange, Inc., 26174–26176
Depository Trust Company, 26181–26182
Financial Industry Regulatory Authority, Inc., 26176–26177
NASDAQ Stock Market LLC, 26177–26179, 26182–26185
NYSE Arca, Inc., 26179–26181

Social Security Administration
RULES
Testimony by Employees and the Production of Records and Information in Legal Proceedings; Change, etc., 26001–26002

State Department
NOTICES
Culturally Significant Objects Imported for Exhibition Determinations:
Home Delivery; Fabricating the Modern Dwelling, 26185

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Internal Revenue Service
See United States Mint

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26129–26131

U.S. Customs and Border Protection
NOTICES
Cancellation of Customs Broker License, 26131
Cancellation of Customs Broker License Due to Death of the License Holder, 26131–26132
Final Determination:
Electric Mini-Trucks, 26132–26134

United States Mint
NOTICES
American Eagle Platinum Uncirculated Coin Price Increases, 26192
Meetings:
Citizens Coinage Advisory Committee, 26192

Veterans Affairs Department
NOTICES
Privacy Act; Systems of Records, 26192–26197

Separate Parts In This Issue

Part II
Treasury Department, Alcohol and Tobacco Tax and Trade Bureau, 26200–26307

Part III
Executive Office of the President, Presidential Documents, 26309–26312

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

13 CFR
Proclamations:
8252.....26311
14 CFR
39 (10 documents) 25961, 25962, 25967, 25970, 25974, 25977, 25984, 25986, 25990, 25997
71 (2 documents) 25999
Proposed Rules:
39 (2 documents) 26043, 26045
71 (2 documents) 26047, 26048
91.....26049
125.....26049
135.....26049
15 CFR
774.....26000
20 CFR
403.....26001
27 CFR
Proposed Rules:
19.....26200
33 CFR
100 (3 documents) 26002, 26005, 26007
165 (2 documents) 26017, 26019
Proposed Rules:
110.....26054
34 CFR
Proposed Rules:
5b.....26056
40 CFR
52.....26019
300.....26025
Proposed Rules:
52.....26059
44 CFR
65.....26026
67.....26030
Proposed Rules:
67.....26060
47 CFR
27.....26032
Proposed Rules:
27.....26067
49 CFR
Proposed Rules:
512.....26071

Rules and Regulations

Federal Register
Vol. 73, No. 90
Thursday, May 8, 2008

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0284; Directorate Identifier 2004–SW–06–AD; Amendment 39–15510; AD 2008–10–04]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–61A, S–61D, S–61E, and S–61V Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Sikorsky Aircraft Corporation (Sikorsky) model helicopters that requires installing an electric chip detector on each engine and an on-board chip detector annunciation system. The AD also requires revising the Rotorcraft Flight Manual (RFM) to add procedures for crew response to the illumination of an on-board chip detector warning light. This AD also requires testing the engine chip detector system at specified intervals. This amendment is prompted by reports of Number 5 engine bearing failures. Failure of the bearing resulted in erratic movement of the high-speed, engine-to-transmission shaft (shaft), an oil leak, an in-flight fire, and an emergency landing. The actions specified by this AD are intended to detect an impending bearing failure, which if undetected and not addressed by appropriate crew action may result in an oil leak, a severed shaft housing, an uncontained in-flight fire, and a subsequent emergency landing.

DATES: Effective June 12, 2008.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 12, 2008.

ADDRESSES: You may get the service information identified in this AD from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, Connecticut, phone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com*.

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on December 6, 2007 (72 FR 68766). That action proposed to require, within 60 days, installing an electric chip detector for the Number 5 bearing in both engines on the specified Sikorsky model helicopters with GE CT58 series engines. That action also proposed installing an on-board chip detector annunciation system and revising the Emergency Procedures section of the RFM to add procedures for crew response to the illumination of an on-board chip detector warning light. In addition, functional testing of the chip detector system at specified intervals was proposed.

We have reviewed Sikorsky Alert Service Bulletin No. 61B30–15A, Revision A, dated October 20, 2003 (ASB). The Sikorsky ASB describes procedures for installing an engine chip detector system that will provide an ''in-cockpit monitoring system'' as a means to detect metallic chips if bearing deterioration occurs in either engine. We have also reviewed General Electric (GE) Aircraft Engines CT58 Service Bulletin Number 72–0195, dated May 1, 2003 (SB). The GE SB describes procedures for installing an alternate electrical chip detector (either part number (P/N) 3018T72P01, cannon-type connector, or 3049T42P01, stud-type connector) to the power turbine accessory drive assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments made by one commenter about two typographical errors in the Notice of proposed rulemaking (NPRM). In paragraph (a) of the NPRM, an engine chip detector is incorrectly shown as P/N 205T33P01 rather than P/N 2005T33P01. In paragraph (d), we referenced paragraph 3.F. of the Sikorsky ASB rather than 3.E.

We concur with the commenter and have changed the engine chip detector P/N from 205T33P01 to 2005T33P01 and have changed the referenced Sikorsky ASB paragraph from 3.E. to 3.F. in this AD.

After careful review of the available data, including the comments noted above, we determined that air safety and the public interest require the adoption of the rule with the changes described previously. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

This AD will affect 7 helicopters of U.S. registry, and it will take about 81.5 work hours per helicopter to install the engine chip detector and the on-board cockpit annunciation system. The repetitive tests will affect about 7 helicopters and require 6 tests per year and 1 work hour per test for 10 years of operating service. The average labor rate is $80 per work hour. Required parts will cost about $1,940 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $92,820 for the entire fleet.

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 an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2008–10–04 Sikorsky Aircraft Corporation: Amendment 39–15510. Docket No. FAA–2007–0284; Directorate Identifier 2004–SW–06–AD.

Applicability

Model S–61A, S–61D, S–61E, and S–61V helicopters with GE CT 58 series engines installed, certificated in any category.

Compliance

Required within 60 days, unless accomplished previously.

To detect an impending Number 5 engine bearing (bearing) failure, which if undetected and not addressed by appropriate crew action may result in an oil leak, severed shaft housing, an uncontained in-flight fire, and a subsequent emergency landing, do the following:

(a) Remove engine chip detector, part number (P/N) 2005T33P01, and install engine chip detector, P/N 3049T42P01 or 3018T72P01, in the engine power turbine accessory drive assembly of each engine. Install the chip detector by following the Accomplishment Instructions, paragraph 3.B., of General Electric Aircraft Engines CT58 Service Bulletin Number 72–0195, dated May 1, 2003.

Note: This AD neither requires installing GE CT58 engines nor replacing an engine power turbine accessory drive assembly that has a 5/16 inch magnetic plug port and applies only to Sikorsky Model S–61A, S–61D, S–61E, and S–61V helicopters with GE CT58 series engines installed.

(b) Install an on-board engine chip detector annunciation system by following the Accomplishment Instructions, paragraphs 3.B. or 3.C., as appropriate for the different manufacturers of the master warning caution panel, of the Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B30–15A, Revision A, dated October 20, 2003 (Sikorsky ASB).

(c) After doing paragraph (b) of this AD, before further flight, perform a functional test of the engine chip detector system. Repeat the test at intervals not to exceed 150 hours time-in-service. Conduct the tests following the Accomplishment Instructions, paragraph 3.D., of the Sikorsky ASB.

(d) Insert the emergency procedures contained in the Accomplishment Instructions, paragraph 3.F., of the Sikorsky ASB for an on-board engine chip detector warning indicator light into the Emergency Procedures section of the applicable Rotorcraft Flight Manual.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, ATTN: Kirk Gustafson, Aviation Safety Engineer, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

(f) Installing an engine chip detector shall be done by following the specified portions of General Electric Aircraft Engines CT58 Service Bulletin Number 72–0195, dated May 1, 2003. Installing an on-board engine chip detector annunciation system and performing a functional test of the engine chip detector system shall be done by following the specified portions of Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B30–15A, Revision A, dated October 20, 2003. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, Connecticut, phone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com*. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(g) This amendment becomes effective on June 12, 2008.

Issued in Fort Worth, Texas, on April 23, 2008.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–9787 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0516; Directorate Identifier 2008–NM–026–AD; Amendment 39–15514; AD 2008–10–08]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP 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 EMBRAER Model EMB–135 airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The existing AD currently requires performing repetitive inspections for cracks, ruptures, or bends in certain components of the elevator control system; replacing discrepant components; and, for certain airplanes, installing a new spring cartridge and implementing new logic for the electromechanical gust lock system. The existing AD also requires eventual modification of the elevator gust lock system to replace the mechanical system with an electromechanical system, which terminates the repetitive

inspections. This AD reduces the compliance time for doing the modification. This AD results from additional reports of failure of the mechanical gust lock system to protect the elevator control surfaces and components from high wind gusts. We are issuing this AD to prevent discrepancies in the elevator control system, which could result in reduced control of the elevator and consequent reduced controllability of the airplane.

DATES: This AD becomes effective May 23, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 23, 2008.

On February 3, 2006 (70 FR 77303, December 30, 2005), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD.

We must receive any comments on this AD by June 9, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On December 13, 2005, we issued AD 2005–26–15, amendment 39–14436 (70 FR 77303, December 30, 2005), for certain EMBRAER Model EMB–135 airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That AD requires performing repetitive inspections for cracks, ruptures, or bends in certain components of the elevator control system; replacing discrepant components; and, for certain airplanes, installing a new spring cartridge and implementing new logic for the electromechanical gust lock system. That AD also requires eventual modification of the elevator gust lock system to replace the mechanical system with an electromechanical system, which terminates the repetitive inspections. That AD resulted from reports that cracks were found in certain components of the elevator control system in the horizontal stabilizer area of several airplanes equipped with a mechanical gust lock system. Those cracks were attributed to damage from strong wind gusts on the ground. We issued that AD to prevent discrepancies in the elevator control system, which could result in reduced control of the elevator and consequent reduced controllability of the airplane.

Actions Since AD 2005–26–15 Was Issued

After we issued AD 2005–26–15, we received a report indicating that a Model EMB–145 airplane did not rotate in response to the command from the yoke during take-off, which resulted in a rejected take-off. The airplane was one of a small percentage of remaining airplanes in the U.S. fleet for which the mechanical elevator gust lock system had yet to be modified to an electromechanical elevator gust lock system, as required by AD 2005–26–15. The compliance time specified in AD 2005–26–15 for accomplishment of the modification time is within 10,000 flight hours or 60 months after February 3, 2006 (the effective date of that AD), whichever is first.

In light of the report described previously, we determined that the repetitive inspections in AD 2005–26–15 were inadequate to ensure long-term continued operational safety. Consequently, on January 18, 2008, we issued AD 2008–03–03, amendment 39–15352 (73 FR 5426, January 30, 2008), for certain EMBRAER Model EMB–135 airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That AD requires additional (interim) inspections to detect discrepancies of the components of the elevator control system, repetitive movements of the control column to observe the normal response of the elevators, repetitive inspections to detect discrepancies of the skin of the elevators, and applicable related investigative actions and corrective actions. AD 2008–03–03 also provides for an optional terminating action for the inspections and measurements; that optional terminating action is the same terminating action that is required by AD 2005–26–15.

In addition, AD 2008–03–03 requires that operators submit reports of any findings of damage or discrepancies found during any inspection required by the AD. As we explained in the preamble to AD 2008–03–03, we were considering superseding AD 2005–26–15 to reduce the compliance time for that modification based on the results of those inspections.

Since we issued AD 2008–03–03, we have received additional reports of in-service failures of the mechanical gust lock system to protect the control surfaces and components of the elevator control system from high wind gusts and jet blasts. Rapid uncommanded movement of the elevator control surface induces inertia loads in the elevator control system, which may result in systematic damage that could ultimately cause failure of the elevator control system and consequent reduced control of the airplane.

FAA's Conclusion

Based on these additional reports, and in light of the severity of the identified unsafe condition, we have determined that in order to further reduce the risk of potential damage of the elevator control system components, the terminating modification required by AD 2005–26–15 must be done sooner than the compliance time specified in that AD. Accomplishment of the modification, as required by paragraph (h)(1) or (h)(2) of this AD, terminates the requirements of AD 2008–03–03, as well as the requirements of paragraph (f) of this AD.

Relevant Service Information

EMBRAER has issued Service Bulletin 145–27–0075, Revision 09, dated November 8, 2006; and Service Bulletin 145–27–0086, Revision 05, dated November 8, 2006. The procedures in these service bulletins are essentially the same as those in EMBRAER Service Bulletin 145–27–0075, Revision 06, dated July 16, 2002; and EMBRAER

Service Bulletin 145–27–0086, Change 01, dated July 3, 2002; which we referred to in the proposed rules to AD 2005–26–15 as the appropriate sources of service information for doing the required modification. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Differences Between the AD and the Service Information

Operators should note that this AD does not mandate installing new electrical grounding for the gust lock system actuator at the horizontal stabilizer structure, as provided in the new revisions of the service bulletins described previously.

Explanation of Brazilian Airworthiness Directive

The Departmento de Aviacao Civil (DAC), which is the former airworthiness authority for Brazil, mandated EMBRAER Service Bulletin 145–27–0075, Revision 06, and EMBRAER Service Bulletin 145–27–0086, Change 01, and further revisions approved by the DAC, by issuing Brazilian airworthiness directive 2002–01–01R3, effective November 8, 2002. The DAC issued that airworthiness directive to ensure the continued airworthiness of these airplanes in Brazil. We referred to Brazilian airworthiness directive 2002–01–01R3, effective November 8, 2002, in AD 2005–26–15 as a related source of information.

Since we issued AD 2005–26–15, the Agência Nacional de Aviação Civil (ANAC) has assumed responsibility for the airplane models subject to this AD. While it has not issued a new airworthiness directive related to this issue, we have coordinated the requirements of this AD with ANAC.

U.S. Type Certification of the Airplane

These airplane models are manufactured in Brazil 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.

Change to Existing AD

This AD retains the requirements of AD 2005–26–15. Since AD 2005–26–15 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2005–26–15	Corresponding requirement in this AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).
Paragraph (c)	Paragraph (h).
Paragraph (d)	Paragraph (i).

Paragraph (c)(2)(i) of AD 2005–26–15 (paragraph (h)(2)(i) of this AD) specifies making repairs using a method approved by either the FAA or the DAC (or its delegated agent). As we previously explained, the ANAC has assumed responsibility for the airplane model[s] subject to this AD. Therefore, we have revised paragraph (h)(2)(i) of this AD to specify making repairs using a method approved by the FAA, the DAC (or its delegated agent), or the ANAC (or its delegated agent).

FAA's Justification and Determination of the Effective Date

Based on the service reports since the release of AD 2005–26–15, we have determined that a shorter compliance time for the terminating action is necessary to address the unsafe condition and to ensure long-term continued operational safety in this case to detect any discrepancy before it represents a hazard to the airplane. Because of our requirement to promote safe flight of civil aircraft, and thus the critical need to ensure the proper functioning of the elevator control system and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less that 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0516; Directorate Identifier 2008–NM–026–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

We 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 39–14436 (70 FR 77303, December 30, 2005) and adding the following new AD:

2008–10–08 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2008–0516; Directorate Identifier 2008–NM–026–AD; Amendment 39–15514.

Effective Date

(a) This AD becomes effective May 23, 2008.

Affected ADs

(b) This AD supersedes AD 2005–26–15.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, certificated in any category; serial numbers 145001 through 145189 inclusive, 145191 through 145362 inclusive, 145364 through 145373 inclusive, 145375, 145377 through 145411 inclusive, 145413 through 145424 inclusive, 145426 through 145430 inclusive, 145434 through 145436 inclusive, 145440 through 145445 inclusive, 145448, 145450, and 145801; equipped with a mechanical gust lock system.

Unsafe Condition

(d) This AD results from additional reports of failure of the mechanical gust lock system to protect the elevator control surfaces and components from high wind gusts. We are issuing this AD to prevent discrepancies in the elevator control system, which could result in reduced control of the elevator and consequent reduced 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.

Restatement of the Requirements of AD 2005–26–15 With Certain Revised Compliance Times/Requirements

Repetitive Inspections

(f) Within 800 flight hours after February 3, 2006 (the effective date of AD 2005–26–15), do a detailed inspection of the elevator control system for any crack, rupture, or bend in any component, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0087, Change 03, dated September 27, 2002. Where this service bulletin specifies to return discrepant parts and report inspection results to the manufacturer, this AD does not require these actions. Repeat the inspection thereafter at intervals not to exceed 2,500 flight hours or 15 months, whichever is first.

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

Replacement of Discrepant Parts

(g) If any discrepant part is found during any inspection required by paragraph (f) of this AD, before further flight, replace the discrepant part with a new part, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0087, Change 03, dated September 27, 2002.

Modification

(h) At the applicable time specified in paragraph (j) of this AD: Modify the elevator gust lock by accomplishing paragraph (h)(1) or (h)(2) of this AD, as applicable. Accomplishment of the modification terminates the repetitive inspections required by paragraph (f) of this AD. Doing the actions required by paragraph (h)(1) or (h)(2) of this AD, as applicable, also terminates the requirements of AD 2008–03–03, amendment 39–15352. This AD does not mandate installing new electrical grounding for the gust lock system actuator at the horizontal stabilizer structure in accordance with EMBRAER Service Bulletin 145–27–0075, Revision 09, dated November 8, 2006; or EMBRAER Service Bulletin 145–27–0086, Revision 05, dated November 8, 2006.

(1) For airplanes listed in EMBRAER Service Bulletin 145–27–0075, Revision 08, dated March 3, 2005: Do paragraph (h)(1)(i) or (h)(1)(ii) of this AD, as applicable, and install a new spring cartridge and implement new logic for the electromechanical gust lock system by doing all actions in section 3.D. (Part IV) of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0075, Revision 08, dated March 3, 2005; or Revision 09, dated November 8, 2006. After the effective date of this AD, Revision 09 of the service bulletin must be used. After accomplishing the actions in EMBRAER Service Bulletin 145–27–0101, as specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0075, Revision 08 or Revision 09; the airplane flight manual (AFM) revision required by AD 2002–26–51, amendment 39–13008, may be removed from the Limitations section of the EMBRAER EMB–145 AFM. Accomplishing the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0102, as specified by EMBRAER Service Bulletin 145–27–0075, Revision 08 or Revision 09, terminates the repetitive inspections required by AD 2005–24–11, amendment 39–14391.

(i) Replace the mechanical gust lock system with an electromechanical gust lock system, and replace the control stand with a reworked control stand, by doing all the actions (including a detailed inspection to ensure that certain parts have been removed previously per EMBRAER Service Bulletin 145–27–0076) in and per section 3.A. (Part I) or 3.B. (Part II), as applicable, of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0075, Revision 08 or Revision 09. If the inspection reveals that certain subject parts have not been removed previously, before further flight, remove the subject parts in accordance with EMBRAER Service Bulletin 145–27–0075, Revision 08 or Revision 09. Where Parts I and II of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0075, Revision 08 or Revision 09, specify to remove and ''send the control stand to be reworked in a workshop,'' replace the control stand with a control stand reworked as specified in EMBRAER Service Bulletin 145–27–0075, Revision 08 or Revision 09. After the effective date of this AD, Revision 09 of the service bulletin must be used for the actions required by this paragraph.

(ii) Replace the return spring and spring terminal of the gust lock control lever with improved parts by doing all the actions in and per section 3.C. (Part III) of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0075, Revision 08 or Revision 09. After the effective date of this AD, Revision 09 of the service bulletin must be used.

Note 2: Part IV of the Accomplishment Instructions of EMBRAER Service Bulletins 145–27–0075, Revision 08 and Revision 09, refers to EMBRAER Service Bulletin 145–27–0101, Revision 02, dated December 27, 2004; and EMBRAER Service Bulletin 145–27–0102, Revision 02, dated January 20, 2005; as additional sources of instructions for accomplishing the installation of a new spring cartridge and implementation of the new logic for the electromechanical gust lock system.

(2) For airplanes listed in EMBRAER Service Bulletin 145–27–0086, Change 04, dated March 21, 2005: Do paragraphs (h)(2)(i), (h)(2)(ii), (h)(2)(iii), and (h)(2)(iv) of this AD, as applicable.

(i) Rework the tail carbon box and the horizontal stabilizer by doing all the actions (including the inspection for delamination) in and per section 3.A. (Part I) of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0086, Change 04; or Revision 05, dated November 8, 2006. After the effective date of this AD, Revision 05 of the service bulletin must be used. If any delamination is found that is outside the limits specified in EMBRAER Service Bulletin 145–27–0086, Change 04 or Revision 05, before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, Transport

Airplane Directorate, FAA; the Departmento de Aviacao Civil (or its delegated agent); or the Agência Nacional de Aviação Civil (or its delegated agent).

(ii) Install wiring and electrical components by doing all the actions in and per section 3.B. (Part II) of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0086, Change 04 or Revision 05. After the effective date of this AD, Revision 05 of the service bulletin must be used.

(iii) Install and activate the electromechanical gust lock system by doing all the actions in section 3.D. (Part IV) of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0086, Change 04 or Revision 05. Where Part IV of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0086, Change 04 or Revision 05, specifies to remove and ''send the control stand to be reworked in a workshop,'' replace the control stand with a control stand reworked as specified in Part III of the service bulletin. After the effective date of this AD, Revision 05 of the service bulletin must be used.

(iv) Install a new spring cartridge and implement new logic for the electromechanical gust lock system by doing all applicable actions in section 3.E. (Part V) of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0086, Change 04 or Revision 05. After the effective date of this AD, Revision 05 of the service bulletin must be used. After accomplishing the actions in EMBRAER Service Bulletin 145–27–0101; as specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0086, Change 04 or Revision 05; the AFM revision required by AD 2002–26–51, amendment 39–13008, may be removed from the Limitations section of the EMBRAER EMB–145 AFM. Accomplishing the actions in EMBRAER Service Bulletin 145–27–0102; as specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0086, Change 04 or Revision 05; terminates the repetitive inspections required by AD 2005–24–11, amendment 39–14391.

Note 3: Part V of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0086, Change 04 and Revision 05, refers to EMBRAER Service Bulletin 145–27–0101, Revision 02, dated December 27, 2004; and EMBRAER Service Bulletin 145–27–0102, Revision 02, dated January 20, 2005; as additional sources of instructions for accomplishing the installation of a new spring cartridge and implementation of the new logic for the electromechanical gust lock system.

Actions Accomplished Previously

(i) Actions accomplished before February 3, 2006, are acceptable for compliance with the corresponding requirements of this AD, as specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD.

(1) Modification of the elevator gust lock system before February 3, 2006, in accordance with EMBRAER Service Bulletin 145–27–0075, Change 06, dated July 16, 2002, is acceptable for compliance with paragraph (h)(1) of this AD, provided that, within the compliance time specified in paragraph (h) of this AD, a new spring cartridge is installed and new logic for the electromechanical gust lock system is implemented in accordance with Part IV of EMBRAER Service Bulletin 145–27–0075, Revision 07, dated March 2, 2004, or Revision 08, dated March 3, 2005.

(2) Modification of the elevator gust lock system before February 3, 2006, in accordance with EMBRAER Service Bulletin 145–27–0075, Revision 07, dated March 2, 2004, is acceptable for compliance with paragraph (h)(1) of this AD.

(3) Modification of the elevator gust lock system before February 3, 2006, in accordance with EMBRAER Service Bulletin 145–27–0086, Change 02, dated December 23, 2003; or EMBRAER Service Bulletin 145–27–0086, Change 03, dated April 14, 2004; is acceptable for compliance with paragraph (h)(2) of this AD.

Reduced Compliance Time for Required Modification

(j) For airplanes on which the modification of the elevator gust lock system specified in paragraph (h) of this AD has not been done as of the effective date of this AD: At the earlier of the times specified in paragraphs (j)(1) and (j)(2) of this AD, accomplish the actions required by paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) Within 10,000 flight hours after February 3, 2006, or within 60 months after February 3, 2006, whichever occurs first.

(2) Within 90 days after the effective date of this AD, or 500 flight hours after the effective date of this AD, whichever occurs later.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, International Branch, ANM–116, 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

(l) None.

Material Incorporated by Reference

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

TABLE 1.—ALL MATERIAL INCORPORATED BY REFERENCE

EMBRAER Service Bulletin	Revision/change level	Date
145–27–0075	Revision 08	March 3, 2005.
145–27–0075	Revision 09	November 8, 2006.
145–27–0086	Change 04	March 21, 2005.
145–27–0086	Revision 05	November 8, 2006.
145–27–0087	Change 03	September 27, 2002.

(1) The Director of the Federal Register approved the incorporation by reference of the service information 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

EMBRAER Service Bulletin	Revision/change level	Date
145–27–0075	Revision 09	November 8, 2006.
145–27–0086	Revision 05	November 8, 2006.

(2) On February 3, 2006 (70 FR 77303, December 30, 2005), the Director of the Federal Register approved the incorporation by reference of the service information identified in Table 3 of this AD.

TABLE 3.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

EMBRAER Service Bulletin	Revision/change level	Date
145–27–0075	Revision 08	March 3, 2005.
145–27–0086	Change 04	March 21, 2005.
145–27–0087	Change 03	September 27, 2002.

(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 April 23, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9890 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0258; Directorate Identifier 2007–CE–090–AD; Amendment 39–15518; AD 2008–10–12]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. AT–400, AT–500, AT–600, and AT–800 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) to supersede AD 2007–13–17, which applies to certain Air Tractor, Inc. (Air Tractor) Models AT–602, AT–802, and AT–802A airplanes. AD 2007–13–17 currently requires you to repetitively inspect the engine mount for any cracks, repair or replace any cracked engine mount, and report any cracks found to the FAA. Since we issued AD 2007–13–17, Air Tractor has learned of a Model AT–502B with a crack located where the lower engine mount tube is welded to the engine mount ring. In addition, Air Tractor has developed gussets that, when installed according to their service letter, terminate the repetitive inspection requirement. Consequently, this AD would retain the inspection actions of AD 2007–13–17 for Model AT–602, AT–802, and AT–802A airplanes, including the compliance times and effective dates; establish new inspection actions for the AT–400 and AT–500 series airplanes; incorporate a mandatory terminating action for all airplanes; and terminate the reporting requirement of AD 2007–13–17. We are issuing this AD to detect and correct cracks in the engine mount, which could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

DATES: This AD becomes effective on June 12, 2008.

On June 12, 2008, the Director of the Federal Register approved the incorporation by reference of Snow Engineering Co. Service Letter #253, Rev. C, dated April 17, 2008; Snow Engineering Co. Service Letter #253, Rev. B, dated November 30, 2007; and Snow Engineering Co. Service Letter #253 Rev. A, dated October 16, 2007, as listed in this AD.

As of August 10, 2007 (72 FR 36863, July 6, 2007), the Director of the Federal Register approved the incorporation by reference of Snow Engineering Co. Service Letter #253, revised January 22, 2007, as listed in this AD.

ADDRESSES: For service information identified in this AD, contact Air Tractor Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is FAA–2007–0258; Directorate Identifier 2007–CE–090–AD.

FOR FURTHER INFORMATION CONTACT: Andy McAnaul, Aerospace Engineer, 10100 Reunion Pl., Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Discussion

On November 23, 2007, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Air Tractor AT–400, AT–500, AT–600, and AT–800 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 30, 2007 (72 FR 67687). The NPRM proposed to supersede AD 2007–13–17 with a new AD that would retain the inspection actions of AD 2007–13–17 for Models AT–602, AT–802, and AT–802A airplanes, including the compliance times and effective dates; establish new inspection actions for the AT–400 and AT–500 series airplanes; incorporate a mandatory terminating action for all airplanes; and terminate the reporting requirement of AD 2007–13–17. That proposed AD would have required you to use Snow Engineering Co. Service Letter #253 Rev. A, dated October 16, 2007.

Air Tractor revised the Snow Engineering Co. Service Letter #253 to the Rev. B level (dated November 30, 2007), and:

- The FAA determined the actions in the revised service letter were necessary and needed to be incorporated into the proposed AD; and
- Because incorporating the revision increased the burden upon the public over that proposed in the NPRM, the FAA issued a supplemental NPRM to give the public an additional opportunity to comment.

The supplemental NPRM was published in the **Federal Register** on December 14, 2007 (72 FR 71086).

Comments

The following presents the comment received on the proposal and FAA's response to that comment:

Comment Issue: Delay the Terminating Action

Mr. Leland Snow, President of Air Tractor, and five other commenters recommend some kind of delay in mandating the terminating action in the proposed AD. Mr. Snow and one other commenter believe that the compliance time to install welded gussets on the engine mounts can be adjusted from before the airplane reaches 5,000 total hours time-in-service (TIS) to before the airplane reaches 8,000 hours total TIS. In order to get through the current spray season, three commenters believe the compliance time should be delayed 12 months or when the engine is removed.

The other commenter recommends shorter interval repetitive inspections with no mandatory terminating action.

The FAA partially agrees. Our review of the current service history does not support allowing the installation of welded gussets to be extended from before the airplane reaches 5,000 total hours TIS to before the airplane reaches 8,000 hours total TIS. We have received no additional data to substantiate the airworthiness aspects of such an extension and show that the unsafe condition is addressed.

After further evaluation of the service history and the risk involved, we have determined that terminating action can be delayed until the beginning of the 2009 spray season (May 1, 2009) provided 100-hour TIS repetitive inspections are done and no cracks are found. Therefore, we are changing the final rule AD action to allow for the option of delaying the terminating action until April 30, 2009, with the provisions described above.

In addition, Air Tractor has revised Snow Engineering Co. Service Letter #253 to the Revision C level (dated April 17, 2008). This revision incorporates new gusset part numbers for the AT–400 and AT–500 series airplanes. The gusset part numbers provided in Revision B or Revision C of the service letter address the unsafe condition. We will incorporate this service letter revision into the final rule.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the change and addition described above and minor editorial corrections. We have determined that the change, addition, and minor corrections:

- Are consistent with the intent that was proposed in the NPRM or supplemental NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM or supplemental NPRM.

Costs of Compliance

We estimate that this AD affects 1,264 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1.5 work-hours × $80 per hour = $120	$0	$120	$151,680

We estimate the following costs to do the repair/modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
24 work-hours × $80 per hour = $1,920	$80	$2,000	$2,528,000

The estimated total cost on U.S. operators includes the cumulative costs associated with AD 2007–13–17 and those airplanes and actions being added in this AD.

Authority for This Rulemaking

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

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

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 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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–0258; Directorate Identifier 2007–CE–090–AD'' in your request.

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 Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2007–13–17, Amendment 39–15121 (72 FR 36863, July 6, 2007), and adding the following new AD:

2008–10–12 Air Tractor, Inc.: Amendment 39–15518; Docket No. FAA–2007–0258; Directorate Identifier 2007–CE–090–AD.

Effective Date

(a) This AD becomes effective on June 12, 2008.

Affected ADs

(b) This AD supersedes AD 2007–13–17, Amendment 39–15121.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Models	Serial Nos.
AT–400, AT–400A, AT–402, AT–402A, and AT–402B	–0001 through –1175.
AT–502, AT–502A, AT–502B, and AT–503A	–0001 through –2597.
AT–602	–0001 through –1141.
AT–802 and AT–802A	–0001 through –0227.

Unsafe Condition

(d) This AD results from a report of a Model AT–502B airplane with a crack located where the lower engine mount tube is welded to the engine mount ring. The airplane had 8,436 total hours time-in-service (TIS). We are issuing this AD to detect and correct cracks in the engine mount, which could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

Compliance

(e) To address this problem, you must do the following, unless already done:

(1) *For all airplanes with less than 5,000 hours total TIS that do not have gussets installed on the engine mount in accordance with Snow Engineering Co. Service Letter #253 Rev. A, dated October 16, 2007; Snow Engineering Co. Service Letter #253 Rev. B, dated November 30, 2007; or Snow Engineering Co. Service Letter #253 Rev. C, dated April 17, 2008*: Visually inspect the engine mount as follows:

Affected airplanes	Compliance	Procedures
(i) *For all Models AT–602, AT–802, and AT–802A airplanes.*	Initially before the airplane reaches a total of 1,300 hours TIS or within the next 100 hours TIS after August 10, 2007 (the effective date of AD 2007–13–17), whichever occurs later. Repetitively thereafter at intervals not to exceed 300 hours TIS.	Follow one of the following: (A) Snow Engineering Co. Service Letter #253, Rev. C, dated April 17, 2008; (B) Snow Engineering Co. Service Letter #253, Rev. B, dated November 30, 2007; (C) Snow Engineering Co. Service Letter #253, Rev. A, dated October 16, 2007; or (D) Snow Engineering Co. Service Letter #253, revised January 22, 2007.
(ii) *For all Model AT–502A airplanes*	Initially before the airplane reaches a total of 1,300 hours TIS or within the next 100 hours TIS after June 12, 2008 (the effective date of this AD), whichever occurs later. Repetitively thereafter at intervals not to exceed 300 hours TIS.	Follow one of the following: (A) Snow Engineering Co. Service Letter #253, Rev. C, dated April 17, 2008; or (B) Snow Engineering Co. Service Letter #253, Rev. B, dated November 30, 2007.
(iii) *For all Models AT–400, AT–400A, AT–402, AT–402A, AT–402B, AT–502, AT–502B, and AT–503A airplanes.*	Initially within the next 12 months after June 12, 2008 (the effective date of this AD). Repetitively thereafter at intervals not to exceed 12 months.	Follow one of the following: (A) Snow Engineering Co. Service Letter #253, Rev. C, dated April 17, 2008; or (B) Snow Engineering Co. Service Letter #253, Rev. B, dated November 30, 2007.

(2) *For all airplanes*: Before further flight after any inspection required by paragraph (e)(1) of this AD where crack damage is found, repair and modify the engine mount by installing gussets following Snow Engineering Co. Service Letter #253, Rev. C, dated April 17, 2008; or Snow Engineering Co. Service Letter #253, Rev. B, dated November 30, 2007. This modification terminates the repetitive inspections required in paragraphs (e)(1)(i), (e)(1)(ii), and (e)(1)(iii) of this AD.

(3) *For all airplanes*: Unless already done (mandated by paragraph (e)(2) of this AD when crack damage was found) inspect, repair if cracked, and modify the engine mount by installing gussets following Snow Engineering Co. Service Letter #253, Rev. C, dated April 17, 2008; or Snow Engineering Co. Service Letter #253, Rev. B, dated November 30, 2007, at whichever of the following compliance times that occurs later. This modification terminates the repetitive inspections required in paragraphs (e)(1)(i), (e)(1)(ii), and (e)(1)(iii) of this AD.

(i) Before the airplane reaches 5,000 hours total TIS; or

(ii) Within the next 100 hours TIS after June 12, 2008 (the effective date of this AD).

(4) *For all airplanes*: You may delay the modification specified in paragraph (e)(3) above until April 30, 2009, provided you do the following in accordance with the service information provided in the Procedures column of the table presented in paragraph (e)(1) of this AD:

(i) Initially inspect upon reaching the applicable time in paragraph (e)(3)(i) or (e)(3)(ii) of this AD, unless already done within the last 100 hours TIS;

(ii) Repetitively inspect thereafter at intervals not to exceed 100 hours TIS; and

(iii) If cracks are found during any inspection, before further flight, repair the cracked part and install the gussets.

Note: As a terminating action to the repetitive inspections required in paragraphs (e)(1)(i), (e)(1)(ii), and (e)(1)(iii) of this AD, you may install the gussets before finding cracks or reaching the times specified above provided you inspect to assure the area is crack free before installing the gussets.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification Office, 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: Andy McAnaul, Aerospace Engineer, ASW–150, FAA San Antonio MIDO–43, 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370. 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

(g) You must use Snow Engineering Co. Service Letter #253, Rev. C, dated April 17, 2008; Snow Engineering Co. Service Letter #253, Rev. B, dated November 30, 2007; Snow Engineering Co. Service Letter #253, Rev. A, dated October 16, 2007; or Snow Engineering Co. Service Letter #253, revised January 22, 2007, 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 Snow Engineering Co. Service Letter #253, Rev. C, dated April 17, 2008; Snow Engineering Co. Service Letter #253, Rev. B, dated November 30, 2007; and Snow Engineering Co. Service Letter #253 Rev. A, dated October 16, 2007, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On August 10, 2007 (72 FR 36863, July 6, 2007), the Director of the Federal Register approved the incorporation by reference of Snow Engineering Co. Service Letter #253, revised January 22, 2007.

(3) For service information identified in this AD, contact Air Tractor Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612.

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

Issued in Kansas City, Missouri, on April 30, 2008.

Patrick R. Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9925 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28383; Directorate Identifier 2006–NM–180–AD; Amendment 39–15515; AD 2008–10–09]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires revising the FAA-approved maintenance program to incorporate new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This AD also requires the initial inspection of a certain repetitive AWL inspection to phase in that inspection, and repair if necessary. This AD results from a design review of the fuel tank system. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective June 12, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 12, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6438; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on July 6, 2007 (72 FR 36907). That NPRM proposed to require revising the FAA-approved maintenance program to incorporate new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That NPRM also proposed to require the initial inspection of a certain repetitive AWL inspection to phase in that inspection, and repair if necessary.

Actions Since NPRM Was Issued

Since we issued the NPRM, Boeing has issued Revision March 2008 of the 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR (hereafter referred to as ''Revision March 2008 of Document D6–38278–CMR''). The NPRM referred to Revision May 2006 of Document D6–38278–CMR as the appropriate source of service information for accomplishing the proposed actions. Revision March 2008 of Document D6–38278–CMR, among other actions, includes the following changes:

- Removes the repetitive task interval of 36,000 flight cycles from AWLs No. 28–AWL–01 and No. 28–AWL–03.
- Revises the task description for AWL No. 28–AWL–01 to harmonize it with AWL No. 28–AWL–02 by removing references to certain station numbers.
- Revises AWL No. 28–AWL–03 to reflect the new maximum loop resistance values associated with the lightning protection of the unpressurized fuel quantity indicating system (FQIS) wire bundle installations.

Accordingly, we have revised paragraphs (f), (g), and (h) of this AD to refer to Revision March 2008 of Document D6–38278–CMR. We also have added a new paragraph (j) to this AD specifying that actions done before the effective date of this AD in accordance with Revisions May 2006 through November 2007 of Document D6–38278–CMR are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

We also have removed reference to 36,000 total flight hours from paragraph (h)(1) of this AD and revised the initial threshold for accomplishing AWL No. 28–AWL–03 to within 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

Operators should note that paragraph (g) of this AD requires only incorporating AWLs No. 28–AWL–01 through No. 28–AWL–20 inclusive for Model 737–100, –200, and –200C series airplanes, and AWLs No. 28–AWL–01 through No. 28–AWL–19 inclusive for Model 737–300, –400, and –500 series airplanes. Revision September 2006 of Document D6–38278–CMR added AWL inspections of the fuel boost pump auto shutoff system for the center and auxiliary fuel tanks (specified as AWLs No. 28–AWL–20 and No. 28–AWL–21 for Model 737–300, –400, and –500 series airplanes, and AWLs No. 28–

AWL–21 and No. 28–AWL–22 for Model 737–100, –200, and –200C series airplanes). Revision November 2007 of Document D6–38278–CMR added an AWL inspection of the boost pump ground fault interrupter (specified as AWL No. 28–AWL–22 for Model 737–300, –400, and –500 series airplanes, and AWL No. 28–AWL–23 for Model 737–100, –200, and –200C series airplanes). We might issue additional rulemaking to require the incorporation of those AWLs. However, as an optional action, operators may incorporate those AWLs as specified in paragraph (g) of this AD.

Other Changes Made to This AD

For standardization purposes, we have revised this AD in the following ways:

- We have added a new paragraph (i) to this AD to specify that no alternative inspections, inspection intervals, or critical design configuration control limitations (CDCCLs) may be used unless they are part of a later approved revision of Revision March 2008 of Document D6–38278–CMR, or unless they are approved as an alternative method of compliance (AMOC). Inclusion of this paragraph in the AD is intended to ensure that the AD-mandated airworthiness limitations changes are treated the same as the airworthiness limitations issued with the original type certificate.
- We have revised Note 1 of this AD to clarify that an operator must request approval for an AMOC if the operator cannot accomplish the required inspections because an airplane has been previously modified, altered, or repaired in the areas addressed by the required inspections.
- We have revised paragraph (h) of this AD to specify that accomplishing AWL No. 28–AWL–03 as part of an FAA-approved maintenance program before the applicable compliance time constitutes compliance with the applicable requirements of that paragraph.
- We have deleted Appendix 1 and Appendix 2 from this AD, since Revision March 2008 of Document D6–38278–CMR already contains most of the updated information that is listed in those appendices of the NPRM.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the five commenters.

Request To Revise the Loop Resistance Values for AWL No. 28–AWL–03

Boeing, KLM Royal Dutch Airlines (KLM), and Lufthansa state that the loop resistance values for AWL No. 28–AWL–03 specified in Revision May 2006 of Document D6–38278–CMR are going to be revised, since those values are relevant for production airplanes. The commenters also state that the revised values will be more representative of the expected values for in-service airplanes. Boeing points out that, according to paragraph (h) of the NPRM, the revised values should be able to be used in accordance with a later revision of the CMR if the revision is approved by the Seattle Aircraft Certification Office (ACO), FAA.

We agree that operators may use the revised loop resistance values for AWL No. 28–AWL–03 in accordance with Revision March 2008 of Document D6–38278–CMR. As stated previously, we have revised this AD accordingly.

Request To Revise Intervals for Certain AWL Inspections

KLM, on behalf of several operators, requests that we review a 45-page proposal to align certain airworthiness limitation item (ALI) intervals with the applicable maintenance significant item (MSI) and enhanced zonal analysis procedure (EZAP) intervals for Model 737, 747, 757, 767, and 777 airplanes. The recommendations in that proposal ensure that the ALI intervals align with the maintenance schedules of the operators. Among other changes, the proposal recommends extending certain AWL inspection intervals from 10 years/36,000 flight cycles to 12 years for Model 737–100, –200, –300, –400, and –500 series airplanes.

Lufthansa and the Air Transport Association (ATA), on behalf of its member U.S. Airways, both note an inconsistency between the inspection interval specified in Revision May 2006 of Document D6–38278–CMR and the compliance threshold specified in paragraph (h)(1) of the NPRM. The NPRM specifies accomplishing the initial inspection within 36,000 total flight hours or 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first. However, Revision May 2006 of Document D6–38278–CMR specifies a repetitive interval of 36,000 total flight cycles or 120 months, whichever occurs first. U.S. Airways requests we verify whether the initial inspection interval should be in units of flight cycles or flight hours.

We disagree with KLM's request to extend certain AWL inspection intervals to 12 years. However, as stated previously, we have deleted the 36,000-total-flight-hour parameter from paragraph (h)(1) of this AD to correspond with the task interval for AWL No. 28–AWL–03 as specified in Revision March 2008 of Document D6–38278–CMR. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition and the practical aspect of accomplishing the required actions within a period of time that corresponds to the normal scheduled maintenance for most affected operators. However, according to the provisions of paragraph (k) of this AD, we might approve requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety.

Request To Revise Note 1

Boeing requests that we revise Note 1 of the NPRM to clarify the need for an AMOC. Boeing states that the current wording is difficult to follow, and that the note is meant to inform operators that an AMOC to the required AWLs might be required if an operator has previously modified, altered, or repaired the areas addressed by the limitations. Boeing requests that we revise Note 1 as follows:

- Add the words ''according to paragraph (g)'' at the end of the first sentence.
- Replace the words ''revision to'' with ''deviation from'' in the last sentence.
- Delete the words ''(g) or'' and ''as applicable'' from the last sentence.

As stated previously, we have clarified the language in Note 1 of this AD for standardization with other similar ADs. The language the commenter requests that we change does not appear in the revised note. Therefore, no additional change to this AD is necessary in this regard.

Request To Extend the Grace Period for AWL No. 28–AWL–03

KLM expects to have problems accomplishing the initial inspection of AWL No. 28–AWL–03 within the 24-month grace period. The commenter states that if it does the check and does not reach the specified values, then tank entry outside of heavy maintenance would be necessary. The commenter also states that it would be helpful to plan to do this inspection during an overhaul.

We infer that KLM requests that we extend the grace period for AWL No.

28–AWL–03 in paragraph (h) of this AD to allow accomplishing the initial inspection during a regularly scheduled ''D'' check (about 6 years). We disagree with extending the grace period to 6 years. In developing an appropriate compliance time for this action, we considered the safety implications, the rate of lightning strikes in the fleet, and the average age of the fleet. In consideration of these items, we have determined that an initial compliance time of 120 months (as discussed previously) with a grace period of 24 months will ensure an acceptable level of safety. We have not changed the grace period for AWL No. 28–AWL–03 in this regard.

Request To Add Applicability to Paragraph (g)

Lufthansa states that the applicability of the AWL tasks should be included in the AWL table of the AD.

We infer the commenter requests that we include the applicability for AWL No. 28–AWL–03 in paragraph (g) of this AD. (The commenter made the same request for a similar NPRM, which contained an ''AWL table.'') We agree to add the airplane applicability to paragraph (g) of this AD because AWL No. 28–AWL–03 only applies to airplanes on which certain design changes have been incorporated. We have revised paragraph (g) of this AD accordingly.

Request To Clarify Need for AMOCs

The ATA, on behalf of its member U.S. Airways, requests that we clarify whether operators must obtain AMOCs for AWLs that are not applicable to their airplanes. U.S. Airways also requests that we clarify that some of the items identified in Appendix 2 of the NPRM might not be applicable to all Model 737–300, –400, and –500 series airplanes. U.S. Airways states that it will not be able to comply with certain AWL inspections or CDCCLs because it has not incorporated the relevant service bulletins identified in Revision May 2006 of Document D6–38278–CMR on several of its airplanes.

Document D6–38278–CMR contains an applicability column that identifies the airplane configuration to which the AWL applies. The AWL is required only for those airplanes that have that configuration. If the applicability column identifies a service bulletin, then the operator would not need to adhere to the AWL until the airplane is modified in accordance with that service bulletin. There is no need to obtain an AMOC for airplanes that have not been modified. We agree that some of the items identified in Appendix 2 of the NPRM might not be applicable to all Model 737–300, –400, and –500 series airplanes. However, no change to this AD is necessary in this regard, since we have deleted Appendix 2 from this AD.

Request To Clarify if Latest Revision of Document D6–38278–CMR is Required

The ATA, on behalf of its member U.S. Airways, requests that we clarify whether the latest revision of Document D6–38278–CMR will be incorporated into the final rule. The commenters note that Boeing has published a later revision of Document D6–38278–CMR than the one referenced in the NPRM.

We have revised this AD to refer to the latest revision of Document D6–38278–CMR because paragraphs (g) and (h) of this AD allow the use of later approved revisions of that document. That document has been revised since then to include additional AWLs associated with the incorporation of certain design changes. As stated previously, we might require those design changes and associated AWLs with separate rulemaking actions, but operators may choose to incorporate the new AWLs before then.

Request To Clarify Revision Date of Document D6–38278–CMR

The ATA, on behalf of its member U.S. Airways, notes that the ''Changes to Fuel Tank System AWLs'' and ''Exceptional Short-Term Extensions'' sections of the NPRM refer to Revision March 2006 of Document D6–38278–CMR. U.S. Airways believes that the correct revision date should be May 2006 to match the rest of the NPRM.

We infer the commenters request that we change the revision date to May 2006. We agree that the NPRM should have referred to Revision May 2006 of Document D6–38278–CMR because that revision, and other later approved revisions, are the subject of this AD. Revision March 2006 of Document D6–38278–CMR was originally included in the NPRM because the AWLs for fuel tank systems were first incorporated in that document. However, we have not changed this AD since the paragraphs that the commenters refer to are not retained in the final rule.

Conclusion

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

Costs of Compliance

There are about 2,337 airplanes of the affected design in the worldwide fleet. 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.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Maintenance program revision	8	None	$640	672	$430,080
Inspection	8	None	640	672	430,080

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

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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–10–09 Boeing: Amendment 39–15515. Docket No. FAA–2007–28383; Directorate Identifier 2006–NM–180–AD.

Effective Date

(a) This airworthiness directive (AD) is effective June 12, 2008.

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.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss 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.

Service Information Reference

(f) The term ''Revision March 2008 of Document D6–38278–CMR,'' as used in this AD, means Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, Revision March 2008.

Maintenance Program Revision

(g) Before December 16, 2008, revise the FAA-approved maintenance program to incorporate the information specified in paragraph (g)(1) or (g)(2) of this AD, as applicable; except that the initial inspection required by paragraph (h) of this AD must be done at the applicable compliance time specified in that paragraph. Accomplishing the revision in accordance with a later revision of Document D6–38278–CMR is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(1) For Model 737–100, –200, and –200C series airplanes: Section C, ''FUEL SYSTEMS AIRWORTHINESS LIMITATIONS,'' including AWLs No. 28–AWL–01 through No. 28–AWL–20 inclusive, of Revision March 2008 of Document D6–38278–CMR. As an optional action, AWLs No. 28–AWL–21 through No. 28–AWL–23 inclusive, as identified in Section C of Revision March 2008 of Document D6–38278–CMR, also may be incorporated into the FAA-approved maintenance program.

(2) For Model 737–300, –400, and –500 series airplanes: Section C, ''FUEL SYSTEMS AIRWORTHINESS LIMITATIONS,'' including AWLs No. 28–AWL–01 through No. 28–AWL–19 inclusive, Revision March 2008 of Document D6–38278–CMR. As an optional action, AWLs No. 28–AWL–20 through No. 28–AWL–22 inclusive, as identified in Section C of Revision March 2008 of Document D6–38278–CMR, also may be incorporated into the FAA-approved maintenance program.

Initial Inspection and Repair if Necessary

(h) For the airplanes identified in the ''Applicability'' column of AWL No. 28–AWL–03 of Section C of Revision March 2008 of Document D6–38278–CMR: At the later of the compliance times specified in paragraphs (h)(1) and (h)(2) of this AD, do a special detailed inspection of the lightning shield to ground termination on the out-of-tank fuel quantity indication system (FQIS) wiring to verify functional integrity, in accordance with AWL No. 28–AWL–03 of Section C of Revision March 2008 of Document D6–38278–CMR. If any discrepancy is found during the inspection, repair the discrepancy before further flight in accordance with AWL No. 28–AWL–03 of Section C of Revision March 2008 of Document D6–38278–CMR. Accomplishing the actions required by this paragraph in accordance with a later revision of Document D6–38278–CMR is an acceptable method of compliance if the revision is approved by the Manager, Seattle ACO. Accomplishing AWL No. 28–AWL–03 as part of an FAA-approved maintenance program before the applicable compliance time specified in paragraph (h)(1) or (h)(2) of this AD constitutes compliance with the requirements of this paragraph.

Note 2: For the purposes of this AD, a special detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required.''

(1) Within 120 months since the date of issuance of the original standard airworthiness certification or the date of issuance of the original export certificate of airworthiness.

(2) Within 24 months after the effective date of this AD.

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(i) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are part of a later revision of Revision March 2008 of Document D6–38278–CMR that is approved by the Manager, Seattle ACO; or unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k) of this AD.

Credit for Actions Done According to Previous Revisions of the Service Information

(j) Actions done before the effective date of this AD in accordance with the Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, Revision May 2006; Revision September 2006; or Revision November 2007; are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, 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

(l) You must use Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, Revision March 2008, 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference 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/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on April 29, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9922 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26710; Directorate Identifier 2006–NM–147–AD; Amendment 39–15517; AD 2008–10–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 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 757 airplanes. This AD requires revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness by incorporating new limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This AD also requires the initial inspection of certain repetitive AWL inspections to phase-in those inspections, and repair if necessary. This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective June 12, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 12, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Judy Coyle, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6497; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

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 all Boeing Model 757 airplanes. That supplemental NPRM was published in the **Federal Register** on August 1, 2007 (72 FR 41963). That supplemental NPRM proposed to require revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness (ICA) by incorporating new limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That supplemental NPRM also proposed to require the initial inspection of certain repetitive inspections specified in the AWLs to phase-in those inspections, and repair if necessary. That supplemental NPRM also proposed to revise the original NPRM by aligning the compliance time for revising the AWLs section with the compliance date of the special maintenance program requirements, updating the listing of applicable airplane maintenance manuals in Appendix 1, and clarifying certain actions.

Actions Since Supplemental NPRM Was Issued

Since we issued the supplemental NPRM, Boeing has issued Temporary Revision (TR) 09–008, dated March 2008. Boeing TR 09–008 is published as Section 9 of the Boeing 757 Maintenance Planning Document (MPD) Document, D622N001–9, Revision March 2008 (hereafter referred to as ''Revision March 2008 of the MPD''). The supplemental NPRM referred to Revision March 2006 of the MPD as the appropriate source of service information for accomplishing the proposed actions. Revision March 2008 of the MPD, among other actions, includes the following changes:

- Removes the repetitive task interval of 36,000 flight cycles from AWLs No. 28–AWL–01, No. 28–AWL–03, and No. 28–AWL–14.
- Revises the task description for AWL No. 28–AWL–01 to harmonize it with AWL No. 28–AWL–02 by removing references to certain station numbers.
- Revises AWL No. 28–AWL–03 to reflect the new maximum loop resistance values associated with the lightning protection of the unpressurized fuel quantity indicating system (FQIS) wire bundle installations.

Accordingly, we have revised paragraphs (f), (g), and (h) of this AD to refer to Revision March 2008 of the MPD. We also have added a new paragraph (j) to this AD specifying that actions done before the effective date of this AD in accordance with Revisions March 2006 through November 2007 of the MPD are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

We also have removed reference to 36,000 total flight cycles from Table 1 of this AD and revised the initial threshold for accomplishing AWLs No. 28–AWL–01, No. 28–AWL–03, and No. 28–AWL–14 to within 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

Operators should note that we have revised paragraph (g) of this AD to require incorporating only AWLs No. 28–AWL–01 through No. 28–AWL–24 inclusive. AWL No. 28–AWL–25 was added in Revision October 2006 of the MPD, and AWL No. 28–AWL–26 was added in Revision January 2007 of the MPD. However, as an optional action, operators may incorporate those AWLs as specified in paragraph (g) of this AD.

We have issued a separate NPRM (Docket No. FAA–2007–28598) that, in part, proposes to incorporate AWLs No. 28–AWL–20 and No. 28–AWL–26 into the AWLs section of the ICA. That NPRM was published in the **Federal Register** on July 9, 2007 (72 FR 37132). We have also issued AD 2008–06–03, amendment 39–15415 (73 FR 13081, March 12, 2008) that, in part, requires revising the AWLs section of the ICA to incorporate AWLs No. 28–AWL–23, No. 28–AWL–24, and No. 28–AWL–25. Therefore, we have added a new paragraph (k) to this AD specifying that incorporating AWLs No. 28–AWL–23, No. 28–AWL–24, and No. 28–AWL–25 in accordance with paragraph (g) of this AD terminates the action required by paragraph (h)(2) of AD 2008–06–03.

Other Changes Made to This AD

We have revised paragraph (h) of this AD to clarify that the actions identified in Table 1 of this AD must be done at the compliance time specified in that table. Also, for standardization purposes, we have revised this AD in the following ways:

- We have added a new paragraph (i) to this AD to specify that no alternative inspections, inspection intervals, or critical design configuration control limitations (CDCCLs) may be used unless they are part of a later approved revision of Revision March 2008 of the MPD, or unless they are approved as an alternative method of compliance (AMOC). Inclusion of this paragraph in the AD is intended to ensure that the AD-mandated airworthiness limitations changes are treated the same as the airworthiness limitations issued with the original type certificate.
- We have revised Note 1 of this AD to clarify that an operator must request approval for an AMOC if the operator cannot accomplish the proposed inspections because an airplane has been previously modified, altered, or repaired in the areas addressed by the proposed inspections.
- We have revised paragraph (h) of this AD to specify that accomplishing the applicable AWLs in Table 1 of this AD as part of an FAA-approved maintenance program before the applicable compliance time constitutes compliance with the applicable requirements of that paragraph.
- We have deleted Appendix 1 from this AD, since Revision March 2008 of the MPD already contains most of the updated information that is listed in Appendix 1 of the NPRM.

Comments

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

Request To Extend the Task Intervals for Certain AWL Inspections

KLM Royal Dutch Airlines, on behalf of several operators, requests that we review a 45-page proposal to align certain airworthiness limitation item (ALI) intervals with the applicable maintenance significant item (MSI) and enhanced zonal analysis procedure (EZAP) intervals for Model 737, 747, 757, 767, and 777 airplanes. The recommendations in that proposal ensure that the ALI intervals align with the maintenance schedules of the operators. Among other changes, the proposal recommends extending certain AWL inspection intervals from 10 years/36,000 flight cycles to 12 years for Model 757 airplanes.

We disagree with KLM's request to extend certain AWL inspection intervals to 12 years. However, as stated previously, we have deleted the 36,000-total-flight-cycle parameter from Table 1 of this AD to correspond with the task intervals specified in Revision March 2008 of the MPD. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition and the practical aspect of accomplishing the required actions within a period of time that corresponds to the normal scheduled maintenance for most affected operators. However, according to the provisions of paragraph (l) of this AD, we might approve requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety.

Request To Revise the Loop Resistance Values for AWL No. 28–AWL–03

Boeing states that the loop resistance values for AWL No. 28–AWL–03 specified in Revision March 2006 of the MPD are going to be revised, since those values are relevant for production airplanes. Boeing also states that the revised values will be more representative of the expected values for in-service airplanes. Boeing points out that, according to paragraph (h) of the supplemental NPRM, the revised values should be able to be used in accordance with a later revision of the MPD if the revision is approved by the Seattle Aircraft Certification Office (ACO), FAA.

We agree that operators may use the revised loop resistance values for AWL No. 28–AWL–03 in accordance with Revision March 2008 of the MPD. As stated previously, we have revised this AD accordingly.

Request To Revise Note 1

Boeing requests that we revise Note 1 of the supplemental NPRM to clarify the need for an AMOC. Boeing states that the current wording is difficult to follow, and that the note is meant to inform operators that an AMOC to the required MPD AWLs might be required if an operator has previously modified, altered, or repaired the areas addressed by the limitations. Boeing requests that we revise Note 1 as follows:

- Add the words ''according to paragraph (g)'' at the end of the first sentence.
- Replace the words ''revision to'' with ''deviation from'' in the last sentence.
- Delete the words ''(g) or'' and ''as applicable'' from the last sentence.

As stated previously, we have simplified the language in Note 1 of this AD for standardization with other similar ADs. The language the commenter requests that we change does not appear in the revised note. Therefore, no additional change to this AD is necessary 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

There are about 990 airplanes of the affected design in the worldwide fleet. 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.

ESTIMATED COSTS

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AWLs revision	8	$640	639	$408,960
Inspections	8	640	639	408,960

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):

2008–10–11 Boeing: Amendment 39–15517. Docket No. FAA–2006–26710; Directorate Identifier 2006–NM–147–AD.

Effective Date

(a) This AD becomes effective June 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (l) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss 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.

Service Information

(f) The term ''Revision March 2008 of the MPD'' as used in this AD, means Boeing Temporary Revision (TR) 09–008, dated March 2008. Boeing TR 09–008 is published as Section 9 of the Boeing 757 Maintenance Planning Document (MPD) Document, D622N001–9, Revision March 2008.

Revision of Airworthiness Limitations (AWLs) Section

(g) Before December 16, 2008, revise the AWLs section of the Instructions for Continued Airworthiness (ICA) by incorporating the information in the subsections specified in paragraphs (g)(1) through (g)(3) of this AD into the MPD; except that the initial inspections specified in Table 1 of this AD must be done at the compliance times specified in Table 1. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(1) Subsection E, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS,'' of Revision March 2008 of the MPD.

(2) Subsection F, ''PAGE FORMAT: SYSTEMS AIRWORTHINESS LIMITATIONS,'' of Revision March 2008 of the MPD.

(3) Subsection G, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEM AWLs,'' AWLs No. 28–AWL–01 through No. 28–AWL–24 inclusive, of Revision March 2008 of the MPD. As an optional action, AWLs No. 28-AWL–25 and No. 28-AWL–26, as identified in Subsection G of Revision March 2008 of the MPD, also may be incorporated into the AWLs section of the ICA.

Initial Inspections and Repair

(h) Do the inspections specified in Table 1 of this AD at the compliance time specified in Table 1 of this AD, and repair any discrepancy, in accordance with Section G of Revision March 2008 of the MPD. The repair must be done before further flight. Accomplishing the actions in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle ACO. Accomplishing the inspections identified in Table 1 of this AD as part of an FAA-approved maintenance program before the applicable compliance time specified in Table 1 of this AD constitutes compliance with the requirements of this paragraph.

TABLE 1.—INITIAL INSPECTIONS

AWL No.	Description	Compliance time (whichever occurs later)	
		Threshold	Grace period
(1) 28–AWL–01	A detailed inspection of external wires over the center fuel tank for damaged clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank.	Within 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 72 months after the effective date of this AD.
(2) 28–AWL–03	A special detailed inspection of the lightning shield to ground termination on the out-of-tank fuel quantity indicating system to verify functional integrity.	Within 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 24 months after the effective date of this AD.
(3) 28–AWL–14	A special detailed inspection of the fault current bond of the fueling shutoff valve actuator of the center wing tank to verify electrical bond.	Within 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 60 months after the effective date of this AD.

Note 2: 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.''

Note 3: For the purposes of this AD, a special detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required.''

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(i) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are part of a later revision of ''Revision March 2008 of the MPD'' that is approved by the Manager, Seattle ACO; or unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (l) of this AD.

Credit for Actions Done According to Previous Revisions of the MPD

(j) Actions done before the effective date of this AD in accordance with Section 9 of the Boeing 757 MPD Document, D622N001–9, Revision March 2006; Revision October 2006; Revision January 2007; or Revision November 2007; are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

Terminating Action for AD 2008–06–03, Amendment 39–15415

(k) Incorporating AWLs No. 28–AWL–23, No. 28–AWL–24, and No. 28–AWL–25 into the AWLs section of the ICA in accordance with paragraph (g) of this AD terminates the action required by paragraph (h)(2) of AD 2008–06–03.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle ACO, 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

(m) You must use Boeing Temporary Revision (TR) 09–008, dated March 2008, to the Boeing 757 Maintenance Planning Document (MPD) Document, D622N001–9, to perform the actions that are required by this AD, unless the AD specifies otherwise. Boeing TR 09–008 is published as Section 9 of the Boeing 757 Maintenance Planning Document (MPD) Document, D622N001–9, Revision March 2008.

(1) 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.

(2) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information.

(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 April 29, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9917 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28385; Directorate Identifier 2006–NM–181–AD; Amendment 39–15513; AD 2008–10–07]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. This AD requires revising the FAA-approved maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This AD also requires the initial inspection of

certain repetitive AWL inspections to phase in those inspections, and repair if necessary. This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective June 12, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 12, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. That NPRM was published in the **Federal Register** on July 3, 2007 (72 FR 36380). That NPRM proposed to require revising the FAA-approved maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That NPRM also proposed to require the initial inspection of certain repetitive AWL inspections to phase in those inspections, and repair if necessary.

Actions Since NPRM Was Issued

Since we issued the NPRM, Boeing has issued the Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, Revision March 2008 (hereafter referred to as ''Revision March 2008 of Document D6–13747–CMR''). (For the purposes of Revision March 2008 of Document D6–13747–CMR, the Model 747SR series airplane is basically a Model 747–100 series airplane with certain modifications to improve fatigue life.) The NPRM referred to Revision March 2006 of Document D6–13747–CMR as the appropriate source of service information for accomplishing the proposed actions. Revision March 2008 of Document D6–13747–CMR includes the following changes:

- Removes the repetitive task interval of 36,000 flight hours from AWLs No. 28–AWL–01, No. 28–AWL–03, and No. 28–AWL–13.
- Revises AWL No. 28–AWL–03 to reflect the new maximum loop resistance values associated with the lightning protection of the unpressurized fuel quantity indicating system (FQIS) wire bundle installations, and removes the joint resistance values.
- Revises AWL No. 28–AWL–06 to correct the numerical value given in milliohms for the bonding measurement.

We have revised paragraphs (f), (g), and (h) of this AD to refer to Revision March 2008 of Document D6–13747–CMR. We also have removed reference to 36,000 total flight cycles from Table 1 of this AD and revised the initial threshold for accomplishing AWLs No. 28–AWL–01, No. 28–AWL–03, and No. 28–AWL–13 to within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness. (The NPRM incorrectly specified 36,000 total ''flight cycles'' instead of ''flight hours.'')

We also have added a new paragraph (j) to this AD specifying that actions done before the effective date of this AD in accordance with Revisions March 2006 through January 2008 of Document D6–13747–CMR are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

Operators should note that we have revised paragraph (g) of this AD to require incorporating only AWLs No. 28–AWL–01 through No. 28–AWL–19 inclusive. AWLs No. 28–AWL–20, No. 28–AWL–21, and No. 28–AWL–22 were added in Revision January 2007 of Document D6–13747–CMR, and AWL No. 28–AWL–23 was added in Revision September 2007 of Document D6–13747–CMR. We issued a separate NPRM that proposes to incorporate AWL No. 28–AWL–20 into the FAA-approved maintenance program. That NPRM (Docket No. FAA–2008–0091) was published in the **Federal Register** on January 31, 2008 (73 FR 5770). We also issued a separate NPRM (Docket No. FAA–2008–0090) that proposes to incorporate AWL No. 28–AWL–21 into the FAA-approved maintenance program. That NPRM was published in the **Federal Register** on January 31, 2008 (73 FR 5773). We might issue additional rulemaking to require the incorporation of AWLs No. 28–AWL–22 and No. 28–AWL–23. However, as an optional action, operators may incorporate those AWLs as specified in paragraph (g) of this AD.

Other Changes Made to This AD

We have revised paragraph (h) of this AD to clarify that the actions identified in Table 1 of this AD must be done at the compliance time specified in that table. Also, for standardization purposes, we have revised this AD in the following ways:

- We have added a new paragraph (i) to this AD to specify that no alternative inspections, inspection intervals, or critical design configuration control limitations (CDCCLs) may be used unless they are part of a later approved revision of Revision March 2008 of Document D6–13747–CMR, or unless they are approved as an alternative method of compliance (AMOC). Inclusion of this paragraph in the AD is intended to ensure that the AD-mandated airworthiness limitations changes are treated the same as the airworthiness limitations issued with the original type certificate.
- We have revised Note 1 of this AD to clarify that an operator must request approval for an AMOC if the operator cannot accomplish the required inspections because an airplane has been previously modified, altered, or repaired in the areas addressed by the required inspections.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the six commenters.

Request To Allow Inspections Done According to a Maintenance Program

Japan Airlines (JAL) requests that we revise paragraph (h) of the NPRM to allow an operator to update its FAA-

approved maintenance program to include the initial inspections and repair for certain AWLs. JAL states that the NPRM would require accomplishing the initial inspection and repair of certain AWLs, which would require JAL to establish a special inspection and special recordkeeping for the proposed requirement.

The compliance times specified in paragraph (h) of this AD are intended to provide a grace period for those airplanes that have already exceeded the specified threshold in Document D6–13747–CMR. To be in compliance with the recording requirements of this AD, operators must record their compliance with the initial inspection for those airplanes over the specified threshold. We have revised paragraph (h) of this AD to specify that accomplishing the applicable AWLs as part of an FAA-approved maintenance program before the applicable compliance time constitutes compliance with the applicable requirements of that paragraph.

Request To Revise Intervals for Certain AWL Inspections

KLM Royal Dutch Airlines (KLM), on behalf of several operators, requests that we review a 45-page proposal to align certain airworthiness limitation item (ALI) intervals with the applicable maintenance significant item (MSI) and enhanced zonal analysis procedure (EZAP) intervals for Model 737, 747, 757, 767, and 777 airplanes. The recommendations in that proposal ensure that the ALI intervals align with the maintenance schedules of the operators. Among other changes, the proposal recommends revising certain AWL inspection intervals from 12 years/36,000 flight hours to only 12 years for Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes.

Qantas Airways also requests that the 36,000-flight-hour parameter be removed from the inspection interval for AWL No. 28–AWL–01, No. 28–AWL–03, and No. 28–AWL–13. The commenter states that the flight-hour parameter does not adequately take into account actual airplane usage, and that the long haul utilization of the airplane is 5,000 flight hours per year. Based on this number, the commenter states that the AWL tasks would be required at 7.2 years instead of 12 years.

Qantas Airways and TradeWinds Airlines both note an inconsistency between the inspection interval specified in Revision March 2006 of Document D6–13747–CMR and the compliance threshold specified in Table 1 of the NPRM. Table 1 of the NPRM specifies accomplishing the initial inspection within 36,000 total flight cycles or 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first. TradeWinds Airlines requests that we revise the compliance threshold to 36,000 ''total flight hours.'' However, Qantas Airways would welcome the change from ''flight hours'' to ''flight cycles,'' if the flight-hour parameter is not deleted from the inspection intervals specified in Revision March 2006 of Document D6–13747–CMR.

We have reviewed the commenter's requests, and we agree to revise the compliance threshold for certain AWLs identified by KLM and Qantas Airways. As stated previously, Revision March 2008 of Document D6–13747–CMR specifies a repetitive interval of 144 months. We have revised the threshold specified in Table 1 of this AD accordingly.

Request To Harmonize Task Descriptions

JAL states that, in Revision March 2006 of Document D6–13747–CMR, the task descriptions defining the applicable area are different for AWLs Nos. 28–AWL–01 and 28–AWL–02. (AWL No. 28–AWL–01 is a repetitive inspection of the external wires over the center fuel tank, and AWL No. 28–AWL–02 is a CDCCL to maintain the original design features for the external wires over the center fuel tank.) JAL believes that the task descriptions for these AWLs should match. JAL presumes that, if one purpose for the inspection is to prevent a spark in the fuel vapor over the center fuel tank, then the applicable area should have a certain tolerance instead of defining the area by exact station number.

We agree that the task descriptions for AWL Nos. 28–AWL–01 and 28–AWL–02 should be harmonized. Revision March 2008 of Document D6–13747–CMR includes a revised task description of AWL No. 28–AWL–01, which addresses JAL's comments. As stated previously, we have revised this AD to refer to Revision March 2008 of Document D6–13747–CMR.

Request To Revise the Loop Resistance Values for AWL No. 28–AWL–03

Boeing, KLM, and Qantas Airways state that the loop resistance values for AWL No. 28–AWL–03 specified in Revision March 2006 of Document D6–13747–CMR are going to be revised, since those values are relevant for production airplanes. The commenters also state that the revised values will be more representative of the expected values for in-service airplanes. Boeing points out that, according to paragraph (h) of the NPRM, the revised values should be able to be used in accordance with a later revision of Revision March 2006 of Document D6–13747–CMR if the revision is approved by the Seattle Aircraft Certification Office (ACO), FAA.

We agree that operators may use the revised loop resistance values for AWL No. 28–AWL–03 in accordance with Revision March 2008 of Document D6–13747–CMR. As stated previously, we have revised this AD accordingly.

Request To Clarify Use of Equivalent Tools and Chemicals

JAL requests that we provide guidelines for using equivalent tools and chemical materials according to the component maintenance manuals (CMMs). JAL states that normally operators can use equivalents without FAA approval when the CMM specifies that equivalents may be used. JAL also states that it has received further clarification from Boeing specifying that unless a CDCCL refers to a certain tool by part number or certain chemicals by name, an operator can continue to use equivalent tools or materials according to the CMMs.

We acknowledge the commenter's request and are working with Boeing to provide appropriate flexibility while still ensuring that items critical for maintaining safety continue to be specifically identified in the CMMs. However, to delay issuance of this AD would be inappropriate.

We agree that when the CMMs allow use of equivalent tools or chemical materials, operators and repair stations may use equivalents. We have already approved the use of the CMMs at the revision levels specified in Revision March 2008 of Document D6–13747–CMR, including the use of equivalent tools or chemicals where the CMMs state equivalents are allowed. If the CMM does not allow use of an equivalent, none may be used. No change to this AD is necessary in this regard.

Request To Revise Appendix 1

Boeing requests that we revise Appendix 1 of the NPRM as follows: (1) Correct the ATA section for AWL No. 28–AWL–03, (2) add an airplane maintenance manual (AMM) task title for AWL No. 28–AWL–08, and (3) add an ATA section for AWL No. 28–AWL–18.

JAL requests that we update Appendix 1 of the NPRM to include all AWLs specified in the CMR, and that we indicate how to maintain the latest version of Appendix 1. JAL also requests that we correct the following error in Appendix 1 of the NPRM: For AWL No. 28–AWL–04, change ''SWPM 20–10–15'' to ''SWPM 20–10–13.''

We disagree with revising the AMM references, since we have deleted Appendix 1 from this AD. The purpose of Appendix 1 was to assist operators in identifying the AMM tasks that could affect compliance with a CDCCL. However, we have also received several similar comments regarding the appendices in other NPRMs that address the same unsafe condition on other Boeing airplanes. Those comments indicate that including non-required information in those NPRMs has caused confusion. Further, Revision March 2008 of Document D6–13747–CMR contains most of the updated information that is listed in Appendix 1 of the NPRM. Therefore, we have removed Appendix 1 from this AD.

Request To Revise Note 1

Boeing requests that we revise Note 1 of the NPRM to clarify the need for an AMOC. Boeing states that the current wording is difficult to follow, and that the note is meant to inform operators that an AMOC to the required AWLs might be required if an operator has previously modified, altered, or repaired the areas addressed by the limitations. Boeing requests that we revise Note 1 as follows:

- Add the words ''according to paragraph (g)'' at the end of the first sentence.
- Replace the words ''revision to'' with ''deviation from'' in the last sentence.
- Delete the words ''(g) or'' and ''as applicable'' from the last sentence.

As stated previously, we have clarified the language in Note 1 of this AD for standardization with other similar ADs. The language the commenter requests that we change does not appear in the revised note. Therefore, no additional change to this AD is necessary in this regard.

Request To Extend the Grace Period for AWL No. 28–AWL–03

KLM expects to have problems accomplishing the initial inspection of AWL No. 28–AWL–03 within the 24-month grace period. KLM states that if it does the check and does not reach the specified values, then tank entry outside of heavy maintenance would be necessary. KLM also states that it would be helpful to plan to do this inspection during an overhaul.

We infer that KLM requests that we extend the grace period for AWL No. 28–AWL–03 in Table 1 of this AD to allow accomplishing the initial inspection during a regularly scheduled ''D'' check (about 6 years). We disagree with extending the grace period to 6 years. In developing an appropriate compliance time for this action, we considered the safety implications, the rate of lightning strikes in the fleet, and the average age of the fleet. In consideration of these items, we have determined that an initial compliance time of 144 months (as discussed previously) with a grace period of 24 months will ensure an acceptable level of safety. We have not changed the grace period for AWL No. 28–AWL–03 in this regard.

Request To Extend the Exceptional Short-Term Extension

Qantas Airways requests that we allow exceptional short-term extensions of 10 percent of the task interval or 6 months, whichever is less, for AWL tasks. The commenter believes that the exceptional short-term extension of 30 days, which is specified in Revision March 2006 of Document D6–13747–CMR, is too small for AWL tasks having 12-year intervals. The commenter states that, as part of the Boeing 747 Corrosion Prevention and Control Program mandated by AD 90–25–05, amendment 39–6790 (55 FR 49268, November 27, 1990), operators were given a provision to invoke exceptional short-term extensions of 10 percent of the task interval or 6 months, whichever is less. The commenter states that this is a more appropriate magnitude because operators are often permitted one-time exceptional extensions to maintenance checks and tasks of this proportion. The commenter also states that limiting the extension period to 30 days means that a ''D'' check can never be extended by more than 30 days, which would force operators to do certain AWL inspections outside of a ''D'' check.

We disagree with the commenter's request because exceptional short-term extensions are, in essence, pre-approved extensions without Seattle ACO review of the specifics of the situation. We consider that the ability to extend the interval without further approval for 30 days should be sufficient for most circumstances. However, if an operator finds that it needs an extension longer than 30 days, with appropriate justification one may be requested from the Seattle ACO, or governing regulatory authority. Longer extensions may be granted on a case-by-case basis because, as Qantas Airways points out, the task interval is long, and the FAA is interested in limiting out-of-sequence work. We have not changed this AD in this regard.

Request To Require Latest Revision of the AMM

JAL requests that we revise the NPRM to require incorporation of the latest revision of the manufacturer's AMM. JAL asserts that we have allowed Boeing to include statements in the Boeing AMM allowing operators to use certain CMM revision levels or later revisions. JAL states that, with the exception of the CMM, operators cannot find what revision level of the AMM needs to be incorporated into the operator's AMM in order to comply with the proposed requirements of the NPRM. JAL also states that it could take several weeks to incorporate the manufacturer's AMM.

JAL further requests that we clarify whether it is acceptable to change the procedures in the AMM with Boeing's acceptance. JAL states that the CMR notes that any use of parts, methods, techniques, or practices not contained in the applicable CDCCL and AWL inspection must be approved by the FAA office that is responsible for the airplane model type certificate, or applicable regulatory agency. JAL also states that the Boeing AMM or CMM notes to obey the manufacturer's procedures when doing maintenance that affects a CDCCL or AWL inspection. However, JAL believes that according to the NPRM it is acceptable to change the AMM procedures with Boeing's acceptance.

We disagree with the changes proposed by the commenter. This AD does not require revising the AMM. This AD does require revising your maintenance program to incorporate the AWLs identified in Revision March 2008 of Document D6–13747–CMR. However, complying with the AWL inspections or CDCCLs will require other actions by operators including AMM revisions. In the U.S., operators are not required to use original equipment manufacturer (OEM) maintenance manuals. Operators may develop their own manuals, which are reviewed and accepted by the FAA Flight Standards Service. In order to maintain that flexibility for operators, most of the AWLs contain all of the critical information, such as maximum bonding resistances and minimum separation requirements. The FAA Flight Standards Service will only accept operator manuals that contain all of the information specified in the AWLs, so there is no need to require

operators to use the OEM maintenance manuals.

Regarding JAL's request for clarification of approval of AWL changes, we infer JAL is referring to the following sentence located in the ''Changes to AMMs Referenced in Fuel Tank System AWLs'' section of the NPRM: ''A maintenance manual change to these tasks may be made without approval by the Manager, Seattle ACO, through an appropriate FAA principal maintenance inspector (PMI) or principal avionics inspector (PAI), by the governing regulatory authority, or by using the operator's standard process for revising maintenance manuals.'' If changes need to be made to tasks associated with an AWL, they may be made using an operator's normal process without approval of the Seattle ACO, as long as the change maintains the information specified in the AWL. For some CDCCLs, it was beneficial to not put all the critical information into the CMR. This avoids duplication of a large amount of information. In these cases, the CDCCL refers to a specific revision of the CMM. U.S. operators are required to use those CMMs. Any changes to the CMMs must be approved by the Seattle ACO.

Request To Delete Reference to Task Cards

All Nippon Airways (ANA) requests that we delete the words ''and task cards,'' unless the task card references are listed in Section D of Document D6–13747–CMR or Appendix 1 of the AD. Those words are located in the following sentence in the ''Ensuring Compliance with Fuel Tank System AWLs'' section of the NPRM: ''Operators that do not use Boeing's revision service should revise their maintenance manuals and task cards to highlight actions tied to CDCCLs to ensure that maintenance personnel are complying with the CDCCLs.'' ANA believes that if a task card refers to the AMM, which includes the CDCCL note, then highlighting the CDCCL items is not necessary because they are already highlighted in the AMM and maintenance personnel always refer to the AMM. ANA further states that the applicable task card references are not listed in Section D of Document D6–13747–CMR, or in Appendix 1 of the NPRM; they refer only to the AMM. ANA, therefore, states that it is difficult to find out or distinguish the affected task card.

JAL believes that the proposed requirement regarding the CDCCLs is to incorporate the manufacturer's maintenance manuals into an operator's maintenance manual. If the description of a CDCCL is missing from the manufacturer's AMM, then JAL believes that operators are not responsible for the requirements of the AD.

We agree that the task cards might not need to be revised because an operator might find that the AMM notes are sufficient. However, we disagree with deleting the reference to the task cards since some operators might need to add notes to their task cards. This AD does not require any changes to the maintenance manuals or task cards. The AD requires incorporating new AWLs into the operator's maintenance program. It is up to the operator to determine how best to ensure compliance with the new AWLs. In the ''Ensuring Compliance with Fuel Tank System AWLs'' section of the NPRM, we were only suggesting, not requiring, ways that an operator could implement CDCCLs into its maintenance program. We have not changed this AD in this regard.

Request To Clarify Meaning of Task Cards

JAL requests that we clarify whether ''task cards,'' as found in the ''Recording Compliance with Fuel Tank System AWLs'' section of the NPRM, means Boeing task cards only or if they also include an operator's unique task cards.

We intended that ''task cards'' mean both Boeing and an operator's unique task cards, as applicable. The intent is to address whatever type of task cards are used by mechanics for maintenance. This AD would not require any changes to the AMMs or task cards relative to the CDCCLs. We are only suggesting ways an operator might implement CDCCLs into its maintenance program. No change to this AD is necessary in this regard.

Request To Delete Reference to Parts Manufacturer Approval (PMA) Parts

ANA requests that we delete the words ''Any use of parts (including the use of parts manufacturer approval (PMA) approved parts),'' unless a continuous supply of CMM specified parts is warranted or the FAA is open 24 hours to approve alternative parts for in-house repair by the operator. Those words are located in the following sentence in the ''Changes to CMMs Cited in Fuel Tank System AWLs'' section of the NPRM: ''Any use of parts (including the use of parts manufacturer approval (PMA) approved parts), methods, techniques, and practices not contained in the CMMs needs to be approved by the Manager, Seattle ACO, or governing regulatory authority.''

ANA states that in some cases the parts specified in the CMMs cannot be obtained from the parts market or directly from the component vendor, so an operator is forced into using alternative parts to keep its schedule. ANA requests that we direct the component vendor to ensure a continuous supply of CMM parts and to direct the component vendor to remedy a lack of parts if parts are not promptly supplied. ANA further requests that we direct the component vendor to promptly review the standard parts and allow use of alternative fasteners and washers listed in Boeing D590. ANA asserts that, in some cases, a component vendor specifies the uncommon part to preserve its monopoly.

We disagree with revising the ''Changes to CMMs Cited in Fuel Tank System AWLs'' section of the NPRM. We make every effort to identify potential problems with the parts supply, and we are not aware of any problems at this time. The impetus to declare overhaul and repair of certain fuel tank system components as CDCCLs arose from in-service pump failures that resulted from repairs not done according to OEM procedures. We have approved the use of the CMMs—including parts, methods, techniques, and practices—at the revision levels specified in Revision March 2008 of Document D6–13747–CMR. Third-party spare parts, such as parts approved by PMA, have not been reviewed.

An operator may submit a request to the Seattle ACO, or governing regulatory authority, for approval of an AMOC if sufficient data are submitted to substantiate that use of an alternative part would provide an acceptable level of safety. The CDCCLs do not restrict where repairs can be performed, so an operator may do the work in-house as long as the approved CMMs are followed. If operators would like to change those procedures, they can request approval of the changes. The FAA makes every effort to respond to operators' requests in a timely manner. If there is a potential for disrupting the flight schedule, the operator should include that information in its request. Operators should request approval for the use of PMA parts and alternative procedures from the FAA or the governing regulatory authority in advance in order to limit schedule disruptions. We have not changed this AD in this regard.

Request To Identify Other Test Equipment

JAL states that certain test equipment is designated in the CMR and that additional equipment should also be designated. For example, AWL No. 28–AWL–03 would require using loop

resistance tester, part number (P/N) 906–10246–2 or –3. Therefore, JAL requests that we also identify alternative test equipment, so that operators do not need to seek an AMOC to use other equipment.

We disagree with identifying other test equipment. We cannot identify every possible piece of test equipment. We ensure that some are listed as recommended by the manufacturer. With substantiating data, operators can request approval of an alternative tester from the Seattle ACO, or the governing regulatory agency. We have not changed this AD in this regard.

Request to Clarify AWL No. 28–AWL–02

JAL requests that we clarify the intent of AWL No. 28–AWL–02. JAL states that Chapters 53–01 and 53–21 of the Boeing 747 AMM specify doing an inspection of the external wires over the center fuel tank according to AMM 28–11–00 before installing the floor panel over the center wing tank based on AWL No. 28–AWL–02. JAL also states that, according to Revision March 2006 of Document D6–13747–CMR, AWL No. 28–AWL–02 contains two limitations: maintaining the existing wire bundle routing and clamping, and installing any new wire bundle per the Boeing standard wiring practices manual (SWPM). Therefore, JAL believes it is not necessary to inspect the external wires over the center fuel tank according to AMM 28–11–00 before installing the floor panel over the center wing tank, unless that wire bundle routing and clamping are changed.

We point out that AWL No. 28–AWL–02 also contains a third limitation: Verifying that all wire bundles over the center fuel tank are inspected according to AWL No. 28–AWL–01, which refers to AMM 28–11–00 for accomplishing the inspection. We do not agree that the inspection should be required only if the wire bundle routing and clamping are changed while maintenance is accomplished in the area. If any of the other bundles have a clamp or routing failure, it must be detected and corrected. After accomplishing the inspection required by AWL No. 28–AWL–01, an operator would not need to repeat the inspection for another 12 years. No change to this AD is necessary in this regard.

Request for Clarification for Recording Compliance With CDCCLs

JAL requests that we clarify the following sentence: ''An entry into an operator's existing maintenance record system for corrective action is sufficient for recording compliance with CDCCLs, as long as the applicable maintenance manual and task cards identify actions that are CDCCLs.'' That sentence is located in the ''Recording Compliance with Fuel Tank System AWLs'' section of the NPRM. Specifically, JAL asks whether an operator must indicate the CDCCL in their recording documents or whether it is sufficient for the recording document to call out the applicable AMMs that are tied to the CDCCLs.

We have coordinated with the FAA Flight Standards Service and it agrees that, for U.S.-registered airplanes, if the applicable AMMs and task cards identify the CDCCL, then the entry into the recording documents does not need to identify the CDCCL. However, if the applicable AMMs and tasks cards do not identify the CDCCL, then they must be identified. Other methods may be accepted by the appropriate FAA PMI or PAI, or governing regulatory authority. No change to this AD is necessary in this regard.

Conclusion

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

Costs of Compliance

There are about 308 airplanes of the affected design in the worldwide fleet. 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.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Maintenance program revision	8	None	$640	93	$59,520
Inspections	8	None	640	93	59,520

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

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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–10–07 Boeing: Amendment 39–15513. Docket No. FAA–2007–28385; Directorate Identifier 2006–NM–181–AD.

Effective Date

(a) This airworthiness directive (AD) is effective June 12, 2008.

Affected ADs

(b) None.

Applicability

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

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss 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.

Service Information Reference

(f) The term ''Revision March 2008 of Document D6–13747–CMR,'' as used in this AD, means Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, Revision March 2008. (For the purposes of Revision March 2008 of Document D6–13747–CMR, the Model 747SR series airplane is basically a Model 747–100 series airplane with certain modifications to improve fatigue life.)

Maintenance Program Revision

(g) Before December 16, 2008, revise the FAA-approved maintenance program to incorporate the information in Section D, ''AIRWORTHINESS LIMITATIONS—SYSTEMS,'' AWLs No. 28–AWL–01 through No. 28–AWL–19 inclusive, of Revision March 2008 of Document D6–13747–CMR; except that the initial inspections required by paragraph (h) of this AD must be done at the applicable compliance time specified in that paragraph. As an optional action, AWLs No. 28–AWL–20 through No. 28–AWL–23 inclusive, as identified in Section D of Revision March 2008 of Document D6–13747–CMR, also may be incorporated into the FAA-approved maintenance program. Accomplishing the revision in accordance with a later revision of Document D6–13747–CMR is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Initial Inspections and Repair if Necessary

(h) Do the inspections specified in Table 1 of this AD at the compliance time specified in Table 1 of this AD, and repair any discrepancy, in accordance with Section D of Revision March 2008 of Document D6–13747–CMR. The repair must be done before further flight. Accomplishing the actions required by this paragraph in accordance with a later revision of Document D6–13747–CMR is an acceptable method of compliance if the revision is approved by the Manager, Seattle ACO. Accomplishing the inspections identified in Table 1 of this AD as part of an FAA-approved maintenance program before the applicable compliance time specified in Table 1 of this AD constitutes compliance with the requirements of this paragraph.

Note 2: 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.''

Note 3: For the purposes of this AD, a special detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required.''

TABLE 1.—INITIAL INSPECTIONS

AWL No.	Description	Compliance Time (whichever occurs later)	
		Threshold	Grace period
28–AWL–01	A detailed inspection of external wires over the center fuel tank for damaged clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank.	Within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 72 months after the effective date of this AD.
28–AWL–03	A special detailed inspection of the lightning shield to ground termination on the out-of-tank fuel quantity indicating system to verify functional integrity.	Within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 24 months after the effective date of this AD.
28–AWL–13	A special detailed inspection of the fault current bond of the fueling shutoff valve actuator of the center wing tank to verify electrical bond.	Within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 60 months after the effective date of this AD.

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(i) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are part of a later revision of Revision March 2008 of Document D6–13747–CMR that is approved by the Manager, Seattle ACO; or unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k) of this AD.

Credit for Actions Done According to Previous Revisions of the Service Information

(j) Actions done before the effective date of this AD in accordance with Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, Revision March 2006; Revision May 2006; Revision December 2006; Revision January 2007; Revision September 2007; or Revision January 2008; are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, 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

(l) You must use Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, Revision March 2008, 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference 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/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 28, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9896 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0118; Directorate Identifier 2007–NM–289–AD; Amendment 39–15502; AD 2008–09–21]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 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:

This Airworthiness Directive (AD) is issued following the discovery of a risk of chafing between an electrical feeder bundle and a bus bar under the circuit breaker panel. Most of the time, this possible chafing would be dormant and would lead to an uneventful loss of segregation within the different electrical system components. However, missing segregation combined with additional electrical failures may impair flight safety.

* * * * *

Chafing between an electrical feeder bundle and a bus bar under the circuit breaker panel could lead to electrical arcing, which could result in smoke and fire in the cockpit. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 12, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 12, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.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 Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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 February 5, 2008 (73 FR 6620). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive (AD) is issued following the discovery of a risk of chafing between an electrical feeder bundle and a bus bar under the circuit breaker panel. Most of the time, this possible chafing would be dormant and would lead to an uneventful loss of segregation within the different electrical system components. However, missing segregation combined with additional electrical failures may impair flight safety.

This AD mandates inspection of the electrical feeder bundle, and modification of its routing under the circuit breaker panel through implementation of modification M3093.

Chafing between an electrical feeder bundle and a bus bar under the circuit breaker panel could lead to electrical arcing, which could result in smoke and fire in the cockpit.

The corrective action includes repairing or replacing damaged wiring; re-routing the feeder cables above the wiring of the ''Avionic Master'' and ''Aux Bat'' relays; installing a protective sheath on the feeder cables; adding spacers to separate the bus bar wiring assemblies from the feeder cables; and adding Teflon protection on the feeder cables and securing the feeder cables with wiring retaining strips. 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

We estimate that this AD will affect about 76 products of U.S. registry. We also estimate that it will take about 12 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 $0 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 $72,960, or $960 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://www.regulations.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:

2008–09–21 Dassault Aviation: Amendment 39–15502. Docket No. FAA–2008–0118; Directorate Identifier 2007–NM–289–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Mystere-Falcon 50 airplanes, certificated in any category, serial number (S/N) 251 and S/N 253 and subsequent, without modification M3093 implemented.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

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

This Airworthiness Directive (AD) is issued following the discovery of a risk of chafing between an electrical feeder bundle and a bus bar under the circuit breaker panel. Most of the time, this possible chafing would be dormant and would lead to an uneventful loss of segregation within the different electrical system components. However, missing segregation combined with additional electrical failures may impair flight safety.

This AD mandates inspection of the electrical feeder bundle, and modification of its routing under the circuit breaker panel through implementation of modification M3093.

Chafing between an electrical feeder bundle and a bus bar under the circuit breaker panel could lead to electrical arcing, which could result in smoke and fire in the cockpit. The corrective action includes repairing or replacing damaged wiring; re-routing the feeder cables above the wiring of the ''Avionic Master'' and ''Aux Bat'' relays; installing a protective sheath on the feeder cables; adding spacers to separate the bus bar wiring assemblies from the feeder cables; and adding Teflon protection on the feeder cables and securing the feeder cables with wiring retaining strips.

Actions and Compliance

(f) Unless already done: Within 13 months after the effective date of this AD, inspect for damage of the electrical feeder bundle; repair or replace wiring, as applicable; and modify its routing as detailed in the accomplishment instructions paragraph of Dassault Service Bulletin F50–483, dated June 6, 2007, including Erratum dated July 2007.

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 Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0175, dated June 28, 2007; and Dassault Service Bulletin F50–483, dated June 6, 2007, including Erratum dated July 2007; for related information.

Material Incorporated by Reference

(i) You must use Dassault Service Bulletin F50–483, dated June 6, 2007, including Erratum dated July 2007, 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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606.

(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 April 23, 2008.

Ali Bahrami,

Manager,Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9895 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28384; Directorate Identifier 2006–NM–165–AD; Amendment 39–15516; AD 2008–10–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This AD requires revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness by incorporating new limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This AD also requires the initial inspection of a certain repetitive AWL inspection to phase in that inspection, and repair if necessary. This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective June 12, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 12, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Samuel Spitzer, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6510; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. That NPRM was published in the **Federal Register** on July 6, 2007 (72 FR 36920). That NPRM proposed to require revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness (ICA) by incorporating new limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That NPRM also proposed to require the initial inspection of a certain repetitive AWL inspection to phase in that inspection, and repair if necessary.

Actions Since NPRM Was Issued

Since we issued the NPRM, Boeing has issued Temporary Revision (TR) 09–020, dated March 2008. Boeing TR 09–020 is published as Section 9 of the Boeing 737–600/700/800/900 Maintenance Planning Data (MPD) Document, D626A001–CMR, Revision March 2008 (hereafter referred to as ''Revision March 2008 of the MPD''). The NPRM referred to Revision March 2006 of the MPD as the appropriate source of service information for accomplishing the proposed actions. Revision March 2008 of the MPD, among other actions, includes the following changes:

- Removes the repetitive task interval of 36,000 flight cycles from AWLs No. 28–AWL–01 and No. 28–AWL–03.
- Revises the task description for AWL No. 28–AWL–01 to harmonize it with AWL No. 28–AWL–02 by removing references to certain station numbers.
- Revises AWL No. 28–AWL–03 to reflect the new maximum loop resistance values associated with the lightning protection of the unpressurized fuel quantity indicating system (FQIS) wire bundle installations.

Accordingly, we have revised paragraphs (f), (g), and (h) of this AD to refer to Revision March 2008 of the MPD. We also have added a new paragraph (j) to this AD specifying that actions done before the effective date of this AD in accordance with Revisions March 2006 through February 2008 of the MPD are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD. (In Revision March 2007 of the MPD, Boeing revised the document title to ''737–600/700/800/900.'')

We also have removed reference to 36,000 total flight cycles from paragraph (h)(1) of this AD and revised the initial threshold for accomplishing AWL No. 28–AWL–03 to within 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

Since publication of Revision March 2006 of the MPD, Boeing has revised the contents of certain subsections of the MPD. Information pertaining to the fuel system AWLs has been removed from Subsection D, ''AIRWORTHINESS

LIMITATIONS—SYSTEMS'' and placed into a new Subsection E, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS.'' The subsequent subsections of the MPD were reidentified accordingly. Therefore, we have revised paragraphs (g)(1), (g)(2), and (g)(3) of this AD to refer to Subsections E, F, and G, respectively.

Operators should note that we have revised paragraph (g) of this AD to require incorporating only AWLs No. 28–AWL–01 through No. 28–AWL–22 inclusive. AWL No. 28–AWL–23 was added in Revision May 2006 of the MPD, and AWL No. 28–AWL–24 was added in Revision October 2006 of the MPD. However, as an optional action, operators may incorporate those two AWLs as specified in paragraph (g) of this AD.

Operators should also note that we have issued a separate NPRM (Docket No. FAA–2007–28661) that, in part, proposes to incorporate AWLs No. 28–AWL–19 and No. 28–AWL–23 into the AWLs section of the ICA. That NPRM was published in the **Federal Register** on July 10, 2007 (72 FR 37479).

We have also issued AD 2008–06–03, amendment 39–15415 (73 FR 13081, March 12, 2008) that, in part, requires revising the AWLs section of the ICA to incorporate AWLs No. 28–AWL–21, No. 28–AWL–22, and No. 28–AWL–24. Therefore, we have added a new paragraph (k) to this AD specifying that incorporating AWLs No. 28–AWL–21, No. 28–AWL–22, and No. 28–AWL–24 in accordance with paragraph (g) of this AD terminates the action required by paragraph (h)(1) of AD 2008–06–03.

Other Changes Made to This AD

For standardization purposes, we have revised this AD in the following ways:

- We have added a new paragraph (i) to this AD to specify that no alternative inspections, inspection intervals, or critical design configuration control limitations (CDCCLs) may be used unless they are part of a later approved revision of Revision March 2008 of the MPD, or unless they are approved as an alternative method of compliance (AMOC). Inclusion of this paragraph in the AD is intended to ensure that the AD-mandated airworthiness limitations changes are treated the same as the airworthiness limitations issued with the original type certificate.
- We have revised Note 2 of this AD to clarify that an operator must request approval for an AMOC if the operator cannot accomplish the required inspections because an airplane has been previously modified, altered, or repaired in the areas addressed by the required inspections.
- We have revised paragraph (h) of this AD to specify that accomplishing AWL No. 28–AWL–03 as part of an FAA-approved maintenance program before the applicable compliance time constitutes compliance with the applicable requirements of that paragraph.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the six commenters.

Request To Revise the Loop Resistance Values for AWL No. 28–AWL–03

Boeing and KLM Royal Dutch Airlines (KLM) state that the loop resistance values for AWL No. 28–AWL–03 specified in Revision March 2006 of the MPD are going to be revised, since those values are relevant for production airplanes. The commenters also state that the revised values will be more representative of the expected values for in-service airplanes. Boeing points out that, according to paragraph (h) of the NPRM, the revised values should be able to be used in accordance with a later revision of the MPD if the revision is approved by the Seattle Aircraft Certification Office (ACO), FAA.

We agree that operators may use the revised loop resistance values for AWL No. 28–AWL–03 in accordance with Revision March 2008 of the MPD. As stated previously, we have revised this AD accordingly.

Request To Extend the Task Intervals for Certain AWL Inspections

KLM, on behalf of several operators, requests that we review a 45-page proposal to align certain airworthiness limitation item (ALI) intervals with the applicable maintenance significant item (MSI) and enhanced zonal analysis procedure (EZAP) intervals for Model 737, 747, 757, 767, and 777 airplanes. The recommendations in that proposal ensure that the ALI intervals align with the maintenance schedules of the operators. Among other changes, the proposal recommends extending certain AWL inspection intervals from 10 years/36,000 flight cycles to 12 years for Model 737–600, –700, –700C, –800, and –900 series airplanes.

The Air Transport Association (ATA), on behalf of its member Delta Airlines (DAL), notes an inconsistency between the inspection interval specified in Revision March 2006 of the MPD and the compliance threshold specified in paragraph (h)(1) of the NPRM. Paragraph (h)(1) of the NPRM specifies accomplishing the initial inspection prior to the accumulation of 36,000 total flight hours, or 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first. DAL requests that we revise the compliance threshold to 36,000 ''total flight cycles.''

We disagree with KLM's request to extend certain AWL inspection intervals to 12 years. However, as stated previously, we have deleted the 36,000-total-flight-hour parameter from paragraph (h)(1) of this AD to correspond with the task interval for AWL No. 28–AWL–03 as specified in Revision March 2008 of the MPD. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition and the practical aspect of accomplishing the required actions within a period of time that corresponds to the normal scheduled maintenance for most affected operators. However, according to the provisions of paragraph (l) of this AD, we might approve requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety.

Request To Require the Incorporation of AWL No. 28–AWL–24

The ATA, on behalf of its member Delta Airlines (DAL), notes that AD 2008–06–03 requires a revision to the AWLs section of the Instructions for Continued Airworthiness to incorporate AWLs No. 28–AWL–21, No. 28–AWL–22, and No. 28–AWL–24. DAL states that AD 2008–06–03 appears to duplicate the proposed requirements of the NPRM, and that it is more appropriate to have this AD require the incorporation of AWLs No. 28–AWL–21, No. 28–AWL–22, and No. 28–AWL–24.

We infer that the commenters request that we delete paragraph (h)(1) from AD 2008–06–03, and revise this AD to require incorporating AWL No. 28–AWL–24 into the AWLs section of the Instructions for Continued Airworthiness. (This AD requires the incorporation of AWLs No. 28–AWL–01 through No 28–AWL–22 and specifies that AWL No. 28–AWL–24 may be incorporated as an optional action.) We do not agree to revise this AD or AD 2008–06–03. Revision March 2008 of the MPD contains an applicability column that identifies the airplane configuration to which the AWL applies. That AWL is required only for airplanes that have that configuration. If

the applicability column identifies a service bulletin, then the operator would not need to adhere to the AWL until the airplane is modified in accordance with that service bulletin. There is no penalty for incorporating the AWL before accomplishing the actions specified in the service bulletin, and doing so actually reduces the paperwork burden for the FAA and the operators by incorporating subsections E, F, and G in their entirety.

Also, it is necessary to have AD 2008–06–03 require the incorporation of AWLs No 28–AWL–21, No. 28–AWL–22, and No. 28–AWL–24, since those AWLs are tied to the design change required by paragraph (g) of AD 2008–06–03. If an operator were to comply with AD 2008–06–03 before complying with this AD and did not revise its MPD concurrently with accomplishing the design change, then the operations checks required by those AWLs would not be performed at the proper time.

However, we do not intend for operators to incorporate AWLs No. 28–AWL–21 and No. 28–AWL–22 into the AWLs section of the Instructions for Continued Airworthiness twice by two separate airworthiness directives. As stated previously, we have added a new paragraph (k) to this AD specifying that incorporating AWLs No. 28–AWL–21, No. 28–AWL–22, and No. 28–AWL–24 in accordance with paragraph (g) of this AD terminates the action required by paragraph (h)(1) of AD 2008–06–03.

Request To Issue Separate Airworthiness Directives

The ATA, on behalf of its member American Airlines (AAL), requests that we delete the initial inspection and repair specified in paragraph (h) of the NPRM and address those actions with a separate airworthiness directive. AAL states that the different actions and compliance times proposed in paragraphs (g) and (h) of the NPRM create confusion and difficulty in tracking compliance. AAL also states that it will not be able to say it is fully compliant with the requirements of the NPRM by December 16, 2008, because it will still be in the process of completing the initial inspection and repair specified in paragraph (h) of the NPRM.

AirTran Airways states that it is unclear as to why AWL No. 28–AWL–03 is given special consideration in paragraph (h) of the NPRM. AirTran Airways also states that, although it is not affected by the compliance time specified in paragraph (h)(2) of the NPRM, it assumes that there are other operators who will be affected by it due to the age of the fleet. AirTran Airways, therefore, requests that we substantiate why the NPRM contains a more restrictive requirement for AWL No. 28–AWL–03.

We disagree with issuing a separate airworthiness directive to address the requirements of the paragraph (h) of this AD. Some airplanes might have already passed the age when the initial inspection required by AWL No. 28–AWL–03 should have been accomplished. The intent of paragraph (h) of this AD is to phase in that inspection for those airplanes. Further, paragraph (h)(2) of this AD provides a 24-month grace period for an airplane that has already exceeded the compliance threshold specified in paragraph (h)(1) of this AD. No change to this AD is necessary in this regard.

Request To Revise Appendix 1

Boeing requests that we revise Appendix 1 of the NPRM to add an additional ATA section for AWL No. 28–AWL–02 and for AWL No. 28–AWL–17. The ATA, on behalf of its member DAL, requests that we revise Appendix 1 of the NPRM as follows: (1) add the task title for AWLs No. 28–AWL–08, No. 28–AWL–12, No. 28–AWL–13, and No. 28–AWL–22 based on the information found in the MPD, (2) add the ''ALI/CDCCL'' designation, airplane maintenance manual (AMM) reference, and task title for AWL No. 28–AWL–20 based on the information in the MPD, and (3) delete any duplicate sources of service information and reference a single source document that provides the task instructions necessary to comply with the AWLs.

We disagree with revising the AMM references, since we have deleted Appendix 1 from this AD. The purpose of Appendix 1 was to assist operators in identifying the AMM tasks that could affect compliance with a CDCCL. However, we have also received several similar comments regarding the appendices in other NPRMs that address the same unsafe condition on other Boeing airplanes. Those comments indicate that including non-required information in those NPRMs has caused confusion. Further, Revision March 2008 of the MPD contains most of the updated information that is listed in Appendix 1 of the NPRM. Therefore, we have removed Appendix 1 from this AD.

Request To Revise Note 2

Boeing requests that we revise Note 2 of the NPRM to clarify the need for an AMOC. Boeing states that the current wording is difficult to follow, and that the note is meant to inform operators that an AMOC to the required MPD AWLs might be required if an operator has previously modified, altered, or repaired the areas addressed by the limitations. Boeing requests that we revise Note 2 as follows:

- Add the words ''according to paragraph (g)'' at the end of the first sentence.
- Replace the words ''revision to'' with ''deviation from'' in the last sentence.
- Delete the words ''(g) or'' and ''as applicable'' from the last sentence.

As stated previously, we have clarified the language in Note 2 of this AD for standardization with other similar ADs. The language the commenter requests that we change does not appear in the revised note. Therefore, no additional change to this AD is necessary in this regard.

Request To Extend the Grace Period for AWL No. 28–AWL–03

KLM expects to have problems accomplishing the initial inspection of AWL No. 28–AWL–03 within the 24-month grace period. The commenter states that if it does the check and does not reach the specified values, then tank entry outside of heavy maintenance would be necessary. The commenter also states that it would be helpful to plan to do this inspection during an overhaul.

We infer that KLM requests that we extend the grace period for AWL No. 28–AWL–03 in paragraph (h)(2) of this AD to allow accomplishing the initial inspection during a regularly scheduled ''D'' check (about 6 years). We disagree with extending the grace period to 6 years. In developing an appropriate compliance time for this action, we considered the safety implications, the rate of lightning strikes in the fleet, and the average age of the fleet. In consideration of these items, we have determined that an initial compliance time of 120 months (as discussed previously) with a grace period of 24 months will ensure an acceptable level of safety. We have not changed the grace period for AWL No. 28–AWL–03 in this regard.

Request To Revise the Estimated Costs Table

The ATA, on behalf of its member DAL, states that it disagrees with the cost estimate for accomplishing the inspection provided in the ''Estimated Costs'' table of the NPRM because it does not include the time required for accomplishing the additional repetitive inspections. DAL also states that it will take much more than eight hours to accomplish the initial inspection.

We infer the commenters request that we revise the ''Estimated Cost'' table in this AD to reflect the cost of

accomplishing the repetitive inspections. We do not agree because the repetitive inspections are not directly required by this AD. This AD only requires the change to the maintenance program via a revision to the MPD, and the initial accomplishment of AWL No. 28–AWL–03. Section 91.403(c) of the Federal Aviation Regulations (14 CFR part 91.403(c)) requires the repetitive inspections once the maintenance program is changed. Although DAL states the initial inspection takes more than 8 hours, it has not provided an estimate. Therefore, we have not changed this AD in this regard.

Conclusion

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

Costs of Compliance

There are about 1,960 airplanes of the affected design in the worldwide fleet. 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.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AWLs revision	8	None	$640	682	$436,480
Inspection	8	None	640	682	436,480

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

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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–10–10 Boeing: Amendment 39–15516. Docket No. FAA–2007–28384; Directorate Identifier 2006–NM–165–AD.

Effective Date

(a) This airworthiness directive (AD) is effective June 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category, with an original standard airworthiness certificate or original export certificate of airworthiness issued before March 31, 2006.

Note 1: Airplanes with an original standard airworthiness certificate or original export certificate of airworthiness issued on or after March 31, 2006, must already be in compliance with the airworthiness limitations specified in this AD because those limitations were applicable as part of the airworthiness certification of those airplanes.

Note 2: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (l) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss 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.

Service Information Reference

(f) The term ''Revision March 2008 of the MPD,'' as used in this AD, means Boeing Temporary Revision (TR) 09–020, dated March 2008. Boeing TR 09–020 is published as Section 9 of the Boeing 737–600/700/800/900 Maintenance Planning Data (MPD) Document, D626A001–CMR, Revision March 2008.

Revision to Airworthiness Limitations (AWLs) Section

(g) Before December 16, 2008, revise the AWLs section of the Instructions for Continued Airworthiness (ICA) by incorporating into the MPD the information in the subsections specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD; except that the initial inspection required by paragraph (h) of this AD must be done at the applicable compliance time specified in that paragraph. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(1) Subsection E, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS,'' of Revision March 2008 of the MPD.

(2) Subsection F, ''PAGE FORMAT: FUEL SYSTEM AIRWORTHINESS LIMITATIONS,'' of Revision March 2008 of the MPD.

(3) Subsection G, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEM AWLs,'' AWLs No. 28–AWL–01 through No. 28–AWL–22 inclusive, of Revision March 2008 of the MPD. As an optional action, AWLs No. 28–AWL–23 and No. 28–AWL–24, as identified in Subsection G of Revision March 2008 of the MPD, also may be incorporated into the AWLs section of the ICA.

Initial Inspection and Repair if Necessary

(h) At the later of the compliance times specified in paragraphs (h)(1) and (h)(2) of this AD, do a special detailed inspection of the lightning shield to ground termination on the out-of-tank fuel quantity indication system (FQIS) wiring to verify functional integrity, in accordance with AWL No. 28–AWL–03 of Subsection G of Revision March 2008 of the MPD. If any discrepancy is found during the inspection, repair the discrepancy before further flight in accordance with AWL No. 28–AWL–03 of Subsection G of Revision March 2008 of the MPD. Accomplishing the actions required by this paragraph in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle ACO. Accomplishing AWL No. 28–AWL–03 as part of an FAA-approved maintenance program before the applicable compliance time specified in paragraph (h)(1) or (h)(2) of this AD constitutes compliance with the requirements of this paragraph.

Note 3: For the purposes of this AD, a special detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required.''

(1) Within 120 months since the date of issuance of the original standard airworthiness certification or the date of issuance of the original export certificate of airworthiness.

(2) Within 24 months after the effective date of this AD.

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(i) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are part of a later revision of Revision March 2008 of the MPD that is approved by the Manager, Seattle ACO; or unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (l) of this AD.

Credit for Actions Done According to Previous Revisions of the MPD

(j) Actions done before the effective date of this AD in accordance with the following MPDs are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD: Section 9 of the Boeing 737–600/700/700C/700IGW/800/900 MPD Document, D626A001–CMR, Revision March 2006; Revision May 2006; Revision October 2006; Revision November 2006; or Revision November 2006 R1; and Section 9 of the Boeing 737–600/700/800/900 MPD Document, D626A001–CMR, Revision March 2007; Revision March 2007 R1; Revision March 2007 R2; or Revision February 2008.

Terminating Action for AD 2008–06–03, Amendment 39–15415

(k) Incorporating AWLs No. 28–AWL–21, No. 28–AWL–22, and No. 28–AWL–24 into the AWLs section of the ICA in accordance with paragraph (g) of this AD terminates the action required by paragraph (h)(1) of AD 2008–06–03.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle ACO, 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

(m) You must use Boeing Temporary Revision 09–020, dated March 2008, to the Boeing 737–600/700/800/900 Maintenance Planning Data (MPD) Document, D626A001–CMR, to do the actions required by this AD, unless the AD specifies otherwise. Boeing Temporary Revision 09–020 is published as Section 9 of the Boeing 737–600/700/800/900 Maintenance Planning Data (MPD) Document, D626A001–CMR, Revision March 2008.

(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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference 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/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 29, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9919 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28386; Directorate Identifier 2006–NM–162–AD; Amendment 39–15512; AD 2008–10–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, –400D, and –400F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 747–400, –400D, and –400F series airplanes. This AD requires revising the FAA-approved maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This AD also requires the initial inspection of certain repetitive AWL inspections to phase in those inspections, and repair if necessary. This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective June 12, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 12, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing

Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 747–400, –400D, and –400F series airplanes. That NPRM was published in the **Federal Register** on July 3, 2007 (72 FR 36385). That NPRM proposed to require revising the FAA-approved maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That NPRM also proposed to require the initial inspection of certain repetitive AWL inspections to phase in those inspections, and repair if necessary.

Actions Since NPRM Was Issued

Since we issued the NPRM, Boeing has issued Temporary Revision (TR) 09–010, dated March 2008. Boeing TR 09–010 is published as Section 9 of the Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9, Revision March 2008 (hereafter referred to as ''Revision March 2008 of the MPD''). The NPRM referred to Revision March 2006 of the MPD as the appropriate source of service information for accomplishing the proposed actions. Revision March 2008 of the MPD, among other actions, includes the following changes:

- Removes the repetitive task interval of 36,000 flight hours from AWLs No. 28–AWL–01, No. 28–AWL–03, and No. 28–AWL–10.
- Revises AWL No. 28–AWL–03 to reflect the new maximum loop resistance values associated with the lightning protection of the unpressurized fuel quantity indicating system (FQIS) wire bundle installations.
- Adds new AWLs No. 28–AWL–30, No. 28–AWL–31, and No. 28–AWL–32 to incorporate new critical design configuration control limitations (CDCCLs) for the electronic fuel level indication system (EFLI) for Model 747–400 series airplanes equipped with an auxiliary fuel tank.

Accordingly, we have revised paragraphs (f), (g), and (h) of this AD to refer to Revision March 2008 of the MPD. We also have removed reference to 36,000 total flight cycles from Table 1 of this AD and revised the initial threshold for accomplishing AWLs No. 28–AWL–01, No. 28–AWL–03, and No. 28–AWL–10 to within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness. (The NPRM incorrectly specified 36,000 total ''flight cycles'' instead of ''flight hours.'')

We also have added a new paragraph (k) to this AD specifying that actions done before the effective date of this AD in accordance with Revisions March 2006 through November 2007 of the MPD are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

Operators should note that we have revised paragraph (g)(3) of this AD to require incorporating only AWLs No. 28–AWL–01 through No. 28–AWL–23 inclusive. AWLs No. 28–AWL–24, No. 28–AWL–25, No. 28–AWL–26, No. 28–AWL–27, No. 28–AWL–28, and No. 28–AWL–29 were added in other revisions of the MPD after March 2006 and before March 2008. We have issued a separate NPRM that proposes to incorporate AWL No. 28–AWL–25 into the FAA-approved maintenance program. We have also issued a separate NPRM that proposes to incorporate AWL No. 28–AWL–27 into the FAA-approved maintenance program. Those NPRMs were published in the **Federal Register** on January 31, 2008 (73 FR 5770 and 5773, respectively). We might issue additional rulemaking to require the incorporation of AWLs No. 28–AWL–24, No. 28–AWL–26, No. 28–AWL–28, and No. 28–AWL–29. However, as an optional action, operators may incorporate those AWLs as specified in paragraph (g)(3) of this AD.

Further, we have added a new paragraph (i) to this AD, which requires the incorporation of AWLs No. 28–AWL–30, No. 28–AWL–31, and No. 28–AWL–32 on Model 747–400 series airplanes equipped with an auxiliary fuel tank. Since none of these airplanes are on the U.S. Register, this change does not impose an additional burden on any U.S. operators.

Other Changes Made to This AD

We have revised paragraph (h) of this AD to clarify that the actions identified in Table 1 of this AD must be done at the compliance time specified in that table. Also, for standardization purposes, we have revised this AD in the following ways:

- We have added a new paragraph (j) to this AD to specify that no alternative inspections, inspection intervals, or CDCCLs may be used unless they are part of a later approved revision of Revision March 2008 of the MPD, or unless they are approved as an alternative method of compliance (AMOC). Inclusion of this paragraph in the AD is intended to ensure that the AD-mandated airworthiness limitations changes are treated the same as the airworthiness limitations issued with the original type certificate.
- We have revised Note 2 of this AD to clarify that an operator must request approval for an AMOC if the operator cannot accomplish the required inspections because an airplane has been previously modified, altered, or repaired in the areas addressed by the required inspections.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the six commenters.

Request To Allow Inspections Done According to a Maintenance Program

Japan Airlines (JAL) requests that we revise paragraph (h) of the NPRM to allow an operator to update its FAA-approved maintenance program to include the initial inspections and repair for certain AWLs. JAL states that the NPRM would require accomplishing the initial inspection and repair of certain AWLs, which would require JAL to establish a special inspection and special recordkeeping for the proposed requirement.

The compliance times specified in paragraph (h) of this AD are intended to provide a grace period for those airplanes that have already exceeded the specified threshold in the MPD. To be in compliance with the recording requirements of this AD, operators must record their compliance with the initial inspection for those airplanes over the specified threshold. We have revised paragraph (h) of this AD to specify that accomplishing the applicable AWLs as

part of an FAA-approved maintenance program before the applicable compliance time constitutes compliance with the applicable requirements of that paragraph.

Request To Revise Intervals for Certain AWL Inspections

KLM Royal Dutch Airlines (KLM), on behalf of several operators, requests that we review a 45-page proposal to align certain airworthiness limitation item (ALI) intervals with the applicable maintenance significant item (MSI) and enhanced zonal analysis procedure (EZAP) intervals for Model 737, 747, 757, 767, and 777 airplanes. The recommendations in that proposal ensure that the ALI intervals align with the maintenance schedules of the operators. Among other changes, the proposal recommends revising certain AWL inspection intervals from 12 years/36,000 flight hours to only 12 years for Model 747–400, –400D, and –400F series airplanes.

Qantas Airways also requests that the 36,000-flight-hour parameter be removed from the inspection interval for AWL No. 28–AWL–01, No. 28–AWL–03, and No. 28–AWL–10. The commenter states that the flight-hour parameter does not adequately take into account actual airplane usage, and that the long haul utilization of the airplane is 5,000 to 6,000 flight hours per year. Based on this number, the commenter states that the AWL tasks would be required at 6 years instead of 12 years.

Qantas Airways and Lufthansa both note an inconsistency between the inspection interval specified in Revision March 2006 of the MPD and the compliance threshold specified in Table 1 of the NPRM. Table 1 of the NPRM specifies accomplishing the initial inspection within 36,000 total flight cycles or 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first. Qantas Airways would welcome the change from ''flight hours'' to ''flight cycles,'' if the flight-hour parameter is not deleted from the inspection intervals specified in Revision March 2006 of the MPD.

We have reviewed the commenter's requests, and we agree to revise the compliance threshold for certain AWLs identified by the commenters. As stated previously, Revision March 2008 of the MPD specifies a repetitive interval of 144 months. We have revised the threshold specified in Table 1 of this AD accordingly.

Request To Harmonize Task Descriptions

JAL states that, in Revision March 2006 of the MPD, the task descriptions defining the applicable area are different for AWLs Nos. 28–AWL–01 and 28–AWL–02. (AWL No. 28–AWL–01 is a repetitive inspection of the external wires over the center fuel tank, and AWL No. 28–AWL–02 is a CDCCL to maintain the original design features for the external wires over the center fuel tank.) JAL believes that the task descriptions for these AWLs should match. JAL presumes that, if one purpose for the inspection is to prevent a spark in the fuel vapor over the center fuel tank, then the applicable area should have a certain tolerance instead of defining the area by exact station number.

We agree that the task descriptions for AWL Nos. 28–AWL–01 and 28–AWL–02 should be harmonized. Revision March 2008 of the MPD includes a revised task description of AWL No. 28–AWL–01, which addresses JAL's comments. As stated previously, we have revised this AD to refer to Revision March 2008 of the MPD.

Request To Revise the Loop Resistance Values for AWL No. 28–AWL–03

Boeing, KLM, Lufthansa, and Qantas Airways state that the loop resistance values for AWL No. 28–AWL–03 specified in Revision March 2006 of the MPD are going to be revised, since those values are relevant for production airplanes. The commenters also state that the revised values will be more representative of the expected values for in-service airplanes. Boeing points out that, according to paragraph (h) of the NPRM, the revised values should be able to be used in accordance with a later revision of the MPD if the revision is approved by the Seattle Aircraft Certification Office (ACO), FAA.

We agree that operators may use the revised loop resistance values for AWL No. 28–AWL–03 in accordance with Revision March 2008 of the MPD. As stated previously, we have revised this AD accordingly.

Request To Revise Estimated Costs

Qantas Airways states that the work-hour estimates provided in the NPRM seem too small. The commenter has submitted its estimates for AWLs No. 28–AWL–01, No. 28–AWL–03, No. 28–AWL–10, No. 28–AWL–17, and No. 28–AWL–21.

We infer the commenter requests that we revise the ''Costs of Compliance'' section of this AD to reflect its estimates. We agree to include the work-hour estimates for the initial accomplishment of AWLs No. 28–AWL–01, No. 28–AWL–03, and No. 28–AWL–10 in this AD. We have not included the estimate for AWL No. 28–AWL–17, since this AD does not need to require the initial inspection of that AWL to phase in the inspection. The initial inspection of AWL No. 28–AWL–17 should have been previously accomplished as part of the existing FAA-approved maintenance program. We also have not included the estimate for AWL No. 28–AWL–21 because incorporation of that AWL has been postponed, as specified in Revision 24, dated June 2006, of the MPD.

Request To Clarify Use of Equivalent Tools and Chemicals

JAL requests that we provide guidelines for using equivalent tools and chemical materials according to the component maintenance manuals (CMMs). JAL states that normally operators can use equivalents without FAA approval when the CMM specifies that equivalents may be used. JAL also states that it has received further clarification from Boeing specifying that unless a CDCCL refers to a certain tool by part number or certain chemicals by name, an operator can continue to use equivalent tools or materials according to the CMMs.

We acknowledge the commenter's request and are working with Boeing to provide appropriate flexibility while still ensuring that items critical for maintaining safety continue to be specifically identified in the CMMs. However, to delay issuance of this AD would be inappropriate.

We agree that when the CMMs allow use of equivalent tools or chemical materials, operators and repair stations may use equivalents. We have already approved the use of the CMMs at the revision levels specified in Revision March 2008 of the MPD, including the use of equivalent tools or chemicals where the CMMs state equivalents are allowed. If the CMM does not allow use of an equivalent, none may be used. No change to this AD is necessary in this regard.

Request To Revise Appendix 1

Boeing requests that we revise Appendix 1 of the NPRM as follows: (1) Reference an additional ATA section for AWL No. 28–AWL–02, (2) correct the airplane maintenance manual (AMM) task titles and numbers for AWL No. 28–AWL–09, (3) correct the AMM task number for AWL No. 28–AWL–10, (4) delete certain information from the ATA section for AWL No. 28–AWL–21, and

(4) add AMM task titles and numbers for AWL No. 28–AWL–23.

JAL requests that we update Appendix 1 of the NPRM to include all AWLs specified in the MPD, and that we indicate how to maintain the latest version of Appendix 1. JAL also requests that we correct the following error in Appendix 1 of the NPRM: For AWL No. 28–AWL–04, change ''SWPM 20–10–15'' to ''SWPM 20–10–13.''

We disagree with revising the AMM references, since we have deleted Appendix 1 from this AD. The purpose of Appendix 1 was to assist operators in identifying the AMM tasks that could affect compliance with a CDCCL. However, we have also received several similar comments regarding the appendices in other NPRMs that address the same unsafe condition on other Boeing airplanes. Those comments indicate that including non-required information in those NPRMs has caused confusion. Further, Revision March 2008 of the MPD contains most of the updated information that is listed in Appendix 1 of the NPRM. Therefore, we have removed Appendix 1 from this AD.

Request To Extend the Grace Period for AWL No. 28–AWL–03

Lufthansa and KLM expect to have problems accomplishing the initial inspection of AWL No. 28–AWL–03 within the 24-month grace period. The commenters state that if they do the check and do not reach the specified values, then tank entry outside of heavy maintenance would be necessary. The commenters also state that it would be helpful to plan to do this inspection during an overhaul.

We infer that the commenters request that we extend the grace period for AWL No. 28–AWL–03 in Table 1 of this AD to allow accomplishing the initial inspection during a regularly scheduled ''D'' check (about 6 years). We disagree with extending the grace period to 6 years. In developing an appropriate compliance time for this action, we considered the safety implications, the rate of lightning strikes in the fleet, and the average age of the fleet. In consideration of these items, we have determined that an initial compliance time of 144 months (as discussed previously) with a grace period of 24 months will ensure an acceptable level of safety. We have not changed the grace period for AWL No. 28–AWL–03 in this regard.

Request To Extend the Exceptional Short-Term Extension

Qantas Airways requests that we allow exceptional short-term extensions of 10 percent of the task interval or 6 months, whichever is less, for AWL tasks. The commenter believes that the exceptional short-term extension of 30 days, which is specified in Revision March 2006 of the MPD, is too small for AWL tasks having 12-year intervals. The commenter states that, as part of the Boeing 747 Corrosion Prevention and Control Program mandated by AD 90–25–05, amendment 39–6790 (55 FR 49268, November 27, 1990), operators were given a provision to invoke exceptional short-term extensions of 10 percent of the task interval or 6 months, whichever is less. The commenter states that this is a more appropriate magnitude because operators are often permitted one-time exceptional extensions to maintenance checks and tasks of this proportion. The commenter also states that limiting the extension period to 30 days means that a ''D'' check can never be extended by more than 30 days, which would force operators to do certain AWL inspections outside of a ''D'' check.

We disagree with the commenter's request because exceptional short-term extensions are, in essence, pre-approved extensions without Seattle ACO review of the specifics of the situation. We consider that the ability to extend the interval without further approval for 30 days should be sufficient for most circumstances. However, if an operator finds that it needs an extension longer than 30 days, with appropriate justification one may be requested from the Seattle ACO, or governing regulatory authority. Longer extensions may be granted on a case-by-case basis because, as Qantas Airways points out, the task interval is long, and the FAA is interested in limiting out-of-sequence work. We have not changed this AD in this regard.

Request To Add Applicability to Table 1

Lufthansa states that the applicability of AWL inspections should be included in Table 1 of the AD.

We disagree because the AWL inspections listed in Table 1 of this AD are applicable to all airplanes identified in paragraph (c) of this AD. We have not changed this AD in this regard.

Request To Require Latest Revision of the AMM

JAL requests that we revise the NPRM to require incorporation of the latest revision of the manufacturer's AMM. JAL asserts that we have allowed Boeing to include statements in the Boeing AMM allowing operators to use certain CMM revision levels or later revisions. JAL states that, with the exception of the CMM, operators cannot find what revision level of the AMM needs to be incorporated into the operator's AMM in order to comply with the proposed requirements of the NPRM. JAL also states that it could take several weeks to incorporate the manufacturer's AMM.

JAL further requests that we clarify whether it is acceptable to change the procedures in the AMM with Boeing's acceptance. JAL states that the MPD notes that any use of parts, methods, techniques, or practices not contained in the applicable CDCCL and AWL inspection must be approved by the FAA office that is responsible for the airplane model type certificate, or applicable regulatory agency. JAL also states that the Boeing AMM or CMM notes to obey the manufacturer's procedures when doing maintenance that affects a CDCCL or AWL inspection. However, JAL believes that according to the NPRM it is acceptable to change the AMM procedures with Boeing's acceptance.

We disagree with the changes proposed by the commenter. This AD does not require revising the AMM. This AD does require revising your maintenance program to incorporate the AWLs identified in Revision March 2008 of the MPD. However, complying with the AWL inspections or CDCCLs will require other actions by operators including AMM revisions. In the U.S., operators are not required to use original equipment manufacturer (OEM) maintenance manuals. Operators may develop their own manuals, which are reviewed and accepted by the FAA Flight Standards Service. In order to maintain that flexibility for operators, most of the AWLs contain all of the critical information, such as maximum bonding resistances and minimum separation requirements. The FAA Flight Standards Service will only accept operator manuals that contain all of the information specified in the AWLs, so there is no need to require operators to use the OEM maintenance manuals.

Regarding JAL's request for clarification of approval of AWL changes, we infer JAL is referring to the following sentence located in the ''Changes to AMMs Referenced in Fuel Tank System AWLs'' section of the NPRM: ''A maintenance manual change to these tasks may be made without approval by the Manager, Seattle ACO, through an appropriate FAA principal maintenance inspector (PMI) or principal avionics inspector (PAI), by the governing regulatory authority, or by using the operator's standard process for revising maintenance manuals.'' If changes need to be made to tasks associated with an AWL, they may be

made using an operator's normal process without approval of the Seattle ACO, as long as the change maintains the information specified in the AWL. For some CDCCLs, it was beneficial to not put all the critical information into the MPD. This avoids duplication of a large amount of information. In these cases, the CDCCL refers to a specific revision of the CMM. U.S. operators are required to use those CMMs. Any changes to the CMMs must be approved by the Seattle ACO.

Request To Revise Note 2

Boeing requests that we revise Note 2 of the NPRM to clarify the need for an AMOC. Boeing states that the current wording is difficult to follow, and that the note is meant to inform operators that an AMOC to the required MPD AWLs might be required if an operator has previously modified, altered, or repaired the areas addressed by the limitations. Boeing requests that we revise Note 2 as follows:

- Add the words ''according to paragraph (g)'' at the end of the first sentence.
- Replace the words ''revision to'' with ''deviation from'' in the last sentence.
- Delete the words ''(g) or'' and ''as applicable'' from the last sentence.

As stated previously, we have clarified the language in Note 2 of this AD for standardization with other similar ADs. The language the commenter requests that we change does not appear in the revised note. Therefore, no additional change to this AD is necessary in this regard.

Request To Delete Reference to Task Cards

All Nippon Airways (ANA) requests that we delete the words ''and task cards,'' unless the task card references are listed in Subsection D of the MPD or Appendix 1 of the AD. Those words are located in the following sentence in the ''Ensuring Compliance with Fuel Tank System AWLs'' section of the NPRM: ''Operators that do not use Boeing's revision service should revise their maintenance manuals and task cards to highlight actions tied to CDCCLs to ensure that maintenance personnel are complying with the CDCCLs.'' ANA believes that if a task card refers to the AMM, which includes the CDCCL note, then highlighting the CDCCL items is not necessary because they are already highlighted in the AMM and maintenance personnel always refer to the AMM. ANA further states that the applicable task card references are not listed in Subsection D of the MPD, or in Appendix 1 of the NPRM; they refer only to the AMM. ANA, therefore, states that it is difficult to find out or distinguish the affected task card.

JAL believes that the proposed requirement regarding the CDCCLs is to incorporate the manufacturer's maintenance manuals into an operator's maintenance manual. If the description of a CDCCL is missing from the manufacturer's AMM, then JAL believes that operators are not responsible for the requirements of the AD.

We agree that the task cards might not need to be revised because an operator might find that the AMM notes are sufficient. However, we disagree with deleting the reference to the task cards since some operators might need to add notes to their task cards. This AD does not require any changes to the maintenance manuals or task cards. The AD requires incorporating new AWLs into the operator's maintenance program. It is up to the operator to determine how best to ensure compliance with the new AWLs. In the ''Ensuring Compliance with Fuel Tank System AWLs'' section of the NPRM, we were only suggesting, not requiring, ways that an operator could implement CDCCLs into its maintenance program. We have not changed this AD in this regard.

Request To Clarify Meaning of Task Cards

JAL requests that we clarify whether ''task cards,'' as found in the ''Recording Compliance with Fuel Tank System AWLs'' section of the NPRM, means Boeing task cards only or if they also include an operator's unique task cards.

We intended that ''task cards'' mean both Boeing and an operator's unique task cards, as applicable. The intent is to address whatever type of task cards are used by mechanics for maintenance. This AD would not require any changes to the AMMs or task cards relative to the CDCCLs. We are only suggesting ways an operator might implement CDCCLs into its maintenance program. No change to this AD is necessary in this regard.

Request To Delete Reference to Parts Manufacturer Approval (PMA) Parts

ANA requests that we delete the words ''Any use of parts (including the use of parts manufacturer approval (PMA) approved parts),'' unless a continuous supply of CMM specified parts is warranted or the FAA is open 24 hours to approve alternative parts for in-house repair by the operator. Those words are located in the following sentence in the ''Changes to CMMs Cited in Fuel Tank System AWLs'' section of the NPRM: ''Any use of parts (including the use of parts manufacturer approval (PMA) approved parts), methods, techniques, and practices not contained in the CMMs needs to be approved by the Manager, Seattle ACO, or governing regulatory authority.''

ANA states that in some cases the parts specified in the CMMs cannot be obtained from the parts market or directly from the component vendor, so an operator is forced into using alternative parts to keep its schedule. ANA requests that we direct the component vendor to ensure a continuous supply of CMM parts and to direct the component vendor to remedy a lack of parts if parts are not promptly supplied. ANA further requests that we direct the component vendor to promptly review the standard parts and allow use of alternative fasteners and washers listed in Boeing D590. ANA asserts that, in some cases, a component vendor specifies an uncommon part to preserve its monopoly.

We disagree with revising the ''Changes to CMMs Cited in Fuel Tank System AWLs'' section of the NPRM. We make every effort to identify potential problems with the parts supply, and we are not aware of any problems at this time. The impetus to declare overhaul and repair of certain fuel tank system components as CDCCLs arose from in-service pump failures that resulted from repairs not done according to OEM procedures. We have approved the use of the CMMs—including parts, methods, techniques, and practices—at the revision levels specified in Revision March 2008 of the MPD. Third-party spare parts, such as parts approved by PMA, have not been reviewed.

An operator may submit a request to the Seattle ACO, or governing regulatory authority, for approval of an AMOC if sufficient data are submitted to substantiate that use of an alternative part would provide an acceptable level of safety. The CDCCLs do not restrict where repairs can be performed, so an operator may do the work in-house as long as the approved CMMs are followed. If operators would like to change those procedures, they can request approval of the changes. The FAA makes every effort to respond to operators' requests in a timely manner. If there is a potential for disrupting the flight schedule, the operator should include that information in its request. Operators should request approval for the use of PMA parts and alternative procedures from the FAA or the governing regulatory authority in advance in order to limit schedule

disruptions. We have not changed this AD in this regard.

Request To Identify Other Test Equipment

JAL states that certain test equipment is designated in the MPD and that additional equipment should also be designated. For example, AWL No. 28–AWL–03 would require using loop resistance tester, part number (P/N) 906–10246–2 or –3. Therefore, JAL requests that we also identify alternative test equipment, so that operators do not need to seek an AMOC to use other equipment.

We disagree with identifying other test equipment. We cannot identify every possible piece of test equipment. We ensure that some are listed as recommended by the manufacturer. With substantiating data, operators can request approval of an alternative tester from the Seattle ACO, or the governing regulatory agency. We have not changed this AD in this regard.

Request To Clarify AWL No. 28–AWL–02

JAL requests that we clarify the intent of AWL No. 28–AWL–02. JAL states that Chapters 53–21 and 53–01 of the Boeing AMM specify doing an inspection of the external wires over the center fuel tank according to AMM 28–11–00 before installing the floor panel over the center wing tank based on AWL No. 28–AWL–02. JAL also states that, according to Revision March 2006 of the MPD, AWL No. 28–AWL–02 contains two limitations: maintaining the existing wire bundle routing and clamping, and installing any new wire bundle per the Boeing standard wiring practices manual (SWPM). Therefore, JAL believes it is not necessary to inspect the external wires over the center fuel tank according to AMM 28–11–00 before installing the floor panel over the center wing tank, unless that wire bundle routing and clamping are changed.

We point out that AWL No. 28–AWL–02 also contains a third limitation: verifying that all wire bundles over the center fuel tank are inspected according to AWL No. 28–AWL–01, which refers to AMM 28–11–00 for accomplishing the inspection. We do not agree that the inspection should be required only if the wire bundle routing and clamping are changed while maintenance is accomplished in the area. If any of the other bundles have a clamp or routing failure, it must be detected and corrected. After accomplishing the inspection required by AWL No. 28–AWL–01, an operator would not need to repeat the inspection for another 12 years. No change to this AD is necessary in this regard.

Request for Clarification for Recording Compliance With CDCCLs

JAL requests that we clarify the following sentence: ''An entry into an operator's existing maintenance record system for corrective action is sufficient for recording compliance with CDCCLs, as long as the applicable maintenance manual and task cards identify actions that are CDCCLs.'' That sentence is located in the ''Recording Compliance with Fuel Tank System AWLs'' section of the NPRM. Specifically, JAL asks whether an operator must indicate the CDCCL in their recording documents or whether it is sufficient for the recording document to call out the applicable AMMs that are tied to the CDCCLs.

We have coordinated with the FAA Flight Standards Service and it agrees that, for U.S.-registered airplanes, if the applicable AMMs and task cards identify the CDCCL, then the entry into the recording documents does not need to identify the CDCCL. However, if the applicable AMMs and tasks cards do not identify the CDCCL, then they must be identified. Other methods may be accepted by the appropriate FAA PMI or PAI, or governing regulatory authority. No change to this AD is necessary in this regard.

Conclusion

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

Costs of Compliance

There are about 596 airplanes of the affected design in the worldwide fleet. 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.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Maintenance program revision	8	None	$640	57	$36,480
Initial accomplishment of AWL 28–AWL–01	6	None	480	57	27,360
Initial accomplishment of AWL 28–AWL–03	32	None	2,560	57	145,920
Initial accomplishment of AWL 28–AWL–10	2	None	180	57	9,120

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

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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–10–06 Boeing: Amendment 39–15512. Docket No. FAA–2007–28386; Directorate Identifier 2006–NM–162–AD.

Effective Date

(a) This airworthiness directive (AD) is effective June 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–400, –400D, and –400F series airplanes, certificated in any category; with an original standard airworthiness certificate or original export certificate of airworthiness issued before April 12, 2006.

Note 1: Airplanes with an original standard airworthiness certificate or original export certificate of airworthiness issued on or after April 12, 2006, must be already in compliance with the airworthiness limitations specified in this AD because those limitations were applicable as part of the airworthiness certification of those airplanes.

Note 2: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (l) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss 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.

Service Information Reference

(f) The term ''Revision March 2008 of the MPD,'' as used in this AD, means Boeing Temporary Revision (TR) 09–010, dated March 2008. Boeing TR 09–010 is published as Section 9 of the Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9, Revision March 2008.

Maintenance Program Revision

(g) Before December 16, 2008, revise the FAA-approved maintenance program by incorporating the information in the subsections specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD; except that the initial inspections specified in Table 1 of this AD must be done at the compliance times specified in Table 1. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(1) Subsection B, ''AIRWORTHINESS LIMITATIONS (AWLs)—SYSTEMS,'' of Revision March 2008 of the MPD.

(2) Subsection C, ''PAGE FORMAT: FUEL SYSTEMS AIRWORTHINESS LIMITATIONS,'' of Revision March 2008 of the MPD.

(3) Subsection D, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS,'' AWLs No. 28–AWL–01 through No. 28–AWL–23 inclusive, of Revision March 2008 of the MPD. As an optional action, AWLs No. 28–AWL–24 through No. 28–AWL–29 inclusive, as identified in Subsection D of Revision March 2008 of the MPD, also may be incorporated into the FAA-approved maintenance program.

Initial Inspections and Repair if Necessary

(h) Do the inspections specified in Table 1 of this AD at the compliance time specified in Table 1 of this AD, and repair any discrepancy, in accordance with Subsection D of Revision March 2008 of the MPD. The repair must be done before further flight. Accomplishing the actions required by this paragraph in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle ACO. Accomplishing the inspections identified in Table 1 of this AD as part of an FAA-approved maintenance program before the applicable compliance time specified in Table 1 of this AD constitutes compliance with the requirements of this paragraph.

Note 3: 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.''

Note 4: For the purposes of this AD, a special detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required.''

TABLE 1.—INITIAL INSPECTIONS

AWL No.	Description	Compliance time (whichever occurs later)	
		Threshold	Grace period
28–AWL–01	A detailed inspection of external wires over the center fuel tank for damaged or loose clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank.	Within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 72 months after the effective date of this AD.
28–AWL–03	A special detailed inspection of the lightning shield to ground termination on the out-of-tank fuel quantity indicating system to verify functional integrity.	Within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 24 months after the effective date of this AD.

TABLE 1.—INITIAL INSPECTIONS—Continued

AWL No.	Description	Compliance time (whichever occurs later)	
		Threshold	Grace period
28–AWL–10	A special detailed inspection of the fault current bond of the fueling shutoff valve actuator of the center wing tank to verify electrical bond.	Within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 60 months after the effective date of this AD.

Incorporation of Additional AWLs for Certain Airplanes

(i) For Model 747–400 series airplanes equipped with an auxiliary fuel tank: Before December 16, 2008, revise the FAA-approved maintenance program by incorporating AWLs No. 28–AWL–30, No. 28–AWL–31, and No. 28–AWL–32 of Subsection D of Revision March 2008 of the MPD. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle ACO.

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(j) After accomplishing the applicable actions specified in paragraphs (g), (h), and (i) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are part of a later revision of Revision March 2008 of the MPD that is approved by the Manager, Seattle ACO; or unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (l) of this AD.

Credit for Actions Done According to Previous Revisions of the MPD

(k) Actions done before the effective date of this AD in accordance with Section 9 of the Boeing 747–400 MPD Document, D621U400–9, Revision 23, dated March 2006; Revision 24, dated June 2006; Revision November 2006; Revision December 2006; Revision December 2006 R1; Revision May 2007; Revision October 2007; or Revision November 2007; are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle ACO, 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

(m) You must use Boeing Temporary Revision 09–010, dated March 2008, to the Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9, to do the actions required by this AD, unless the AD specifies otherwise. Boeing Temporary Revision 09–010 is published as Section 9 of the Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9, Revision March 2008.

(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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference 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/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 28, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9897 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0045; Directorate Identifier 2007–NM–169–AD; Amendment 39–15501; AD 2008–09–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200F, 747–300, 747–400, and 747–400D Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 747–200F, 747–300, 747–400, and 747–400D series airplanes. This AD requires a detailed inspection to detect missing fasteners from the shear clip at a certain stub frame to auxiliary sill joint, and applicable related investigative and corrective actions. This AD results from reports of missing fasteners from the shear clip of the stub frame to auxiliary sill joint and cracking of the adjacent exterior skin and internal doubler. We are issuing this AD to ensure that fasteners are installed in the shear clip of the stub frame to auxiliary sill joint. Missing fasteners could result in cracks in the adjacent exterior skin and internal doubler, which can propagate and result in loss of structural integrity and sudden in-flight decompression of the airplane.

DATES: This AD is effective June 12, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 12, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 747–200F, 747–300, 747–400, and 747–400D series airplanes. That NPRM was published in the **Federal Register** on October 17, 2007 (72 FR 58768). That NPRM proposed to require a detailed inspection to detect missing fasteners from the shear clip at a certain stub frame to auxiliary sill joint, and applicable related investigative and corrective actions.

New Service Bulletin Revision

Since we issued the NPRM, we have reviewed Boeing Service Bulletin 747–53A2685, Revision 1, dated March 13, 2008. Revision 1 clarifies certain figures and part and material content. No additional work is necessary for airplanes on which the actions have been done in accordance with Boeing Alert Service Bulletin 747–53A2685, dated May 31, 2007 (referred to as the appropriate source of service information for accomplishing the actions specified in the NPRM). We have revised paragraphs (c), (f), and (g) of this AD to refer to Boeing Service Bulletin 747–53A2685, Revision 1, dated March 13, 2008. We have added a new paragraph (h) of this AD to give credit for actions done before the effective date of this AD according to Boeing Alert Service Bulletin 747–53A2685, dated May 31, 2007, and redesignated subsequent paragraphs of the AD accordingly.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from two commenters. Boeing requested that Boeing Service Bulletin 747–53A2685, Revision 1, dated March 13, 2008, be used instead of Boeing Alert Service Bulletin 747–53A2685, dated May 31, 2007. All Nippon Airways requested clarification of technical information in the NPRM. These requests have been addressed in Revision 1 of the service bulletin, which is cited in the final rule.

Conclusion

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

Costs of Compliance

There are about 98 airplanes of the affected design in the worldwide fleet. This AD affects about 8 airplanes of U.S. registry. The required actions 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 for U.S. operators is $640, 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

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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–09–20 Boeing: Amendment 39–15501. Docket No. FAA–2007–0045; Directorate Identifier 2007–NM–169–AD.

Effective Date

(a) This airworthiness directive (AD) is effective June 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–200F, 747–300, 747–400, and 747–400D series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–53A2685, Revision 1, dated March 13, 2008.

Unsafe Condition

(d) This AD results from two reports of cracks found in the exterior skin and internal doubler adjacent to the shear clip at the stub frame to auxiliary sill joint at stringer 30 (left and right sides), body station (BS) 488. In addition, on one of the airplanes, seven fasteners were missing from the shear clip on the left side of the airplane. The cause of the missing fasteners has been attributed to a manufacturing process error. We are issuing this AD to ensure fasteners in the shear clip of the stub frame to auxiliary sill joints (left and right sides) are installed. Missing fasteners could result in cracks in the adjacent exterior skin and internal doubler, which can propagate and result in loss of structural integrity and sudden in-flight decompression 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.

Inspection and Applicable Related Investigative and Corrective Actions

(f) At the applicable compliance time and repeat intervals listed in Tables 1 and 2 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2685, Revision 1, dated March 13, 2008; except where the service bulletin specifies a compliance time

after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD: Do the inspection and applicable related investigative and corrective actions by accomplishing all the applicable actions specified in the Accomplishment Instructions of the service bulletin, except as provided by paragraph (g) of this AD.

Repair of Cracks

(g) If any crack is found during any inspection required by this AD, and Boeing Service Bulletin 747–53A2685, Revision 1, dated March 13, 2008, 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 (i) of this AD.

Credit for Actions Done Using the Previous Service Information

(h) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–53A2685, dated May 31, 2007, are considered acceptable for compliance with the corresponding actions specified in paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(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.

Material Incorporated by Reference

(j) You must use Boeing Service Bulletin 747–53A2685, Revision 1, dated March 13, 2008, 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference 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/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on April 23, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–9894 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0067; Airspace Docket No. 08–ANE–98]

Establishment of Class E Airspace; Rockport, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** (73 FR 9442) that establishes Class E Airspace at Rockport, ME to support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations into the Penobscot Bay Medical Center.

DATES: Effective 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on February 21, 2008 (73 FR 9442), Docket No. FAA–2008–0067; Airspace Docket No. 08–ANE–98. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 5, 2008. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, Georgia, on April 18, 2008.

John D. Haley,

Acting Manager, System Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–9848 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0060; Airspace Docket No. 08–ANE–91]

Establishment of Class E Airspace; Swans Island, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** (73 FR 9183) that establishes Class E Airspace at Swans Island, ME to support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations into the Swans Island Heliport.

DATES: Effective 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on February 20, 2008 (73 FR 9183), Docket No. FAA–2008 0060; Airspace Docket No. 08–ANE–91. The FAA uses the direct final rulemaking procedure for a non-

controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 5, 2008. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, Georgia, on April 18, 2008.

Lynda G. Otting,

Acting Manager, System Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–9850 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 080307395–8515–01]

RIN 0694–AE32

Technical Corrections to the Export Administration Regulations Based Upon a Systematic Review of the CCL; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Correcting amendment.

SUMMARY: The Bureau of Industry and Security published a final rule in the **Federal Register** on April 18, 2008 (73 FR 21035), that amended the Export Administration Regulations (EAR) to make various technical corrections and clarifications to the EAR as a result of a systematic review of the CCL. The amendments in that final rule included a revision to the ''Unit'' paragraph in the List of Items Controlled section of Export Control Classification Number (ECCN) 9A004. However, because of an inadvertent formatting error in a rule published on March 18, 1999 (64 FR 13338), the ''Related Controls'' paragraph in that CCL entry appeared to be a part of the ''Unit'' paragraph. This resulted in the inadvertent removal of the ''Related Controls'' paragraph in the List of Items Controlled section of that ECCN entry when the ''Unit'' paragraph was revised with the publication of the April 18, 2008, rule. Today's rule corrects that inadvertent removal by adding the ''Related Controls'' paragraph back into that ECCN entry.

DATES: *Effective Date:* This rule is effective: May 8, 2008.

ADDRESSES: You may submit comments, identified by RIN 0694–AE32, by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include ''RIN 0694–AE32'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE32.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694–AE32)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce; by telephone: (202) 482–2440; or by fax: 202–482–3355.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 2008, the final rule, Technical Corrections to the Export Administration Regulations based upon a Systematic Review of the CCL was published in the **Federal Register** (73 FR 21035). The amendments in that final rule included a revision to the ''Unit'' paragraph in the List of Items Controlled section of Export Control Classification Number (ECCN) 9A004. The changes made in the April 18 rule made *no* changes to the ''Related Controls'' paragraph of that ECCN entry. However, because of an inadvertent formatting error that occurred in a final rule published on March 18, 1999 (64 FR 13338), the ''Related Controls'' paragraph appeared to be a part of the ''Unit'' paragraph, which resulted in the inadvertent removal of the ''Related Controls'' paragraph in the List of Items Controlled section when the ''Unit'' paragraph was revised with the publication of the April 18, 2008, rule. The formatting issue involved the ''Related Controls'' paragraph not appearing on its own line in the Code of Federal Regulations (CFR) and the ''Related Controls'' heading not being italicized. This rule corrects those inadvertent formatting errors from the 1999 rule that were compounded with the publication of the April 18 rule, by adding the ''Related Controls'' paragraph back into ECCN 9A004.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 15, 2007, 72 FR 46137 (August 16, 2007), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. The changes made by this rule are not substantive changes, but rather are updates to cross-references, conformance of units of measure to item descriptions, and removal of outdated references. This rule does not alter any right, obligation or prohibition that applies to any person under the Export Administration Regulations (EAR). Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for

public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730–774) is corrected by making the following correcting amendment:

PART 774—[CORRECTED]

■ 1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9A004 is amended by adding the ''Related Controls'' paragraph in the List of Items Controlled section, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

9A004 Space launch vehicles and ''spacecraft''.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls:

(1.) See also 9A104.

(2.) Space launch vehicles are under the jurisdiction of the Department of State.

(3.) Effective March 15, 1999, all satellites, including commercial communications satellites, are subject to the ITAR. Effective March 15, 1999, all license applications for the export of commercial communications satellites will be processed by the State Department, Directorate of Defense Trade Controls. Retransfer of jurisdiction for commercial communications satellites and related items shall not affect the validity of any export license issued by the Department of Commerce prior to March 15, 1999, or of any export license application filed under the Export Administration Regulations on or before March 14, 1999, and subsequently issued by the Department of Commerce. Commercial communications satellites licensed by the Department of Commerce, including those already exported, remain subject to the EAR and all terms and conditions of issued export licenses until their stated expiration date. All licenses issued by the Department of Commerce for commercial communications satellites, including licenses issued after March 15, 1999, remain subject to SI controls throughout the validity of the license. Effective March 15, 1999, Department of State jurisdiction shall apply to any instance where a replacement license would normally be required from the Department of Commerce. Transferring registration or operational control to any foreign person of any item controlled by this entry must be authorized on a license issued by the Department of State, Directorate of Defense Trade Controls. This requirement applies whether the item is physically located in the United States or abroad.

(4.) All other ''spacecraft'' not controlled under 9A004 and their payloads, and specifically designed or modified components, parts, accessories, attachments, and associated equipment, including ground support equipment, are subject to the export licensing authority of the Department of State unless otherwise transferred to the Department of Commerce via a commodity jurisdiction determination by the Department of State.

(5.) Exporters requesting a license from the Department of Commerce for ''spacecraft'' and their associated parts and components, other than the international space station, must provide a statement from the Department of State, Directorate of Defense Trade Controls, verifying that the item intended for export is under the licensing jurisdiction of the Department of Commerce. All specially designed or modified components, parts, accessories, attachments, and associated equipment for ''spacecraft'' that have been determined by the Department of State through the commodity jurisdiction process to be under the licensing jurisdiction of the Department of Commerce and that are not controlled by any other ECCN on the Commerce Control List will be assigned a classification under this ECCN 9A004.

(6.) Technical data required for the detailed design, development, manufacturing, or production of the international space station (to include specifically designed parts and components) remains under the jurisdiction of the Department of State. This control by the ITAR of detailed design, development, manufacturing or production technology for NASA's international space station does not include that level of technical data necessary and reasonable for assurance that a U.S.-built item intended to operate on NASA's international space station has been designed, manufactured, and tested in conformance with specified requirements (e.g., operational performance, reliability, lifetime, product quality, or delivery expectations). All technical data and all defense services, including all technical assistance, for launch of the international space station, including launch vehicle compatibility, integration, or processing data, are controlled and subject to the jurisdiction of the Department of State, in accordance with 22 CFR parts 120 through 130.

* * * * *

Eileen Albanese,

Director, Office of Exporter Services.

[FR Doc. E8–10309 Filed 5–7–08; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 403

[Docket No. SSA–2007–0077]

RIN 0960–AG76

Testimony by Employees and the Production of Records and Information in Legal Proceedings; Change of Address for Requests

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: Our regulations describe when a Social Security Administration (SSA) employee will testify or provide records or other information in a legal proceeding to which we are not a party. The regulations also describe how you request testimony of an SSA employee. This final rule updates the address you should use to request testimony of an SSA employee.

DATES: This final rule is effective May 8, 2008.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. Call (410) 965–1767 for further information about these rules. 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 Web 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*.

Why are we revising our rules on requesting testimony of an SSA employee?

Our regulations at 20 CFR Part 403 describe when an SSA employee will testify or provide records or other information in a legal proceeding to which we are not a party. The regulations also describe how you

request testimony of an SSA employee. At 20 CFR 403.120(c), we provide a post office box address for you to use to request testimony of an SSA employee. The address has changed; therefore, we are updating the regulations to reflect the new address. We are not making any substantive changes to the regulations.

Regulatory Procedures

Justification for Final Rule

As required by section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in developing regulations. The APA provides that prior notice and public comment is not required when an agency finds good cause for dispensing with such procedures because 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 here because this final rule only updates the address to be used for requesting testimony of an SSA employee. It makes no substantive changes to the regulations. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this revision as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date provided by 5 U.S.C. 553(d)(3). As explained above, we are not making any substantive changes to the regulations. Without the correct address, there could be a delay in receiving these requests for testimony of an SSA employee. In order to ensure that we continue to receive these requests timely, we find that it is in the public interest to make this final rule effective on the date of publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations describe the procedures for an individual to request testimony of an SSA employee. The application for testimony is a paperwork burden that requires clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. SSA has already cleared the burden contained in 20 CFR 413.120 under OMB Number 0960–0619, and there is no change. Consequently, we are showing a 1-hour placeholder for the paperwork burden for this rule.

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology.

Comments should be sent to OMB by fax or by e-mail to: Office of Management and Budget, *Attn:* Desk Office for SSA, *Fax Number:* 202–395–6974, *E-mail address: OIRA_Submission@omb.eop.gov.*

Comments on the paperwork burdens associated with this rule can be received for up to 30 days after publication of this notice. When OMB has approved these information collection requirements, SSA will publish a notice in the **Federal Register**. To receive a copy of the OMB clearance package, please contact the Reports Clearance Officer at *OPLM.RCO@ssa.gov.*

(Catalog of Federal Domestic Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income; and 96.020 Special Benefits for Certain World War II Veterans)

List of Subjects in 20 CFR Part 403

Courts, Government employees.

Dated: April 30, 2008.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, part 403 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 403—TESTIMONY BY EMPLOYEES AND THE PRODUCTION OF RECORDS AND INFORMATION IN LEGAL PROCEEDINGS

■ 1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 702(a)(5) and 1106 of the Act, (42 U.S.C. 902(a)(5) and 1306); 5 U.S.C. 301; 31 U.S.C. 9701.

■ 2. In § 403.120, revise paragraph (c) to read as follows:

§ 403.120 How do you request testimony?

* * * * *

(c) You must send your application for testimony to: Social Security Administration, Office of the General Counsel, Office of General Law, Suite No. 56, P.O. Box 26430, Baltimore, Maryland 21207, Attn: Touhy Officer. (If you are requesting testimony of an employee of the Office of the Inspector General, send your application to the address in § 403.125.)

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[FR Doc. E8–10256 Filed 5–7–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–0278]

RIN 1625–AA08

Special Local Regulations; Delaware River, Big Timber Creek, Westville, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations during the ''Westville Parade of Lights'', a marine parade to be held on the waters of the Delaware River and Big Timber Creek, Westville, NJ. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a small portion of the Delaware River and Big Timber Creek during the event.

DATES: This rule is effective from 7 p.m. to 11:30 p.m. on June 28, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0278 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704 between 10 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention

Division, (757) 398–6204. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable and contrary to public interest since immediate action is needed to minimize potential danger to the public during the event. The necessary information to determine whether the marine event poses a threat to persons and vessels was not provided with sufficient time to publish an NPRM. The potential dangers posed by a marine parade formation transiting the waterway with other vessel traffic at night makes special local regulations necessary to provide for the safety of participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. On scene Coast Guard and local law enforcement vessels will also provide actual notice to mariners.

Background and Purpose

On June 28, 2008, the Borough of Westville, New Jersey and the Westville Power Boat Association will sponsor the ''Westville Parade of Lights''. Approximately 20 power and sailing vessels will participate in a marine parade that will begin formation in the vicinity of the Route 130 Bridge and transit Big Timber Creek and terminate where the waterway joins the Delaware River. The event will also include a fireworks display launched from land, with a fallout area extending over the navigable waters of Big Timber Creek, Westville, NJ. Spectator vessels are expected to gather near the event site to view the on water activity. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Rule

The Coast Guard will establish temporary special local regulations on specified waters of the Delaware River and Big Timber Creek. The temporary special local regulations will be in effect from 7 p.m. to 11:30 p.m. on June 28, 2008. The effect will be to restrict general navigation in the regulated area during the marine event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period. The Patrol Commander will notify the public of specific enforcement times by marine radio safety broadcast. These regulations are needed to control vessel traffic during the event to enhance the safety of spectators and transiting vessels.

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.

Although this regulation restricts vessel traffic from transiting a small portion of the Delaware River and Big Timber Creek during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via Local Notice to Mariners and marine information broadcasts. Notice to the public may also be conveyed by local area newspapers, radio and TV stations so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this segment of the Delaware River and Big Timber Creek during the event.

This temporary rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 7 p.m. to 11:30 p.m. on June 28, 2008. Although this regulation prevents traffic from transiting a small segment of the Delaware River and Big Timber Creek during the event, this temporary rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic may be able to transit around the regulated area or when event activity is halted, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

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 100

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

Words of Issuance and Regulatory Text

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35–T05–0278 to read as follows:

§ 100.35–T05–0278 Delaware River, Big Timber Creek Westville, NJ.

(a) *Regulated area* includes all waters of Big Timber Creek, shore line to shore line from the Route 130 Bridge northwest to the waterway entrance where Big Timber Creek joins the Delaware River.

(b) *Definitions*: (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Westville Parade of Lights under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Delaware Bay.

(c) *Special local regulations*: (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must: (i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the event area.

(d) *Enforcement period*. This section will be enforced from 7 p.m. to 11:30 p.m. on June 28, 2008. A notice of enforcement of this section will be disseminated through the Fifth Coast Guard District Local Notice to Mariners announcing the specific event date and times. Notice will also be made via broadcast notice to mariners on VHF–FM marine band radio.

Dated: April 16, 2008.

Neil O. Buschman,

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

[FR Doc. E8–10227 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–0277]

RIN 1625–AA08

Special Local Regulations; Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations during the ''First Annual Safe Boating Day'', a water safety demonstration to be held on the waters of the Delaware River adjacent to Penn's Landing, Philadelphia, PA. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic between the Walt Whitman and Benjamin Franklin bridges in the Delaware River during the event.

DATES: This rule is effective from 11 a.m. to 7 p.m. on June 1, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0277 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704 between 10 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, (757) 398–6204. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable and contrary to public interest since immediate action is needed to minimize potential danger to the public during the event. The necessary information to determine whether the marine event poses a threat to persons and vessels was not provided with sufficient time to publish an NPRM. The danger posed by on the water fire and rescue demonstrations makes special local regulations necessary to provide for the safety of spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. On scene Coast Guard and local law enforcement vessels will also provide actual notice to mariners.

Background and Purpose

On June 1, 2008, the Penn's Landing Corporation will sponsor the ''First Annual Safe Boating Day''. Various on the water fire-rescue and tug boat demonstrations will be staged in close proximity to Penn's Landing on the Delaware River. The demonstrations will generally take place in the vicinity between the shoreline and the navigational channel. A fleet of spectator vessels is expected to gather near the event site to view the on water activity. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Rule

The Coast Guard will establish temporary special local regulations on specified waters of the Delaware River. The temporary special local regulations will be in effect from 11 a.m. to 7 p.m. on June 1, 2008. The effect will be to restrict general navigation in the regulated area during the marine event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period. Notice will be provided to the public through a Local Notice to Mariners published before the event, as well as through Broadcast Notice to Mariners. The Patrol Commander will notify the public of specific enforcement times by marine radio safety broadcast VHF–FM marine band radio. These regulations are needed to control vessel traffic during the event to enhance the safety of spectators and transiting vessels.

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.

Although this regulation restricts vessel traffic from transiting a portion of the Delaware River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts and local area newspapers, radio and TV stations so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Delaware River during the event.

This temporary rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 11 a.m. to 7 p.m. on June 1, 2008. Although this regulation prevents traffic from transiting a small segment of the Delaware River during the event, this temporary rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic may be able to transit around the regulated area or when event activity is halted, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

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 100

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

Words of Issuance and Regulatory Text

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35–T05–0277 to read as follows:

§ 100.35–T05–0277 Delaware River, Philadelphia, PA.

(a) *Regulated area* includes all waters of the Delaware River bounded from shore to shore, bounded to the south by the Walt Whitman Bridge and bounded to the north by the Benjamin Franklin Bridge.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the First Annual Safe Boating Day under the auspices of the Marine Event Permit issued to the event

sponsor and approved by Commander, Coast Guard Sector Delaware Bay.

(c) *Special local regulations:* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must: (i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the event area.

(d) *Enforcement period.* This section will be enforced from 11 a.m. to 7 p.m. on June 1, 2008. A notice of enforcement of this section will be disseminated through the Fifth Coast Guard District Local Notice to Mariners announcing the specific event date and times. Notice will also be made via broadcast notice to mariners on VHF–FM marine band radio.

Dated: April 16, 2008.

Neil O. Buschman,

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

[FR Doc. E8–10228 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2007–0147]

RIN 1625–AA08

Special Local Regulations; Recurring Marine Events in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing special local regulations to regulate recurring marine events in the Fifth Coast Guard District. These regulations apply to all permitted events listed in the table attached to the regulation, and include events such as regattas, and marine parades. These regulations reduce the Coast Guard's administrative workload and expedite public notification of events.

DATES: This rule is effective June 9, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2007–0147 and are available online at *http://www.regulations.gov.* This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Fifth Coast Guard District Office, 431 Crawford Street, Portsmouth, VA 23704 between 10 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, at 757–398–6204 or e-mail at *Dennis.M.Sens@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 10, 2008, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations; Recurring Marine Events in the Fifth Coast Guard District in the **Federal Register** (73 FR 12669). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

Marine events are frequently held on the navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation includes events such as sailing regattas, power boat races, swim races and holiday parades. Currently, there are 57 annually recurring marine events and many other non-recurring events within the district. In the past, the Coast Guard regulated these events by creating individual special local regulations on a case by case basis. Most of these events required only the establishment of a regulated area and assignment of a patrol commander to ensure safety. Issuing individual, annual special local regulations has created a significant administrative burden on the Coast Guard. From 2005 to 2007 the Coast Guard created over 100 temporary regulations for marine events in the Fifth District. The numbers are expected to increase in 2008 with the growing popularity of water sports activities.

Additionally, for the majority of these events, the Coast Guard does not receive notification of the event, or important details of the event are not finalized by event organizers, with sufficient time to publish a notice of proposed rulemaking and final rule before the event date. The Coast Guard must therefore create temporary final rules that sometimes are not completed until only days before the event. This results in delayed notification to the public, potentially placing the public and event participants at risk.

This rule significantly reduces the administrative burden on the Coast Guard, and at the same time allows the sponsor of the event and the Coast Guard to notify the public of these events in a timely manner. The public will be provided with notice of events through the table attached to this regulation. This table lists each recurring event that may be regulated by the Coast Guard, and indicates the sponsor, as well as the date and location of the event. Because the dates and location of these events may change slightly from year to year, the specific information on each event, including the exact dates, specific areas, and description of the regulated area, would be provided to the public through a Local Notice to Mariners published before the event, as well as through Broadcast Notice to Mariners. This table will also be updated by the Coast Guard periodically to add new recurring events, remove events that no longer occur, and update listed events to ensure accurate information is provided. The public will also be notified about many of the listed marine events by local newspapers, radio and television stations. The various methods of notification provided by the Coast Guard and local community media outlets will facilitate informing mariners so they can adjust their plans accordingly.

Discussion of Comments and Changes

The Coast Guard has made some minor technical revisions to this rule. Revisions to the regulatory text include the following items.

In the Table to § 100.501, marine event No. 3 was deleted. In its place ''Night in Venice'' Great Egg Harbor Bay, Ocean City, New Jersey was added as marine event No. 3. This event was previously regulated by 33 CFR 100.504 for the same location. This revision does not impose any additional restrictions on vessel traffic.

In the Table to § 100.501, the location description for marine event No's 31, 32, 35 and 49 were revised. All four marine events take place in the same location in the Western Branch of the Elizabeth River, Portsmouth, Virginia. The location was revised to reduce the overall size of the regulated area. This revision does not impose any additional restrictions on vessel traffic.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The effect of this action merely establishes the dates on which the existing regulations would be enforced and consolidates them within one regulation. It would not impose any additional restrictions on vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the areas where marine events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during marine events that have been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the areas where events are occurring. Additionally, in most cases, vessels will be able to safely transit around the regulated area at all times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

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 which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. This rule fits the category of paragraph 34(h) because it creates special local regulations for regattas and marine parades.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Revise section 100.501 and add a new § 100.501 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

The following regulations apply to the marine events listed in the Table to § 100.501. These regulations will be effective annually, for the duration of each event listed in the Table to § 100.501. Annual notice of the exact dates and times of the effective period of the regulation with respect to each event, the geographical area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be published in Local Notices to Mariners and via Broadcast Notice to Mariners over VHF–FM marine band radio.

(a) *Definitions.* The following definitions apply to this section:

(1) *Coast Guard Patrol Commander.* A Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the respective Coast Guard Sector—Captain of the Port to enforce these regulations.

(2) *Official Patrol.* Any vessel assigned or approved by the respective Captain of the Port with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(b) *Event Patrol.* The Coast Guard may assign an event patrol, as described in § 100.40 of this part, to each regulated event listed in the table. Additionally, a Patrol Commander may be assigned to oversee the patrol. The event patrol and Patrol Commander may be contacted on VHF–FM Channel 16.

(c) *Special Local Regulations.* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, a vessel in these areas shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(3) Only event sponsor designated participants and official patrol vessels are allowed to enter the regulated area.

(4) Spectators are allowed inside the regulated area only if they remain within a designated spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.

(d) *Contact Information.* Questions about marine events should be addressed to the local Coast Guard Captain of the Port for the area in which the event is occurring. Contact information is listed below. For a description of the geographical area of each Coast Guard Sector—Captain of the Port zone, please see subpart 3.25 of this chapter.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Zone, Philadelphia, Pennsylvania: (215) 271–4944.

(2) Coast Guard Sector Baltimore—Captain of the Port Zone, Baltimore, Maryland: (410) 576–2525.

(3) Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(4) Coast Guard Sector North Carolina—Captain of the Port Zone, Atlantic Beach, North Carolina: (252) 247–4545.

(5) Coast Guard Marine Safety Unit Wilmington—Cape Fear River Captain of the Port Zone, Wilmington, North Carolina: (910) 772–2200.

(e) *Application for Marine Events.* The application requirements of § 100.15 of this part apply to all events listed in the Table to § 100.501. For information on applying for a marine event, contact the Captain of the Port for the area in which the event will occur, at the phone numbers listed above.

TABLE TO § 100.501.—ALL COORDINATES LISTED IN THE TABLE TO § 100.501 REFERENCE DATUM NAD 1983

No.	Date	Event	Sponsor	Location
Coast Guard Sector Delaware Bay—COTP Zone				
1	June—1st Sunday	Atlantic County Day at the Bay.	Atlantic County, New Jersey.	The waters of Great Egg Harbor Bay, adjacent to Somers Point, New Jersey, bounded by a line drawn along the following boundaries: The area is bounded to the north by the shoreline along John F. Kennedy Park and Somers Point, New Jersey; bounded to the east by the State Route 52 bridge; bounded to the south by a line that runs along latitude 39°18′00″ N; and bounded to the west by a line that runs along longitude 074°37′00″ W.

TABLE TO § 100.501.—ALL COORDINATES LISTED IN THE TABLE TO § 100.501 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location
2	June—3rd Saturday.	Annual Escape from Fort Delaware Triathlon.	Escape from Fort Delaware Triathlon, Inc.	All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points: Latitude 39°36′35.7″ N, longitude 075°35′25.6″ W, to latitude 39°34′57.3″ N, longitude 075°33′23.1″ W, to latitude 39°34′11.9″ N, longitude 075°34′28.6″ W, to latitude 39°35′52.4″ N, longitude 075°36′33.9″ W.
3	July—4th Saturday.	Night in Venice	City of Ocean City, NJ, Night in Venice Committee.	The waters of Great Egg Harbor Bay and Beach Thorofare along the Intracoastal Waterway (ICW), adjacent to Ocean City, New Jersey, bounded by a line drawn at the following points: Bounded to the north by a line that runs along longitude 074°33′35″ W, that crosses the ICW in the vicinity of the northern end of the Great Egg Harbor Inlet bridge; bounded to the south by a line that runs along longitude 074°36′30″ W, that crosses the ICW in the vicinity of day beacon #270. The regulated area includes the ICW between the northern and southern boundaries and 100 yards on either side of the ICW centerline.
4	July—On or about July 4th.	U.S. holiday celebrations.	City of Philadelphia.	The waters of the Delaware River, adjacent to Philadelphia, PA, and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
5	August—2nd Friday, Saturday and Sunday.	Point Pleasant OPA/NJ Offshore Grand Prix.	Offshore Performance Association (OPA) and New Jersey Offshore Racing Assn.	The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Normandy Beach, NJ, at latitude 40°00′00″ N, longitude 074°03′30″ W, thence easterly to latitude 39°59′40″ N, longitude 074°02′00″ W, thence southwesterly to latitude 39°56′35″ N, longitude 074°03′00″ W, thence westerly to a position near the Seaside Heights Pier at latitude 39°56′35″ N, longitude 074°04′15″ W, thence northerly along the shoreline to the point of origin.
6	July—3rd Wednesday and Thursday.	New Jersey Offshore Grand Prix.	Offshore Performance Assn. & New Jersey Offshore Racing Assn.	The waters of the Manasquan River from the New York and Long Branch Railroad to Manasquan Inlet, together with all of the navigable waters of the United States from Asbury Park, New Jersey, latitude 40°14′00″ N; southward to Seaside Park, New Jersey latitude 39°55′00″ N, from the New Jersey shoreline seaward to the limits of the Territorial Sea. The race course area extends from Asbury Park to Seaside Park from the shoreline, seaward to a distance of 8.4 nautical miles.
7	August—4th Wednesday.	Thunder Over the Boardwalk Air show.	Atlantic City Chamber of Commerce.	The waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: Southeasterly from a point along the shoreline at latitude 39°21′31″ N, longitude 074°25′04″ W, thence to latitude 39°21′08″ N, longitude 074°24′48″ W, thence southwesterly to latitude 39°20′16″ N, longitude 074°27′17″ W, thence northwesterly to a point along the shoreline at latitude 39°20′44″ N, longitude 074°27′31″ W, thence northeasterly along the shoreline to latitude 39°21′31″ N, longitude 074°25′04″ W.
8	September—3rd Saturday.	Annual Escape from Fort Delaware Triathlon.	Escape from Fort Delaware Triathlon, Inc.	All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points: Latitude 39°36′35.7″ N, longitude 075°35′25.6″ W, to latitude 39°34′57.3″ N, longitude 075°33′23.1″ W, to latitude 39°34′11.9″ N, longitude 075°34′28.6″ W, to latitude 39°35′52.4″ N, longitude 075°36′33.9″ W.
9	September—last Friday, Saturday and Sunday; October—first Friday, Saturday and Sunday.	Sunset Lake Hydrofest.	Sunset Lake Hydrofest Assn.	All waters of Sunset Lake, New Jersey, from shoreline to shoreline, south of latitude 38°58′32″ N.
10	October—2nd Saturday and Sunday.	The Liberty Grand Prix.	Offshore Performance Assn. (OPA).	The waters of the Delaware River, adjacent to Philadelphia, PA, and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
11	October—1st Monday (Columbus Day).	U.S. holiday celebrations.	City of Philadelphia.	The waters of the Delaware River, adjacent to Philadelphia, PA, and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
12	December—On December 31st (New Year's Eve).	U.S. holiday celebrations.	City of Philadelphia.	The waters of the Delaware River, adjacent to Philadelphia, PA, and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.

TABLE TO § 100.501.—ALL COORDINATES LISTED IN THE TABLE TO § 100.501 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location
			Coast Guard Sector Baltimore—COTP Zone	
13	March—4th or last Saturday.	Safety at Sea Seminar.	U.S. Naval Academy.	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N., longitude 076°31′05.2″ W. thence to the north shoreline at latitude 39°00′54.7″ N., longitude 076°30′44.8″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W., thence southeast to a point 700 yards east of Chinks Point, MD, at latitude 38°58′1.9″ N., longitude 076°28′1.7″ W., thence northeast to Greenbury Point at latitude 38°58′29″ N., longitude 076°27′16″ W.
14	March—last Friday, Saturday, and Sunday; April and May—every Friday, Saturday, and Sunday.	USNA Crew Races.	U.S. Naval Academy.	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N., longitude 076°31′05.2″ W. thence to the north shoreline at latitude 39°00′54.7″ N., longitude 076°30′44.8″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence southeast to a point 700 yards east of Chinks Point, MD, at latitude 38°58′1.9″ N., longitude 076°28′1.7″ W. thence northeast to Greenbury Point at latitude 38°58′29″ N., longitude 076°27′16″ W.
15	April—2nd Saturday.	St. Mary's Seahawk Sprint.	St. Mary's College of Maryland.	All waters of the St. Mary's River, from shoreline to shoreline, bounded to the south by a line at latitude 38°10′05″ N, and bounded to the north by a line at latitude 38°12′00″ N.
16	May—1st Sunday	Nanticoke River Swim and Triathlon.	Nanticoke River Swim and Triathlon, Inc.	All waters of the Nanticoke River, including Bivalve Channel and Bivalve Harbor, bounded by a line drawn from a point on the shoreline at latitude 38°18′00″ N, longitude 075°54′00″ W, thence westerly to latitude 38°18′00″ N, longitude 075°55′00″ W, thence northerly to latitude 38°20′00″ N, longitude 075°53′48″ W, thence easterly to latitude 38°19′42″ N, longitude 075°52′54″ W.
17	May—2nd Saturday and Sunday.	Baltimore County Community Waterfront Festival.	Baltimore County	All waters of Martin Lagoon that are north of a line drawn from latitude 39°19′34″ N, longitude 076°25′41″ W, thence to a position located at 39°19′33″ N, longitude 076°25′33″ W.
18	May—3rd Friday, Saturday, and Sunday.	Dragon Boat Races at Thompson Boathouse, Georgetown, Washington, DC.	Dragon Boat Festival, Inc.	The waters of the Upper Potomac River, Washington, DC, from shoreline to shoreline, bounded upstream by the Francis Scott Key Bridge and downstream by the Roosevelt Memorial Bridge.
19	May—3rd Tuesday and Wednesday.	Blue Angels Air Show.	U.S. Naval Academy.	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N., longitude 076°31′05.2″ W. thence to the north shoreline at latitude 39°00′54.7″ N., longitude 076°30′44.8″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence southeast to a point 700 yards east of Chinks Point, MD, at latitude 38°58′1.9″ N., longitude 076°28′1.7″ W. thence northeast to Greenbury Point at latitude 38°58′29″ N., longitude 076°27′16″ W.
20	June—2nd Sunday.	The Great Chesapeake Bay Bridges Swim Races and Chesapeake Challenge One Mile Swim.	Great Chesapeake Bay Swim, Inc.	The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge shore to shore 500 yards north of the north span of the bridge from the western shore at latitude 39°00′36″ N, longitude 076°23′05″ W and the eastern shore at latitude 38°59′14″ N, longitude 076°20′00″ W, and 500 yards south of the south span of the bridge from the western shore at latitude 39°00′16″ N, longitude 076°24′30″ W and the eastern shore at latitude 38°58′38.5″ N, longitude 076°20′06″ W.
21	June—3rd Saturday or July—3rd Saturday.	Maryland Swim for Life.	District of Columbia Aquatics Club.	The waters of the Chester River from shoreline to shoreline, bounded on the south by a line drawn at latitude 39°10′16″ N, near the Chester River Channel Buoy 35 (LLN–26795) and bounded on the north at latitude 39°12′30″ N by the Maryland S.R. 213 Highway Bridge.

TABLE TO § 100.501.—ALL COORDINATES LISTED IN THE TABLE TO § 100.501 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location
22	June—last Saturday and Sunday.	Bo Bowman Memorial—Sharptown Regatta.	Virginia/Carolina Racing Assn.	All waters of the Nanticoke River, near Sharptown, Maryland, between Maryland S.R. 313 Highway Bridge and Nanticoke River Light 43 (LLN–24175), bounded by a line drawn between the following points: Southeasterly from latitude 38°32′46″ N, longitude 075°43′14″ W, to latitude 38°32′42″ N, longitude 075°43′09″ W, thence northeasterly to latitude 38°33′04″ N, longitude 075°42′39″ W, thence northwesterly to latitude 38°33′09″ N, longitude 075°42′44″ W, thence southwesterly to latitude 38°32′46″ N, longitude 075°43′14″ W.
23	August—1st Saturday and Sunday.	Thunder on the Narrows.	Kent Narrows Racing Assn.	All waters of Prospect Bay enclosed by the following points: Latitude 38°57′52.0″ N, longitude 076°14′48.0″ W, to latitude 38°58′02.0″ N, longitude 076°15′05.0″ W, to latitude 38°57′38.0″ N, longitude 076°15′29.0″ W, to latitude 38°57′28.0″ N, longitude 076°15′23.0″ W, to latitude 38°57′52.0″ N, longitude 076°14′48.0″ W.
24	Labor Day weekend —Saturday and Sunday, or Monday.	Annual Ragin on the River.	Port Deposit, MD, Chamber of Commerce.	The waters of the Susquehanna River, adjacent to Port Deposit, Maryland, from shoreline to shoreline, bounded on the south by the U.S. I–95 fixed highway bridge, and bounded on the north by a line running southwesterly from a point along the shoreline at latitude 39°36′22″ N, longitude 076°07′08″ W, thence to latitude 39°36′00″ N, longitude 076°07′46″ W.
25	September—2nd Saturday.	Dragon Boat Races in the Inner Harbor.	Associated Catholic Charities, Inc.	The waters of the Patapsco River, Baltimore, MD, Inner Harbor from shoreline to shoreline, bounded on the east by a line drawn along longitude 076°36′30″ W.
26	September—2nd Sunday.	Annapolis Triathlon Swim.	City of Annapolis and the Annapolis Triathlon Club.	The approaches to Annapolis Harbor, the waters of Spa Creek, and the Severn River, shore to shore, bounded on the south by a line drawn from Carr Point, at latitude 38°58′58.0″ N, longitude 076°27′40.0″ W, thence to Horn Point Warning Light (LLNR–17935), at 38°58′24.0″ N, longitude 076°28′10.0″ W, thence to Horn Point, at 38°58′20.0″ N, longitude 076°28′27.0″ W, and bounded on the north by the State Route 450 Bridge.
27	September—4th or last Saturday and Sunday.	Cambridge Offshore Challenge.	Chesapeake Bay Powerboat Association.	All waters of the Choptank River, from shoreline to shoreline, bounded to the west by the Route 50 Bridge and bounded to the east by a line drawn along longitude 076° W, between Goose Point, MD, and Oystershell Point, MD.
28	September—last Saturday.	Chesapeakeman Ultra Triathlon.	Columbia Triathlon Assn. Inc.	All waters of the Choptank River within 200 yards either side of a line drawn northwesterly from a point on the shoreline at latitude 38°33′45″ N, longitude 076°02′38″ W, thence to latitude 38°35′06″ N, longitude 076°04′42″ W, a position located at Great Marsh Park, Cambridge, MD.
29	October—last Saturday or November—1st Saturday.	Tug of War	City of Annapolis	The waters of Spa Creek from shoreline to shoreline, extending 400 feet from either side of a rope spanning Spa Creek from a position at latitude 38°58′36.9″ N, longitude 076°29′03.8″ W on the Annapolis shoreline to a position at latitude 38°58′26.4″ N, longitude 076°28′53.7″ W on the Eastport shoreline.
30	December—2nd Saturday.	Eastport Yacht Club Boat Parade.	Eastport Yacht Club.	The approaches to Annapolis Harbor, the waters of Spa Creek, and the Severn River, shore to shore, bounded on the south by a line drawn from Carr Point, at latitude 38°58′58.0″ N, longitude 076°27′40.0″ W, thence to Horn Point Warning Light (LLNR–17935), at 38°58′24.0″ N, longitude 076°28′10.0″ W, thence to Horn Point, at 38°58′20.0″ N, longitude 076°28′27.0″ W, and bounded on the north by the State Route 450 Bridge.
Coast Guard Sector Hampton Roads—COTP Zone				
31	March—4th or last Friday and Saturday.	Virginia state hydroplane championships.	Virginia Boat Racing Assn.	The waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50′06″ N, longitude 076°22′27″ W, thence to latitude 36°50′06″ N, longitude 076°21′57″ W, thence to latitude 36°50′15″ N, longitude 076°21′55.8″ W, thence to latitude 36°50′15″ N, longitude 076°22′27″ W, thence to point of origin.
32	April—3rd Friday and Saturday.	Hydroplane races	Virginia Boat Racing Assn.	The waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50′06″ N, longitude 076°22′27″ W, thence to latitude 36°50′06″ N, longitude 076°21′57″ W, thence to latitude 36°50′15″ N, longitude 076°21′55.8″ W, thence to latitude 36°50′15″ N, longitude 076°22′27″ W, thence to point of origin.
33	April—4th Friday and Saturday.	Crawford Bay Crew Classic.	Port Events, Inc ..	The waters of the Southern Branch, Elizabeth River from shoreline to shoreline bounded to the south by a line drawn from latitude 36°49′11.0″ N, longitude 076°17′33.0″ W to latitude 36°49′11.0″ N, longitude 076°17′22.0″ W and bounded to the north by a line drawn from latitude 36°50′17.5″ N, longitude 076°17′45.0″ W to latitude 36°50′17.5″ N, longitude 076°17′30.0″ W.

TABLE TO § 100.501.—ALL COORDINATES LISTED IN THE TABLE TO § 100.501 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location
34	April—4th Saturday and Sunday.	Wet Spring Regatta.	Windsurfing Enthusiasts of Tidewater.	The waters of Willoughby Bay contained within the following coordinates: Latitude 36°58′36″ N, longitude 076°18′42″ W, to latitude 36°58′00″ N, longitude 076°18′00″ W, to latitude 36°57′49″ N, longitude 076°18′14″ W, to latitude 36°57′36″ N, longitude 076°17′55″ W, to latitude 36°57′26″ N, longitude 076°18′06″ W, to latitude 36°58′15″ N, longitude 076°19′08″ W, to latitude 36°58′36″ N, longitude 076°18′42″ W.
35	May—2nd Friday and Saturday.	Hydroplane races	Virginia Boat Racing Assn.	The waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: Latitude 36°50′06″ N, longitude 076°22′27″ W, thence to latitude 36°50′06″ N, longitude 076°21′57″ W, thence to latitude 36°50′15″ N, longitude 076°21′55.8″ W, thence to latitude 36°50′15″ N, longitude 076°22′27″ W, thence to point of origin.
36	May—last Friday, Saturday and Sunday or June—1st Friday, Saturday and Sunday.	Blackbeard Festival.	Hampton Event Makers.	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C & O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03.0″ N, longitude 76°20′26.0″ W, to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N, longitude 76°20′32.0″ W. Spectator Vessel Anchorage Areas—Area A: Located in the upper reaches of the Hampton River, bounded to the south by a line drawn from the western shore at latitude 37°01′48.0″ N, longitude 76°20′22.0″ W, across the river to the eastern shore at latitude 37°01′44.0″ N, longitude 76°20′13.0″ W, and to the north by the C & O Railroad Bridge. The anchorage area will be marked by orange buoys. Area B: Located on the eastern side of the channel, in the Hampton River, south of the Queen Street Bridge, near the Riverside Health Center. Bounded by the shoreline and a line drawn between the following points: Latitude 37°01′26.0″ N, longitude 76°20′24.0″ W, latitude 37°01′22.0″ N, longitude 76°20′26.0″ W, and latitude 37°01′22.0″ N, longitude 76°20′23.0″ W. The anchorage area will be marked by orange buoys.
37	June—1st Friday, Saturday and Sunday.	Norfolk Harborfest	Norfolk Festevents, Ltd.	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia, at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.
38	June—1st Friday and Saturday.	Ocean City Maryland Offshore Challenge.	Offshore Performance Assn. Racing, LLC.	The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ N, longitude 075°03′06″ W; thence east southeast to latitude 38°25′30″ N, longitude 075°02′12″ W, thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ N, longitude 075°03′48″ W; thence west northwest to the shoreline at latitude 38°19′30″ N, longitude 075°05′00″ W. The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Ocean City, MD, at latitude 38°22′25.2″ N, longitude 075°03′49.4″ W, thence easterly to latitude 38°22′00.4″ N, longitude 075°02′34.8″ W, thence southwesterly to latitude 38°19′35.9″ N, longitude 075°03′35.4″ W, thence westerly to a position near the shoreline at latitude 38°20′05″ N, longitude 075°04′48.4″ W, thence northerly along the shoreline to the point of origin.

TABLE TO § 100.501.—ALL COORDINATES LISTED IN THE TABLE TO § 100.501 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location
39	June—3rd Saturday.	Cock Island Race	Ports Events, Inc	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia, at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.
40	June—last Saturday.	RRBA Spring Radar Shootout.	Rappahannock River Boaters Association (RRBA).	The waters of the Rappahannock River, adjacent to Layton, VA, from shoreline to shoreline, bounded on the west by a line running along longitude 076°58′30″ W, and bounded on the east by a line running along longitude 076°56′00″ W.
41	July—3rd Sunday	Watermen's Heritage Festival Workboat Races.	Watermen's Museum of Yorktown, VA.	The waters of the York River, Yorktown, Virginia, bounded on the west by a line drawn along longitude 076°31′25″ W, bounded on the east by a line drawn along longitude 076°30′55″ W, bounded on the south by the shoreline and bounded on the north by a line drawn parallel and 400 yards north of the southern shoreline.
42	July—last Wednesday and following Friday.	Pony Penning Swim.	Chincoteague Volunteer Fire Department.	The waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55′01″ N, longitude 075°22′40″ W, to latitude 37°54′50″ N, longitude 075°22′46″ W, and to the west by a line drawn from latitude 37°54′54.0″ N, longitude 075°23′00″ W, to latitude 37°54′49″ N, longitude 075°22′49″ W.
43	August—1st Friday, Saturday and Sunday.	Power boat race ..	East Coast Boat Racing Club of New Jersey.	The waters of the Chesapeake Bay, along the shoreline adjacent to Cape Charles, Virginia, to and including waters up to 300 yards offshore, parallel with the Cape Charles Beach shoreline in this area. The area is bounded on the south by a line running northwesterly from the Cape Charles shoreline at latitude 37°16′.2″ N, longitude 076°01′28.5″ W, to a point offshore approximately 300 yards at latitude 37°16′3.4″ N, longitude 076°01′36.6″ W, and bounded on the north by a line running northwesterly from the Cape Charles shoreline at latitude 37°16′26.2″ N, longitude 076°01′14″ W, to a point offshore approximately 300 yards at latitude 37°16′28.9″ N, longitude 076°01′24.1″ W.
44	August—2nd Friday, Saturday and Sunday.	Hampton Cup Regatta.	Virginia Boat Racing Association.	The waters of Mill Creek, adjacent to Fort Monroe, Hampton, Virginia, enclosed by the following boundaries: to the north, a line drawn along latitude 37°01′00″ N, to the east a line drawn along longitude 076°18′30″ W, to the south a line parallel with the shoreline adjacent to Fort Monroe, and the west boundary is parallel with the Route 258—Mercury Boulevard Bridge.
45	September—2nd Friday and Saturday.	Ocean City power boat race.	Offshore Performance Assn. Racing, LLC.	The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ N, longitude 075°03′06″ W; thence east southeast to latitude 38°25′30″ N, longitude 075°02′12″ W, thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ N, longitude 075°03′48″ W; thence west northwest to the shoreline at latitude 38°19′30″ N, longitude 075°05′00″ W. The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Ocean City, MD, at latitude 38°22′25.2″ N, longitude 075°03′49.4″ W, thence easterly to latitude 38°22′00.4″ N, longitude 075°02′34.8″ W, thence southwesterly to latitude 38°19′35.9″ N, longitude 075°03′35.4″ W, thence westerly to a position near the shoreline at latitude 38°20′05″ N, longitude 075°04′48.4″ W, thence northerly along the shoreline to the point of origin.
46	September—2nd Friday, Saturday and Sunday.	Hampton Bay Days Festival.	Hampton Bay Days, Inc.	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C & O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03.0″ N, longitude 076°20′26.0″ W, to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N, longitude 076°20′32.0″ W.

TABLE TO § 100.501.—ALL COORDINATES LISTED IN THE TABLE TO § 100.501 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location
47	October—1st Saturday and Sunday.	Virginia Boat Racing Association.	Clarksville Hydroplane Challenge.	The waters of the John H. Kerr Reservoir, adjacent to the State Route 15 Highway Bridge and Occoneechee State Park, Clarksville, Virginia, from shoreline to shoreline, bounded on the south by a line running northeasterly from a point along the shoreline at latitude 36°37′14″ N, longitude 078°32′46.5″ W, thence to latitude 36°37′39.2″ N, longitude 078°32′08.8″ W, and bounded on the north by the State Route 15 Highway Bridge.
48	October—2nd Friday.	U.S. Navy Fleet Week Celebration.	U.S. Navy	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia, at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge, which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.
49	October—2nd Saturday and Sunday.	Hydroplane races	Virginia Boat Racing Assn.	The waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50′06″ N, longitude 076°22′27″ W, thence to latitude 36°50′06″ N, longitude 076°21′57″ W, thence to latitude 36°50′15″ N, longitude 076°21′55.8″ W, thence to latitude 36°50′15″ N, longitude 076°22′27″ W, thence to point of origin.
50	October—2nd Sunday.	Poquoson Seafood Festival Workboat Races.	City of Poquoson	The waters of the Back River, Poquoson, Virginia, bounded on the north by a line drawn along latitude 37°06′30″ N, bounded on the south by a line drawn along latitude 37°06′15″ N, bounded on the east by a line drawn along longitude 076°18′52″ W and bounded on the west by a line drawn along longitude 076°19′30″ W.
51	October—last Saturday and Sunday.	Hampton Roads Sailboard Classic.	Windsurfing Enthusiasts of Tidewater.	The waters of Willoughby Bay contained within the following coordinates: latitude 36°58′36″ N, longitude 076°18′42″ W, to latitude 36°58′00″ N, longitude 076°18′00″ W, to latitude 36°57′49″ N, longitude 076°18′14″ W, to latitude 36°57′36″ N, longitude 076°17′55″ W, to latitude 36°57′26″ N, longitude 076°18′06″ W, to latitude 36°58′15″ N, longitude 076°19′08″ W, to latitude 36°58′36″ N, longitude 076°18′42″ W.
52	November—1st Friday and Saturday.	International Search and Rescue Competition.	U.S. Coast Guard and Canadian Auxiliaries.	The waters of the Southern Branch of the Elizabeth River including the North Ferry Landing, from shoreline to shoreline, bounded to the north by a line drawn along latitude 36°50′23″ N and bounded to the south by a line drawn along latitude 36°50′12″ N.
53	November—4th or last Saturday.	Holidays in the City.	Norfolk Festevents, Ltd.	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the easternmost pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.

TABLE TO § 100.501.—ALL COORDINATES LISTED IN THE TABLE TO § 100.501 REFERENCE DATUM NAD 1983—Continued

No.	Date	Event	Sponsor	Location
Coast Guard Sector North Carolina—COTP Zone				
54	June—2nd Saturday and Sunday.	Carolina Cup Regatta.	Virginia Boat Racing Assn.	The waters of the Pasquotank River, adjacent to Elizabeth City, NC, from shoreline to shoreline, bounded on the west by the Elizabeth City Draw Bridge and bounded on the east by a line originating at a point along the shoreline at latitude 36°17′54″ N, longitude 076°12′00″ W, thence southwesterly to latitude 36°17′35″ N, longitude 076°12′18″ W at Cottage Point.
55	August—1st Friday, Saturday and Sunday.	SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix.	Super Boat International Productions (SBIP), Inc.	The waters of the Pamlico River including Chocowinity Bay, from shoreline to shoreline, bounded on the south by a line running northeasterly from Camp Hardee at latitude 35°28′23″ N, longitude 076°59′23″ W, to Broad Creek Point at latitude 35°29′04″ N, longitude 076°58′44″ W, and bounded on the north by the Norfolk Southern Railroad Bridge.
56	September—4th or last Sunday.	Crystal Coast Super Boat Grand Prix.	Super Boat International Productions, Inc.	The waters of Bogue Sound, adjacent to Morehead City, NC, from the southern tip of Sugar Loaf Island approximate position latitude 34°42′55″ N, longitude 076°42′48″ W, thence westerly to Morehead City Channel Day beacon 7 (LLNR 38620), thence southwest along the channel line to Bogue Sound Light 4 (LLRN 38770), thence southerly to Causeway Channel Day beacon 2 (LLNR 38720), thence southeasterly to Money Island Day beacon 1 (LLNR 38645), thence easterly to Eight and One Half Marina Day beacon 2 (LLNR 38685), thence easterly to the westernmost shoreline of Brant Island approximate position latitude 34°42′36″ N, longitude 076°42′11″ W, thence northeasterly along the shoreline to Tombstone Point approximate position latitude 34°42′14″ N, longitude 076°41′20″ W, thence southeasterly to the east end of the pier at Coast Guard Sector North Carolina approximate position latitude 34°42′00″ N, longitude 076°40′52″ W, thence easterly to Morehead City Channel Buoy 20 (LLNR 29427), thence northerly to Beaufort Harbor Channel LT 1BH (LLNR 34810), thence northwesterly to the southern tip of Radio Island approximate position latitude 34°42′22″ N, longitude 076°40′52″ W, thence northerly along the shoreline to approximate position latitude 34°43′00″ N, longitude 076°41′25″ W, thence westerly to the North Carolina State Port Facility, thence westerly along the State Port to the southwest corner approximate position latitude 34°42′55″ N, longitude 076°42′12″ W, thence westerly to the southern tip of Sugar Loaf Island the point of origin.
57	September—last Saturday.	Wilmington YMCA Triathlon.	Wilmington, NC, YMCA.	The waters of, and adjacent to, Wrightsville Channel, from Wrightsville Channel Day beacon 14 (LLNR 28040), located at 34°12′18″ N, longitude 077°48′10″ W, to Wrightsville Channel Day beacon 25 (LLNR 28080), located at 34°12′51″ N, longitude 77°48′53″ W.

§ 100.502 [Removed]

■ 3. Remove section 100.502.

§ 100.504 [Removed]

■ 4. Remove section 100.504.

§ 100.505 [Removed]

■ 5. Remove section 100.505.

§ 100.506 [Removed]

■ 6. Remove section 100.506.

§ 100.507 [Removed]

■ 7. Remove section 100.507.

§ 100.508 [Removed]

■ 8. Remove section 100.508.

§ 100.509 [Removed]

■ 9. Remove section 100.509.

§ 100.510 [Removed]

■ 10. Remove section 100.510.

§ 100.511 [Removed]

■ 11. Remove section 100.511.

§ 100.512 [Removed]

■ 12. Remove section 100.512.

§ 100.513 [Removed]

■ 13. Remove section 100.513.

§ 100.514 [Removed]

■ 14. Remove section 100.514.

§ 100.515 [Removed]

■ 15. Remove section 100.515.

§ 100.517 [Removed]

■ 16. Remove section 100.517.

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■ 17. Remove section 100.518.

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■ 18. Remove section 100.519.

§ 100.520 [Removed]

■ 19. Remove section 100.520.

§ 100.522 [Removed]

■ 20. Remove section 100.522.

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■ 21. Remove section 100.523.

§ 100.525 [Removed]

■ 22. Remove section 100.525.

§ 100.526 [Removed]

■ 23. Remove section 100.526.

§ 100.527 [Removed]

■ 24. Remove section 100.527.

§ 100.529 [Removed]

■ 25. Remove section 100.529.

§ 100.530 [Removed]

■ 26. Remove section 100.530.

§ 100.531 [Removed]

■ 27. Remove section 100.531.

§ 100.532 [Removed]

■ 28. Remove section 100.532.

§ 100.533 [Removed]

■ 29. Remove section 100.533.

§ 100.534 [Removed]

■ 30. Remove section 100.534.

§ 100.535 [Removed]

■ 31. Remove section 100.535.

§ 100.536 [Removed]

■ 32. Remove section 100.536.

Dated: April 21, 2008.

Fred M. Rosa, Jr.,

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

[FR Doc. E8–10229 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

RIN 1625–AA00

[Docket No. USCG–2008–0309]

Safety Zone: Hatteras Boat Parade and Firework Display, Trent River, New Bern, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will implement a safety zone during the Hatteras Boat Parade and Firework Display, a motor yacht parade to be held on the waters of the Trent River, New Bern, North Carolina. Vessel traffic in portions on the Trent River adjacent to New Bern, North Carolina, will be restricted during the fireworks display.

DATES: This rule is effective May 30, 2008 from 7:30 p.m. to 9 p.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0309 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and at Commander Sector North Carolina, 2301 East Fort Macon Road, Atlantic Beach, North Carolina 28512, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call C. D. Humphrey, Marine Event Coordinator, (252) 247–4569. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable and contrary to public interest because immediate action is needed to minimize potential danger to the public during the event. The necessary information to determine whether the marine event poses a threat to persons and vessels was not provided to the Coast Guard in sufficient time to publish an NPRM. The potential dangers posed by the pyrotechnic fireworks display, make a safety zone necessary to provide for the safety of spectator craft and other vessels transiting the event area. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction and on have on-scene Coast Guard and local law enforcement vessels.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, because immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area. Advance notifications will be made to users of the Trent River, via marine information broadcasts, local notice to mariners, commercial radio stations and area newspapers.

Background and Purpose

On May 30, 2008, Hatteras Yacht's will sponsor the ''Hatteras Boat Parade and Firework Display'', on the waters of the Trent River. The event will consist of approximately nine motor Yachts ranging from 41 to 80 feet in length parading single file pass the Sheraton Hotel and Marina. A small barge with close proximity pyrotechnics will be anchored near the Trent River Railroad Bridge. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Rule

The Coast Guard is establishing a safety zone on specified waters of the Trent River, New Bern, North Carolina. The safety zone includes all waters within a 150 foot radius of position 35° 06′ 03″ N 077° 02′ 24″ W or approximately one 100 yards east of the center span of Trent River Railroad Bridge, New Bern, North Carolina. The safety zone will be in effect from 7:30 p.m. to 9 p.m. on May 30, 2008. The effect will be to restrict general navigation in the safety zone during the fireworks display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the safety zone during the enforcement period. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this proposed regulation would prevent traffic from transiting a portion of the Trent River adjacent to New Bern, North Carolina, during the event, the effects of this regulation would not be significant due to the limited duration that the safety zone would be in effect. Extensive advance notifications would be made to the maritime community via Local Notice to Mariners, marine information broadcast, and area newspapers, so mariners can adjust their plans accordingly. Vessel traffic would be able to transit the safety zone when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

The owners or operators of vessels intending to transit this section of the Trent River will be impacted during the event.

This purposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only a short period, from 7:30 p.m. to 9 p.m. on May 30, 2008. The safety zone will apply to a segment of the Trent River adjacent to the New Bern waterfront. Marine traffic may be allowed to pass through the safety zone with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the safety zone during the event, vessels will be required to proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the parade route. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

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 which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. 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), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary 165.T–0309 to read as follows:

§ 165.T–0309 Trent River, New Bern, North Carolina.

(a) *Safety Zone.* The safety zone includes all waters within a 150 feet radius of position 35° 06′ 03″ North 077° 03′ 24″ West, approximately one hundred yards east of the Trent River Railroad Bridge, New Bern, North Carolina. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the ''Hatteras Boat Parade'' under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(c) *Safety Zone.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the safety zone.

(2) The Operator of any vessel in the safety zone must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) Comply with the instructions of the Official Patrol.

(iii) If authorized to proceed, proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the event site.

(d) *Enforcement period.* This section will be enforced from 7:30 p.m. to 9 p.m. on May 30, 2008.

Dated: April 21, 2008.

June E. Ryan,

Captain, U.S. Coast Guard, Commander, Sector North Carolina.

[FR Doc. E8–10272 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG 2008–0275]

Safety Zone; Fourth of July Fireworks, City of Monterey, Monterey, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Fourth of July Fireworks Display safety zone for the city of Monterey from 8 a.m. to 9:45 p.m. on July 4, 2008. This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191 will be enforced from 8 a.m. to 9:45 p.m. on July 4, 2008.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Sheral Richardson, Waterways Management Branch, U.S. Coast Guard Sector San Francisco, at (415) 399–7436.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the annual Fourth of July Fireworks Display for the city of Monterey in 33 CFR 165.1191 on July 4, 2008, from 8 a.m. to 9:45 p.m.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: April 15, 2008.

D.J. Swatland,

Captain, U.S. Coast Guard, Acting Captain of the Port, Sector San Francisco.

[FR Doc. E8–10276 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–0648; FRL–8563–6]

Approval and Promulgation of State Implementation Plans; States of South Dakota and Wyoming; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: EPA is taking direct final action to approve State Implementation Plans (SIPs) submitted by the States of South Dakota and Wyoming that address interstate transport with respect to the 1997 8-hour ozone and fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards. EPA has determined that the Interstate Transport declarations submitted by South Dakota on May 15, 2007, and by Wyoming on May 3, 2007, satisfy the requirements of the Clean Air Act section 110(a)(2)(D)(i) provisions, also known as the ''good neighbor'' provisions, that a state SIP contain adequate provisions prohibiting air pollutant emissions from sources or activities in the state from adversely affecting another state. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on July 7, 2008 without further notice, unless EPA receives adverse comment by June 9, 2008. 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–R08–OAR–2007–0648, by one of the following methods:

• *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *E-mail: videtich.callie@epa.gov* and *mastrangelo.domenico@epa.gov*

• *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

• *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

• *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2007–0648. 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 instructions on submitting comments, go to section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6436, *mastrangelo.domenico@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *South Dakota* and *Wyoming* mean respectively the State of South Dakota and the State of Wyoming.

Table of Contents

I. General Information
What should I consider as I prepare my comments for EPA?
II. What is the purpose of this action?
III. What is the State process to submit these materials to EPA?
IV. EPA's evaluation of the State of South Dakota May 15, 2007 submittal
V. EPA's evaluation of the State of Wyoming May 3, 2007 submittal
VI. Final Action
VII. Statutory and Executive Order Reviews

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. What Is the Purpose of this Action?

EPA is approving the ''Interstate Transport Report'' adopted into the State of South Dakota SIP on April 19, 2007 and submitted to EPA on May 15, 2007. EPA is also approving the ''Interstate Transport'' declaration adopted into the State of Wyoming SIP on April 19, 2007 and submitted to EPA on May 3, 2007. The South Dakota ''Interstate Transport Report'' and the Wyoming ''Interstate Transport'' declaration address the requirements of section 110(a)(2)(D)(i) of the Clean Air Act (CAA). The provisions in this section of the CAA, also referred to as the ''good neighbor'' provisions, require that each state's SIP include adequate provisions prohibiting emissions that adversely affect another state's air quality through interstate transport of air pollutants.

III. What Is the State Process To Submit These Materials to EPA?

Section 110(k) of the CAA addresses EPA's actions on submissions of revisions to a SIP. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to EPA.

The South Dakota Department of Environmental and Natural Resources (DENR) held a public hearing for the addition of the Interstate Transport Report to the South Dakota SIP on April 19, 2007, adopted the Report on this same date, and submitted it to EPA on May 15, 2007.

The Wyoming Department of Environmental Quality (DEQ) held a public hearing for the addition of the Interstate Transport declaration on December 11, 2006, adopted the declaration into the State SIP on April 15, 2007, and submitted it to EPA on May 3, 2007.

We have evaluated the submittals of these SIP revisions by the South Dakota DENR and the Wyoming DEQ and have determined that the States met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

IV. EPA's Evaluation of the State of South Dakota May 15, 2007 Submittal

EPA has reviewed the South Dakota Interstate Transport Report submitted on May 15, 2007 and believes that approval is warranted. The provisions of the CAA section 110(a)(2)(D)(i) require that the South Dakota SIP contain adequate provisions prohibiting air pollutant emissions from sources or activities in the state from adversely affecting another state. A state SIP must include provisions that prohibit sources from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in another state; (2) interfere with maintenance of the NAAQS by another state; (3) interfere with another state's measures to prevent significant deterioration of its air quality; and (4) interfere with the efforts of another state to protect visibility. EPA issued guidance on August 15, 2006 relating to SIP submissions that meet the requirements of section 110(a)(2)(D)(i) for the $PM_{2.5}$ and the 8-hour ozone standards. The Interstate Transport Report submitted by the State of South Dakota is consistent with the guidance.

To support the first two of the four elements noted above, the State of South Dakota relies on a combination of: (a) EPA positions and modeling analysis results published in **Federal Register** notices as part of the Clean Air Interstate Rule (CAIR) rulemaking process;[1] and, (b) considerations of geographical and meteorological factors affecting the likelihood of pollution transport from the State to the closest 8-hour ozone and $PM_{2.5}$ nonattainment areas in other states.

In addition, EPA includes data and analysis based on materials published in EPA's CAIR rulemaking notices and on monitoring data gathered by the states and reported to EPA in the Air Quality System (AQS) database.

For the 1997 8-hour ozone standard, the South Dakota Interstate Transport Report identifies the Denver Metropolitan Area in Colorado, and the Illinois and Wisconsin counties along the western shore of Lake Michigan as the closest nonattainment areas. The northernmost edge of the Denver Metropolitan Area is about 170 miles from the southwest corner of South Dakota, and nearly in opposite direction to the prevailing winds. These considerations, in combination with other factors such as the absence of nonattainment areas in South Dakota, and along the 170 miles between South Dakota's southwestern corner and the Denver Metropolitan Area, lead to the conclusion that it is highly unlikely that South Dakota makes a significant contribution to the 8-hour ozone nonattainment in this Colorado area. The rim of Illinois/Wisconsin counties along the western shore of Lake Michigan is more than 400 miles from the South Dakota eastern border. Again, distance, in combination with factors such as the absence of nonattainment areas in the intervening downwind states of Minnesota and Iowa make it highly unlikely that South Dakota contributes significantly to ozone nonattainment in the Illinois and Wisconsin counties along the western shore of Lake Michigan.

A similar conclusion is suggested by our examination of AQS monitoring data on 8-hour ozone exceedance days registered during the 2004–2006 years at monitoring stations in South Dakota and in neighboring downwind or potentially downwind states. During these years the ozone monitors did not register any exceedance days in South Dakota, Nebraska and Iowa. In the same time span the monitors in Minnesota, another of the closest downwind states, measured 8-hours ozone exceedances on less than 0.5 percent of the days. Minnesota monitors registered three exceedance days on June 2, July 12 and 22, 2005. The absence of 8-hour ozone exceedance days in South Dakota and most of its adjacent states, combined with the rare occurrence of exceedance days in Minnesota is consistent with conclusions drawn from other data and analysis, presented in the preceding paragraphs: any ozone or ozone precursor transport from South Dakota to downwind states is not high enough to significantly contribute to nonattainment, or interfere with maintenance of the NAAQS, in neighboring downwind states.

The section of the South Dakota Interstate Transport Report addressing the absence of significant ozone transport from South Dakota to downwind states includes a paragraph quoted from the EPA web page ''States Not Covered by CAIR'' [2] that has since been replaced. While the text quoted in the South Dakota Interstate Transport SIP reflects accurately the EPA web page text at the time South Dakota adopted the Report into the State SIP and submitted it to EPA, EPA subsequently revised its website. Specifically, in September 2007, EPA removed the sentence ''Several states are not included in the CAIR region because they do not contribute to down wind nonattainment.'' EPA's revised website prefaces the same list of 22 non-CAIR States (which includes South Dakota) with the statement that these states are not covered by CAIR, without discussing the basis for this conclusion.[3]

EPA's replacement of the text originally published on its ''Non-CAIR States'' web page does not affect our evaluation of the State of South Dakota's position that the State is unlikely to contribute significantly to ozone nonattainment in down wind states, as demonstrated by the data and analysis examined in the preceding paragraphs. In light of EPA's website revisions, EPA recommends that in a future rulemaking the State of South Dakota remove from

[1] Unless otherwise noted, in this action the expression CAIR rulemaking process or CAIR rule refers to materials (data, analyses, assessments) developed during the rulemaking process that resulted in the May 12, 2005 **Federal Register** notice ''Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to NO_x SIP Call; Final Rule,'' (70 FR 25162).

[2] See ''South Dakota Implementation Plan, Interstate Transport Report,'' January 5, 2007, page 2.

[3] Reproductions of the two web pages discussed in this paragraph may be found in EPA's April 8, 2008, ''Guidance and Supporting Documentation'' memo included in the docket for this action. As of 1/24/08 the EPA Web page for Non-CAIR States, updated in September 2007, may be found at *http://www.epa.gov/CAIR/not-covered.html.*

its Interstate Transport Report the EPA paragraph incorrectly reflecting the Agency's position on the Non-CAIR states' contribution to down wind nonattainment.

For the 1997 $PM_{2.5}$ standard, South Dakota identifies Libby, in Lincoln County, Montana, and Chicago, Illinois, as the nonattainment areas closest to the State. Libby is about 570 miles northwest from South Dakota, in a direction opposite to that of the prevailing winds. In addition, EPA's findings based on a nine-factor analysis of Lincoln County, and reported in the Agency's technical support document for the December 17, 2004 designations, stressed the local origins of $PM_{2.5}$ nonattainment in Libby.[4] These considerations in combination with other factors such as the absence of $PM_{2.5}$ nonattainment areas in South Dakota, and the absence of $PM_{2.5}$ nonattainment areas along the 570 miles between the State's northwest corner and Libby lead to the conclusion that it is unlikely that South Dakota is making a significant contribution to the $PM_{2.5}$ nonattainment status of Lincoln County or interfering with maintenance of the NAAQS in Montana.

The Cook County nonattainment area, in which Chicago is located, is about 450 miles from the southeastern corner of South Dakota. Given the distance, the absence of $PM_{2.5}$ nonattainment areas in South Dakota, and between South Dakota and Cook County, it is unlikely that the State of South Dakota is making a significant contribution to the nonattainment of the 1997 $PM_{2.5}$ standard in Cook County. This assessment is consistent with results of the modeling analysis EPA conducted and reported in the rulemaking **Federal Register** notices for the determination of the CAIR states (69 FR 4566 and 70 FR 25162). According to the CAIR Proposed Rule of January 30, 2004, the maximum $PM_{2.5}$ contribution by South Dakota to downwind counties identified as being in nonattainment for the base years 2010 and 2015 is to Cook County, and is estimated to be 0.04 $\mu g/m^3$ (Table V–5, 69 FR 4608). This amount is well below the ''significant contribution'' threshold of 0.20$\mu g/m^3$ set by EPA. AQS monitoring data we reviewed are consistent with these results. During the years 2004–2006, monitors in the State of South Dakota and its adjacent downwind or potentially downwind states, except for Minnesota, showed no $PM_{2.5}$ exceedance days. During these years the Minnesota monitors registered exceedances only on one out of 1,096 days.[5]

In conclusion, the data and analysis reviewed above indicate that the Interstate Transport Report adopted by South Dakota into the State SIP satisfactorily addresses the first two elements of the CAA section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ and 8-hour ozone standards.

The third element of the section 110(a)(2)(D)(i) provisions requires states to prohibit emissions that interfere with any other state's measures to prevent significant deterioration (PSD) of air quality. Consistently with EPA guidance issued August 11, 2006, the State of South Dakota explains that the State's SIP provisions include EPA-approved PSD and Nonattainment New Source Review (NNSR) programs that satisfy the section 110(a)(2)(D)(i) requirements. The State PSD program has been implemented for many years and NNSR implementation has not been needed since there are no $PM_{2.5}$ or 8-hour ozone nonattainment areas in South Dakota.

The fourth element of the section 110(a)(2)(D)(i) provisions concerns the requirement that a state SIP prohibit sources from emitting pollutants that interfere with the efforts of another state to protect visibility. Consistent with the August 15, 2006 EPA guidance, the South Dakota Interstate Transport Report declares that there are no State sources of emissions interfering with the implementation of the 1980 regulations that required the states to address Reasonably Attributable Visibility Impairment (RAVI) SIPs in other states. Regarding visibility impairment caused by regional haze, the South Dakota Interstate Transport Report concurs with EPA that it is currently premature to determine whether or not SIPs for 8-hour ozone or $PM_{2.5}$ contain adequate provisions to prohibit emissions that interfere with measures in other states' SIPs designed to address regional haze. This requirement will be addressed in the South Dakota regional haze SIP. Therefore, South Dakota addresses the third and fourth elements of the section 110(a)(2)(D)(i) provisions in a way that is consistent with the EPA guidance noted above.

V. EPA's Evaluation of the State of Wyoming May 3, 2007 Submittal

EPA has reviewed the Wyoming Interstate Transport SIP submitted on May 3, 2007 and believes that approval is warranted. The provisions of the CAA section 110(a)(2)(D)(i) require that the Wyoming SIP contain adequate provisions prohibiting air pollutant emissions from sources or activities in the state from adversely affecting another state. A state SIP must include provisions that prohibit sources from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in another state; (2) interfere with maintenance of the NAAQS by another state; (3) interfere with another state's measures to prevent significant deterioration of its air quality; and (4) interfere with the efforts of another state to protect visibility. EPA issued guidance on August 15, 2006 relating to SIP submissions that meet the requirements of Section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ and the 8-hour ozone standards. The Interstate Transport SIP submitted by the State of Wyoming is consistent with the guidance.

To support the first two of the four elements noted above, the State of Wyoming relies on a combination of: (a) EPA positions and modeling analysis results published in **Federal Register** notices as part of the CAIR rulemaking process; and (b) considerations of geographical, meteorological and topographical factors affecting the likelihood of significant pollution transport from the State to the closest $PM_{2.5}$ and 8-hour ozone nonattainment areas in other states. In addition, we examine factors specific to Wyoming, and to a number of downwind or potentially downwind states that might be significantly affected by any transport of $PM_{2.5}$, and of ozone and/or ozone precursors from Wyoming.

For the 8-hour ozone standard, the Denver metropolitan area in Colorado, and the Las Vegas-Clark County area in Nevada are the closest nonattainment areas. The Las Vegas-Clark County area is more than 400 miles from the southwest corner of Wyoming and in a direction opposite to that of the prevailing winds. Given this distance and the absence of 8-hour ozone nonattainment areas between Wyoming and Clark County, it is unlikely that Wyoming is making a significant contribution to the ozone nonattainment in Clark County.

Even though the northernmost edge of the Denver metropolitan area is only 30 miles south of the Wyoming border, it is highly unlikely that Wyoming contributes significantly to this area's non-attainment for the 1997 8-hour ozone standard. The State of Wyoming does not have any ozone nonattainment areas, and the AQS database indicates that during the 2004–2006 years Wyoming monitors registered four

[4] ''Technical Support for State and Tribal Air Quality Fine Particle ($PM_{2.5}$) Designations,'' December 2004; Chapter 6, pages 347–352.

[5] Adjacent downwind/potentially downwind states showing no $PM_{2.5}$ exceedance days include Nebraska, North Dakota and Iowa. Minnesota monitors showed one exceedance day in three years, on January 31, 2005.

exceedance days for the 8-hour ozone standard, all occurring in the wintertime.[6] Given that ozone levels generally reach peak values during the warm months of the year, which is also the case of the Denver metropolitan area, one may readily conclude that the monitoring data noted above excludes the likelihood of a significant contribution from the State of Wyoming to the 8-hour ozone nonattainment of the Denver metropolitan area.

A significant transport of ozone and/or its precursors from Wyoming to other close downwind or potentially downwind states such as Montana, Nebraska, North Dakota and South Dakota is also unlikely. As is the case with Wyoming, none of these states have any ozone nonattainment areas, and the four ozone exceedance days registered in Wyoming during the winter of 2005 and 2006 had no significant impact on these states. During the 2004–2006 years considered here, the monitoring stations in Montana, Nebraska, North Dakota and South Dakota showed no exceedance days for the 1997 8-hour ozone standard.

The section of the Wyoming Interstate Transport SIP addressing the absence of significant ozone transport from Wyoming to downwind states includes a paragraph quoted from the EPA Web page ''States Not Covered by CAIR'' [7] that has since been replaced. While the text quoted in the Wyoming Interstate Transport SIP reflects accurately the EPA Web page text at the time Wyoming adopted the Interstate Transport declaration into the State SIP and submitted it to EPA, EPA subsequently revised its Web site. Specifically, in September 2007, EPA removed the sentence ''Several states are not included in the CAIR region because they do not contribute to downwind nonattainment.'' EPA's revised Web site prefaces the same list of 22 non-CAIR States (which includes Wyoming) with the statement that these states are not covered by CAIR, without discussing the basis for this conclusion.[8]

EPA's replacement of the text originally published on its ''Non-CAIR States'' Web page does not affect our evaluation of the State of Wyoming's position that the State is unlikely to contribute significantly to ozone nonattainment in downwind states, as demonstrated by the data and analysis examined in the preceding paragraphs. In light of EPA's Web site revisions, EPA recommends that in a future rulemaking the State of Wyoming remove from its Interstate Transport SIP the EPA paragraph incorrectly reflecting the Agency's position on the Non-CAIR states' contribution to downwind nonattainment.

The Wyoming Interstate Transport SIP addresses the question of potential $PM_{2.5}$ transport to other states by quoting from the explanation given by EPA in support of the exclusion of four western states (including Wyoming) from the analysis that underlies the CAIR final rule notice:

> Regarding modeling of all states, in the $PM_{2.5}$ modeling for the NPRM, we modeled 41 states, and found that the westernmost of these states made very small contributions to nonattainment in any other state. For the revised modeling for the final rule, we reduced the set of states modeled for reasons of efficiency. The results again showed that the westernmost states modeled did not make contributions above the significance threshold, indicating that had other even more western States been modeled they also would not have done so. [9]

These assessments are substantiated by data and consideration of additional factors we examine next. Findings from the modeling analysis conducted by EPA for the CAIR proposed rule include the maximum annual average $PM_{2.5}$ contribution by 41 states to the downwind counties identified in nonattainment for the base years 2010 and 2015. Among the states included in the study, the maximum $PM_{2.5}$ annual average contribution to nonattainment by the westernmost states amounted to: 0.04 $\mu g/m^3$ for Colorado, 0.03 $\mu g/m^3$ for Montana, 0.08 $\mu g/m^3$ for Nebraska, 0.12 $\mu g/m^3$ for North Dakota, 0.04 $\mu g/m^3$ for South Dakota, and 0.05 $\mu g/m^3$ for Wyoming (69 FR 4608). These amounts are well below the ''significant contribution'' threshold of 0.20 $\mu g/m^3$ set by EPA.

A review of $PM_{2.5}$ attainment/nonattainment areas and AQS monitoring data in Wyoming and its downwind, or potentially downwind, states yields similar conclusions. Wyoming's closest $PM_{2.5}$ nonattainment area is centered in Libby, Lincoln County, Montana, which is about 330 miles north of the Wyoming northwest corner. EPA's findings based on a nine-factor analysis of Lincoln County (reported in the Agency's technical support document for the December 17, 2004 nonattainment designations) stress the local origins of $PM_{2.5}$ nonattainment in Libby.[10] These findings, in combination with other factors such as distance, the absence of $PM_{2.5}$ nonattainment areas in Wyoming, and the absence of $PM_{2.5}$ nonattainment areas along the 330 miles between the Wyoming northwest corner area and Libby, are strong indications that it is unlikely that Wyoming is making a significant contribution to the $PM_{2.5}$ nonattainment status of Lincoln County. AQS monitoring data for the period 2004–2006 shows that there were no $PM_{2.5}$ exceedance days in Wyoming, Colorado, North Dakota, South Dakota and Nebraska. Montana monitors registered five exceedance days, equivalent to less than 0.5 percent, distributed among four different counties.

The data and analyses considered in the preceding paragraphs indicate that the Interstate Transport declaration adopted by Wyoming into the State SIP satisfactorily addresses the first two elements of the CAA section 110(a)(2)(D)(i) requirements for the 1997 $PM_{2.5}$ and 8-hour ozone standards.

The third element of the section 110(a)(2)(D)(i) provisions requires states to prohibit emissions that interfere with any other state's measures to prevent significant deterioration (PSD) of air quality. Consistent with EPA guidance issued August 11, 2006, the State of Wyoming explains that the State's SIP provisions include an EPA-approved PSD program, implemented for many years, that satisfies the section 110(a)(2)(D)(i) requirements. In the absence of any $PM_{2.5}$ or 8-hour ozone nonattainment areas, Wyoming does not have an NNSR program but indicates that the State will update its NSR program to include one if the need should arise.

The fourth element of the section 110(a)(2)(D)(i) provisions concerns the requirement that a state SIP prohibit sources from emitting pollutants that interfere with the efforts of another state to protect visibility. Consistent with the

[6] The exceedance days were registered at two monitors within Sublette County—the site of the Jonah gas field development. The exceedance values were measured on February 3, 20, and 26, 2005, and February 27, 2006.

[7] See ''Wyoming State Implementation Plan, Interstate Transport,'' December 11, 2006, page 2.

[8] Reproductions of the two Web pages discussed in this paragraph may be found in EPA's ''Guidance, Supporting Materials, and Additional Materials'' in this docket. As of 1/24/08 the EPA Web page for Non-CAIR States, updated on September 20, 2007, may be found at *http://www.epa.gov/CAIR/not-covered.html.*

[9] ''Corrected Response to Significant Public Comments on the Proposed Clean Air Interstate Rule Received in response to: Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule); Proposed Rule (69 FR 4566; January 30, 2004) Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Proposal Rule (69 FR 32684; June 10, 2004) Docket Number OAR–2003–0053,'' April 2005.

[10] ''Technical Support for State and Tribal Air Quality Fine Particle ($PM_{2.5}$) Designations,'' December 2004; Chapter 6, pages 347–352.

August 15, 2006 EPA guidance, the Wyoming Interstate Transport SIP declares that there are no State sources of emissions interfering with the implementation of the 1980 regulations that required the states to address Reasonably Attributable Visibility Impairment (RAVI) SIPs in other states. Regarding visibility impairment caused by regional haze, the Wyoming Interstate Transport SIP concurs with EPA that it is currently premature to determine whether or not SIPs for 8-hour ozone or $PM_{2.5}$ contain adequate provisions to prohibit emissions that interfere with measures in other states' SIPs designed to address regional haze. This requirement will be addressed in the Wyoming regional haze SIP. Thus, Wyoming addresses the third and fourth elements of the section 110(a)(2)(D)(i) provisions in a way that is consistent with the EPA guidance noted above.

VI. Final Action

EPA is approving the Interstate Transport Report submitted by the State of South Dakota on May 15, 2007, and is adding section X to 40 CFR 52.1270(e) to reflect that the State has adequately addressed the required elements of section 110(a)(2)(D)(i) of the Clean Air Act.

EPA is approving the Interstate Transport SIP submitted by the State of Wyoming on May 3, 2007 and is adding section XVIII to 40 CFR 52.2620(e) to reflect that the State has adequately addressed the required elements of section 110(a)(2)(D)(i) of the Clean Air Act.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This rule will be effective July 7, 2008 without further notice unless the Agency receives adverse comments by June 9, 2008. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VII. Statutory and Executive Order Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 July 7, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: April 23, 2008.

Robert E. Roberts,

Regional Administrator, Region 8.

■ 40 CFR part 52 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 QQ—South Dakota

■ 2. In § 52.2170, the table in paragraph (e) is amended by adding entry ''X'' in numerical order to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(e) *EPA-approved nonregulatory provisions.*

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ Adopted date	EPA approval date and citation	Explanations
* *	*	* *	*	*
X. Interstate Transport. South Dakota Interstate Transport Report satisfying the requirement of Section 110(a)(2)(D)(i) of the CAA for the 1997 8-hour ozone and $PM_{2.5}$ standards.	Statewide	Submitted: 5/15/07 .... Adopted: 4/19/07	5/08/08 [insert FR page number where document begins].	

Subpart ZZ—Wyoming

■ 3. In § 52.2620, the table in paragraph (e) is amended by adding entry ''XVIII'' in numerical order to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(e) EPA-approved nonregulatory provisions.

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ Adopted date	EPA approval date and citation	Explanations
* *	*	* *	*	*
XVIII. Interstate Transport. Wyoming Interstate Transport SIP satisfying the requirement of Section 110(a)(2)(D)(i) of the CAA for the 1997 8-hour ozone and $PM_{2.5}$ standards.	Statewide	Submitted: 5/3/07 ..... Adopted: 4/15/07	5/08/08 [insert FR page number where document begins].	

[FR Doc. E8–10103 Filed 5–7–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–8564–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion for the Tabernacle Drum Dump Superfund Site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 2 Office announces the deletion of the Tabernacle Drum Dump Superfund Site from the National Priorities List (NPL). The Tabernacle Drum Dump Site is located in Tabernacle Township, Burlington County, New Jersey. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey, through the Department of Environmental Protection (NJDEP) have determined that all appropriate response actions have been implemented and no further response actions are required. In addition, EPA and the NJDEP have determined that the remedial action taken at the Tabernacle Drum Dump Site is protective of public health, welfare, and the environment.

DATES: *Effective Date:* May 8, 2008.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–2005–0011. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the site information repositories. Locations, contacts, phone numbers and viewing hours are: EPA's Region 2 Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308. Hours: 9 a.m. to 5 p.m. Monday through Friday, excluding holidays, by appointment only.

Information on the Site is also available for viewing at the Site's information repository located at: Tabernacle Municipal Building, 163 Carranza Road, Tabernacle, New Jersey 08088.

FOR FURTHER INFORMATION CONTACT: Douglas Tomchuk, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 19th Floor, New York, New York 10007–1866, (212) 637–3956.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the Tabernacle Drum Dump Superfund Site, located in Tabernacle Township, Burlington County, New Jersey.

A Notice of Intent to Delete for the Tabernacle Drum Dump Superfund Site was published in the **Federal Register** on September 24, 2007. The closing date for comments on the Notice of Intent to Delete was October 24, 2007. Two letters were received by EPA on the proposed deletion during the public comment period. One of the letters simply asked for clarification of the ability to continue site restoration after the deletion. The second letter provided support for the deletion of the Tabernacle Drum Dump Site. EPA responded to the letters in January 2008. A responsiveness summary was prepared and placed in both the docket, EPA–HQ–SFUND–2005–0011, on *http://www.regulations.gov*, and in the local repositories listed above.

EPA's decision to propose the site for deletion was based on the successful implementation of the remedy, which

included removal and off-site disposal of contaminated drums, containers and soil from the disposal site, and ground water extraction, treatment and re-injection into the ground, thereby mitigating risks to human health and the environment. Post-remediation ground water monitoring for five years confirmed that the remedy is protective of human health and the environment.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, any site or portion thereof deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution controls, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 11, 2008.

Alan J. Steinberg,

Regional Administrator, Region 2.

■ For the reasons set out in the preamble, Part 300, Chapter I of Title 40 of the Code of Federal Regulations, is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9675; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to Part 300 is amended by removing ''Tabernacle Drum Dump Superfund Site, Tabernacle Township, New Jersey.''

[FR Doc. E8–10316 Filed 5–7–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7776]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changes BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Lee	City of Opelika (07–04–4788P).	February 14, 2008; February 21, 2008; *Opelika-Auburn News*.	The Honorable Gary Fuller, Mayor, City of Opelika, P.O. Box 390, Opelika, AL 36803–0390.	January 31, 2008	010145
Arizona:					
Yavapai	Town of Prescott Valley (07–09–1708P).	February 21, 2008; February 28, 2008; *Prescott Daily Courier*.	The Honorable Harvey Skoog, Mayor, Town of Prescott Valley, 7501 East Civic Circle, Prescott Valley, AZ 86314.	June 27, 2008	040121
Yavapai	Yavapai County (07–09–1708P).	February 21, 2008; February 28, 2008; *Prescott Daily Courier*.	The Honorable Chip Davis, Chairman, Yavapai County, Board of Supervisors 1015 Fair Street, Prescott, AZ 86305.	June 27, 2008	040093
Arkansas: Pope	City of Russellville (07–06–2298P).	February 7, 2008; February 14, 2008; *The Courier*.	The Honorable Raye Turner, Mayor, City of Russellville, P.O. Box 428, Russellville, AR 72801.	March 3, 2008	050178
California:					
Fresno	City of Coalinga (07–09–1375P).	February 6, 2008; February 13, 2008; *Coalinga Record*.	The Honorable Trish Hill, Mayor, City of Coalinga, 155 West Durian Avenue, Coalinga, CA 93210.	February 25, 2008	060045
Fresno	Fresno County (07–09–1375P).	February 6, 2008; February 13, 2008; *Coalinga Record*.	The Honorable Phil Larson, Fresno County Board of Supervisors, 2281 Tulare Street, 301 Hall of Records, Fresno, CA 93721.	February 25, 2008	065029
Orange	City of Irvine, CA (08–09–0082P).	February 14, 2008; February 21, 2008; *Irvine World News*.	The Honorable Beth Krom, Mayor, City of Irvine, P.O. Box 19575, Irvine, CA 92623.	May 22, 2008	060222
San Luis Obispo	Unincorporated areas of San Luis Obispo County (07–09–1955P).	March 7, 2008; March 14, 2008; *The Tribune*.	The Honorable James Patterson, Chairman, San Luis Obispo County Board of Supervisors, 1055 Monterey Street, Room D–430, San Luis Obispo, CA 93408.	July 14, 2008	060304
Colorado: Adams	City of Thornton (08–08–0056P).	February 21, 2008; February 28, 2008; *Northglenn-Thornton Sentinel*.	The Honorable Erik Hansen, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	June 27, 2008	080007
Delaware: Sussex	Unincorporated areas of Sussex County (08–03–0159P).	February 13, 2008; February 20, 2008; *The Wave*.	The Honorable George B. Cole, Sussex County Council, P.O. Box 589, Georgetown, DE 19947.	May 21, 2008	100029
Florida:					
Charlotte	Unincorporated areas of Charlotte County (07–04–6248P).	January 31, 2008; February 7, 2008; *Charlotte Sun*.	The Honorable Adam Cummings, Chairman, Charlotte County, Board of Commissioners 18500 Murdock Circle, Port Charlotte, FL 33948.	January 17, 2008	120061
Collier	City of Naples (07–04–6595P).	February 7, 2008; February 14, 2008; *Naples Daily News*.	The Honorable Bill Barnett, Mayor, City of Naples, 735 Eighth Street South, Naples, FL 34102.	January 28, 2008	125130
Georgia:					
Barrow	Unincorporated areas of Barrow County (07–04–6544P).	February 13, 2008; February 20, 2008; *The Barrow County News*.	The Honorable Douglas H. Garrison, Chairman, Barrow County Board of Commissioners, 233 East Broad Street, Winder, GA 30680.	May 21, 2008	130497
Barrow	City of Winder (07–04–6544P).	February 13, 2008; February 20, 2008; *The Barrow County News*.	The Honorable George "Chip" Thompson, III, Mayor, City of Winder, P.O. Box 566, Winder, GA 30680.	May 21, 2008	130234
Chatham	Unincorporated areas of Chatham County (07–04–6193P).	January 15, 2008; January 22, 2008; *Effingham Herald*.	The Honorable Pete Liakakis, Chairman, Chatham County Board of Commissioners, 124 Bull Street, Suite 220, Savannah, GA 31401.	April 22, 2008	130030
Effingham	Unincorporated areas of Effingham County (07–04–6193P).	January 15, 2008; January 22, 2008; *Effingham Herald*.	The Honorable Verna H. Phillips, Chairman, Effingham County Board of Commissioners, 601 North Laurel Street, Springfield, GA 31329.	April 22, 2008	130076
Idaho:					
Ada	Unincorporated areas of Ada County (07–10–0624P).	February 28, 2008; March 6, 2008; *Idaho Statesman*.	The Honorable Fred Tilman, Chairman, Ada County Board of Commissioners, 200 West Front Street, Boise, ID 83702.	July 7, 2008	160001
Ada	City of Meridian (07–10–0624P).	February 28, 2008; March 6, 2008; *Idaho Statesman*.	The Honorable Tammy De Weerd, Mayor, City of Meridian, 33 East Idaho Avenue, Meridian, ID 83642–2300.	July 7, 2008	160180
Illinois:					
St. Clair	Unincorporated areas of St. Clair County (07–05–5847P).	February 7, 2008; February 14, 2008; *Belleville News-Democrat*.	The Honorable Mark Kern, Chairman, St. Clair County Board of Commissioners, 10 Public Square, Belleville, IL 62220.	May 15, 2008	170616
Will	City of Joliet (08–05–0389P).	January 31, 2008; February 7, 2008; *Herald News*.	The Honorable Arthur Schultz, Mayor, City of Joliet, 150 West Jefferson Street, Joliet, IL 60431.	January 23, 2008	170702

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Will	City of Lockport (08–05–0065P).	February 14, 2008; February 21, 2008; *Herald News*.	The Honorable Tim Murphy, Mayor, City of Lockport, 222 East Ninth Street, Lockport, IL 60441.	January 30, 2008	170703
Kansas:					
Douglas	City of Lawrence (07–07–0691P).	February 7, 2008; February 14, 2008; *Lawrence Daily Journal-World*.	The Honorable Sue Hack, Mayor, City of Lawrence, P.O. Box 708, Lawrence, KS 66044.	January 28, 2008	200090
Sedgwick	City of Wichita (08–07–0138P).	March 7, 2008; March 14, 2008; *The Wichita Eagle*.	The Honorable Carl Brewer, Mayor, City of Wichita, 455 North Main Street, Wichita, KS 67202.	February 26, 2008	200328
Maryland:					
Charles	Unincorporated areas of Charles County (07–03–1449P).	March 5, 2008; March 12, 2008; *Maryland Independent*.	The Honorable Wayne Cooper, President, Charles County Commissioners, P.O. Box 2150, La Plata, MD 20646.	July 11, 2008	240089
Montgomery	Unincorporated areas of Montgomery County (08–03–0615X).	February 27, 2008; March 5, 2008; *The Gazette*.	Mr. Isiah Leggett, Montgomery County Executive, 101 Monroe Street, Second Floor, Rockville, MD 20850.	June 5, 2008	240049
Wicomico	City of Salisbury (07–03–1102P).	January 31, 2008; February 7, 2008; *Daily Times*.	The Honorable Barrie Tilghman, Mayor, City of Salisbury, 1009 Monitor Court, Salisbury, MD 21801.	January 18, 2008	240080
Wicomico	Unincorporated areas of Wicomico County (07–03–1102P).	January 31, 2008; February 7, 2008; *Daily Times*.	Mr. Rick Pollitt, Wicomico County Executive, P.O. Box 870, Salisbury, MD 21803.	January 18, 2008	240078
Massachusetts:					
Norfolk	Town of Wellesley (07–01–1131P).	February 7, 2008; February 14, 2008; *Wellesley Townsman*.	The Honorable Owen H. Dugan, Chairman, Town of Wellesley Board of Selectmen, 525 Washington Street, Wellesley, MA 02181.	May 15, 2008	250255
Norfolk	Town of Wellesley (08–01–0508X).	March 6, 2008; March 13, 2008; *Wellesley Townsman*.	The Honorable Owen H. Dugan, Chairman, Board of Selectmen, 525 Washington Street, Wellesley, MA 02181.	July 11, 2008	250255
Plymouth	Town of Rockland (08–01–0140P).	March 15, 2008; March 22, 2008; *Rockland Standard*.	The Honorable Mary Parsons, Chair, Board of Selectmen, Town of Rockland, 242 Union Street, Rockland, MA 02370.	June 16, 2008;	250281
Michigan: Monroe	Village of Dundee (07–05–0218P).	February 14, 2008; February 21, 2008; *The Monroe Evening News*.	The Honorable Ted Norris, Village President, Village of Dundee, Dundee Village Office, 350 West Monroe Street, Dundee, MI 48131.	May 22, 2008	260313
Missouri:					
Cass	City of Harrisonville (07–07–1674P).	March 28, 2008; April 4, 2008; *Democrat Missourian*.	The Honorable Kevin W. Wood, Mayor, City of Harrisonville, 300 East Pearl Street, Harrisonville, MO 64701.	August 4, 2008	290068
Lincoln	Unincorporated areas of Lincoln County (07–07–1516P).	March 26, 2008; April 2, 2008; *Troy Free Press*.	The Honorable Sean O'Brien, Presiding Commissioner, Lincoln County Commission, 201 Main Street, Troy, MO 63379.	July 31, 2008	290869
New Jersey:					
Mercer	Township of Hamilton (07–02–0844P).	February 7, 2008; February 14, 2008; *Trenton Times*.	The Honorable John F. Bencivengo, Mayor, Township of Hamilton, 2090 Greenwood Avenue, Hamilton, NJ 08650–0150.	May 15, 2008	340246
Union	Township of Union (07–02–0942P).	February 21, 2008; February 28, 2008; *Union Leader*.	The Honorable Clifton People, Jr., Mayor, Township of Union, 1976 Morris Avenue, Union, NJ 07083.	May 22, 2008	340477
New York: Erie	Town of Lancaster (07–02–0974P).	March 7, 2008; March 14, 2008; *Buffalo News*.	The Honorable Robert H. Giza, Supervisor, Town of Lancaster, 21 Central Avenue, Lancaster, NY 14086.	August 28, 2008	360249
Nebraska: Lincoln	City of North Platte (07–07–0322P).	February 28, 2008; March 6, 2008; *North Platte Telegraph*.	The Honorable G. Keith Richardson, Mayor, City of North Platte, 211 West Third Street, North Platte, NE 69101.	July 7, 2008	310143
North Carolina:					
Brunswick	Unincorporated Areas of Brunswick County (07–04–6003P).	March 6, 2008; March 13, 2008; *The Brunswick Beacon*.	Mr. Marty Lawing, Manager, Brunswick County, P.O. Box 249, Bolivia, North Carolina 28422.	January 30, 2008	370295
Martin	Unincorporated Areas of Martin County (08–04–1028P).	March 11, 2008; March 18, 2008; *The Enterprise*.	Mr. W. Russell Overman, Manager, Martin County, P.O. Box 668, Williamston, North Carolina 27892.	February 29, 2008	370155
Wake	City of Raleigh (07–04–3146P).	February 4, 2008; February 11, 2008; *The News & Observer*.	The Honorable Charles Meeker, Mayor of the City of Raleigh, P.O. Box 590, Raleigh, North Carolina 27602.	February 29, 2008	370243
Wake	City of Raleigh (07–04–4250P).	February 7, 2008; February 14, 2008; *The News & Observer*.	The Honorable Charles Meeker, Mayor, City of Raleigh, P.O. Box 590, 222 West Hargett Street, Raleigh, North Carolina 27602.	May 14, 2008	370243

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Wake	Unincorporated areas of Wake County (07–04–6027P).	January 31, 2008; February 7, 2008; *The Wake Weekly*.	Mr. David Cooke, Manager, Wake County, 337 South Salisbury Street, Suite 1100, Raleigh, NC 27602.	May 8, 2008	370368
Wake	Town of Wake Forest (07–04–4250P).	February 7, 2008; February 14, 2008; *The Wake Weekly*.	The Honorable Vivian Jones, Mayor, Town of Wake Forest, 401 Elm Avenue, Wake Forest, North Carolina 27587.	May 14, 2008	370244
Wake	Town of Wake Forest (07–04–6027P).	January 31, 2008; February 7, 2008; *The Wake Weekly*.	The Honorable Vivian A. Jones, Mayor, Town of Wake Forest, 401 Elm Avenue, Wake Forest, NC 27587.	May 8, 2008	370244
Ohio: Union	Unincorporated areas of Union County (07–05–6234P).	January 31, 2008; February 7, 2008; *Marysville Journal-Tribune*.	The Honorable Charles Hall, Union County Commissioner, 233 West Sixth Street, Marysville, OH 43040.	January 11, 2008	390808
Oklahoma: Tulsa	City of Tulsa (08–06–0093P).	February 7, 2008; February 14, 2008; *Tulsa World*.	The Honorable Kathy Taylor, Mayor, City of Tulsa, 200 Civic Center, 11th Floor, Tulsa, OK 74103.	May 15, 2008	405381
Rhode Island: Newport.	Town of Tiverton (07–01–1087P).	February 21, 2008; February 28, 2008; *Newport Daily News*.	The Honorable Louise Durfee, President, Town Council, 343 Highland Road, Tiverton, RI 02878.	February 8, 2008	440012
South Carolina:					
Greenville	Unincorporated areas of Greenville County (07–04–6423P).	January 31, 2008; February 7, 2008; *Greenville News*.	The Honorable Herman G. Kirven, Jr., Chairman, Greenville County Council, 301 University Ridge, Suite 2400, Greenville, SC 29601.	May 8, 2008	450089
Jasper	Unincorporated areas of Jasper County (07–04–6192P).	February 13, 2008; February 20, 2008; *Jasper County Sun*.	The Honorable George Hood, Chairman, County Council, Jasper County, P.O. Box 1149, Ridgeland, SC 29936.	May 21, 2008	450112
Texas:					
Bexar	City of Live Oak (07–06–1905P).	March 7, 2008; March 14, 2008; *Daily Commercial Recorder*.	The Honorable Henry O. Edwards, Jr., Mayor, City of Live Oak, 8001 Shin Oak Drive, Live Oak, TX 78233.	July 14, 2008	480043
Bexar	City of San Antonio (08–06–0160P).	February 11, 2008; February 18, 2008; *San Antonio Express-News*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	January 31, 2008	480045
Brazos	City of College Station (07–06–0545P).	March 6, 2008; March 13, 2008; *Bryan College Station Eagle*.	The Honorable Ben White, Mayor, City of College Station, 1101 Texas Avenue, College Station, TX 77840.	July 11, 2008	480083
Brazos	City of College Station (07–06–1353P).	February 14, 2008; February 21, 2008; *Bryan College Station Eagle*.	The Honorable Ben White, Mayor, City of College Station, 1101 Texas Avenue, College Station, TX 77840.	May 22, 2008	480083
Brazos	City of College Station (07–06–1928P).	February 14, 2008; February 21, 2008; *Bryan College Station Eagle*.	The Honorable Ben White, Mayor, City of College Station, 1101 Texas Avenue, College Station, TX 77840.	May 22, 2008	480083
Collin	City of Allen (07–06–2335P).	February 7, 2008; February 14, 2008; *Allen American*.	The Honorable Steve Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	March 3, 2008	480131
Collin	City of Frisco (07–06–1223P).	February 22, 2008; February 29, 2008; *Frisco Enterprise*.	The Honorable Michael Simpson, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	June 30, 2008	480134
Dallas	City of Grand Prairie (07–06–1525P).	February 8, 2008; February 15, 2008; *Rowlett Lakeshore Times*.	The Honorable Charles England, Mayor, City of Grand Prairie, P.O. Box 534045, Grand Prairie, TX 75053.	May 16, 2008	485472
Denton	Town of Northlake (07–06–2016P).	March 6, 2008; March 13, 2008; *Denton Record-Chronicle*.	The Honorable Peter Dewing, Mayor, Town of Northlake, P.O. Box 729, Northlake, TX 76247.	February 22, 2008	480782
Tarrant	City of Grapevine (07–06–1674P).	March 7, 2008; March 14, 2008; *Grapevine Courier*.	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, TX 76099.	July 14, 2008	480598
Tarrant	City of North Richland Hills (07–06–1765P).	February 28, 2008; March 6, 2008; *Dallas Morning News*.	The Honorable Oscar Trevino, Jr., P.E., Mayor, City of North Richland Hills, 7301 North East Loop 820, North Richland Hills, TX 76180.	February 14, 2008	480607
Virginia: Independent City.	City of Winchester (07–03–1236P).	March 27, 2008; April 3, 2008; *Winchester Star*.	The Honorable Elizabeth Minor, Mayor, City of Winchester, 422 National Avenue, Winchester, VA 22601.	March 17, 2008	510173

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 21, 2008;.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–10337 Filed 5–7–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Assistant Administrator of the Mitigation Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Clarke County, Alabama, and Incorporated Areas Docket No.: FEMA–D–7826			
Alabama River	459 feet upstream of the intersection of Reedy Creek and Cross Section A.	+35	Unincorporated Areas of Clarke County.
	2,439 feet downstream of intersection of Alabama River and Silver Creek Lake Road.	+61	
East Basset Creek	The point where East Basset Creek and County Highway 15 intersect.	+34	Unincorporated Areas of Clarke County.
	10,906 feet upstream of the intersection of East Bassett Creek and County Highway 15.	+45	
Tombigbee River	1,332 feet downstream of the intersection of Tombigbee River and Southern Railway.	+35	Unincorporated Areas of Clarke County.
	3,783 feet downstream of the intersection of Tombigbee River and U.S. Highway 43.	+36	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

ADDRESSES

Unincorporated Areas of Clarke County
Maps are available for inspection at 114 Court Street, Grove Hill, AL 36451.

Lee County, Kentucky, and Incorporated Areas
Docket No.: FEMA–B–7748

Kentucky River-North Fork Kentucky River.	Approximately 150 feet downstream of confluence with Mirey Creek.	+668	Unincorporated Areas of Lee County.
	Approximately 1550 feet downstream of confluence with Blaines Branch.	+671	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
= North American Vertical Datum.
Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Lee County
Maps are available for inspection at Lee County Courthouse, 256 Main Street, Beattyville, KY 41311.

Tunica County, Mississippi, and Incorporated Areas
Docket No.: FEMA–B–7724

Buck Island Bayou	At Fields Road	+189	Tunica County (Unincorporated Areas).
	At Highway 3	+189	
Jack Lake Bayou	At Jack Lake Crossing	+189	Tunica County (Unincorporated Areas).
	At Verner Road	+191	
Minton Bayou	At confluence with Jack Lake Bayou	+189	Tunica County (Unincorporated Areas).
	At Fields Road	+190	
White Oak Bayou	At Highway 4	+181	Tunica County (Unincorporated Areas).
	At Highway 61	+186	
White Oak Bayou Tributary	At Academy Road	+190	Town of Tunica, Tunica County (Unincorporated Areas).
	At Fox Island Road	+192	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Town of Tunica
Maps are available for inspection at Town Hall, 909 River Road, Tybuca, MS 38676.

Tunica County (Unincorporated Areas)
Maps are available for inspection at Office of Planning and Development, 1061 South Court Street, Tunica, MS 38676.

Dyer County, Tennessee, and Incorporated Areas
Docket No.: FEMA–D–7822

Mississippi River	Approximately 720 feet downstream from the confluence of Obion River.	+268	Unincorporated Areas of Dyer County.
	County boundary	+281	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Dyer County
Maps are available for inspection at Building Inspector's Office, #1 Veterans Square, Dyersburg, TN 38025.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 21, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–10336 Filed 5–7–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket Nos. 03–66; 03–67; 02–68; IB Docket No. 02–364; ET Docket No. 00–258; FCC 08–83]

Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands; Reviewing of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; declaratory ruling.

SUMMARY: In this document, the Commission continues its efforts to transform its rules and policies governing the licensing of the Educational Broadband Service (EBS) and the Broadband Radio Service (BRS) in the 2495–2690 MHz (2.5 GHz) band, with respect to petitions for reconsideration filed in response to the *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order (Big LEO Order on Reconsideration and AWS 5th MO&O and BRS/EBS 3rd MO&O and 2nd R&O).* Also, the Commission's actions in this proceeding further refine its rules to enable licensees to deploy new and innovative wireless services in the 2.5 GHz band. We believe that these actions will facilitate the promotion of broadband service to all Americans.

DATES: Effective June 9, 2008, except for § 27.1221(f), which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for that section.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. A copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554 or via the Internet at *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For further information regarding the *Big LEO Third Order on Reconsideration and Sixth Memorandum Opinion and Order,* please contact Howard Griboff, Policy Division, International Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, at 202–418–0657 or via the Internet at *Howard.Griboff@fcc.gov* or Jamison Prime, Policy and Rules Division, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, at 202–418–7474 or via the Internet at *Jamison.Prime@fcc.gov*. For further information concerning the *BRS/EBS Fourth Memorandum Opinion and Order* and *Declaratory Ruling* contact John Schauble, Deputy Chief, Broadband Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, at (202) 418–0797 or via the Internet to *John.Schauble@fcc.gov*. For additional information concerning Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order* (*Big LEO 3rd Order on Reconsideration and AWS 6th MO&O and BRS/EBS 4th MO&O*) and *Declaratory Ruling,* FCC 08–83, adopted on March 18, 2008 and released on March 20, 2008. The full text of this document, including attachments and related documents, is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of these documents and related Commission documents may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300 or (800) 387–3160, contact BCPI at its Web site: *http://www.bcpiweb.com*. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 08–83. The complete text of these documents is also available on the Commission's Web site at *http://wireless.fcc.gov/edocs_public/attachment/FCC–08–83A1doc.* This full text may also be downloaded at: *http://wireless.fcc.gov/releases.html*. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to *bmillin@fcc.gov*.

Summary

I. Introduction and Executive Summary

1. In this *Big LEO 3rd Order on Reconsideration and AWS 6th MO&O and Order and BRS/EBS 4th MO&O,* the Commission takes the following actions with respect to petitions for reconsideration filed in response to the *Big LEO Order on Reconsideration and AWS 5th MO&O and BRS/EBS 3rd MO&O and 2nd R&O*:

- Grant a petition, in part, by adopting the part 1, subpart Q competitive bidding rules for future BRS auctions, seeking further comment on rules for future licenses for EBS spectrum, and directing WTB to review inventory and schedule auction(s) of unassigned BRS spectrum as soon as practicable.
- Adopt the small business size standards and bidding credits proposed in the *BRS/EBS FNPRM* (''small business''—an entity with attributed average annual gross revenues not exceeding $40 million for the preceding three years; ''very small business''—an entity with attributed average annual gross revenues not exceeding $15 million for the same period; and an ''entrepreneur''—an entity with attributed annual average gross revenues not exceeding $3 million for the same period).
- Deny a petition requesting that the Commission permit licensees to self-transition before January 21, 2009, the deadline for proponents to file an Initiation Plan with the Commission.
- Grant a petition asking the Commission to correct the inconsistency between the *BRS/EBS 3rd MO&O* and the text of § 27.1236(b)(6), and on the Commission's own motion, change references in §§ 27.1231(f), 27.1236(a), 27.1236(b)(1) and 27.1236(b)(6) to dates certain.
- Deny as moot a petition requesting that the Commission clarify the requirements for multichannel video programming distribution (MVPD) operators seeking to opt out of the transition.

• Deny a petition seeking reconsideration on the effect of MVPD opt-out on adjacent licensees with overlapping Geographic Service Areas (GSAs).

• Grant a petition asking the Commission to modify the height benchmarking rule to establish deadlines for compliance.

• Grant a petition asking the Commission to modify the out-of-band emissions rule to establish deadlines for compliance.

• Grant a petition asking the Commission to modify the out-of-band emissions rule to provide that out-of-band emissions are to be measured from the outermost edge of the channels when two or more channels are combined.

• Deny a petition and reaffirm that only first adjacent channel licensees may file an interference complaint concerning adjacent channel interference.

• Deny a petition and affirm the Commission's decision regarding out-of-band emissions for mobile digital stations.

• Deny a petition asking to establish different deadlines for user stations to cure interference where an existing base station suffers interference from an outdoor antenna user station.

• Grant a petition and allow licensees to maintain existing operations post-transition in the mid-band segment (MBS) at 2572–2614 MHz, even if such operations exceed the current -73.0 dBW/m^2 contour limit.

• Deny a petition asking the Commission to adopt technical standards should it become necessary to ''split the football'' to determine each licensee's GSA.

• Grant a petition and permit BRS Channels No. 1 and 2/2A licensees to operate simultaneously in the 2150–2160/62 MHz and 2496–2690 MHz bands until every subscriber is relocated to the 2496–2690 MHz band.

• Deny a petition asking the Commission to provide greater protection to BRS Channel No. 1 operations by reducing the power flux density (PFD) radiated from the Mobile Satellite Service (MSS) in the 2496–2500 MHz band.

• Deny a petition and affirm the use of splitting the football for BRS Channels No. 2 and 2A licensees.

• Deny petitions concerning overlaps between grandfathered EBS E and F Group licensees and co-channel BRS E and F Group licensees and affirm the existing rule.

• Deny a petition asking for procedural changes to the 90-day negotiation period for significant GSA overlaps (more than 50 percent) between grandfathered EBS E and F Group channel licensees and incumbent BRS E and F Group channel licensees.

• Grant a petition and reinstate a Gulf of Mexico Service Area.

• Establish the Gulf of Mexico boundary 12 nautical miles from the shore.

• Apply the existing technical rules to the Gulf of Mexico Service Area.

• Grant a petition and affirm that EBS excess capacity leases executed before January 10, 2005, are limited to 15 years.

• Deny a petition relating to pre-1998 legacy, video-only excess capacity leases but affirm that leases executed before January 10, 2005, are limited to 15 years.

• Grant a petition and amend rules to permit lessees to offer EBS licensees/lessors the actual equipment used or comparable equipment on lease termination.

• Deny a petition asking that licensees be permitted to demonstrate substantial service based on past-discontinued service.

• Grant a petition asking for a new safe harbor for heavily encumbered or highly truncated Basic Trading Areas (BTAs) and GSAs.

• Grant a petition seeking minor changes in the EBS eligibility rule to conform it to other changes made by the Commission.

• Grant a petition asking the Commission to adopt a rule that clarifies that commercial EBS licensees are not subject to educational programming requirements or the special EBS leasing restrictions.

• Deny a petition asking the Commission to reinstate pending mutually exclusive applications for new EBS stations.

• Grant in part requests for declaratory ruling and clarify how the splitting the football process for determining GSAs works with respect to licenses that were expired on January 10, 2005.

II. BRS/EBS Fourth Memorandum Opinion and Order

A. Licensing Unassigned Spectrum in the Band

2. In the *BRS/EBS 4th MO&O,* with respect to licensing unassigned spectrum in the band, the Commission adopts rules providing that new licenses for unassigned BRS spectrum will be assigned by BTA, with each license authorizing access for all BRS spectrum not otherwise assigned either at the time of licensing or in the future. Transitions in adjacent BTAs will be protected by the requirements in our technical rules that new BTA licensees operate pursuant to the post-transition band plan and provide protection to adjacent operations. We will require new licensees to operate pursuant to the new band plan. This requirement will protect existing licensees by ensuring that any future high-power video operations are restricted to the MBS.

B. BRS Competitive Bidding Rules

3. With respect to the assignment of new BRS licenses, we adopt the competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules, consistent with the bidding procedures that have been employed in many previous auctions. Specifically, we will adopt the part 1 rules governing, among other things, competitive bidding design, designated entities, application and payment procedures, collusion issues, and unjust enrichment. We note that such rules would be subject to any modifications by the Commission in our ongoing part 1 proceeding. In addition, consistent with current practice, matters such as the appropriate competitive bidding design, minimum opening bids and reserve prices, will be determined by the Wireless Telecommunications Bureau pursuant to its delegated authority.

4. With respect to bidding credits, we adopt the proposal contained in the *BRS/EBS FNPRM* to define three categories: ''small business''—an entity with average annual gross revenues not exceeding $40 million for the preceding three years; ''very small business''—an entity with average gross revenues not exceeding $15 million for the same period; and ''entrepreneur''—an entity with average gross revenues not exceeding $3 million for the same period. We also adopt the proposal to provide qualifying ''small businesses'' with a bidding credit of 15%, qualifying ''very small businesses'' with a bidding credit of 25%; and qualifying ''entrepreneurs'' with a bidding credit of 35%, consistent with § 1.2110(f)(2) of the Commission's rules.

C. Transition

5. We reaffirm our decision that a licensee may not self-transition before January 21, 2009 and reiterate that a proponent-driven transition is the most efficient method of transitioning a BTA. In particular, we find that early self-transitions would complicate the transition process for the proponent and would not provide sufficient benefits to the self-transitioning licensee to offset those additional complications.

6. We grant a petition asking the Commission to correct the inconsistency

between the *BRS/EBS 3rd MO&O* and the text of § 27.1236(b)(6), and on the Commission's own motion, change references in §§ 27.1231(f), 27.1236(a), 27.1236(b)(1) and 27.1236(b)(6) to dates certain. Also, we amend §§ 27.1231(f) and 27.1236(a), 27.1236(b)(1), and 27.1236(b)(6) to specify dates certain. Thus, §§ 27.1231(f) and 27.1236(a) reference January 21, 2009, the date the Initiation Plan must be filed with the Commission; § 27.1236(b)(1) references April 21, 2009, the date a self-transitioning licensee must notify the Commission; and § 27.1236(b)(6) references October 20, 2010, the date self-transitions must be completed. Because the time line for self-transitions parallels the timeline for proponent-driven transitions, we note that proponent-driven transitions must also be completed on or before October 20, 2010, unless stayed pending alternative dispute resolution.

D. Multichannel Video Programming Distributors (MVPD) Opt-Out

7. We dismiss as moot a petition for reconsideration asking us to adopt additional requirements for MVPD opt-out waiver requests because, at this point, such changes are unnecessary. The last date for filing requests to opt out of the transition plan was April 30, 2007, and that date has passed. To the extent the petitioner contends that a specific showing is defective, we will consider its arguments in the context of any opposition or petitions filed against specific waiver requests.

8. We also conclude that foreclosing an opt-out in the case of overlapping GSAs is unnecessary. Instead, the transitioning operator and the non-transitioning operator may resolve this situation among themselves or the transitioning licensee may file comments for Commission consideration in response to the non-transitioning operator's opt-out waiver request.

E. Technical Issues

9. In the *BRS/EBS 4th MO&O,* we take the following actions with respect to the technical rules:

• *Height Benchmarking Rule.* Requires a new or modified base station operating outside its height benchmark to cure interference to a base station operating within its height benchmark within 24 hours, either by limiting its received signal at the other party's base station to no more than −107 dBm/5.5 MHz or by reducing its antenna height to comply with the height benchmark. If the interferer is an existing base station that is causing interference to a new base station, the existing licensee has 90 days to comply; modifies the formula to calculate the height benchmark as proposed by Wireless Communications Association International, Inc. (WCA); declines to establish a rule requiring that parties cooperate in good faith to avoid interference.

• *Out-of-band Emissions.* Declines to require all user stations, as opposed to mobile digital user stations, to attenuate their emissions at least 55 + 10 (log (P) dB measured 5.5 megahertz from the channel edge; clarifies that when two or more contiguous channels are combined to form a single channel, out-of-band emissions are to be measured three megahertz from the outermost edges of the combined channel; requires that a new or modified base station comply with the out-of-band emission within 24 hours of receipt of a documented interference complaint from the first adjacent channel licensee. If the interferer is an existing base station that is causing interference to a new base station, the existing licensee has 60 days to comply; affirms the decision to limit the right to file a documented interference complaint to first adjacent channel licensees.

• *Geographic Service Area Boundaries.* Declines to modify the methodology used to divide overlapping geographic service areas; affirms the policies adopted for treating pending applications for new or modified stations in the geographic service area framework.

• *Grandfathering EBS Facilities.* Allows EBS facilities in the Middle Band Segment to exceed the −73.0 dBW/m^2 signal strength limit post-transition if needed to comply with the mandate that an EBS licensee be provided with facilities substantially similar to its pre-transition facilities.

• *Technical Corrections.* Corrects various typographical errors in the existing rules.

• *Simultaneous Operation on Old and New BRS Channels 1 and 2/2A.* Allows BRS Channel 1 and 2/2A licensees to operate simultaneously in their old channel locations in the 2150–2160/62 MHz band and their temporary, pre-transition locations at 2496–2500 MHz and 2686–2690 MHz band until every subscriber is relocated to the 2.5 GHz band.

10. In the *Big LEO 3rd Order on Reconsideration and AWS 6th MO&O,* we defer consideration of a petition for reconsideration filed by the Society of Broadcast Engineers asking us to adopt a revised band plan for Broadcast Auxiliary Service (BAS) Channels A8–A10 that would remove BAS operations from the 2496–2502 MHz band. We deny BellSouth's request that we modify the pfd limits applicable to Code Division Multiple Access Mobile Satellite Service licensees in the 2496–2500 MHz band to correspond to the more stringent limits set forth in United States proposals to the World Radio Conference regarding protection of terrestrial operations in the 2500–2690 MHz band.

11. In the *BRS/EBS 4th MO&O,* we deny a request that primary BRS Channel 2 licensees not be required to split the football with secondary BRS Channel 2 licensees or with BRS Channel 2A licensees.

F. Grandfathered E and F Group Channel EBS Stations

12. In the *4th MO&O,* the Commission denies petitions concerning overlaps between grandfathered EBS E and F Group licensees and co-channel BRS E and F Group licensees and affirm the existing rule § 27.1206 to eliminate overlaps of 50 percent or greater between grandfathered E and F Group channel EBS stations and co-channel incumbent BRS stations by splitting the football. Also, the Commission denies a petition asking for procedural changes to the 90-day negotiation period for significant GSA overlaps (more than 50 percent) between grandfathered EBS E and F Group channel licensees and incumbent BRS E and F Group channel licensees. In the case where the GSAs overlap 50% or greater, the Commission concluded that different treatment was warranted. Where there is a major overlap of service areas, splitting the football may no longer be the best solution for accommodating the needs of both licensees. In those cases, the Commission established a 90-day mandatory negotiation period during which both the BRS and EBS licensees have an explicit duty to work to accommodate each other's communications requirements. If, at the end of 90 days, the parties cannot reach a mutual agreement, the Commission then will split the football on its own accord.

13. All BRS and EBS licensees, including grandfathered E and F Group channel EBS licensees and incumbent BRS licenses that ''split-the-football'' with such licensees, may partition, disaggregate, assign, or transfer their spectrum. The use of the splitting the football mechanism to divide overlapping service areas does not preclude subsequent agreements to partition, disaggregate, assign, or transfer spectrum. The E and F channels, however, are classified as both EBS and BRS spectrum. We have granted waivers to allow assignments or transfers of grandfathered EBS stations

to BRS licensees upon a suitable public interest showing. Similarly, upon a similar showing, an EBS licensee could partition part of its service area or disaggregate its spectrum to its co-channel BRS licensee.

G. Gulf of Mexico Proceeding and Related Issues

14. In this *4th MO&O,* we reestablish three service areas in the Gulf of Mexico as requested by the American Petroleum Institute, establish the boundary of those service areas 12 nautical miles from the shore, and apply our existing technical rules to the Gulf Service Area which will provide Gulf licensees with the flexibility necessary to provide service.

H. Leasing

15. The Commission clarifies that EBS excess capacity leases entered into prior to January 10, 2005 and that contain an automatic renewal clause, are grandfathered after January 10, 2005 if they have an automatic renewal clause effective after January 10, 2005, only to the extent that such leases do not exceed 15 years in total length (including the automatic renewal period(s)). This decision is consistent with our decision in the *Two-Way Order on Reconsideration.* Thus, these leases cannot be extended in perpetuity. To further clarify, lease terms for EBS leases entered under the rules and policies of the *BRS/EBS R&O* (those entered into between January 10, 2005 and July 18, 2006) are not limited by the Commission's rules (but are subject to relevant state laws limiting the length of contracts). Leases entered into under the rules and policies of the *BRS/EBS 3rd MO&O* (on or after July 19, 2006) may be up to 30 years in length, so long as the EBS licensee retains the right at year 15 and every 5 years thereafter to review its educational needs.

16. The Commission declines to void EBS leases for one-way only video services entered into prior to the release of the *Two-Way Order.* While we are concerned by the situation, we do not have the authority to void contracts executed by two private parties under the laws of individual states. We find, however, that the alleged unknown start date is contrary to the rules and policies adopted by the Commission in the *Two-Way Order,* which limited the term of EBS leases to 15 years from the date they are executed between the parties. Any other interpretation of the *Two-Way Order* would permit the warehousing of valuable spectrum for decades and is contrary to the underlying purpose of the rule.

17. In the *4th MO&O,* the Commission grants a petition and amends rules to permit lessees to offer EBS licensees/lessors the actual equipment used or comparable equipment on lease termination. In the *BRS/EBS 3rd MO&O,* the Commission amended § 27.1214(c) to clarify that the EBS licensee/lessor could ''purchase or lease dedicated common equipment used for educational purposes in the event that the spectrum leasing arrangement'' was terminated by either the EBS licensee/lessor or the lessee. We agree that the proposed rule change is an appropriate modification that reflects the fact that equipment is often shared among multiple licensees.

I. Substantial Service

18. In the *4th MO&O,* the Commission denies a petition asking that licensees be permitted to demonstrate substantial service based solely on past-discontinued service. The Commission adopted a substantial service standard to ensure the prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, to promote investment in and rapid deployment of new technologies and services, and to facilitate the availability of broadband to all Americans. Permitting licensees to demonstrate substantial service by using past-discontinued service alone would not achieve any of these goals. Nevertheless, the Commission, by permitting the use of past-discontinued service as a factor in the substantial service determination, struck the appropriate balance between encouraging broadband development in the 2.5 GHz band and recognizing that licensees were permitted to discontinue service in anticipation of the transition to the new band plan and technical rules.

19. In the *4th MO&O,* the Commission agrees that it is appropriate to give some relief to licensees whose GSAs are heavily truncated to remedy a situation created by several factors and grants a petition asking for a new safe harbor for heavily encumbered or highly truncated BTAs and GSAs. We adopt a rule allowing licensees whose GSA is less than 1924 square miles in size to demonstrate substantial service by combining its GSA with an overlapping co-channel station licensed or leased by the licensee or its affiliate.

J. EBS Eligibility

20. We grant a petition asking us to update the EBS eligibility rules to reflect the wider variety of services EBS licensees will use and offer. In particular, as written, the rules contemplate video programming where the licensee will know the specific content being offered in advance. We amend § 27.1201(a)(3) of the Commission's rules to clarify that an educational institution may receive education-enhancing broadband services, which it intends to use in furtherance of its educational mission. We also amend the language in § 27.1201(a)(3) regarding the distance from the transmit site for qualified schools supplying letters to be based on distance from the proposed center reference point, and should be further qualified to ensure that such school will be within the proposed geographic service area.

21. The Commission amends paragraph (d) of § 27.1201 of the Commission's rules to clarify that commercial EBS licensees are not subject to the educational programming requirements in § 27.1203(b) through (d) of the Commission's rules or the special EBS leasing requirements contained in § 27.1214 of the Commission's rules.

K. Mutually Exclusive Applications

22. In the *4th MO&O,* the Commission denies a petition asking the Commission to reinstate pending mutually exclusive applications for new EBS stations. The Commission rejects the argument that D.C. Circuit's holding in *Kessler* v. *FCC* prohibited the dismissal of mutually exclusive applications. The dismissal of the mutually exclusive applications was necessary because neither the Commission nor the parties could resolve this mutual exclusivity under the then applicable site-based licensing scheme. The dismissal of those applications, therefore, furthers the Commission's goal of developing a licensing scheme that not only resolves issues of mutual exclusivity, but also ensures the efficient use of EBS spectrum by educators. Allowing the mutually exclusive applications to remain on file would create considerable uncertainty for potential proponents who would be uncertain of the ultimate licensee in a market.

III. Declaratory Ruling

23. In this *Declaratory Ruling,* we clarify the treatment of the splitting the football policy for overlapping GSAs. On January 25, 2007, the Broadband Division of the Wireless Telecommunications Bureau granted waivers *nunc pro tunc* to 41 late-filed EBS renewal applications. On September 28, 2007, Clearwire, Catholic Television Network/National ITFS Association (CTN/NIA), WCA, NextWave, Sprint Nextel, and Xanadoo (the Joint Commenters) filed a letter

proposing clarifications that they believe represent a consensus position of a majority of the 2.5 GHz industry and that, on balance, most effectively and fairly advance the Commission's 2.5 GHz band goals and objectives. The Joint Commenters ask that we clarify our splitting the football treatment of expired licenses.

24. In addition, four licensees—Instructional Telecommunications Foundation, Inc. (ITF), New Trier Township, High School District 203 (New Trier), Shekinah Network (Shekinah) and Boston Catholic Television Center (BCTC)—have asked the Commission to issue a declaratory ruling that their Stations do not have to split the football with overlapping stations that were expired on January 10, 2005.

25. In response to the petitions for declaratory ruling and other filings we have considered, we issue the following clarifications of our splitting the football policy:

- An active BRS or EBS licensee whose former protected service area overlapped with a co-channel license that was expired on January 10, 2005 need not split the football with such expired license if the licensee has not had its license reinstated.
- If a BRS or EBS license was expired on January 10, 2005, and such license is later reinstated *nunc pro tunc* pursuant to a waiver granted for a late-filed renewal application granted after the adoption date of this *BRS/EBS Fourth Memorandum Opinion and Order,* that licensee's geographic service shall not include any portion of its former protected service area that overlapped with another licensee whose license was in active status on January 10, 2005 and on the date the expired licensee's late-filed renewal application was granted, unless a finding is made that splitting the football is appropriate because of manifest Commission error or other unique circumstances.

IV. Procedural Matters

26. *Paperwork Reduction Analysis:* This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

27. In this present document, we have assessed the effects of requiring licensees to provide information concerning their base stations to any nearby licensee upon request, and find that this requirement will benefit companies with fewer than 25 employees because it will help them to enjoy interference-free operations. We anticipate that the information exchange will consist of a limited number of technical parameters of a licensee's operations that licensees will have already established and recorded for their own operational purposes. Because licensees will already have such information at their disposal, it will not be burdensome to convey such information when requested. Additionally, because licensees will only be required to submit such information upon request from a neighboring licensee, this significantly limits the amount of potential requests for information. Therefore, we conclude that this information exchange will not burden companies with fewer than 25 employees.

28. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–B441, Washington, DC 20554, or via the Internet to <*Judith-B.Herman@fcc.gov*>, and to Nicholas Fraser, Office of Management and Budget (OMB), via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

V. Final Regulatory Flexibility Analysis for BRS/EBS Fourth Memorandum Opinion and Order

29. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), we incorporated an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Further Notice of Proposed Rule Making (FNPRM).* Because we amend the rules in this *BRS/EBS 4th MO&O,* we have included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

A. Need for, and Objectives of the Rules

30. In the *BRS/EBS 4th MO&O,* we continue to modify our rules to enable the transition of the 2.5 GHz band and the provision of new and innovative wireless services. Today, we adopt part I, subpart Q as the competitive bidding rules for available and unassigned Broadband Radio Service (BRS) spectrum; designated entity rules to provide bidding credits for small businesses, very small businesses, and entrepreneurs; modify technical rules concerning emission limits, signal strength limits, and height benchmarking; special safe harbors for licensees whose Geographic Service Area (GSA) is heavily encumbered or highly truncated; and create three Gulf of Mexico Service Area zones.

31. We believe the rules we adopt today will both encourage the enhancement of existing services using this band and promote the development of new innovative services to the public, such as providing wireless broadband services, including high-speed Internet access and mobile services. We also believe that our new rules will allow licensees to adapt quickly to changing market conditions and the marketplace, rather than to government regulation, in determining how this band can best be used.

B. Summary of Significant Issues Raised by Public Comments in Response to the FRFA

32. No comments were submitted specifically in response to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

33. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms, ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''

The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small. Below, we discuss the total estimated numbers of small businesses that might be affected by our actions.

34. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by the decisions in this *BRS/EBS 4th MO&O.*

35. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses.

36. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions may be included in the definition of a small entity. EBS is a non-profit non-broadcast service. We do not collect, nor are we aware of other collections of, annual revenue data for EBS licensees. We find that up to 1,932 of these educational institutions are small entities that may take advantage of our amended rules to provide additional flexibility to EBS.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

37. This *BRS/EBS 4th MO&O* modifies the reporting, recordkeeping, or other compliance requirements previously adopted in this proceeding. We are adopting competitive bidding procedures for available and unassigned BRS spectrum, including small business size standards and bidding credits for a ''small business'' (an entity with attributed average annual gross revenues not exceeding $40 million for the preceding three years), a ''very small business'' (an entity with attributed average gross revenues not exceeding $15 million for the preceding three years), and an ''entrepreneur'' (an entity with attributed average gross revenues not exceeding $3 million the preceding three years). We are also adopting two new safe harbors to enable BRS and EBS licensees whose GSA is heavily encumbered or highly truncated to meet the performance requirements for the 2.5 GHz band. We are also creating three new Gulf of Mexico GSAs, which will enable the provision of 2.5 GHz band wireless services in the Gulf of Mexico in the future. We are changing the technical rules concerning emission limits, signal strength limits, and antenna height benchmarking, including requiring licensees to exchange information.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

38. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

39. Regarding our decision to adopt competitive bidding rules, we anticipate that our decision to adopt small business size standards and bidding credits for entities that meet the definition of small business, very small business, or entrepreneur will not have a significant economic impact on small entities. Because the BRS spectrum in the 2.5 GHz band was auctioned in 1996, only 70 BTA licenses (of the 493 licenses originally available in 1996) are available for reassignment by competitive bidding.

40. Regarding our decision to adopt two new safe harbors for the demonstration of substantial service compliance, we do not anticipate any significant economic impact on small entities. These two safe harbors apply only to licensees that have heavily encumbered or highly truncated GSAs. Although the applicability of these two safe harbors is limited, they will enable licensees to meet both our performance requirements and our interference protection rules.

41. Regarding our decision to adopt three new Gulf of Mexico Service Area Zones, we do not anticipate any significant impact on small entities. We anticipate that spectrum in these GSAs will be used on oil platforms in the Gulf of Mexico.

42. Regarding our decision to modify various technical rules, we do not anticipate any significant impact on small entities. These modifications are minor.

43. The rules set forth in the *BRS/EBS 4th MO&O* will affect all entities that intend to provide BRS or EBS service in the 2.5 GHz band.

VI. Report to Congress

44. The Commission will send a copy of this *Fourth Memorandum Opinion and Order,* including this FRFA, in a

report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *Fourth Memorandum Opinion and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Fourth Memorandum Opinion and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VII. Ordering Clauses

45. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706, that this *Third Order on Reconsideration, Sixth Memorandum Opinion and Order*, and *Fourth Memorandum Opinion and Order* is hereby adopted.

46. It is further ordered that the Petitions for Reconsideration filed in these proceedings are granted to the extent indicated and are otherwise denied.

47. It is further ordered, pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. 154(i), and § 1.2 of the Commission's rules, 47 CFR 1.2, that the petitions for declaratory ruling filed by Instructional Telecommunications Foundation, Inc. on March 13, 2007, New Trier High School District #203 on July 26, 2007, Shekinah Network on November 27, 2007, and Boston Catholic Television Center, Inc. on December 14, 2007 are granted to the extent indicated herein and are otherwise denied.

48. *It is further ordered* that the proceeding entitled Amendment of parts 21 and 74 of the Commission's rules with regard to licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, WT Docket No. 02–68 is reinstated.

49. *It is further ordered* that the Final Regulatory Flexibility Analysis is adopted.

50. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Third Order on Reconsideration, Sixth Memorandum Opinion and Order, and Fourth Memorandum Opinion and Order and Second Notice of Proposed Rulemaking and Declaratory Ruling,* including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 27

Communications common carriers, Communications equipment, Equal employment opportunity, Radio, Reporting and recordkeeping requirements, Satellites, Securities, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 27 as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

■ 2. Amend § 27.5 by revising paragraph (i)(2)(iii) and the note to paragraph (i)(2) to read as follows:

§ 27.5 Frequencies.

(i) * * *

(2) * * *

(iii) Upper Band Segment (UBS): The following channels shall constitute the Upper Band Segment:

BRS Channel KH1: 2614.00000–2614.33333 MHz.

BRS Channel KH2: 2614.33333–2614.66666 MHz.

BRS Channel KH3: 2614.66666–2615.00000 MHz.

EBS Channel KG1: 2615.00000–2615.33333 MHz.

EBS Channel KG2: 2615.33333–2615.66666 MHz.

EBS Channel KG3: 2615.66666–2616.00000 MHz.

BRS Channel KF1: 2616.00000–2616.33333 MHz.

BRS Channel KF2: 2616.33333–2616.66666 MHz.

BRS Channel KF3: 2616.66666–2617.00000 MHz.

BRS Channel KE1: 2617.00000–2617.33333 MHz.

BRS Channel KE2: 2617.33333–2617.66666 MHz.

BRS Channel KE3: 2617.66666–2618.00000 MHz.

BRS Channel 2: 2618–2624 MHz.

BRS/EBS Channel E1: 2624–2629.5 MHz.

BRS/EBS Channel E2: 2629.5–2635 MHz.

BRS/EBS Channel E3: 2635–2640.5 MHz.

BRS/EBS Channel F1: 2640.5–2646 MHz.

BRS/EBS Channel F2: 2646–2651.5 MHz.

BRS/EBS Channel F3: 2651.5–2657 MHz.

BRS Channel H1: 2657–2662.5 MHz.

BRS Channel H2: 2662.5–2668 MHz.

BRS Channel H3: 2668–2673.5 MHz.

EBS Channel G1: 2673.5–2679 MHz.

EBS Channel G2: 2679–2684.5 MHz.

EBS Channel G3: 2684.5–2690 MHz.

Note to paragraph (i)(2): No 125 kHz channels are provided for channels in operation in this service. The 125 kHz channels previously associated with these channels have been reallocated to Channel G3 in the upper band segment.

* * * * *

■ 3. Amend § 27.13 by adding new paragraph (h) to read as follows:

§ 27.13 License period.

* * * * *

(h) *BRS and EBS.* BRS and EBS authorizations shall have a term not to exceed ten years from the date of original issuance or renewal. Unless otherwise specified by the Commission, incumbent BRS authorizations shall expire on May 1 in the year of expiration.

■ 4. Amend § 27.14 by adding new paragraph (o) to read as follows:

§ 27.14 Construction requirements; Criteria for renewal.

* * * * *

(o) BRS and EBS licensees must make a showing of ''substantial service'' no later than May 1, 2011. Incumbent BRS licensees must file their ''substantial service'' showing with their renewal application. ''Substantial service'' is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Substantial service for BRS and EBS licensees is satisfied if a licensee meets the requirements of paragraph (o)(1) or (o)(2) of this section. If a licensee has not met the requirements of paragraph (o)(1) or (o)(2) of this section, then demonstration of ''substantial service'' shall proceed on a case-by-case basis. All substantial service determinations will be made on a license-by-license basis. Except for BTA licenses, BRS licensees must file their ''substantial service'' showing with their renewal applications. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

(1) A BRS or EBS licensee has provided ''substantial service'' by:

(i) Constructing six permanent links per one million people for licensees providing fixed point-to-point services;

(ii) Providing coverage of at least 30 percent of the population of the licensed area for licensees providing mobile services or fixed point-to-multipoint services;

(iii) Providing service to ''rural areas'' (a county (or equivalent) with a population density of 100 persons per square mile or less, based upon the most recently available Census data) and areas with limited access to telecommunications services:

(A) For mobile service, where coverage is provided to at least 75% of the geographic area of at least 30% of the rural areas within its service area; or

(B) for fixed service, where the BRS or EBS licensee has constructed at least one end of a permanent link in at least 30% of the rural areas within its licensed area.

(iv) Providing specialized or technologically sophisticated service that does not require a high level of coverage to benefit consumers; or

(v) Providing service to niche markets or areas outside the areas served by other licensees.

(2) An EBS licensee has provided ''substantial service'' when:

(i) The EBS licensee is using its spectrum (or spectrum to which the EBS licensee's educational services are shifted) to provide educational services within the EBS licensee's GSA;

(ii) the EBS licensee's license is actually being used to serve the educational mission of one or more accredited public or private schools, colleges or universities providing formal educational and cultural development to enrolled students; or

(iii) the level of service provided by the EBS licensee meets or exceeds the minimum usage requirements specified in § 27.1214.

(3) An EBS or BRS licensee may be deemed to provide substantial service through a leasing arrangement if the lessee is providing substantial service under paragraph (o)(1) of this section. The EBS licensee must also be otherwise in compliance with this Chapter (including the programming requirements in § 27.1203 of this subpart).

(4) If the GSA of a licensee is less than 1924 square miles in size, and there is an overlapping co-channel station licensed or leased by the licensee or its affiliate, substantial service may be demonstrated by meeting the requirements of paragraph (o)(1) or (o)(2) of this section with respect to the combined GSAs of both stations.

(5) If the GSA of a BTA authorization holder, is less than one-half of the area within the BTA for every BRS channel, substantial service may be demonstrated for the licenses in question by meeting the requirements of paragraph (o)(1) or (o)(2) of this section with respect to the combined GSAs of the BTA authorization holder, together with any incumbent authorizations licensed or leased by the licensee or its affiliates.

■ 5. Amend § 27.53 by revising paragraph (m) introductory text and paragraphs (m)(2) and (m)(4) to read as follows:

§ 27.53 Emission limits.

* * * * *

(m) For BRS and EBS stations, the power of any emissions outside the licensee's frequency bands of operation shall be attenuated below the transmitter power (P) measured in watts in accordance with the standards below. If a licensee has multiple contiguous channels, out-of-band emissions shall be measured from the upper and lower edges of the contiguous channels.

* * * * *

(2) For digital base stations, the attenuation shall be not less than 43 + 10 log (P) dB, unless a documented interference complaint is received from an adjacent channel licensee with an overlapping Geographic Service Area. Mobile Satellite Service licensees operating on frequencies below 2495 MHz may also submit a documented interference complaint against BRS licensees operating on channel BRS No. 1 on the same terms and conditions as adjacent channel BRS or EBS licensees. Provided that a documented interference complaint cannot be mutually resolved between the parties prior to the applicable deadline, then the following additional attenuation requirements shall apply:

(i) If a pre-existing base station suffers harmful interference from emissions caused by a new or modified base station located 1.5 km or more away, within 24 hours of the receipt of a documented interference complaint the licensee of the new or modified base station must attenuate its emissions by at least 67 + 10 log (P) dB measured at 3 megahertz, above or below, from the channel edge of its frequency block and shall immediately notify the complaining licensee upon implementation of the additional attenuation. No later than 60 days after the implementation of such additional attenuation, the licensee of the complaining base station must attenuate its base station emissions by at least 67 + 10 log (P) dB measured at 3 megahertz, above or below, from the channel edge of its frequency block of the new or modified base station.

(ii) If a pre-existing base station suffers harmful interference from emissions caused by a new or modified base station located less than 1.5 km away, within 24 hours of receipt of a documented interference complaint the licensee of the new or modified base station must attenuate its emissions by at least 67 + 10 log (P) − 20 log (Dkm/1.5) dB measured at 3 megahertz, above or below, from the channel edge of its frequency block of the complaining licensee, or if both base stations are co-located, limit its undesired signal level at the pre-existing base station receiver(s) to no more than −107 dBm measured in a 5.5 megahertz bandwidth and shall immediately notify the complaining licensee upon such reduction in the undesired signal level. No later than 60 days after such reduction in the undesired signal level, the complaining licensee must attenuate its base station emissions by at least 67 + 10 log (P) dB measured at 3 megahertz, above or below, from the channel edge of its frequency block of the new or modified base station.

(iii) If a new or modified base station suffers harmful interference from emissions caused by a pre-existing base station located 1.5 km or more away, within 60 days of receipt of a documented interference complaint the licensee of each base station must attenuate its base station emissions by at least 67 + 10 log (P) dB measured at 3 megahertz, above or below, from the channel edge of its frequency block of the other licensee.

(iv) If a new or modified base station suffers harmful interference from emissions caused by a pre-existing base station located less than 1.5 km away, within 60 days of receipt of a documented interference complaint: (a) The licensee of the new or modified base station must attenuate its OOBE by at least 67 + 10 log (P) − 20 log (Dkm/1.5) measured 3 megahertz above or below, from the channel edge of its frequency block of the other licensee, or if the base stations are co-located, limit its undesired signal level at the other base station receiver(s) to no more than −107 dBm measured in a 5.5-megahertz bandwidth; and (b) the licensee causing the interference must attenuate its emissions by at least 67 + 10 log (P) dB measured at 3 megahertz, above or below, from the channel edge of its frequency block of the new or modified base station.

(v) For all fixed digital user stations, the attenuation factor shall be not less

than 43 + 10 log (P) dB at the channel edge.

* * * * *

(4) For mobile digital stations, the attenuation factor shall be not less than 43 + 10 log (P) dB at the channel edge and 55 + 10 log (P) dB at 5.5 megahertz from the channel edges. Mobile Satellite Service licensees operating on frequencies below 2495 MHz may also submit a documented interference complaint against BRS licensees operating on BRS Channel 1 on the same terms and conditions as adjacent channel BRS or EBS licensees.

* * * * *

■ 6. Amend § 27.55 by revising paragraphs (a)(4)(i), (ii), and (iii) to read as follows:

§ 27.55 Power strength limits.

(a) * * *

(4) * * *

(i) Prior to transition, the signal strength at any point along the licensee's GSA boundary does not exceed the greater of that permitted under the licensee's Commission authorizations as of January 10, 2005 or 47 dBμV/m.

(ii) Following transition, for stations in the LBS and UBS, the signal strength at any point along the licensee's GSA boundary must not exceed 47 dBμV/m. This field strength is to be measured at 1.5 meters above the ground over the channel bandwidth (*i.e.*, each 5.5 MHz channel for licensees that hold a full channel block, and for the 5.5 MHz channel for licensees that hold individual channels).

(iii) Following transition, for stations in the MBS, the signal strength at any point along the licensee's GSA boundary must not exceed the greater of $-73.0 + 10 \log(X/6)$ dBW/m^2, where X is the bandwidth in megahertz of the channel, or for facilities that are substantially similar to the licensee's pre-transition facilities (including modifications that do not alter the fundamental nature or use of the transmissions), the signal strength at such point that resulted from the station's operations immediately prior to the transition, provided that such operations complied with paragraph (a)(4)(i) of this section.

* * * * *

■ 7. Amend § 27.1201 by revising paragraphs (a)(3) and (d) to read as follows:

§ 27.1201 EBS eligibility.

(a) * * *

(3) Those applicant organizations whose eligibility is established by service to accredited institutional or governmental organizations must submit documentation from proposed receive sites demonstrating that they will receive and use the applicant's educational usage. In place of this documentation, a State educational television (ETV) commission may demonstrate that the public schools it proposes to serve are required to use its proposed educational usage. Documentation from proposed receive sites which are to establish the eligibility of an entity not serving its own enrolled students for credit should be in letter form, written and signed by an administrator or authority who is responsible for the receive site's curriculum planning. No receive site more than 35 miles from the proposed station's central reference point, or outside the applicants' proposed GSA, shall be used to establish basic eligibility. Where broadband or data services are proposed, the letter should indicate that the data services will be used in furtherance of the institution's educational mission and will be provided to enrolled students, faculty and staff in a manner and in a setting conducive to educational usage. Where traditional educational or instructional video services are proposed, the letter should indicate that the applicant's program offerings have been viewed and that such programming will be incorporated in the site's curriculum. Where educational or instructional video services are proposed, the letter should discuss the types of programming and hours per week of formal and informal programming expected to be used and the site's involvement in the planning, scheduling and production of programming. If other levels of authority must be obtained before a firm commitment to utilize the service can be made, the nature and extent of such additional authorization(s) must be provided.

* * * * *

(d) This paragraph applies to EBS licensees and applications licensed or filed pursuant to the provisions of § 27.1201(c) contained in the edition of 47 CFR parts 20 through 39, revised as of October 1, 2005, or §§ 74.990 through 74.992 contained in the edition of 47 CFR parts 70 through 79, revised as of October 1, 2004, and that do not meet the eligibility requirements of paragraph (a) of this section. Such licensees may continue to operate pursuant to the terms of their existing licenses, and their licenses may be renewed, assigned, or transferred, so long as the licensee is otherwise in compliance with this chapter. Applications filed pursuant to the provisions of § 27.1201(c) contained in the edition of 47 CFR parts 20 through 39, revised as of October 1, 2005 or §§ 74.990 through 74.992 contained in the edition of 47 CFR parts 70 through 79, revised as of October 1, 2004 may be processed and granted, so long as such applications were filed prior to July 19, 2006. The provisions of §§ 27.1203(b) through (d) and 27.1214 of this subpart do not apply to licenses governed by this paragraph.

■ 8. Amend § 27.1207 by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 27.1207 BTA license authorization.

(a) Winning bidders must file an application (FCC Form 601) for an initial authorization.

(b) Initial authorizations for BRS granted after January 1, 2008, shall be blanket licenses for all BRS frequencies identified in § 27.5(i)(2) and based on the geographic areas identified in § 27.1208. Blanket licenses cover all mobile and response stations.

* * * * *

■ 9. Revise § 27.1208 to read as follows:

§ 27.1208 BTA Service areas.

Except for incumbent BRS licenses, BRS service areas are Basic Trading Areas (BTAs) or additional service areas similar to BTAs adopted by the Commission. BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. The following are additional BRS service areas in places where Rand McNally has not defined BTAs: American Samoa; Guam; Gulf of Mexico Zone A; Gulf of Mexico Zone B; Gulf of Mexico Zone C; Northern Mariana Islands; Mayaguez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The boundaries of Gulf of Mexico Zone A are from an area twelve nautical miles from the shoreline at mean high tide on the north and east, to the limit of the Outer Continental Shelf to the south, and to longitude 91°00′ to the west. The boundaries of Gulf of Mexico Zone B are from an area twelve nautical miles from the shoreline at mean high tide on the north, to the limit of the Outer Continental Shelf to the south, to longitude 91°00′ to the east, and to longitude 94°00′ to the west. The boundaries of Gulf of Mexico Zone C are from an area twelve nautical miles from the shoreline at mean high tide on the north and west, to longitude 94°00′ to the east, and to a line 281 kilometers from the reference point at Linares, N.L., Mexico on the southwest. The Mayaguez/Aguadilla-Ponce, PR, service

area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San German, Santa Isabel, Villalba and Yauco. The San Juan service area consists of all other municipios in Puerto Rico.

■ 10. Amend § 27.1214 by revising paragraph (c) to read as follows:

§ 27.1214 EBS spectrum leasing arrangements and grandfathered leases.

* * * * *

(c) All spectrum leasing arrangements involving EBS spectrum must afford the EBS licensee an opportunity to purchase or to lease the dedicated or common EBS equipment used for educational purposes, or comparable equipment in the event that the spectrum leasing arrangement is terminated.

* * * * *

■ 11. Add § 27.1217 to read as follows:

§ 27.1217 Competitive Bidding Procedures for the Broadband Radio Service.

Mutually exclusive initial applications for BRS licenses in the 2500–2690 MHz band are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

■ 12. Add § 27.1218 to read as follows:

§ 27.1218 Designated Entities.

(a) *Eligibility for small business provisions.* (1) A small business is an entity that, together with all attributed parties, has average gross revenues that are not more than $40 million for the preceding three years.

(2) A very small business is an entity that, together with all attributed parties, has average gross revenues that are not more than $15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with all attributed parties, has average gross revenues that are not more than $3 million for the preceding three years.

(b) *Bidding credits.* (1) A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses, may use a bidding credit of 15 percent, as specified in § 1.2110(f)(2)(iii) of this chapter, to lower the cost of its winning bid on any of the licenses in this subpart.

(2) A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses, may use a bidding credit of 25 percent, as specified in § 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid on any of the licenses in this subpart.

(3) A winning bidder that qualifies as an entrepreneur, as defined in this section, or a consortium of entrepreneurs, may use a bidding credit of 15 percent, as specified in § 1.2110(f)(2)(i) of this chapter, to lower the cost of its winning bid on any of the licenses in this subpart.

■ 13. Amend § 27.1221 by revising paragraphs (b) through (e) and adding a new paragraph (f) to read as follows:

§ 27.1221 Interference protection.

* * * * *

(b) *Height Benchmarking.* Height benchmarking is defined for pairs of base stations, one in each of two proximate geographic service areas (GSAs). The height benchmark, which is defined in meters (hb_m) for a particular base station relative to a base station in another GSA, is equal to the distance, in kilometers, from the base station along a radial to the nearest point on the GSA boundary of the other base station squared (D_{km}^2) and then divided by 17. That is, hb $(_m) = D_{km}^2/17$. A base station antenna will be considered to be within its applicable height benchmark relative to another base station if the height in meters of its centerline of radiation above average elevation (HAAE) calculated along the straight line between the two base stations in accordance with §§ 24.53(b) and (c) of this chapter does not exceed the height benchmark (hb_m). A base station antenna will be considered to exceed its applicable height benchmark relative to another base station if the HAAE of its centerline of radiation calculated along the straight line between the two base stations in accordance with §§ 24.53(b) and (c) of this chapter exceeds the height benchmark (hb_m).

(c) *Protection for Receiving Antennas not Exceeding the Height Benchmark.* Absent agreement between the two licensees to the contrary, if a transmitting antenna of one BRS/EBS licensee's base station exceeds its applicable height benchmark and such licensee is notified by another BRS/EBS licensee that it is generating an undesired signal level in excess of −107 dBm/5.5 megahertz at the receiver of a co-channel base station that is within its applicable height benchmark, then the licensee of the base station that exceeds its applicable height benchmark shall either limit the undesired signal at the receiver of the protected base station to −107dBm/5.5 megahertz or less or reduce the height of its transmission antenna to no more than the height benchmark. If the interfering base station has been modified to increase the EIRP transmitted in the direction of the protected base station, it shall be deemed to have commenced operations on the date of such modification. Such corrective action shall be completed no later than:

(i) 24 hours after receiving such notification, if the base station that exceeds its height benchmark commenced operations after the station that is within its applicable height benchmark; or

(ii) 90 days after receiving such notification, if the base station that exceeds its height commenced operations prior to the station that is within its applicable height benchmark. For purposes of this section, if the interfering base station has been modified to increase the EIRP transmitted in the direction of the victim base station, it shall be deemed to have commenced operations on the date of such modification.

(d) *No Protection from a Transmitting Antenna not Exceeding the Height Benchmark.* The licensee of a base station transmitting antenna less than or equal to its applicable height benchmark shall not be required pursuant to paragraph (c) of this section to limit that antennas undesired signal level to −107dBm/5.5 megahertz or less at the receiver of any co-channel base station.

(e) *No Protection for a Receiving-Antenna Exceeding the Height Benchmark.* The licensee of a base station receive antenna that exceeds its applicable height benchmark shall not be entitled pursuant to paragraph (c) of this section to insist that any co-channel base station limit its undesired signal level to −107dBm/5.5 megahertz or less at the receiver.

(f) *Information Exchange.* A BRS/EBS licensee shall provide the geographic coordinates, the height above ground level of the center of radiation for each transmit and receive antenna, and the date transmissions commenced for each of the base stations in its GSA within 30 days of receipt of a request from a co-channel BRS/EBS licensee with an operational base station located in a proximate GSA. Information shared pursuant to this section shall not be disclosed to other parties except as required to ensure compliance with this section.

■ 14. Amend § 27.1231 by revising paragraph (f) introductory text to read as follows:

§ 27.1231 Initiating the transition.

* * * * *

(f) *Initiation Plan.* To initiate a transition, a potential proponent(s) must submit an Initiation Plan to the Commission at the Office of the Secretary in Washington, DC on or before January 21, 2009.

* * * * *

■ 15. Amend § 27.1236 by revising paragraphs (a), (b)(1), and (b)(6) to read as follows:

§ 27.1236 Self-transitions.

(a) If an Initiation Plan is not filed on or before January 21, 2009 for a BTA, BRS and EBS licensees in that BTA may self-transition by relocating to their default channel locations specified in § 27.5(i)(2) and complying with §§ 27.50(h), 27.53, 27.55 and 27.1221.

* * * * *

(b) * * *

(1) Notify the Secretary of the Commission on or before April 21, 2009 that it will self-transition (see paragraph (a) of this section);

* * * * *

(6) Complete the self-transition on or before October 20, 2010.

* * * * *

[FR Doc. E8–10099 Filed 5–7–08; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 73, No. 90
Thursday, May 8, 2008

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–2008–0523; Directorate Identifier 2008–NM–049–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 Airplanes, and Model 720 and 720B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 707 airplanes, and Model 720 and 720B series airplanes. This proposed AD would require repetitive detailed inspections to detect cracks and corrosion on any existing repairs and at certain body stations of the visible surfaces of the wing to body terminal fittings including the web, flanges, and ribs; and applicable related investigative and corrective actions. This proposed AD results from reports of cracks found in the wing to body terminal fittings during routine inspections. We are proposing this AD to prevent cracks and corrosion in the body terminal fittings, which could cause loss of support for the wing and could adversely affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by June 23, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0523; Directorate Identifier 2008–NM–049–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of cracks found in the wing to body terminal fittings during routine inspections of certain Boeing Model 707 airplanes, and Model 720 and 720B series airplanes. The cause of the cracks has been attributed to stress corrosion. The body terminal fittings are forgings made from 7079–T6 material. Cracks and corrosion in the body terminal fittings, if not corrected, could cause loss of support for the wing and could adversely affect the structural integrity of the airplane.

Relevant Service Information

We have reviewed Boeing 707 Special Attention Service Bulletin 3524, dated July 18, 2007. The service bulletin describes procedures for repetitive detailed inspections to detect cracks and corrosion on any existing repairs and at certain body stations of the visible surfaces of the wing to body terminal fittings including the web, flanges, and ribs; and applicable related investigative and corrective actions. The related investigative actions include removing the repair and doing a detailed inspection to detect cracks and corrosion of the fitting in the area covered by the repair. The corrective action includes contacting Boeing for repair instructions.

FAA's Determination and Requirements of this Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Referenced Service Bulletin.''

Difference Between the Proposed AD and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced Boeing service bulletin describe procedures for submitting information to the manufacturer, this proposed AD would not require that action.

Costs of Compliance

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspections	20	$80	$1,600, per inspection cycle	5	$8,000 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 determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2008–0523; Directorate Identifier 2008–NM–049–AD.

Comments Due Date

(a) We must receive comments by June 23, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 707–100 long body, –200, –100B long body, and –100B short body series airplanes; Model 707–300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes, certificated in any category; as identified in Boeing 707 Special Attention Service Bulletin 3524, dated July 18, 2007.

Unsafe Condition

(d) This AD results from reports of cracks found in the wing to body terminal fittings during routine inspections. We are issuing this AD to prevent cracks and corrosion in the body terminal fittings, which could cause loss of support for the wing and could adversely affect the structural integrity of the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Inspections and Corrective Actions

(f) Within 24 months after the effective date of this AD, do detailed inspections and applicable related investigative and corrective actions, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing 707 Special Attention Service Bulletin 3524, dated July 18, 2007, except as provided by paragraph (g) of this AD. Repeat the detailed inspections thereafter at intervals not to exceed 24 months. Do all applicable related investigative and corrective actions before further flight.

(g) If any crack or corrosion is found during any inspection required by paragraph (f) of this AD, and Boeing 707 Special Attention Service Bulletin 3524, dated July 18, 2007, specifies to contact Boeing for appropriate action: Before further flight, repair the terminal fittings using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

No Information Submission

(h) Although Boeing 707 Special Attention Service Bulletin 3524, dated July 18, 2007, specifies to submit information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (SACO), FAA, ATTN: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using 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, SACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on April 25, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–10217 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0522; Directorate Identifier 2008–NM–041–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) Airplanes, Model CL–600–2D15 (Regional Jet Series 705) Airplanes, and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) 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:

Following in-flight test deployments on CL–600–2B19 aircraft, several Air-Driven generators (ADGs) failed to come on-line. Investigation revealed that, as a result of a wiring anomaly that had not been detected during ADG manufacture, a short circuit was possible between certain internal wires and their metallic over-braided shields, which could result in the ADG not providing power when deployed. * * *

The unsafe condition is that failure of the ADG could lead to loss of several functions essential for safe flight. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 9, 2008.

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

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *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*: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.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 this proposed AD, 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.

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0522; Directorate Identifier 2008–NM–041–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2008–10, dated February 5, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Following in-flight test deployments on CL–600–2B19 aircraft, several Air-Driven generators (ADGs) failed to come on-line. Investigation revealed that, as a result of a wiring anomaly that had not been detected during ADG manufacture, a short circuit was possible between certain internal wires and their metallic over-braided shields, which could result in the ADG not providing power when deployed. This directive mandates checking of the ADG and modification of the ADG internal wiring, if required. It also prohibits future installation of unmodified ADGs.

The unsafe condition is that failure of the ADG could lead to loss of several functions essential for safe flight. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 304 products of U.S. registry. We also estimate that it would take about 5 work hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may

incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $121,600, or $400 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2008–0522; Directorate Identifier 2008–NM–041–AD.

Comments Due Date

(a) We must receive comments by June 9, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, having serial numbers (SNs) 10004 and subsequent; and Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes, having SN 15002 and subsequent; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical Power.

Reason

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

Following in-flight test deployments on CL–600–2B19 aircraft, several Air-Driven generators (ADGs) failed to come on-line. Investigation revealed that, as a result of a wiring anomaly that had not been detected during ADG manufacture, a short circuit was possible between certain internal wires and their metallic over-braided shields, which could result in the ADG not providing power when deployed. This directive mandates checking of the ADG and modification of the ADG internal wiring, if required. It also prohibits future installation of unmodified ADGs.

The unsafe condition is that failure of the ADG could lead to loss of several functions essential for safe flight.

Actions and Compliance

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

(1) For airplanes identified in Table 1 of this AD: Within 12 months after the effective date of this AD, inspect the serial number of the installed ADG. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the ADG can be conclusively determined from that review.

TABLE 1.—BOMBARDIER AIRPLANE IDENTIFICATION

Model	Serial No.
CL–600–2C10 airplanes	10004 through 10265.
CL–600–2D15 and CL–600–2D24 airplanes	15002 through 15162.

(i) If the serial number is not listed in paragraph 1.A of Bombardier Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006, no further action is required by this AD.

(ii) If the serial number is listed in paragraph 1.A of Bombardier Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006, before further flight, inspect the ADG identification plate and, as applicable, do the actions of paragraph (f)(1)(ii)(A) or (f)(1)(ii)(B) of this AD.

(A) If the identification plate is marked with the symbol ''24–2'', no further action is required by this AD.

(B) If the identification plate is not marked with the symbol ''24–2'', modify the ADG wiring in accordance with the Accomplishment Instructions of the service bulletin.

(2) For all Model CL–600–2C10 airplanes having SN 10004 and subsequent, and Model CL–600–2D15 and CL–600–2D24 airplanes having SN 15002 and subsequent: As of the effective date of this AD, no ADG part number 604–90800–19 (761339E), having SN 0101 through 0132, 0134 through 0167, 0169 through 0358, 0360 through 0438, 0440 through 0456, 0458 through 0467, 0469, 0471 through 0590, 0592 through 0597, 0599 through 0745, 0747 through 1005, or 1400 through 1439, may be installed on any airplane, unless the identification plate of the ADG is identified with the symbol ''24–2'' (refer to Hamilton Sundstrand Service Bulletin ERPS10AG–24–2 for further information).

(3) Actions done before the effective date of this AD according to Bombardier Service Bulletin 670BA–24–015, dated May 17, 2004, are considered acceptable for compliance with the corresponding actions specified in this AD, provided the ADG has not been replaced since those actions were done.

FAA AD Differences

Note 1: 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, New York Aircraft Certification Office, 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: Fabio Buttitta, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531. 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

(h) Refer to Canadian Airworthiness Directive CF–2008–10, dated February 5, 2008, and Bombardier Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006, for related information.

Issued in Renton, Washington, on April 25, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–10219 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0308; Airspace Docket No. 08–AEA–19]

Modification of Class E Airspace; Rome, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E Airspace at Rome, NY. Additional airspace is necessary to support the amendment of the current Terminal Visual Flight Rule (VFR) Radar Service Area (TRSA) and to allow for a lower vectoring altitude known as the Minimum Vectoring Altitude (MVA) for vectoring of both VFR and Instrument Flight Rule (IFR) aircraft around the Rome, NY area. This action would enhance the safety and airspace management around the Griffiss Airport area.

DATES: Comments must be received on or before June 23, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2008–0308; Airspace Docket No. 08–AEA–19, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for 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 office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support Group, Eastern Service Center, Air Traffic Organization, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule 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 and be submitted in triplicate to the address listed above. Those wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0308; Airspace Docket No. 08–AEA–19.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.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*. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Code of Federal Regulations (14 CFR Part 71) to modify Class E airspace at Rome, NY. On January 1, 2007, the Oneida County Airport, Utica, NY was permanently closed and operations moved to the Griffiss Airfield. Airspace in this area was modified as published in the **Federal Register** on September 7, 2007 (72 FR 51357). Analysis of operations has determined that there is a need for additional Class E5 airspace extending upward from 700 feet above the surface of the Earth to enhance the management, safety and efficiency of air traffic services in the area. The local area Terminal VFR Radar Service Area (TRSA) is being revised and there is a requirement for the base of the TRSA to not be below the associated Class E airspace. This modification would satisfy that requirement. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the Earth are published in Paragraph 6005 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the 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. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it proposes to modify Class E airspace at Rome, NY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 will continue 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 Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective September 15, 2007, is proposed to be amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA NY E5 Rome, NY [Revised]

Griffiss Airfield, NY
(Lat. 43°14′02″ N, long. 75°24′25″ W)

That airspace extending upward from 700 feet above the surface of the Earth within a 15-mile radius of Griffiss Airfield and within a 26-mile radius of the airport extending clockwise from a 125° bearing to a 200° bearing from the airport.

* * * * *

Issued in College Park, Georgia, on April 22, 2008.

Lynda G. Otting,

Acting Manager, System Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–9852 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0336; Airspace Docket No. 08–ANM–4]

Proposed Establishment of Class E Airspace; Fort Collins, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Fort Collins-Loveland Municipal Airport, Fort Collins, CO. Additional controlled airspace is necessary to accommodate instrument flight rules (IFR) operations from this airport located in mountainous terrain and enable positive control at Fort Collins-Loveland Municipal Airport, Fort Collins, CO. The FAA is proposing this action to enhance the safety and management of aircraft operations at Fort Collins-Loveland Municipal Airport, Fort Collins, CO.

DATES: Comments must be received on or before June 23, 2008.

ADDRESSES: Send comments on this proposal to the 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–2008–0336; Airspace Docket No. 08–ANM–4, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, System Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

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–2008–0336 and Airspace Docket No. 08–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://www.regulations.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–2008–0336 and Airspace Docket No. 08–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 NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.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 NPRMs 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 Fort Collins-Loveland Municipal Airport, Fort Collins, CO. Controlled airspace is necessary to accommodate IFR aircraft at Fort Collins-Loveland Municipal Airport, Fort Collins, CO. This action would enhance the safety and management of aircraft operations at Fort Collins-Loveland Municipal Airport, Fort Collins, CO.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, 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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Fort Collins-Loveland Municipal Airport, Fort Collins, CO.

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 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007 is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM CO E2 Fort Collins, CO [New]

Fort Collins-Loveland Municipal Airport, CO
(Lat. 40°27′07″ N., long. 105°00′41″ W.)

Within a 5-mile radius of Fort Collins-Loveland Municipal Airport.

* * * * *

Issued in Seattle, Washington, on April 28, 2008.

Clark Desing,

Manager, System Support Group, Western Service Area.

[FR Doc. E8–10191 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 125, and 135

[Docket No. FAA–2007–29281; Notice No. 08–06]

RIN 2120–AJ09

Removal of Regulations Allowing for Polished Frost on Wings of Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to remove provisions in its regulations that allow for operations with ''polished frost'' (i.e., frost polished to make it smooth) on the wings of airplanes operated under parts 125, 135, and certain airplanes operated under part 91. The rule would increase safety by not allowing operations with polished frost, which the FAA has determined increases the risk of unsafe flight.

DATES: Send your comments on or before August 6, 2008.

ADDRESSES: You may send comments identified by docket number FAA–2007–29281 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket. Or, go to Docket Operations in Room W12–140 of the West Building Ground Floor at 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: For technical questions concerning this proposed rule contact Mike Frank, AFS–260, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166 ; facsimile (202) 267–5299, e-mail *mike.frank@faa.gov.*

For legal questions concerning this proposed rule contact Bruce Glendening, Operations Law Branch—AGC–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073; facsimile (202) 267–7971, e-mail *bruce.glendening@faa.gov.*

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator, including the authority to issue, rescind, and revise regulations. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Chapter 447—Safety Regulation. Under section 44701 (a)(5), the FAA is charged with promoting safe flight of civil aircraft by, among other things, prescribing regulations the FAA finds necessary for safety in air commerce.

I. Background

Currently, 14 CFR 91.527 (a), 125.221 (a), and 135.227 (a) allow pilots to take off with frost adhering to wings or stabilizing or control surfaces if that frost has been polished to make it smooth. This frost is referred to as ''polished frost.'' This procedure first appeared in the **Federal Register** as Civil Air Regulation Draft Release No. 60–13, a proposed revision of part 47 of the Civil Air Regulations, on August 6, 1960.

Since 1960, the FAA and others have accumulated an extensive amount of data that would indicate that any amount of contaminants on wings or critical surfaces could be detrimental to the flight characteristics of an aircraft. In Advisory Circular (AC) 135–17, the FAA recommends that all wing frost be removed prior to takeoff, and states that if an operator desires to polish the frost, the aircraft manufacturer's recommended procedures should be followed (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/MainFrame?OpenFrameSet*). No current aircraft manufacturer, however, has issued any recommended procedures for (1) polishing frost, or (2) conducting operations with polished frost. In addition, the FAA has no data to support practical guidance on determining how to polish frost on a surface to make it acceptably smooth, other than completely removing the frost and returning the airplane's critical lifting surfaces to uncontaminated smoothness. Moreover, the term ''polished frost'' is ambiguous since no standard of acceptable smoothness is provided. Also, means to ensure that the ''polished frost'' surface smoothness is equivalent to that of the uncontaminated airplane surface is operationally impractical. Subsequently, the FAA issued two Safety Alerts for Operators (SAFOs)—06002 and 06014—advising against the practice of polishing frost (*http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/safo/*).

In addition, there are at least 11 known accidents in which individuals attempted to ''smooth'' or polish frost, but the aircraft failed to generate enough lift and crashed shortly after takeoff.[1] There have been a number of other takeoff accidents and fatalities that have occurred when flightcrews have consciously decided to take off without removing frost from the wings of their aircraft. Following the January 4, 2002 accident at Birmingham, England, the United Kingdom Aircraft Accident Investigation Board recommended in its Safety Recommendation 2003–54 that the FAA, and all Authorities who follow FAA practice, delete all reference to 'Polished Frost' within their regulations and ensure that the term is expunged from Operations Manuals. In addition, the U.S. National Transportation Safety Board (NTSB) has issued numerous safety alerts urging operators to ensure that critical surfaces are free of all contamination prior to take off.

II. General Discussion of the Proposals

As previously mentioned, numerous FAA ACs and Safety Alerts have been issued since 1960 clearly pointing out the hazards of attempting to take off with any frost on aircraft wings or control surfaces, polished or not. Adverse aerodynamic effects for lifting surfaces begin as soon as frost begins to adhere to the surfaces. Determining either when sufficient polishing achieves a smooth surface or the smoothness of the contaminated surface without instrumentation is impracticable. The sheen of polished frost and its tactile smoothness can be misleading. In addition, the FAA believes achieving uniform smoothness on all lifting and control surfaces or even symmetrical smoothness in an operational environment is impossible to determine.

Technical literature well documents the adverse aerodynamic effects of surface roughness, such as frost and other ice that adhere to aircraft surfaces. The literature indicates that surface roughness formed by frost and adhering ice can result in significant adverse aerodynamic effects for lifting surfaces, such as wings and flight control surfaces. For example, (1) a contaminated wing's maximum lift may be reduced by 30 percent or more; (2) the angle of attack for maximum lift may be reduced by several degrees; (3) drag may be increased significantly; and (4) the airplane's handling qualities and performance may change unexpectedly from that of the uncontaminated aircraft. The severity of these adverse aerodynamic effects varies significantly (1) with the magnitude (height and density) and location of the surface roughness, and (2) with the location of the roughness relative to the surface leading edge where significant variations may occur in the local airspeed and surface air loads. Therefore, the FAA has determined that complete removal of frost from critical surfaces to achieve uncontaminated surface smoothness is necessary to ensure acceptable airplane airworthiness. If all wing surfaces, other than those under the wing in the area of

[1] Nine of the 11 accidents would not have been prevented by this proposed rule, since the aircraft were involved in non-part 91 subpart F operations. Nevertheless, the FAA believes they illustrate the risk involved in flying with polished frost.

the fuel tank [2], and control surfaces are not uniformly smooth upon take off, the FAA believes an unsafe condition exists.

The FAA is proposing to amend §§ 91.527 (a)(3), 125.221 (a), and 135.227 (a) to remove language permitting pilots to take off with ''polished frost'' adhering to the wings or stabilizing or control surfaces.

Within part 91 subpart F, the current text of § 91.527 (a) states that no pilot may take off an airplane that has— (1) frost, snow, or ice adhering to any propeller, windshield, or powerplant installation or to an airspeed, altimeter, rate of climb, or flight attitude instrument system; (2) snow or ice adhering to the wings or stabilizing or control surfaces; or (3) any frost adhering to the wings or stabilizing or control surfaces, unless that frost has been polished to make it smooth. The FAA would amend the paragraph to remove the words ''unless that frost has been polished to make it smooth.''

Part 91 subpart F provides for the operation of large and turbine-powered multiengine airplanes and all fractional ownership program aircraft (regardless of category, class, weight, powerplant or number of engines). Therefore, the revised provisions in subpart F in this NPRM would affect the operation of all fractional ownership program aircraft under subpart K, regardless of whether the aircraft is large or small and regardless of whether the aircraft is single or multi-engine.

Similarly, current §§ 125.221 (a) and 135.227 (a) provide that no pilot may take off an airplane that has frost, ice, or snow adhering to any propeller, windshield, wing, stabilizing or control surface, to a powerplant installation, or to an airspeed, altimeter, rate of climb, or flight attitude instrument system, except that takeoffs may be made with frost adhering to the wings, or stabilizing or control surfaces, if the frost has been polished to make it smooth. The FAA would amend those sections to delete the words ''except * * * [t]akeoffs may be made with frost adhering to the wings, or stabilizing or control surfaces, if the frost has been polished to make it smooth.'' These rule changes may also result in changes to an operator's operations specifications (OpSpecs) as they relate to ground deicing operations.

In addition, the FAA is responding to a recommendation from the Part 125/135 Aviation Rulemaking Committee, established on April 8, 2003, which provided recommendations to the FAA regarding the safety and applicability of standards of parts 125, 135, and associated regulations. In this proposed rule, the FAA is therefore taking the opportunity to correct the structure of §§ 91.527(b), 125.221(c), and 135.227(c). Currently, in each of those paragraphs the phrase beginning with the words ''unless the aircraft has * * *'' appears to apply only to paragraph (2); however, that clause applies to all of the provisions of the paragraph. In 1995, the FAA issued a legal interpretation (included in the docket for this rulemaking action) to clarify that this language applies to both IFR flight into known or forecast light or moderate icing conditions and VFR flight into known light or moderate icing conditions. The FAA is therefore proposing to re-structure those paragraphs accordingly.

[2] Takeoffs may be made with frost under the wing area of the fuel tanks if authorized by the FAA. (See e.g., 14 CFR 125.221 (a)(2) and 135.227 (a)(2).)

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this proposed rule.

IV. International Compatibility

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

V. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

V.1. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Operators and pilots would have at least four alternatives to choose from to deal with frost that may have accumulated on the wings of their aircraft. These include: using wing covers, waiting for the frost to melt, storing the aircraft in a heated hangar, or deicing the wing surface. The FAA believes that wing covers are the lowest-cost alternative. Assuming operators impacted by this proposed rule choose to use wing covers, they would incur total costs of roughly $164,000 ($130,000 discounted) over the ten year period from 2009 to 2018. Of these, $155,000 ($123,000 discounted) would accrue to operators in Alaska, and $9,500 ($7,500 discounted) would accrue to mainland U.S. operators. Benefits total roughly $460,000 ($320,000 discounted). About $433,000 ($301,000 discounted) in benefits would accrue in Alaska, while the remaining $27,000 ($19,000 discounted) would accrue in the mainland U.S. These benefits are attributed to averted accidents, injuries, and aircraft damage. Since benefits exceed costs for both

Alaska and the mainland U.S., the FAA concludes the proposed rule is cost beneficial. The FAA calls for comments on this determination and requests that all comments be accompanied by clear and detailed supporting economic documentation.

V.2. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

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

This proposed rule would improve aviation safety by removing references to the ''polished frost'' technique found in 14 CFR 91.527(a), 125.221(a), and 135.227(a). At this time there is no part 91 operator that has an authorized deicing program that incorporates the polished frost procedure; therefore, this rulemaking only affects on-demand and commuter services operating under parts 125 and 135. There are 57 operators operating 188 aircraft that would be affected by the rule. Based on the SBA size standard defining a small unscheduled air carrier as one having 1,500 employees or less per company, all of these operators are considered small entities. As a result, the Regulatory Flexibility Act applies.

The FAA assumes that most operators would choose to buy and use wing covers to comply with the proposed rule. The other alternatives (waiting for the frost to melt, storing the aircraft in a heated hangar, or deicing the aircraft) are more expensive than using wing covers. The FAA estimates that operators would choose to buy wing covers at an initial cost of $400, plus minimal additional fuel costs and, if needed, an additional cost of $400 after five years to replace a worn wing cover.

In Alaska, there are 21 operators with one aircraft apiece, and 30 operators operating the remaining 156 aircraft. In the mainland U.S., there are six operators operating 11 aircraft. The smallest operators operate only one plane, and would incur a cost of approximately $99 per year as a result of this rulemaking, a cost that the FAA does not consider significant. The operator that would be most impacted by the rule operates 16 affected aircraft, and would incur costs of approximately $1,584 per year as a result of this rulemaking. This operator has annual revenues of $5 million. The cost of this rulemaking represents 0.03 percent of the gross revenues of that operator, and the FAA does not consider that amount significant. As a result, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA requests comments from affected entities on this finding and determination.

V.3. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and would not affect international trade.

V.4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million. This proposed rule does not contain such a mandate.

VI. Executive Order 13132, Federalism

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

VII. Regulations Affecting Intrastate Aviation in Alaska

Section 40113(f) of 49 U.S.C. requires the Administrator, when modifying regulations in title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. Because the majority of potentially affected operators are in Alaska, this proposed rule could, if adopted, affect intrastate aviation in Alaska. The FAA believes, however, that over 60% of aircraft currently operating in Alaska do not rely on this procedure. For the remainder of affected operators, the cost of compliance would be minimal. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

VIII. Environmental Analysis

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

IX. Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a

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

X. Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

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

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

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the Internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Airports, Aviation safety, Freight.

14 CFR Part 125

Aircraft, Airmen, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

2. Amend § 91.527 by revising paragraphs (a) and (b) to read as follows:

§ 91.527 Operating in icing conditions.

(a) No pilot may take off an airplane that has frost, ice, or snow adhering to any propeller, windshield, stabilizing or control surface; to a powerplant installation; or to an airspeed, altimeter, rate of climb, or flight attitude instrument system or wing, except that takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the FAA.

(b) No pilot may fly under IFR into known or forecast light or moderate icing conditions, or under VFR into known light or moderate icing conditions, unless—

(1) The aircraft has functioning deicing or anti-icing equipment protecting each rotor blade, propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system; or

(2) The airplane has ice protection provisions that meet section 34 of Special Federal Aviation Regulation No. 23; or

(3) The airplane meets transport category airplane type certification provisions.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

3. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

4. Amend § 125.221 by revising paragraphs (a) and (c) to read as follows:

§ 125.221 Icing conditions: Operating limitations.

(a) No pilot may take off an airplane that has frost, ice, or snow adhering to any propeller, windshield, stabilizing or control surface; to a powerplant installation; or to an airspeed, altimeter, rate of climb, flight attitude instrument system, or wing, except that takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the FAA.

* * * * *

(c) No pilot may fly under IFR into known or forecast light or moderate icing conditions, or under VFR into known light or moderate icing conditions, unless—

(1) The aircraft has functioning deicing or anti-icing equipment protecting each rotor blade, propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system; or

(2) The airplane has ice protection provisions that meet appendix C of this part; or

(3) The airplane meets transport category airplane type certification provisions.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

5. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 45101–45105.

6. Amend § 135.227 by revising paragraphs (a) and (c) to read as follows:

§ 135.227 Icing conditions: Operating limitations.

(a) No pilot may take off an aircraft that has frost, ice, or snow adhering to any rotor blade, propeller, windshield,

stabilizing or control surface; to a powerplant installation; or to an airspeed, altimeter, rate of climb, flight attitude instrument system, or wing, except that takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the FAA.

* * * * *

(c) No pilot may fly under IFR into known or forecast light or moderate icing conditions or under VFR into known light or moderate icing conditions, unless—

(1) The aircraft has functioning deicing or anti-icing equipment protecting each rotor blade, propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system; or

(2) The airplane has ice protection provisions that meet section 34 of appendix A of this part; or

(3) The airplane meets transport category airplane type certification provisions.

* * * * *

Issued in Washington, DC, on May 2, 2008.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. E8–10246 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2008–0047]

RIN 1625–AA01

Anchorage Regulations; Port of New York and Vicinity

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the existing special anchorage area at Perth Amboy, New Jersey, at the junction of the Raritan River and Arthur Kill. This proposed action is necessary to facilitate safe navigation and provide for a safe and secure anchorage for vessels of not more than 65 feet in length. This action is intended to increase the safety of life and property on the Raritan River and Arthur Kill, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: Comments and related material must reach the Coast Guard on or before June 9, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0047 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Jeff Yunker, Waterways Management Coordinator, 718–354–4195. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0047), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0047) in the Search Box, and click ''Go >>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Waterways Management Division, Coast Guard Sector New York, 212 Coast Guard Drive, Room 210, Staten Island, New York 10305.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

During times of tidal shifts, vessels moored near the edge of this Special Anchorage Area were found swinging out into the Raritan River Cutoff and the Raritan River federal channels. Since moored vessels in a Special Anchorage Area are exempt from the Inland Rules of the Road [Rule 30 (33 U.S.C 2030) and Rule 35 (33 U.S.C. 2035)]; vessels swinging out into these federal channels

create a high risk of collision with larger commercial vessels that transit past this Special Anchorage Area especially at night and during times of inclement weather. Also, when larger commercial vessels maneuver to avoid a collision with recreation vessels that swing out into these channels it creates a hazardous, close-quarters passing situation with other larger commercial vessels operating within these federal channels.

This rulemaking is intended to reduce the risk of vessel collisions by adding amplifying information regarding the use of the Special Anchorage Area. This would be accomplished by adding the following note to the regulation: ''Note: This area is limited to vessels no greater than 20 meters in length and is primarily for use by recreational craft on a seasonal or transient basis. These regulations do not prohibit the placement of moorings within the anchorage area, but requests for the placement of moorings should be directed to the local government to ensure compliance with local and state laws. All moorings shall be so placed that no vessel, when anchored, will at any time extend beyond the limits of the area. Fixed mooring piles or stakes are prohibited. Mariners are encouraged to contact the local harbormaster for any additional ordinances and to ensure compliance with additional applicable state and local laws.''

This will greatly increase navigation safety and is necessary due to the boundary of the Special Anchorage Area being within 15 yards of the Raritan River Cutoff and Raritan River federal channels.

Discussion of Proposed Rule

The proposed rule would add a regulatory note to the Special Anchorage Area. This note would require all moorings be placed so that no vessel, when anchored, will at any time extend beyond the limits of the Special Anchorage Area.

We are proposing this rulemaking due to the information provided in the Background and Purpose section above.

Regulatory Evaluation

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

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

This finding is based on the fact that this proposal would require recreational vessels to anchor a greater distance from the Raritan River Cutoff and Raritan River federal channels. As displayed on the government navigation charts, the current boundaries of the Special Anchorage Area and adjacent federal channels nearly overlap. This would greatly reduce the possibility of marine casualties, pollution incidents, or human fatalities that could be caused by these recreational vessels anchoring within, or near, the federal channels and causing a collision with any of the approximately 5,000 commercial vessels that transit the Raritan River Cutoff Channel on an annual basis. Vessel transit statistics from the ACOE Navigation Data Center are available online at: *http://www.iwr.usace.army.mil/ndc/wcsc/wcsc.htm.* Additionally, vessels would still be able to anchor in an area approximately 850 to 1,050 yards wide by 480 to 980 yards long off the southern Perth Amboy shoreline.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of recreational vessels intending to anchor immediately adjacent to, Raritan River Cutoff and Raritan River federal channels and cause a marine casualty, pollution incident, or human fatalities, due to a commercial vessel colliding with the anchored or moored recreational vessel(s). It would also affect commercial vessels by reducing the possibility that they will encounter hazardous, close-quarters passing conditions created by recreational vessels within the channels. However, the requirements contained within the regulatory note would not have a significant economic impact on these entities for the following reasons: The proposed revised special anchorage area would require vessels to moor, or anchor, at a greater distance from the Raritan River and Raritan River Cutoff federal channels reducing the threat of collision with vessels transiting the adjacent federal channel. This Special Anchorage Area was never designed to authorize vessels to anchor, or moor, in a manner where they would extend into the federal channel creating a hazard to navigation. Additionally, vessels would still be able to anchor in an area approximately 850 to 1,050 yards wide by 480 to 980 yards long off the southern Perth Amboy shoreline.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Jeff Yunker, Waterways Management Coordinator, Coast Guard Sector New York at 718–354–4195. 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 proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary ''Environmental Analysis Check List'' supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 110

Anchorage Grounds.

Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

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

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.60, by revising paragraph (aa) to read as follows:

§ 110.60 Port of New York and vicinity.

* * * * *

(aa) *Perth Amboy, NJ.* All waters bound by the following points: 40°30′19.0″ N, 074°15′46.0″ W; thence to 40°30′17.0″ N, 074°15′39.0″ W; thence to 40°30′02.8″ N, 074°15′45.0″ W; thence to 40°29′36.0″ N, 074°16′09.2″ W; thence to 40°29′30.8″ N, 074°16′22.0″ W; thence to 40°29′47.2″ N, 074°16′52.0″ W; thence to 40°30′02.0″ N, 074°16′43.0″ W, thence along the shoreline to the point of origin.

Note: This area is limited to vessels no greater than 20 meters in length and is primarily for use by recreational craft on a seasonal or transient basis. These regulations do not prohibit the placement of moorings within the anchorage area, but requests for the placement of moorings should be directed to the local government to ensure compliance with local and state laws. All moorings shall be so placed that no vessel, when anchored, will at any time extend beyond the limits of the area.

Fixed mooring piles or stakes are prohibited. Mariners are encouraged to contact the local harbormaster for any additional ordinances and to ensure compliance with additional applicable state and local laws.

Dated: April 23, 2008.

Timothy V. Skuby,

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

[FR Doc. E8–10259 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Part 5b

[Docket ID ED–2008–OM–0004]

RIN 1880–AA85

Privacy Act Regulations

AGENCY: Office of Management, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Education (Department) proposes to amend its regulations implementing the Privacy Act of 1974, as amended (Privacy Act). These proposed regulations would amend the Department's current Privacy Act regulations to exempt from certain Privacy Act requirements investigative material in a new system of records to be maintained by the Department that will be known as the Office of Inspector General Data Analytics System (ODAS) (18–10–02). Specifically, the exemption would apply to materials compiled by the Department's Office of Inspector General (OIG) for law enforcement purposes to identify internal control weaknesses and system issues and to improve methods of data modeling and

annual audit planning in order to detect and investigate fraud, waste, and mismanagement in Department programs and operations.

DATES: We must receive your comments on or before June 9, 2008.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Regulatory Information Management Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 8166, Washington, DC 20202–5920. Attention: NOPR Comments.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Shelley Shepherd, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW., room 8166, Washington, DC 20202–5920. Telephone: (202) 245–7077.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, at the National Library of Education, 400 Maryland Avenue, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays. For more information on inspecting public comments call (202) 205–4410.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Under the Inspector General Act of 1978, as amended (5 U.S.C. Appendix) Inspectors General, including the Department's Inspector General (OIG), are responsible for conducting, supervising, and coordinating audits and investigations relating to programs and operations of the Federal agency for which their office is established. The Department intends to establish a new system of records entitled the ''Office of Inspector General Data Analytics System'' (ODAS) (18–10–02) in order to facilitate the OIG's performance of this statutory duty.

The new system of records will be managed by the OIG's Information Technology Audits and Computer Crimes Investigations (ITACCI) division, which is responsible for providing computer programming, data acquisition and analysis and statistical modeling in support of OIG operations. ITACCI will use this new system of records to gather data from Department systems and analyze them using data modeling techniques to detect waste, fraud, abuse, and internal control weaknesses and to identify potential violations of laws, rules and regulations. These data will include information related to transactions between the Department and individuals and entities that have applied for and/or received grants, contracts, loans, or payments from the Department. ITACCI will conduct data modeling on these data, using statistical and mathematical techniques, in order to predict anomalies indicating fraudulent activity and to predict which transactions have a high probability of fraudulent activity.

ITACCI will review this information to determine whether further action is warranted. If so, ITACCI will refer potential violations of law, rules, or regulations that it identifies to other divisions of OIG for investigation, audit, or inspection, as appropriate. Thus, the ODAS will contain data related to transactions with the Department, as well as information related to ITACCI's review and investigation of that data for law enforcement purposes.

Pursuant to section (k)(2) of the Privacy Act (5 U.S.C. 552a), the Secretary, through rulemaking, may exempt from a limited number of Privacy Act requirements a system of records that contains investigatory materials compiled for law enforcement purposes. The investigatory materials in the ODAS will fall within the scope of section (k)(2) of the Privacy Act because the system will consist of investigatory materials compiled for purposes of enforcing Federal legal requirements applicable to individuals and entities receiving Department funds.

Significant Proposed Regulations

Exempt Systems (§ 5b.11(c))

Statute: Section (k)(2) of the Privacy Act provides that the head of any agency may promulgate rules to exempt any system of records from the requirements in sections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act if the system of records contains investigatory material compiled for law enforcement purposes other than material related to criminal subjects and investigations that is within the scope of section (j)(2) of the Privacy Act. Section (k)(2) provides, however, that, in the event that any individual is denied any right, privilege, or benefit that the individual would otherwise be entitled to by Federal law, or for which the individual would otherwise be eligible, as a result of the maintenance of the material, the material must be provided to the individual, unless the disclosure of such material would reveal the identity of a source who furnished the information to the Department under an express

promise, or, prior to September 27, 1975, an implied promise that the identity of the source would be held in confidence.

Current Regulations: The Department does not currently claim any exemption under section (k)(2) of the Privacy Act for the investigatory materials that will be maintained in the ODAS. However, the Department claims exemptions under this section for two other OIG systems of records—the Investigative Files of the Inspector General (18–10–01) and the Hotline Complaint Files of the Inspector General (18–10–04).

Proposed Regulations: The Department proposes to claim an exemption under section (k)(2) of the Privacy Act for investigatory materials that will be maintained in the ODAS.

Reasons: As authorized by section (k)(2) of the Privacy Act and for the reasons specified in this section, the Secretary of Education proposes to exempt investigatory material compiled for law enforcement purposes in the ODAS from the following provisions of the Privacy Act and corresponding Departmental regulations:

1. Section (c)(3) of the Privacy Act (5 U.S.C. 552a(c)(3)) and 34 CFR 5b.9(c)(3) require the Department to make an accounting of disclosures from a system of records available to the individual named in the record at the individual's request. The Secretary proposes to exempt the investigatory material compiled for law enforcement purposes in the ODAS because if OIG made this accounting available to a target individual, it could impede or compromise the OIG's investigation efforts by prematurely revealing its existence and nature. In addition, if OIG were to make this accounting available to a target individual, the target could compromise, interfere with, or make witnesses reluctant to cooperate with the OIG investigation, and this could lead to the suppression, alteration, or destruction of evidence.

2. Sections (d)(1) through (4) and (f) of the Privacy Act (5 U.S.C. 552a(d)(1) through (4) and (f)) and 34 CFR 5b.5(a)(1) and (c), 5b.7, and 5b.8 require the Department to provide access to records pertaining to an individual requestor, to follow specific procedures relating to requests for correction or amendment of records, and to notify an individual of the existence of records pertaining to him or her upon request. The Secretary proposes to exempt the investigatory material compiled for law enforcement purposes in the ODAS from these requirements because providing an individual with access to investigative materials and permitting the individual to contest the records' contents and to try to force changes to the information contained therein could interfere with and compromise the ability of OIG to conduct an orderly and unbiased investigation of potential violations of laws, rules, and regulations.

3. Section (e)(1) of the Privacy Act (5 U.S.C. 552a(e)(1)) and 34 CFR 5b.4(a)(1) require the Department to maintain in its records only ''relevant and necessary'' information about an individual. This provision is inappropriate for OIG's investigatory duties because it is not always possible to detect the relevance or necessity of each piece of information reported to the OIG or collected in the preliminary phase of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity are clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further inquiry or investigation. In order not to impede the OIG's investigation of potential violations of laws, rules, and regulations, the Secretary believes it is appropriate to exempt the investigatory materials in the ODAS from this requirement.

4. Section (e)(4)(G) and (H) of the Privacy Act (5 U.S.C. 552a(e)(4)(G) and (H)) require the Department to publish notice of procedures for notification, access, and correction of records in the system. If the Department exempts the investigatory materials in the ODAS from the underlying Privacy Act requirements, notification of these requirements would be illogical. For this reason, the Department proposes to exempt the ODAS investigatory materials from this requirement as well.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

Summary of Potential Costs and Benefits

We do not view this proposed regulatory action as imposing any new costs as the Department is proposing only to exempt itself from having to meet limited Privacy Act requirements. We view the potential benefits as decreasing the risk that individual(s) whose actions are being investigated could interfere with or compromise the ability of the OIG to conduct an orderly and unbiased investigation of potential violations of laws, rules, and regulations.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 5b.11 Exempt systems.)
- Could the description of the proposed regulations in the ''Significant Proposed Regulations'' section be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

These regulations involve procedural rights of individuals under the Privacy Act. Individuals are not considered to be ''entities'' under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 5b

Privacy.

Dated: May 2, 2008.

Michell Clark,

Assistant Secretary for Management.

For the reasons discussed herein, the Department of Education proposes to amend part 5b of title 34 of the Code of Federal Regulations as follows:

PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for part 5b continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. Section 5b.11 is amended by revising paragraph (c)(1) introductory text to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(c) *Specific systems of records exempted under (k)(2).* (1) The Department exempts the Investigative Files of the Inspector General ED/OIG (18–10–01), the Hotline Complaint Files of the Inspector General ED/OIG (18–10–04), and the Office of Inspector General Data Analytics System (ODAS) (18–10–02) from the following provisions of 5 U.S.C. 552a and this part to the extent that these systems of records consist of investigatory material and complaints that may be included in investigatory material compiled for law enforcement purposes:

* * * * *

[FR Doc. E8–10110 Filed 5–7–08; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–0648; FRL–8563–5]

Approval and Promulgation of State Implementation Plans; States of South Dakota and Wyoming; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plans (SIPs) submitted by the States of South Dakota and Wyoming that address interstate transport with respect to the 1997 8-hour ozone and fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards. EPA has determined that the Interstate Transport declarations submitted by South Dakota on May 15, 2007, and by Wyoming on May 3, 2007, satisfy the requirements of the Clean Air Act section 110(a)(2)(D)(i) provisions, also known as the ''good neighbor'' provisions, that a state SIP contain adequate provisions prohibiting air pollutant emissions from sources or activities in the state from adversely affecting another state. This action is being taken under section 110 of the Clean Air Act.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the States' SIP revisions as a direct final rule without prior proposal because the Agency views these as non-controversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before June 9, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2007–0648, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: videtich.callie@epa.gov* and *mastrangelo.domenico@epa.gov*.
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instruction on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6436, *mastrangelo.domenico@epa.gov*.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: April 23, 2008.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. E8–10100 Filed 5–7–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7775]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before August 6, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7775, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	
				Existing	Modified
City of Virginia Beach, Virginia					
Virginia	City of Virginia Beach.	Atlantic Ocean	Approximately 550 feet east of Sandpiper Lane approximately 1.5 miles south of Little Island District Park.	+4	+10
			Approximately 150 feet east of Sandpiper Lane approximately 1 mile south of Little Island District Park.	+4	+10

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	
				Existing	Modified
			Approximately 300 feet north of Porpoise Lane between Sandfiddler Road and Sandpiper Road.	+9	+10
			Approximately 1200 feet south of Porpoise Lane between Sandfiddler Road and Sandpiper Road.	+9	+10
			Numerous locations along the Atlantic shoreline (extending inland up to 1 mile) from Cape Henry to the southernmost corporate limit of VA Beach. AO zones with depths ranging 1–2 feet & X unshaded zones are now AE or VE zones with BFEs ranging 4–11 feet.	None	+11
Virginia	City of Virginia Beach.	Chesapeake Bay	Immediately south of Oceanview Avenue between Fentress Avenue and Seaview Avenue.	None	+6.8

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Virginia Beach
Maps are available for inspection at 2405 Courthouse Drive, Building 2, Third Floor, Virginia Beach, VA 23456.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Mohave County, Arizona, and Incorporated Areas				
Beaver Dam Wash	1 mile downstream of Old U.S. 91	None	+1800	Unincorporated Areas of Mohave County.
	2.3 miles upstream of Old U.S. 91	None	+1926	
Big Montana Wash	Approximately 1,325 feet downstream of Black Mountain Road.	None	#1	City of Bullhead City.
	Approximately 425 feet downstream of Ramar Road	None	+534	
	Approximately 100 feet downstream of State Route 95.	None	+603	
	Approximately 1,325 feet downstream of Black Mountain Road.	None	+767	
	Approximately 380 feet upstream of Tesota Road	None	+876	
Big Montana Wash Overflow	Approximately at confluence with Big Montana Wash	None	#1	City of Bullhead City.
Bojorquez Wash	Approximately 150 feet upstream of Country Club Road.	None	#1	City of Bullhead City.
	Approximately 120 feet upstream of Country Club Road.	None	+504	
Cerbat Wash	Approximately 700 feet downstream of Ramada Road	None	+2478	Unincorporated Areas of Mohave County.
	Approximately 250 feet upstream of Shipp Drive	None	+2765	
Cerbat Wash Tributary 1A	Approximately 1,400 feet downstream of Unkar Drive	None	+2563	Unincorporated Areas of Mohave County.
	Approximately 200 feet downstream of Bolsa Drive	None	+2630	
Chaparral Wash	Approximately at upstream side of Newberry Road	None	#1	City of Bullhead City.
	Approximately 1,200 feet upstream of Acacia Road	None	#2	
	Approximately 300 feet downstream of Country Club Road.	None	+504	
	Approximately 400 feet downstream of Country Club Road.	None	+504	
	Approximately 400 feet downstream of State Route 95.	None	+548	
	Approximately 1,200 feet upstream of Acacia Way	None	+726	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 0.68 mile upstream of Acacia Way	None	+778	
Chaparral Wash Tributary 1	Approximately 0.48 mile downstream of Acacia Way ..	None	#1	City of Bullhead City.
	Approximately 0.75 mile downstream of Acacia Way ..	None	#1	
	Approximately 1,355 feet downstream of Acacia Way	None	#2	
	Approximately 0.60 mile downstream of Acacia Way ..	None	#2	
	Approximately 1,300 feet downstream of Acacia Way	None	+670	
	Approximately 650 feet upstream of Acacia Way	None	+717	
Chaparral Wash Tributary 2	Approximately 830 feet downstream of Havasupai Road.	None	#2	City of Bullhead City.
	Approximately 830 feet downstream of Havasupai Road.	None	+726	
	Approximately 50 feet downstream of Havasupai Road.	None	+749	
Chemehuevi Wash	Approximately 1,170 feet downstream of Sweetwater Avenue.	None	+669	City of Lake Havasu, Unincorporated Areas of Mohave County.
	Approximately 0.80 mile upstream of Chicksaw Drive	None	+1374	
Colorado River	Approximately at the upstream side of Interstate 40 ...	None	+465	City of Bullhead City, Unincorporated Areas of Mohave County.
	Approximately 250 feet downstream of Davis Dam	None	+514	
Davis Wash	Approximately 700 feet upstream of La Puerta Road	None	#1	City of Bullhead City.
	Approximately 0.53 mile downstream of La Puerta Road.	None	#1	
	Approximately 0.40 mile downstream of La Puerta Road.	None	#2	
	Approximately 100 feet downstream of State Route 95.	None	+522	
	Approximately 100 feet downstream of Pegasus Ranch Road.	None	+967	
	Approximately 100 feet upstream of Pegasus Ranch Road.	None	+987	
Davis Wash Tributary 1	Approximately 550 feet upstream of Pegasus Ranch Road.	None	#1	City of Bullhead City.
Davis Wash Tributary 1 of Tributary 1.	Approximately 550 feet upstream of Pegasus Ranch Road.	None	#1	City of Bullhead City.
Davis Wash Tributary 2	Approximately 550 feet upstream of Pegasus Ranch Road.	None	#1	City of Bullhead City.
Davis Wash Tributary 3	Approximately 530 feet upstream of Pegasus Ranch Road.	None	#1	City of Bullhead City.
Davis Wash Tributary 4	Approximately 500 feet upstream of Pegasus Ranch Road.	None	#1	City of Bullhead City.
	Approximately 50 feet downstream of Pegasus Ranch Road.	None	#1	
Davis Wash Tributary 5	Approximately 1,100 feet upstream of McCormick Blvd.	None	#1	City of Bullhead City.
Dump Wash	Approximately 100 feet upstream of Bullhead Parkway.	None	#1	City of Bullhead City.
	Approximately 300 feet upstream of State Route 95 ...	None	#1	
	Approximately 1,850 feet downstream of Bullhead Parkway.	None	#1	
	Approximately 100 feet downstream of Bullhead Parkway.	None	#2	
	Approximately upstream side of State Route 95	None	#2	
	Approximately 0.40 mile upstream of Lost Hills Road	None	#2	
El Dorado Wash	Approximately 700 feet downstream of London Bridge Road.	None	+462	City of Lake Havasu.
	Approximately 1,320 feet upstream of Jamaica Blvd ..	None	+1276	
Fort Mohave Wash	Approximately 1,250 feet upstream of State Route 95	None	#1	City of Bullhead City, Unincorporated Areas of Mohave County.
	Approximately 0.57 mile upstream of Arroyo Vista Drive.	None	#2	
	Approximately 150 feet upstream of confluence with Soto Wash.	None	#2	
Fox Wash	Approximately 0.64 mile upstream of State Route 95	None	#1	City of Bullhead City.
	Approximately 1,200 feet downstream of Tera Loma Road.	None	#1	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1,730 feet downstream of Bullhead Parkway.	None	#2	
	Approximately 1,450 feet downstream of State Route 95.	None	#2	
	Approximately 700 feet downstream of State Route 95.	None	#3	
	Approximately 0.63 mile downstream of Tera Loma Road.	None	+491	
	Approximately 600 feet downstream of State Route 95.	None	+511	
	Approximately 0.64 mile upstream of State Route 95	None	+642	
	Approximately 1,700 feet downstream of Bullhead Parkway.	None	+802	
	Approximately 1,950 feet upstream of Bullhead Parkway.	None	+903	
Green Wash	Approximately 250 feet upstream of confluence with Williams Wash.	None	+703	City of Bullhead City.
	Approximately 1.42 miles upstream of confluence with Green Wash Tributary 2.	None	+1465	
Green Wash Tributary 1	Approximately 70 feet upstream of confluence with Green Wash.	None	+967	City of Bullhead City.
	Approximately 2.1 miles upstream of confluence with Green Wash.	None	+1450	
Green Wash Tributary 2	Approximately 0.41 mile upstream of confluence with Green Wash.	None	#1	City of Bullhead City.
Havasupai Wash at Bullhead City.	Approximately 870 feet upstream of Camino del Rio Road.	None	#1	City of Bullhead City.
	Approximately 870 feet upstream of Camino del Rio Road.	None	+504	
Havasupai Wash at Bullhead City Tributary 1.	Approximately 0.5 mile upstream of Miracle Mile Road.	None	#1	City of Bullhead City.
	Approximately 0.50 mile upstream of Miracle Mile Road.	None	+651	
	Approximately 0.82 mile upstream of Miracle Mile Road.	None	+691	
Havasupai Wash at Lake Havasu City.	Approximately 1,060 feet downstream of London Bridge Road.	None	+452	City of Lake Havasu.
	Approximately 800 feet upstream of Paso de Oro Drive.	None	+1506	
Highland Wash	Approximately 300 feet downstream of State Route 95.	None	+518	City of Bullhead City.
	Approximately 325 feet upstream of Bullhead Parkway.	None	+693	
Indian Peak Wash	Approximately 360 feet downstream of State Route 95.	None	+543	City of Lake Havasu, Unincorporated Areas of Mohave County.
	Approximately 470 feet upstream of Black Hill Drive	None	+1439	
Mockingbird Wash	Approximately 875 feet downstream of Osborn Drive	None	+754	City of Lake Havasu.
	Approximately 0.78 mile upstream of McCulloch Blvd S.	None	+1258	
Montana Wash	Approximately 0.72 mile upstream of Rolling Hills Road.	None	#1	City of Bullhead City.
	Approximately 0.42 mile upstream of Bullhead Parkway.	None	#2	
	Approximately 120 feet downstream of Riverfront Road.	None	+505	
	Approximately 1,900 feet upstream of Goldrush Road	None	+827	
Montana Wash Overflow	Approximately 50 feet downstream of Arcadia Road	None	#1	City of Bullhead City.
	Approximately upstream side of Arriba Road	None	#1	
	Approximately 800 feet upstream of Jacarta Road	None	#2	
Montana Wash Tributary 1	Approximately 150 feet upstream of confluence with Montana Wash.	None	+1126	City of Bullhead City.
	Approximately 250 feet upstream of Unnamed Road	None	+1198	
Neptune Wash	Approximately 550 feet downstream of London Bridge Road.	None	+455	City of Lake Havasu.
	Approximately 0.47 mile upstream of Avalon Avenue	None	+832	
Old Trails Wash	Approximately 750 feet downstream of Third Street	None	+3299	City of Kingman.
	Approximately 1,200 feet upstream of U.S. 93/U.S. 66	None	+3428	
Old Trails Wash Tributary	Approximately 790 feet downstream of Center Street	None	+3361	City of Kingman.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 0.5 mile upstream of Buchanan Street	None	+3410	
Richardo Wash	Approximately 1,400 feet downstream of Terra Loma Road.	None	#1	City of Bullhead City.
	Approximately 50 feet downstream of State Route 95	None	#1	
	Approximately 100 feet upstream of State Route 95	None	#2	
	Approximately 1,100 feet upstream of Terra Loma Road.	None	#2	
	Approximately 800 feet upstream of confluence with Fox Wash.	None	+491	
Sacramento Wash Tributary 6.	Approximately 250 feet upstream of Bolsa Drive	None	+2635	Unincorporated Areas of Mohave County.
	Approximately 300 feet upstream of Shipp Drive	None	+2762	
Sacramento Wash Tributary 6C.	Approximately 0.5 mile downstream of Redwall Drive	None	+2668	Unincorporated Areas of Mohave County.
	Approximately 1,025 feet upstream of Chino Drive	None	+2830	
Sacramento Wash Tributary 6D.	Approximately 650 feet downstream of State Route 68.	None	+2789	Unincorporated Areas of Mohave County.
	Approximately 290 feet upstream of Chino Drive	None	+2819	
Secret Pass Wash	Approximately downstream side of Pass Canyon Road.	None	#3	Unincorporated Areas of Mohave County, City of Bullhead City.
	Approximately 1.18 miles upstream of Bullhead Parkway.	None	#4	
	Approximately 250 feet downstream of State Route 95.	None	+515	
	Approximately 50 feet downstream of State Route 95	None	+527	
	Approximately 1.23 miles upstream of Bullhead Parkway.	None	+1073	
	Approximately 2 miles upstream of Bullhead Parkway	None	+1188	
Shadow Canyon Wash	Approximately 870 feet downstream of Corwin Road	None	+563	City of Bullhead City.
	Approximately 320 feet upstream of Mountain View Road.	None	+668	
Shadow Canyon Wash Overflow.	Approximately upstream side of Central Park Avenue	None	+540	City of Bullhead City.
	Approximately 450 feet upstream of Central Avenue	None	+550	
Short Creek	Approximately 1.6 miles downstream of State Route 389.	None	+4857	City of Colorado City, Unincorporated Areas of Mohave County
	Approximately 50 feet upstream of State Route 389	None	+4933	
Short Creek Tributary 1	Approximately 320 feet downstream of Township Avenue.	None	+4939	City of Colorado City.
	Approximately 1,000 feet upstream of Arizona Avenue	None	+5027	
Silver Creek Wash	Approximately 1.4 miles upstream of Bullhead Parkway.	None	#3	City of Bullhead City.
	Approximately 0.56 miles upstream of State Route 95	None	#3	
	Approximately 1,250 feet upstream of State Route 95	None	#3	
	Approximately 1.04 miles upstream of State Route 95	None	#3	
	Approximately 500 feet downstream of Bullhead Parkway.	None	#3	
	Approximately 0.62 miles upstream of Bullhead Parkway.	None	#4	
	Approximately 500 feet upstream of Plata Caleta Road.	None	#4	
Silver Creek Wash Tributary 1.	Approximately 0.47 miles upstream of Bullhead Parkway.	None	#1	City of Bullhead City.
	Approximately 0.38 mile upstream of confluence with Silver Creek Wash.	None	#3	
	Approximately 200 feet upstream of confluence with Silver Creek Wash.	None	#4	
Silver Creek Wash Tributary 2.	Approximately 0.83 mile upstream of confluence with Silver Creek Wash.	None	#2	City of Bullhead City.
	Approximately 1,800 feet upstream of confluence with Silver Creek Wash.	None	#3	
	Approximately 1,100 feet upstream of confluence with Silver Creek Wash.	None	#4	
Soto Wash	Approximately 1,800 feet upstream of State Route 95	None	#1	City of Bullhead City.
	Approximately 1,800 feet upstream of Arroyo Vista Road.	None	#2	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 100 feet downstream of State Route 95.	None	#2	
	Approximately 1,300 feet upstream of Mohave Community College Road.	None	+515	
	Approximately 0.36 mile upstream of Arroyo Vista Road.	None	+758	
	Approximately 0.65 mile upstream of Arroyo Vista Drive.	None	+803	
Thirteen Mile Wash	Approximately 75 feet upstream of Limit of Detailed Study.	None	+2478	Unincorporated Areas of Mohave County.
	Approximately 600 feet upstream of Shipp Drive	None	+2803	
Thirteen Mile Wash Overflow 1.	Approximately 620 feet downstream of Unkar Drive	None	+2575	Unincorporated Areas of Mohave County.
	Approximately 1,100 feet upstream of Bolsa Drive	None	+2658	
Thirteen Mile Wash Overflow 2.	Approximately 770 feet downstream of Chuar Drive	None	+2599	Unincorporated Areas of Mohave County.
	Approximately 1,260 feet upstream of Bolsa Drive	None	+2655	
Thirteen Mile Wash Overflow 3.	Approximately 1,660 feet downstream of Adobe Road	None	+2757	Unincorporated Areas of Mohave County.
	Approximately 400 feet upstream of Shipp Drive	None	+2793	
Unnamed Wash 10	Approximately upstream side of Airway Avenue	None	+3450	City of Kingman.
	Approximately 700 feet upstream of Interstate 40	None	+3510	
Unnamed Wash 10 Overflow	Approximately 200 feet upstream of confluence with Unnamed Wash 6.	None	+3491	City of Kingman.
	Approximately 795 feet downstream of confluence with Unnamed Wash 6.	None	+3499	
Unnamed Wash 13	Approximately 50 feet downstream of Ashley Street	None	#1	Unincorporated Areas of Mohave County.
	Approximately 50 feet upstream of confluence with Unnamed Wash East Golf Course.	None	#2	
	Approximately 300 feet upstream of Lippan Blvd	None	#3	
Unnamed Wash 13 East Golf Course.	At Approximately Clubhouse Road	None	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 13 Overflow	Approximately 700 feet upstream of Lippan Blvd	None	#1	Unincorporated Areas of Mohave County, Fort Mojave Indian Tribe.
	Approximately 600 feet upstream of Lippan Blvd	None	#2	
Unnamed Wash 13 Tributary 1.	Approximately 150 feet downstream of Ashley Street	None	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 13 Tributary 1 of Tributary 1.	Approximately downstream side of Ashley Street	None	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 13 Tributary 1 of Tributary 2.	Approximately upstream side of Ashley Street	None	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 13 Tributary 1 of Tributary 2 of Tributary 1.	Approximately 200 feet downstream of Ashley Street	None	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 13 Tributary 2.	Approximately 200 feet downstream of Ashley Street	None	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 13 Tributary 2 of Tributary 1.	Approximately 350 feet downstream of Ashley Street	None	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 13 West Golf Course.	Approximately 50 feet downstream of Desert Lakes Drive.	None	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 14	Approximately 750 feet downstream of Ashley Street	None	#1	Unincorporated Areas of Mohave County, Fort Mojave Indian Tribe.
	Approximately 50 feet downstream of Ashley Street	None	#2	
	Approximately 50 feet upstream of Mountain View Road.	None	+553	
	Approximately 475 feet upstream of Antelope Drive	None	+676	
Unnamed Wash 14 Tributary 1.	Approximately 100 feet downstream of Ashley Street	None	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 15	Approximately 350 feet upstream of Boundary Cone Road.	None	#1	Unincorporated Areas of Mohave County.
	Approximately 400 feet downstream of Ashley Street	None	#2	
	Approximately 400 feet upstream of Boundary Cone Road.	None	+524	
	Approximately 450 feet upstream of Bison Avenue	None	+652	
Unnamed Wash 15 Tributary 1.	Approximately 450 feet downstream of Ashley Street	None	#1	Unincorporated Areas of Mohave County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 900 feet upstream of Bison Avenue	None	#2	
Unnamed Wash 6	Approximately 280 feet downstream of Andy Devine Road.	None	#1	City of Kingman.
	Approximately 50 feet upstream of Andy Devine Avenue.	None	+3446	
	Approximately 50 feet upstream of Interstate 40	None	+3491	
Unnamed Wash 6 Overflow ..	Approximately 800 feet downstream of Railroad Tracks.	None	+3459	City of Kingman.
	Approximately 1,070 feet upstream of Railroad Street	None	+3487	
Unnamed Wash 7 (With Berm).	Approximately 50 feet upstream of Andy Devine Road	None	+3502	City of Kingman.
	Approximately 300 feet upstream of Hulapai Mountain Road.	None	+3530	
Unnamed Wash 7 (Without Berm).	Approximately 250 feet downstream of Railroad Tracks.	None	#1	City of Kingman.
Unnamed Wash 9	Approximately 100 feet downstream of Lead Street	None	#1	City of Kingman.
	Approximately 800 feet upstream of Lead Street	None	#2	
Virgin River	Approximately 2.7 miles downstream of Scenic Blvd ..	None	+1598	Unincorporated Areas of Mohave County.
	Approximately 1.0 mile upstream of Interstate 15	None	+1817	
Wash A	Approximately 1750 feet downstream of Redwall Drive.	None	+2678	Unincorporated Areas of Mohave County.
	Approximately 150 feet upstream of Shipp Drive	None	+2771	
Wash B	Approximately 0.45 mile downstream of Bolsa Drive ..	None	+2606	Unincorporated Areas of Mohave County.
	Approximately 200 feet upstream of Shipp Drive	None	+2783	
Wash B Tributary 1A	Approximately 0.07 mile downstream of Redwall Drive	None	+2662	Unincorporated Areas of Mohave County.
	Approximately 1,760 feet upstream of U.S. 68	None	+2861	
Wash B Tributary 1B	Approximately 900 feet downstream of Shipp Drive	None	+2763	Unincorporated Areas of Mohave County.
	Approximately 200 feet upstream of Shipp Drive	None	+2777	
Wash B Tributary 1C	Approximately 250 feet upstream of confluence with Wash B Tributary 1A.	None	+2753	Unincorporated Areas of Mohave County
	Approximately 150 feet upstream of Shipp Drive	None	+2784	
Wash C	Approximately 1,700 feet downstream of Shinarump Drive.	None	+2493	Unincorporated Areas of Mohave County
	Approximately 200 feet upstream of Shipp Drive	None	+2829	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Bullhead City
Maps are available for inspection at 1255 Marina Blvd, Bullhead City, AZ 86442.

City of Colorado City
Maps are available for inspection at 25 S. Central, Colorado City, AZ 86021.

City of Kingman
Maps are available for inspection at 310 N. 4th Street, Kingman, AZ 86401.

City of Lake Havasu
Maps are available for inspection at 2330 McCulloch Blvd North, Lake Havasu City, AZ 86403.

Fort Mojave Indian Tribe
Maps are available for inspection at 500 Merriman Avenue, Needles, CA 92363.

Unincorporated Areas of Mohave County
Maps are available for inspection at 700 W. Beale Street, Kingman, AZ 86402.

Washington County, Oregon, and Incorporated Areas

Dairy Creek	Approximately 85 feet downstream of P&W Railroad ..	*147	*149	Unincorporated Areas of Washington County, City of Hillsboro.
	Approximately 125 feet upstream of NW Susbauer Road.	*152	*155	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
West Fork Dairy Creek	Approximately .8 miles upstream of NW Wilson River Highway.	None	*191	City of Banks.
	Approximately .72 miles downstream of NW Banks Road.	None	*192	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Banks
Maps are available for inspection at 100 S. Main Street, Banks, OR 97106.

City of Hillsboro
Maps are available for inspection at 150 East Main Street, Hillsboro, OR 97123.

Unincorporated Areas of Washington County
Maps are available for inspection at 155 North First Ave., Ste. 300, Hillsboro, OR 97124.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 21, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–10335 Filed 5–7–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket Nos. 03–66; 03–67; 02–68; IB Docket No. 02–364; ET Docket No. 00–258; FCC 08–83]

Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands; Reviewing of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on whether to assign Educational Broadband Service (EBS) spectrum in the Gulf of Mexico. It also seeks comment on how to license unassigned and available EBS spectrum. Specifically, we seek comment on whether it would be in the public interest to develop a scheme for licensing unassigned EBS spectrum that avoids mutual exclusivity; we ask whether EBS eligible entities could participate fully in a spectrum auction; we seek comment on the use of small business size standards and bidding credits for EBS if we adopt a licensing scheme that could result in mutually exclusive applications; we seek comment on the proper market size and size of spectrum blocks for new EBS licenses; and we seek comment on issuing one license to a State agency designated by the Governor to be the spectrum manager, using frequency coordinators to avoid mutually exclusive EBS applications, as well as other alternative licensing schemes. The Commission must develop a new licensing scheme for EBS in order to achieve the Commission's goal of facilitating the development of new and innovative wireless services for the benefit of students throughout the nation.

DATES: Submit comments on or before July 7, 2008. Submit reply comments on or before August 6, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. You may submit comments, identified by FCC 08–83, or by WT Docket No. 03–66, WT Docket No. 03–67, WT Docket No. 02–68, IB Docket No. 02–364, or ET Docket No. 00–258, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For further information contact John Schauble, Broadband Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, at (202) 418–0797 or via the Internet to *John.Schauble@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's *Broadband Radio Service/Educational Broadband Service Second Further Notice of Proposed Rulemaking (BRS/EBS 2nd FNPRM),* FCC 08–83, adopted on March 18, 2008, and released on March 20, 2008. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's

duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via e-mail at *fcc@bcpiweb.com.* The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov/edocs_public/attachment/FCC-08-83A1doc.* This full text may also be downloaded at: *http://wireless.fcc.gov/releases.html.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to *bmillin@fcc.gov.*

Summary

BRS/EBS 2nd FNPRM

1. We seek comment on whether and how we license EBS spectrum in the Gulf of Mexico. Commenters should address the issue of whether there is a need in the Gulf of Mexico for the type of educational services that EBS is designed to meet. Because there are no schools or universities in the Gulf of Mexico, we seek comment on whether any changes to our educational use requirements are appropriate for the Gulf of Mexico.

2. We also seek further comment on the appropriate licensing scheme for new EBS licenses. We note that the opportunities presented by the new technical rules and band plan create additional demand for EBS spectrum, and that EBS eligible entities have not been able to file applications for new stations since 1995. The record developed to date is insufficient for us to adequately weigh the various options for licensing EBS spectrum, including options that might avoid mutually exclusive applications.

3. The Balanced Budget Act of 1997 (Budget Act) expanded the Commission's competitive bidding authority under section 309(j) of the Communications Act by adding, among other things, provisions governing auctions for broadcast and other previously exempt services. In a subsequent order, the Commission concluded that the legislation required that mutually exclusive applications for new Instructional Television Fixed Service (ITFS) stations be subject to auction. The Commission concluded that ITFS did not fall within the exemption from competitive bidding for noncommercial educational broadcast stations. The Commission expressed concern that section 309(j), as adopted, might not reflect Congress' intent with regard to the treatment of competing ITFS applications. Given the instructional nature of the service and the reservation of ITFS spectrum for noncommercial educational use, the Commission thought it possible that Congress did not intend its expansion of our auction authority in the Budget Act to include that service. Accordingly, the Commission did not proceed immediately with an auction of ITFS applications but sought Congressional guidance with regard to assigning licenses for ITFS by competitive bidding and proposed that Congress exempt ITFS applications from competitive bidding. In 2000, the Commission opened a settlement window to resolve mutual exclusivity between applications by allowing payments to applicants in return for dismissing their applications and permitting agreements providing for the authorization to be awarded to a non-applicant third party.

4. In 2003, the Commission reiterated its prior conclusion that mutually exclusive applications for new ITFS stations would be subject to competitive bidding and noted the Commission's attempt to seek Congressional guidance on this issue. It also held that there would be no opportunity to file new ITFS applications, amendments, or modifications of any kind of station (except for applications that involved minor modifications, assignment of licenses, or transfer of control) while the Commission undertook a major restructuring of the 2.5 GHz band plan and technical rules. The Commission also sought comment on potential options for assigning licenses for unassigned ITFS spectrum by competitive bidding. While the Commission later lifted the freeze on modification applications, the freeze on applications for new EBS stations remained in place.

5. In the 2004 *BRS Further Notice of Proposed Rulemaking*, the Commission proposed to assign new EBS spectrum licenses using competitive bidding. The Commission also sought comment on geographic areas for new licenses, frequency blocks for new licenses, rules for auctions, bidding credits for small businesses and designated entities, and auctioning spectrum as a means of transitioning areas where a proponent has not come forward within the deadline established by the Commission.

6. Notwithstanding the Commission's prior determinations that applications for initial EBS spectrum licenses are not exempt from competitive bidding under the Communications Act, today, we seek comment on a mechanism for assigning EBS licenses by competitive bidding among applicants, as well as through other means that would avoid mutual exclusivity among applications, obviating any need for competitive bidding.

5. Given various characteristics of eligible EBS licensees that are unique among potential Commission licensees, a licensing mechanism that depends on competitive bidding to assign licenses may not provide many otherwise eligible EBS licensees with a full opportunity to participate, accordingly, we seek further comment on the appropriate licensing mechanism for new EBS licenses. We do so without prejudging the appropriate time for issuing new EBS licenses, whether pursuant to competitive bidding or an alternative assignment mechanism.

6. We seek comment on several threshold questions involving the possibility of adopting a licensing scheme that provides for mutually exclusive applications and competitive bidding. First, do EBS eligible entities, in general, have the authority to bid for spectrum licenses? Second, if EBS eligible entities have the authority to bid for spectrum, do they have the authority to bid for spectrum outside of their respective jurisdictions? We seek comment on whether educational institutions would be able to competitively bid for Basic Trading Areas (BTAs), given that school districts are usually smaller than counties, while BTAs can be very large and frequently bisect state boundaries. If EBS eligible entities cannot bid for spectrum outside of their respective jurisdictions, but are otherwise able to bid for spectrum, we seek comment on whether educational institutions could form a consortium or some other joint entity to bid for spectrum in areas larger than their respective jurisdictions and as large as a BTA.

7. Moreover, we seek comment on how we should structure the auction to ensure that licenses are disseminated among a wide variety of applicants. In this connection, we seek comment on whether we should prohibit non-profit educational organizations from participating in an auction and limiting eligible bidders to EBS eligible entities that are publicly supported or privately controlled educational institutions accredited by the appropriate State department of education or the recognized regional and national accrediting organization.

8. We propose to conduct any auction of the EBS spectrum in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules, consistent with many of the bidding procedures that have been employed in previous auctions. Specifically, we propose to

employ the part 1 rules governing, among other things, competitive bidding design, designated entities, application and payment procedures, collusion issues, and unjust enrichment.

9. We seek comment on whether we should adopt bidding credits and small business size standards in the auction of EBS spectrum.

10. We seek comment on the size of the spectrum blocks to be auctioned. Under one possible scheme, the winning bidder would receive both the three low-power channels and the one high-power channel assigned to the group. We could also auction the high-power channels in the group separately from the low-power channels in the group. A third option would be to license all of the available spectrum in the Lower Band Segment (LBS) and Upper Band Segment (UBS) as one frequency block and all of the available Middle Band Segment (MBS) spectrum as a separate frequency block.

11. With respect to a geographic area licensing scheme, we seek comment on the size of the area to be licensed. Several commenters recommend that we license available and unassigned EBS spectrum by BTA to correspond to the BRS licensing area. We could also assign licenses by State. We also seek comment on whether we should license smaller areas such as cellular market areas. If we decide to license the low-power channels separately from the high-power channels, we seek comment on whether we should adopt a different geographic area for the MBS channels.

12. We also seek comment on whether special eligibility or spectrum aggregation limits would be appropriate or necessary to ensure that public and private educational institutions can successfully bid for spectrum.

13. If, as a result of the record developed in response to this *BRS/EBS 2nd FNPRM*, we learn that very few EBS eligible entities can bid for spectrum, we may find that the public interest of making this spectrum available will lead us to adopt a licensing scheme that avoids competitive bidding. In this connection, we seek comment on all available options for granting geographic area licenses without granting one of multiple mutually exclusive applications. Commenters proposing such options should provide a detailed description of how their proposed option would work, describe what they believe the proper geographic area and channel blocks should be for proposed licenses, and explain why they believe their proposed licensing scheme would allow vacant EBS spectrum to be rapidly placed into use by EBS-eligible licensees and meet the educational, spectrum policy, and broadband goals underlying EBS.

14. One option would be to issue one license to a State agency designated by the Governor to be the spectrum manager for the entire State, using frequency coordinators to avoid mutually exclusive EBS applications, as well as other alternative licensing schemes. In connection with this state licensing option, we seek comment on whether any modifications to our Secondary Markets leasing rules would be appropriate for these state licenses. We also seek comment on whether any modifications to our special leasing rules for EBS stations would be appropriate for state licenses.

15. Under spectrum manager leasing arrangements and *de facto* transfer leasing arrangements, the licensee must meet the eligibility requirements in the Commission's rules. Thus, the State agency designated by the Governor would have to meet the eligibility requirements of § 27.1201 of our rules. We seek comment on whether any restrictions on a state's leasing discretion would be necessary to ensure that the full range of educational entities have access to EBS spectrum.

16. We also seek comment on whether any modifications to our special leasing rules for EBS stations would be appropriate for state licenses. Under § 27.1214 of our rules, a licensee must comply with certain educational programming requirements and retain the opportunity to purchase or to lease dedicated or common EBS equipment used for educational purposes or comparable equipment if the lease terminates.

17. Another option would adopt a licensing scheme similar to the one we use to license private land mobile radio spectrum. Under this approach, applicants could submit applications for new EBS stations at any time to certified frequency coordinators. The frequency coordinators would review the applications and, in case of conflict, certify the earlier filed application that complies with the Commission's rules for submission to the Commission.

18. Using frequency coordination to award licenses for new EBS stations raises a variety of issues. First, we seek comment on whether there are entities that could be qualified to serve as an EBS frequency coordinator and the process by which the Commission should select one or more frequency coordinators. Second, we seek comment on the processes that a frequency coordinator would use to handle requests for EBS frequencies and to determine whether an application complies with the Commission's rules. We also seek comment on the appropriate geographic area for new licenses. We also seek comment on the appropriate size of the frequency block for EBS licenses awarded through the frequency coordination process. Available alternatives include: (1) Issuing a separate license for each channel group; (2) licensing MBS channels separately and licensing LBS and UBS channels together; (3) issuing one UBS license, one MBS license, and one LBS license in a given geographic area. Finally, we ask whether it is appropriate or necessary to place limitations on the number of applications that a licensee or its affiliates could file for new EBS stations in a given time period in order to ensure that a wide variety of EBS licensees can access spectrum. We seek comment on these and any other issues relating to the use of frequency coordination to assign new EBS licenses.

19. Our discussion of specific proposals and questions is not meant to preclude commenters from offering other proposals or raising other questions relating to the assignment of new EBS licenses. We seek comment on all questions and issues relating to the assignment of new EBS licenses.

Procedural Matters

Ex Parte Rules—Permit-But-Disclose Proceeding

20. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.

Comment Period and Procedures

21. Pursuant to §§ 1.415 and 1.419 of the FCC's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The FCC's Electronic Comment Filing system (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the *Federal eRulemaking Portal: http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.
- *For ECFS filers*, if multiple docket or rulemaking numbers appear in the

caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Comments shall be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

- *Paper filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).
- *Availability of Documents:* The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov*. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 1–800–378–3160.

Paperwork Reduction Analysis

22. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4) requirements.

Initial Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *BRS/EBS 2nd FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the *BRS/EBS 2nd FNPRM* for comments. The Commission will send a copy of this *BRS/EBS 2nd FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *BRS/EBS 2nd FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

24. The *BRS/EBS 2nd FNPRM* seeks comment on various alternatives to license unassigned and available EBS spectrum throughout the United States and the Gulf of Mexico. Specifically, the *BRS/EBS 2nd FNPRM* seeks comments on the following options:

(a) Using competitive bidding to license unassigned and available spectrum. If this option is adopted the Commission proposes to use the competitive bidding rules in part 1, subpart Q of the Commission's rules. The Commission also seeks comment on whether to adopt bidding credits and small business size standard, the size of the spectrum blocks to be auctioned, and the size of geographic areas to be licensed.

(b) Issuing one license per State to a State agency designated by the Governor to act as a spectrum manager for the State. The State agency would be required to meet the eligibility restrictions in § 27.1201 of the Commission's rules. The State agency would be able use spectrum manager leasing arrangements or *de facto* transfer leasing arrangements.

(c) Using a leasing scheme similar to the one used to license private land mobile radio spectrum. Under this approach, applicants could submit applications for new EBS stations at any time to frequency coordinators.

25. We believe our proposals will encourage utilization of this band and the development of new innovative services to the public such as providing wireless broadband services, including high-speed Internet access and mobile services while encouraging educators to use the band for educational services.

B. Legal Basis for Proposed Rules

26. The proposed action is authorized under sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

27. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms, ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined as ''governments of cities,

towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small. Below, we discuss the total estimated numbers of small businesses that might be affected by our actions.

28. The Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)) is used to provide educational services to students. The SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses.

29. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions may be included in the definition of a small entity. EBS is a non-profit non-broadcast service. We do not collect, nor are we aware of other collections of, annual revenue data for EBS licensees. We find that up to 1,932 of these educational institutions are small entities that may take advantage of our amended rules to provide additional flexibility to EBS.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

30. There are no new reporting, recordkeeping or other compliance requirements proposed in the *BRS/EBS 2nd FNPRM*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

31. RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

32. The Commission has not proposed an approach for licensing EBS spectrum. Instead, the Commission seeks comment on three distinct approaches for licensing EBS spectrum to determine which approach would best suit the needs of schools and universities and other non-profit educational institutions.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

33. None.

Ordering Clauses

34. It is further ordered that notice is hereby given of the proposed regulatory changes described in this *Second Further Notice of Proposed Rulemaking*, and that comment is sought on these proposals.

35. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Further Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–10105 Filed 5–7–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 512

[Docket No. NHTSA–06–26140; Notice 3]

RIN 2127–AJ95

Confidential Business Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of Petition for Reconsideration.

SUMMARY: This document denies a petition for reconsideration regarding amendments to NHTSA's regulation on Confidential Business Information. The petition, by the American Association for Justice, sought the rescission of class determinations that provide confidential treatment for certain categories of information submitted to NHTSA pursuant to the Early Warning Reporting regulations.

FOR FURTHER INFORMATION CONTACT: Michael Kido, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, NHTSA has adopted Early Warning Reporting (EWR) regulations. 49 CFR Part 579. *See* 49 U.S.C. 30166(m), Public Law 106–414. Under these regulations, in general, larger manufacturers must submit certain data to the NHTSA on a quarterly basis. Their EWR reports include information on production, incidents involving deaths or injuries, property damage claims, consumer complaints, warranty claims, field reports and common green tires, with some variation based on the reporting sector. In general, smaller manufacturers must report on incidents involving deaths.

On October 19, 2007, NHTSA published regulations addressing the confidentiality of EWR data. 72 FR 59434. The Appendices to the October 2007 notice contain class determinations providing that certain EWR information is confidential. Under Appendix C to 49 CFR Part 512, EWR data on production (except for light vehicles), consumer complaints, warranty claims, field reports and common green tires, as well as copies of field reports are confidential. 72 FR at 59470. Under Appendix D, the last six

(6) characters of the vehicle identification number (VIN) in an EWR report on death(s) or injuries are confidential. *Id.* As explained in the preamble to the October 2007 rule, NHTSA based these class determinations on the substantive criteria in Exemptions 4 and 6 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4) and (b)(6).

Under FOIA Exemption 4, the standard for assessing the confidentiality of information that parties are required to submit to the government is whether ''disclosure of the information is likely to have either of the following effects: (1) To impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial competitive harm to the competitive position of the person from whom the information was obtained.'' *National Parks & Conservation Ass'n* v. *Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). The class determinations in Appendix C to Part 512 are based on Exemption 4. FOIA Exemption 6 provides for the withholding of ''personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.'' 5 U.S.C. § 552(b)(6). The agency applied Exemption 6 to the last six (6) characters of the VINs affixed to those vehicles allegedly involved in a death or injury reported under 49 CFR part 579 to protect the identity of individual vehicle owners. The class determination in Appendix D to part 512 is based on Exemption 6. For a more detailed discussion of the agency's analysis regarding the class determinations in Appendices C and D, we refer readers to the preamble of the October 2007 rule.

II. American Association for Justice Petition and NHTSA's Response

In a December 3, 2007 letter, the American Association for Justice (AAJ), formerly known as the Association of Trial Lawyers of America, petitioned for reconsideration of the class determinations on EWR data. AAJ asks NHTSA to withdraw the class determinations, based on two arguments.

First, AAJ asserts that Federal law requires NHTSA to apply a balancing test used by a court in evaluating a motion to unseal court records filed in a products liability action. *See Chicago Tribune Co.* v. *Bridgestone/Firestone, Inc.*, 263 F.3d 1304 (11th Cir. 2001). Under this test, AAJ argues, an agency must balance the manufacturer's interest in keeping the information confidential with the alternate contention that disclosure serves the public interest in health and safety. AAJ asserts that a blanket exemption under the FOIA would violate this federal balancing test and that the agency must continue to evaluate the disclosure of a manufacturer's EWR data on a case-by-case basis.

Second, AAJ asserts that automobile companies would not suffer detrimental competitive consequences from the disclosure of their EWR submissions. It states that industry's arguments regarding the competitive impact of the disclosure of EWR data should be discounted because manufacturers already learn about their competitors' products through reverse-engineering. AAJ cites an article in WIRED magazine discussing the vehicle tear-down process followed by manufacturers in general, and General Motors Corporation in particular. *See* Carl Hoffman, *The Teardown Artists*, WIRED (Feb. 2006). AAJ contends that since manufacturers already conduct these types of activities, disclosing EWR data may not have an additional impact on competition and that it could significantly improve public safety.

As to both of these arguments, we disagree with AAJ's views regarding the applicable legal principles. In *Chicago Tribune*, a balancing test was applied in the unsealing of documents produced in a products liability lawsuit. In our view, the body of law that governs the disclosure of EWR data is FOIA law, rather than the law on the unsealing of documents in *Chicago Tribune*. More particularly, as explained in the preamble to the October 2007 rule, the proper standard is that of Exemption 4 of the FOIA. *See* 72 FR at 59437. In Exemption 4, Congress has already struck the balance and no further balancing of the public interest is warranted. *See Public Citizen Health Research Group* v. *FDA*, 185 F.3d 898, 904 (D.C. Cir. 1999); 72 FR at 59437 *and* 59449–50. In any event, to the extent relevant, the agency weighed the public's interest in these data against its continued ability to obtain EWR data under its impairment prong analyses. *See, e.g.,* 72 FR at 59449–51 (consumer complaints), 59456–57 (warranty claims), *and* 59460–62 (field reports). AAJ does not dispute our impairment analyses.

We also disagree with AAJ's related contentions that this information would protect consumers and that NHTSA did not dispute AAJ's claim that the disclosure of EWR information is vital to the public interest but that NHTSA gave greater weight to competitive consequences that would result from the release of the data, which were presented by the automotive industry. AAJ's conclusory contentions on the value of the information to the public were not supported in its submission. And, we had explained that the disclosure of the EWR data covered by the Appendices would provide limited, if any, safety benefits to the public, *see, e.g.,* 72 FR at 59450, 59457, *and* 59462, but would be likely to cause substantial competitive harm to manufacturers and significantly impair the agency's ability to carry out the EWR program effectively. *See, e.g.,* 72 FR at 59441–63.[1] In the course of our assessment, we applied the FOIA law and considered the administrative record in reaching the determinations in Appendices C and D. AAJ and others had the opportunity to submit detailed comments presenting their views and any facts in support of them.

The AAJ petition and article from WIRED do not provide justification for revision of the October 2007 rule and its appendices on the grounds that automobile companies would not likely suffer detrimental competitive harm from the disclosure of EWR data. The article points out that teardowns and related activities can yield valuable information about a competitor's products, such as dimensions, parts weight, and how parts are assembled together. However, the AAJ petition and article do not indicate, much less demonstrate, that teardowns provide information comparable to EWR data.

The preamble to the October 2007 rule discussed EWR data and explained, among other things, the competitive value of those data. AAJ does not address how an entity could use tear-down information to develop EWR information or comparable information. NHTSA addressed EWR consumer complaints, warranty claims, and field reports. *See* 72 FR at 59444–63. The compendium of EWR consumer complaint data provides valuable information on customer satisfaction and how well products were received, quality and field experience. *See* 72 FR at 59444–48. Tear-downs do not provide this information. *See e.g.*, 72 FR at 59445, 59447–48.

EWR warranty data provide a compendium of information on the quality and in-use performance of significant systems or components. *See* 72 FR at 59451–55. These data serve as a valuable indicator of the field performance and experience of parts and systems in vehicles and tires. *See*

[1] We note that the EWR information on deaths and injuries are not covered under the class determinations in Appendix C.

72 FR at 59454–55. Vehicle tear-downs do not provide this information.

EWR field report data address malfunctions or performance problems. *See* 72 FR at 59457. They reflect the in-use experience of a manufacturer's product collected at its expense and with the intent of identifying problems associated with its products. 72 FR at 59459; *see also* 72 FR at 59457–60. These data provide in-use information on technologies employed by manufacturers and provide competitively valuable information on product performance and experience in the field, including at times reliability and durability of systems and components. 72 FR at 59459–60. Again, vehicle tear-downs do not provide this information.

Furthermore, NHTSA addressed EWR production data and explained why they are confidential (other than for light vehicles). *See, e.g.,* 72 FR at 59441–44. AAJ's petition does not address production data at all. NHTSA also explained why EWR common green tire identifiers are confidential. 72 FR at 59462–63. AAJ does not address this information either.

Also, AAJ does not address the issue of costs in collecting information on competitor products. In general, the ability of a competitor to engage in reverse engineering, which forms a basis for AAJ's contentions, does not alone resolve the confidentiality of information; cost is a significant factor. *See* 72 FR at 59448 (quoting *Worthington Compressors* v. *Costle*, 662 F.2d 45, 51–52 (D.C. Cir. 1981)). The article from Wired alluded to the considerable costs incurred by GM to conduct vehicle tear-downs. It noted that a full vehicle tear-down takes approximately six weeks and requires work by technicians and the use of sophisticated equipment. The article also noted that the process focuses on costs; cost estimators estimate the price of every part used in the examined vehicle. AAJ does not address any of these vehicle tear-down costs. If there was a means by which competitors could acquire the competitive information provided by EWR submissions, such as consumer complaints, warranty claims, and field reports, these costs would certainly be considerable. *See, e.g.,* 72 FR at 59448, 59454, *and* 59459.

Lastly, AAJ does not address Appendix D or any of the FOIA Exemption 6 issues detailed in the preamble to the October 2007 rule related to the disclosure of the full VIN reported in an incident involving an alleged death or injury. *See* 72 FR at 59463–65. For example, it does not address the privacy concerns raised by the agency if complete VIN information were disclosed. It does not address the fact that the agency's final rule permits the disclosure of the first eleven (11) of the seventeen (17) characters that comprise each VIN or that the first eleven characters are sufficient to identify the make, model, and model year of a vehicle. And, it does not address relevant case law. *See Center for Auto Safety* v. *NHTSA*, 809 F. Supp. 148 (D.D.C. 1993); *see also* 72 FR at 59465.

III. Conclusion

For the reasons stated above, the agency is denying AAJ's petition for reconsideration.

Authority: 49 U.S.C. 322; 5 U.S.C. 552; 49 U.S.C. 30166, 49 U.S.C. 30167; 49 U.S.C. 32307; 49 U.S.C. 32505; 49 U.S.C. 32708; 49 U.S.C. 32910; 49 U.S.C. 33116; delegation of authority at 49 CFR 1.50.

Issued on: April 30, 2008.

James F. Ports, Jr.,

Deputy Administrator.

[FR Doc. E8–10192 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 73, No. 90
Thursday, May 8, 2008

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

May 5, 2008.

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) 720–8958.

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.

Farm Service Agency

Title: Customer Data Worksheet Request for SCIMS Record Change.

OMB Control Number: 0560–NEW.

Summary of Collection: Critical Customer Data is required in order to identify USDA program participants and ensure that benefits are directed to the correct customer and respective Tax Identification Numbers. There is no public law regarding the use or collection of Critical Customer Data. The option to document and track Critical Customer Data changes is necessary to ensure the integrity of the database and to provide the Farm Service Agency (FSA), Natural Resources and Conservation Service and Rural Development a method of verifying the validity of the information, and provide a necessary basis for pursuing legal remedies when needed.

Need and Use of the Information: Critical Customer Data is necessary to input customer information for identity purposes and to provide a point of contact for the respective customer and a valid Tax Identification Number to direct program benefits to. The AD–2047 will be used to document Critical Customer Data changes and also to provide a spot check documentation form. Failure to collect and timely maintain the data collected will result in erroneous/outdated point of contact information, which could result in program information and benefits being directed to incorrect recipients.

Description of Respondents: Individuals or households.

Number of Respondents: 51,750.

Frequency of Responses: Reporting: Other (when necessary).

Total Burden Hours: 24,323.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–10255 Filed 5–7–08; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

In-Handling Charges for Commodities Pledged as Collateral for Marketing Assistance Loan

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) will discontinue reimbursing producers or warehouse operators for in-handling charges. This begins with the 2008-crop for all commodities except cotton. Producers must pay or provide for all in-handling charges on warehouse-stored commodities before CCC will accept commodities as collateral for a warehouse-stored marketing assistance loan. Also, producers must pay or provide for the payment of in-handling charges for farm-stored commodities that are delivered to a warehouse in settlement of a farm-stored marketing assistance loan.

DATES: *Effective Date:* May 8, 2008.

FOR FURTHER INFORMATION CONTACT: Helen Linden, Assistant to the Director, Warehouse and Inventory Division, Farm Service Agency, USDA, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553; telephone: (202) 690–4321; e-mail: *helen.linden@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (2002 Farm Bill) authorizes the marketing assistance loan program for all commodities. In the past, CCC paid warehouse operators or reimbursed producers for in-handling charges on forfeited commodities that were pledged as collateral for warehouse-stored marketing assistance loans or delivered to CCC in satisfaction of a farm-stored marketing assistance loan.

Starting with the 2008-crop year, CCC will no longer pay warehouse operators or reimburse producers for in-handling charges that are applicable to either warehouse-stored commodities that are pledged as collateral for marketing assistance loans or farm-stored

commodities that are forfeited to CCC in satisfaction of a farm-stored marketing assistance loan.

Beginning with 2008-crop marketing assistance loans, producers must pay or provide for the payment of in-handling charges on warehouse-stored commodities before CCC will accept the commodity as collateral for a warehouse-stored marketing assistance loan.

Beginning with the 2008-crop of wheat, feed grains, soybeans, rice, pulses, minor oilseeds, peanuts, honey, wool, and mohair, producers must provide documentation that all in-handling charges have been paid or provided for before a warehouse-stored marketing assistance loan will be disbursed for the commodity. Acceptable documentation will include specific information recorded directly on the warehouse receipt pledged as collateral for a marketing assistance loan. If the information is not recorded directly on the warehouse receipt that is pledged as loan collateral, separate documentation that is signed by the warehouse operator that includes the following language will be accepted as evidence that in-handling charges have been paid or provided for if the document is presented in conjunction with a warehouse receipt that is pledged as collateral for a warehouse-stored marketing assistance loan:

> Arrangements for the payment of in-handling charges have been made by the depositor of the commodity covered by receipt number *(Insert Receipt Number).* No lien will be asserted by the warehouse operator against the Commodity Credit Corporation or any subsequent holder of the warehouse receipt for in-handling charges.

Failure to present the required documentation that in-handling charges have been paid or provided for will result in the commodity represented by the warehouse receipt being determined ineligible as collateral for the marketing assistance loan until the documentation is submitted to the applicable Farm Service Agency county office.

For commodities pledged as collateral for farm-stored marketing assistance loans that are forfeited to CCC in satisfaction of an outstanding loan, the producer or warehouse operator that is accepting delivery of the forfeited commodity must provide documentation that in-handling charges have been paid or provided for before the loan settlement will be recorded. If the evidence is not provided as part of the delivery documentation, CCC will reduce the producer's settlement value for the forfeited commodity to reflect the amount of unpaid in-handling charges, at the rate provided in the warehouse's public tariff rates. In the event that a deduction from settlement proceeds is made, CCC will forward the withheld amount to the storing warehouse operator on behalf of the producer and will report the amount paid to the Internal Revenue Service (IRS).

Signed at Washington, DC, on May 1, 2008.

Glen L. Keppy,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E8–10179 Filed 5–7–08; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

San Juan National Forest; Columbine Ranger District; Colorado; Hermosa Land Exchange Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The San Juan National Forest is studying a proposal for a land exchange whereby Tamarron Properties Associates would offer 330 acres of non-Federal lands to the U.S. Forest Service in exchange for 265 acres of National Forest System lands and an easement for a new road. Any exchange would require by law that the appraised value of the properties be equal. The non-Federal properties include two inholdings adjacent to the Hermosa Roadless area; Mitchell Lakes and Hermosa Creek. The third inholding is a mining claim located in the Weminuche Wilderness area along the Whitehead Gulch Trail southeast of Silverton. Mitchell Lakes parcel is specifically located in T. 37 N., R. 9 W, Section 23 ; Hermosa Park T. 39 N., R. 10 W., Section 24, La Plata County, The Iron Clad Mining Claim is located in Section 11, T. 40 N., R. 7 W., N.M.P.M., Columbine Ranger District, San Juan National Forest, Colorado.

DATES: Formal scoping on the proposed land exchange began on June 11, 2007 and ended on September 10, 2007. Two public open houses were held June 21 and 25, 2007. Public field trips to the parcels were held June 28 and 29, 2007. The draft environmental impact statement is expected in September 2008 and the final environmental impact statement is expected in December 2008.

FOR FURTHER INFORMATION CONTACT: For further information contact Cindy Hockelberg, Columbine Public Lands, POB 439, 367 South Pearl Street, Bayfield, CO 81122; e-mail *chockelberg@fs.fed.us.,* telephone 970–884–1418.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of and need for action is for (1) more consolidated Federal and private ownership that reduces cost of Federal management and increases management efficiency; and (2) acquisition of significant non-Federal inholdings within the San Juan National Forest in visible and frequented locations so they are not available for development; and (3) additional Federal jurisdiction within Congressionally designated wilderness or other parcels such as wetlands, floodplains, and riparian areas that provide habitat for threatened or endangered species.

The Forest Service is directed to achieve the optimum landownership pattern to provide for the protection and management of resource uses to meet the needs of the nation now and in the future.

Further, the Forest Service is to complete land-for-land exchanges to consolidate National Forest System and private, State, or local government land patterns, to permit needed urban or industrial expansion; or to make other adjustments in landownership in the public interest.

Proposed Action

The proposed action is to complete a land exchange whereby the Forest Service would acquire three non-Federal parcels located within the boundaries of the San Juan National Forest and convey a Federal parcel and road easement for a new road to private ownership.

Possible Alternatives

The following alternatives have been preliminarily identified:

Alternative 1: This alternative is the No Action Alternative. The proposed project as described above would not occur.

Alternative 2: This alternative is the proposed action and the project would occur as described above. This alternative was presented in the public scoping that occurred during the summer of 2007.

Alternative 3: This alternative is responsive to trail use and moves the northern boundary of the Federal parcel south of the proponent's proposed location. The northern boundary for Alternative 3 would keep the trails immediately south and adjacent to the Chris Park wetland in Federal ownership. This alternative would include a road easement and limit use. Restrictions on road use for this

alternative, in addition to 4 and 5 may affect the appraised value.

Alternative 4: This alternative would be the same as Alternative 3 but would not include the road easement. Like Alternative 3, this alternative is responsive to the concerns expressed by trail users and will help address visual concerns.

Alternative 5: This alternative would not include a substantial portion of the federal parcel, as described in the proposed alternative. The alternative is designed to preserve major portions of the wagon road and some wetlands. This alternative would not include the road easement and more directly addresses cultural and recreation concerns. A trade-off of this alternative is that acquisition of both large non-Federal parcels may not be possible due to the requirement that the exchange be equal value.

Responsible Official

Mark W. Stiles, Center Manager, San Juan Public Lands, 15 Burnett Court, Durango, CO 81301.

Nature of Decision To Be Made

Given the purpose and need, the deciding official reviews the proposed action and the other alternatives in order to make the following decisions: Will the proposed land exchange occur as proposed, as modified under the various alternatives, or not at all. If the exchange proceeds what mitigation measures will the Forest Service apply to the project?

Scoping Process

Formal scoping has already occurred on this project as described above; comments received indicate that there may be significant impacts for which an EIS is the appropriate level of analysis. Informal scoping responses may be submitted to Cindy Hockelberg (contact information above), if there is an issue that has not been identified.

Preliminary Issues

During review of all public comments and internal input, the Forest Service has identified the following concerns or issues with the proposal: Recreation, particularly with regard to Chris Park campground and the trails that have been created in the area; The Animas Wagon road and its historical status; Socio-economic issues related to tourism and special use permittees who use the area; Visual impacts to those areas that are sensitive, including Highway 550 and Chris Park Campground; Wildlife impacts that may occur to a potential wildlife corridor on the Federal parcel; Wetlands and hydrology, particularly with regard to quality of wetlands on all parcels; and how the non-Federal parcels will be managed if they are acquired.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. This is expected to occur around September 2008.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: May 1, 2008.

Mark W. Stiles,

Center Manager.

[FR Doc. E8–10223 Filed 5–7–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Satellite Ground Station Customer Questionnaire.

Form Number(s): None.

OMB Approval Number: 0648–0227.

Type of Request: Regular submission.

Burden Hours: 17.

Number of Respondents: 102.

Average Hours per Response: 15 minutes.

Needs and Uses: NOAA requests people who operate ground receiving stations that receive data from NOAA satellites to complete a questionnaire about the types of data received, its use, the equipment involved, and similar subjects. The data obtained are used by NOAA for short-term operations and long-term planning. The collection of this data assists NOAA in complying with the terms of the Memorandum of Understanding (MOU) with the World Meteorological Organization Administration (NOAA) and other international agreements.

Affected Public: Not-for-profit institutions; individuals or households; State, Local or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: May 5, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–10226 Filed 5–7–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Proposal for Available Alternative Site–Designation and Management Framework

SUMMARY: The Foreign–Trade Zones (FTZ) Board is inviting public comment on a staff proposal to make available an alternative framework for participating grantees to designate and manage their general–purpose FTZ sites. A key result of this proposal, which stems from a series of regional and state–level discussions with FTZ grantees that began in April 2007, would be greater flexibility and predictability for a participating grantee to use administrative ''minor boundary modifications'' (MBMs) to modify FTZ sites. The greater flexibility would be made possible by participating grantees' increased focus on the FTZ sites needed for current or near–term zone activity, with a resulting improvement in the efficiency of FTZ oversight by government agencies. The availability of this alternative framework would affect only participating FTZ grantees and would occur within the existing statutory and regulatory context (including the role of the local CBP port director relative to any application for Board action or MBM request).

Background:

Under the FTZ Act of 1934 (19 U.S.C. 81a–81u), the FTZ Board may authorize FTZ sites sponsored by local ''grantee'' organizations at locations within or adjacent to U.S. Customs and Border Protection (CBP) ports of entry. Under the FTZ Act and the FTZ Board's regulations (15 CFR Part 400), FTZ designation for a particular parcel or site may result either from an application for action by the FTZ Board or from a request for an administrative MBM action by the FTZ Board staff. The regulatory time frame for such FTZ Board actions is ten months versus a thirty-day time frame for administrative MBM actions, and there are significantly greater documentation requirements associated with applications for Board action than for requests for administrative action.

The FTZ Act gives the FTZ Board broad authority and discretion. In this context, the Board's 1991 regulations delineate criteria for evaluation of applications for Board action and requests for administrative action to authorize FTZ designation for new parcels or sites. The applicable regulatory criteria are general in nature and the Board's existing approach (practice) for MBMs and FTZ designation for new parcels or sites pre–dates both the enormous growth in international trade of recent decades and the significant evolution in trade–related security and oversight responsibilities within government since 2001.

Within the FTZ program itself, increased demand for rapid action regarding new FTZ parcels or sites is tied to an accelerated pace of decision–making among the types of businesses that constitute the ultimate users of the program. The program's ability to react to business needs in a timely manner is inextricably linked to the program's success in helping to retain or enhance U.S.-based activity. In this context, an alternative approach to MBMs and site management for grantees in need of greater flexibility and responsiveness can be important in fulfilling the FTZ program's purpose ''to expedite and encourage foreign commerce.''

Proposal: The fundamental trade–off addressed in this proposal is greater flexibility and increased predictability for approval of FTZ sites through simple and rapid MBM actions in exchange for a grantee maximizing the linkage between designation of FTZ space and actual use of that space for FTZ activity (after ''activation'' by CBP). Maximizing this linkage can further other important program–related goals, including more efficient use of both FTZ Board and CBP resources.

Although the proposed alternative framework could be available to new or existing grantees, the major benefit would likely be for existing grantees who seek to enhance their ability to respond to evolving FTZ–related needs in their communities. Under this proposal, existing or potential grantees would have the option of applying to establish or reorganize their FTZ by incorporating in an application for FTZ Board action elements from the following framework:

1. The ''service area'' within which the grantee intends to be able to propose FTZ sites (e.g., specific counties, with documented support from new counties if the service area reflected a broader focus than the FTZ's current area served). The term ''service area'' applies a name to a concept which already exists in certain approved FTZ applications in which a grantee organization has named the localities it intends to serve. It should be noted that any service area would need to be consistent with the ''adjacency'' requirement of the FTZ Board's regulations (60 miles/90 minutes driving time from CBP Port of Entry boundaries).
2. An initial limit of up to 2,000 acres of designated FTZ space within the service area. Given the proposal's focus on linking FTZ designation more closely to FTZ activity, the 2,000–acre limit reflects the FTZ Board's existing practice of limiting any FTZ grantee to activation of 2,000 acres (regardless of the overall size of the grantee's zone) unless further approval is obtained from the FTZ Board. Acreage within the 2,000–acre limit which had not been applied to specific designated sites would effectively be ''reserve'' acreage available for future FTZ designation for parcels or sites within the grantee's approved service area.
3. Enhancement of the usefulness of the 2,000 available acres by emphasizing ''floating'' acreage within an individual site's boundaries (as has been the FTZ Board's practice with certain applications to date). For example, 100 acres of ''floating'' FTZ designation within the boundaries of a 700–acre port complex would mean that it would be possible to activate with CBP up to 100 acres of total space anywhere within that 700–acre complex.
4. Mandatory designation of a primary ''anchor'' FTZ site able to attract multiple FTZ users. No ''sunset'' time limit (see below) would apply to the anchor site. The anchor site would generally be no more than 500 acres (which could be ''floating'' acres within larger site boundaries see above). A grantee's anchor site would be designated through the full application process for FTZ Board action.
5. Possible designation of a limited number of ''magnet'' sites selected by the grantee often through local public processes for ability and readiness to attract multiple FTZ users. An individual magnet site would generally be limited to 200 ''floating'' acres. A magnet site could only be designated through an application for FTZ Board

action.

6. Possible designation of ''user–driven'' sites to serve companies not located in an anchor or magnet site but which are ready to pursue conducting activity under FTZ procedures. In the general interest of maximizing the linkage between FTZ site designation and FTZ activity at the site, a user–driven site would be limited in the context of a larger industrial park or business district where other companies interested in FTZ procedures might be able to locate in the future to the area(s) required for the company(ies) ready to pursue conducting activity under FTZ procedures.
7. Unlike anchor and magnet sites, user–driven sites could be designated through the current minor boundary modification (MBM) mechanism a rapid administrative action by the Board's staff in addition to through FTZ Board action. A simplification of the MBM process would result from elimination of the need to ''swap'' like amounts of acreage from existing sites as long as the total acreage for existing and proposed sites remained within the standard 2,000–acre limit.
8. In addition to the one anchor site, general initial limits of five magnet sites and ten user–driven sites which could exist simultaneously for a single FTZ. Increases of the limits applicable to a specific grantee could be justified over a longer term based on FTZ activity at a significant percentage of the grantee's designated sites. A grantee's request for a permanent increase in its number of authorized sites would be a matter for consideration by the FTZ Board. Also, the special circumstances of regional (multi–county) FTZs could be taken into account by an alternative general initial limit for such zones of two magnet sites per county. (Other limits in the proposal would be unaffected by such an alternative initial limit on numbers of magnet sites for regional FTZs.)
9. Consistent with current practice for many expansion applications, magnet sites and user–driven sites would be subject to ''sunset'' time limits which would self–remove FTZ designation from a site if there had been no FTZ activity before the site's sunset date (generally five years from the date of the site's approval). Magnet sites and user–driven sites would also be subject to ongoing ''recycling'' whereby FTZ activity at a site during the site's initial sunset period would serve to push back the sunset date by another five years (when the sunset test based on FTZ activity would again apply).

It is important to note that the elements of the proposal support each other in furthering the goals of flexibility and focus for FTZ site designation (with important resulting resource- and efficiency–related benefits for the government). As such, a framework incorporating these types of elements would incorporate the package of elements as an available alternative to the Board's current practice. FTZ grantees opting to manage their zones under the Board's current framework would be unaffected by this proposal. As is currently the case, MBM actions would be approved by the Board's staff while modifications to a zone's ''plan'' (*e.g.*, increase in authorized FTZ acreage, modification to service area) would be matters for the FTZ Board's consideration.

In addition, in order to help the FTZ Board evaluate the effectiveness and appropriateness of the alternative framework after actual experience with FTZ grantees, the FTZ staff would report to the Board on a periodic basis regarding the actual usage of the alternative framework. The staff's reporting regarding implementation of the framework at individual participating FTZs would result from staff–initiated reviews and would not require any request or application from the grantee.

Public comment on this proposal is invited from interested parties. We ask that parties fax a copy of their comments, addressed to the Board's Executive Secretary, to (202) 482–0002. We also ask that parties submit the original of their comments to the Board's Executive Secretary at the following address: U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for the receipt of public comments is July 7, 2008. Any questions about this request for comments may be directed to the FTZ Board staff at (202) 482–2862.

Dated: May 2, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–10274 Filed 5–7–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terepthalate Film, Sheet, and Strip from the Republic of Korea: Amended Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 8, 2008.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4475 and (202) 482–0649, respectively.

SUMMARY: On April 3, 2008, the Department of Commerce (the Department) published in the **Federal Register** the final results of the antidumping duty changed circumstances review and reinstatement of the antidumping order on polyethylene terephthalate film, sheet, and strip from Korea. The review covered a single firm, Kolon Industries, Inc. (Kolon) and the period July 1, 2005 to June 30, 2006. *See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order*, 73 FR 18259 (April 3, 2008) (*Final Results*). We are amending the *Final Results* to correct a ministerial error in the calculation of the cash deposit rate for Kolon pursuant to 19 CFR 351.224(e).

SUPPLEMENTARY INFORMATION: On April 7, 2008, the Department received from Kolon a timely allegation of a ministerial error pursuant to 19 CFR 351.224(c)(1). Kolon alleges an error in formatting product–specific control numbers. Kolon asserts the Department assigned a revised field of only 6 characters in length for the variable CONNUM2H in the home market comparison program while assigning a field length of 10 characters for the variable CONNUM2H in the margin program. Kolon argues that the effect of this error is to truncate some of the CONNUM2H values used for matching purposes in the final results. Petitioners did not comment on the alleged ministerial error.

Amended Final Results of Review

A ministerial error as defined in section 751(h) of the Tariff Act of 1930, as amended (the act) ''includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.'' See also 19 CFR 351.224(f). After analyzing Kolon's allegation, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that the Department made a ministerial error in the final results by inadvertently setting the field length for CONNUM2H in the comparison market program to 6 characters rather than 10 characters. Therefore, we are amending the final results of this antidumping duty changed circumstances review of polyethylene terephthalate film, sheet, and strip from Korea. In these amended final results we have assigned a character length of 10 for the CONNUM2H variable used in the comparison market program. As a result of this correction, the weighted–average percentage margin for Kolon has changed from 1.53 percent to 1.52 percent. We will issue amended cash deposit instructions for these amended final results of this administrative review to U.S. Customs and Border Protection 15 days after publication of these amended final results. There are no changes to the rates applicable to any other companies under this antidumping order. *See Final Results.*

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act and 19 CFR 351.224(e).

Dated: May 01, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–10277 Filed 5–7–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824, A–583–837]

Continuation of Antidumping Duty Orders on Polyethylene Terephthalate Film, Sheet and Strip from India and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of≤ Commerce.

SUMMARY: 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 polyethylene terephthalate film, sheet, and strip (PET film) from India and Taiwan would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation for these antidumping duty orders.

EFFECTIVE DATE: May 8, 2008.

CONTACT INFORMATION: Jacqueline Arrowsmith or Martha Douthit, AD/CVD Operations, Office 6, Import Administration, International Trade, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–5255 or (202) 482–5050, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated and the ITC instituted sunset reviews of the antidumping duty orders on PET film from India and Taiwan, pursuant to Section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-year (''Sunset'') Reviews*, 72 FR 30544 (June 1, 2007) (*Notice of Initiation*).

As a result of its reviews, the Department found that revocation of the antidumping duty orders would likely lead to a continuation or recurrence of dumping, and therefore notified the ITC of the magnitude of the margins likely to prevail were the orders to be revoked. *See Polyethylene Terephthalate Film, Sheet, and Strip from India and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 72 FR 57297 (October 9, 2007).

On April 10, 2008, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on PET film from India and Taiwan would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India and Taiwan* (Inv. Nos. 701–TA–415 and 731–TA–933–934, USITC Publication 3994 (Review) (April 2008)).

Scope of the Orders

The products covered by these orders are all gauges of raw, pretreated or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item number 3920.62.00.90. Although the HTSUS subheadings are provided for the convenience and customs purposes, the written description of the scope of these orders is dispositive. Since these orders were published, there was one scope determination for PET film from India, dated August 25, 2003. In this determination, requested by International Packaging Films Inc., the Department determined that tracing and drafting film is outside of the scope of the order on PET film from India. *See Notice of Scope Rulings*, 70 FR 24533 (May 10, 2005).

Continuation of the Orders

As a result of these determinations by the Department and the ITC that revocation of these antidumping duty orders would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on PET film from India and Taiwan. 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 the 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) of the Act, the Department intends to initiate the next five-year review of these orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: May 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–10266 Filed 5–7–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Continuation of Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the countervailing duty order on Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India would be likely to lead to continuation or recurrence of countervailable subsidies and material injury to an industry in the United States, the Department is publishing a notice of continuation for this countervailing duty order.

EFFECTIVE DATE: May 8, 2008.

CONTACT INFORMATION: Elfi Blum or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated and the ITC instituted a sunset review of the countervailing duty order on PET Film, Sheet, and Strip from India, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-year (''Sunset'') Reviews*, 72 FR 30544 (June 1,2007) (*Initiation*).

As a result of its review, the Department found that revocation of the countervailing duty order would likely lead to a continuation or recurrence of countervailable subsidies, and therefore notified the ITC of the magnitude of the rates likely to prevail were the order to be revoked. *See Polyethylene Terephthalate Film, Sheet, and Strip from India*, 72 FR 57300 (October 9, 2007) (*Final Sunset Review PET Film from India*).

On April 10, 2008, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the countervailing duty order on PET Film, Sheet, and Strip from India would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India and Taiwan* (Inv. Nos. 701–TA–415 and 731–TA–933–934, USITC Publication 3994 (Review)(April 2008)).

Scope of the Order

The products covered by this order are all gauges of raw, pretreated or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item number 3920.62.90. Although the HTSUS subheadings are provided for the convenience and customs purposes, the written description of the scope of these orders is dispositive. Since this order was published, there has been one scope determination for PET film from India, dated August 25, 2003. In this determination, requested by International Packaging Films Inc., the Department determined that tracing and drafting film is outside of the scope of the order on PET film from India. *See Notice of Scope Rulings*, 70 FR 24533 (May 10, 2005).

Continuation of Order

As a result of these determinations by the Department and the ITC that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of countervailable subsidies 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 countervailing duty order on PET Film from India. U.S. Customs and Border Protection will continue to collect cash deposits at the rate in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of this order is the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of this order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: May 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–10273 Filed 5–7–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit from Thailand: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 27, 2007, the Department of Commerce (the Department) published the preliminary results of the new shipper review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand. This review covers one producer/exporter of the subject merchandise to the United States, C & A Products Co., Ltd. (C&A). The period of review (POR) is July 1, 2006 through December 31, 2006. Subsequent to the preliminary results, we conducted verification and provided parties with an opportunity to comment. As discussed below in the section on ''Verification,'' no changes to the preliminary dumping margin were warranted by the results of verification. Furthermore, no parties submitted any comments. Therefore, the final results do not differ from those presented in the preliminary results. The final weighted–average dumping margin for C&A is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: May 8, 2008.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2371.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 2007, the Department published the preliminary results of the new shipper review of the antidumping duty order on CPF from Thailand. *See Canned Pineapple Fruit from Thailand: Preliminary Results of Antidumping Duty New Shipper Review*, 72 FR 73318 (December 27, 2007). Since the publication of the preliminary results, we conducted verification of C&A's sales information in Bangkok,

Thailand and issued our verification report. *See* Memorandum to File through Dana Mermelstein, Program Manager from Myrna Lobo, International Trade Compliance Analyst, Verification of the Sales Response of C & A Products Co., Ltd. in the Antidumping Duty New Shipper Review of Canned Pineapple Fruit from Thailand (Verification Report), dated February 21, 2008, the public version of which is on file in the Central Records Unit (CRU) located in room 1117 of the Main Commece Building. On February 25, 2008 we issued a briefing schedule giving interested parties the opportunity to submit comments. On March 10, 2008, the Department extended the time limit for completion of the final results of the instant new shipper review to May 19, 2008. *See Canned Pineapple Fruit from Thailand: Extension of Time Limit for Final Results of Antidumping Duty New Shipper Review*, 73 FR 12704 (March 10, 2008). No comments were submitted by any of the parties.

Scope of the Order

The product covered by this order is CPF, defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (''HTSUS''). HTSUS 2008.20.0010 covers CPF packed in a sugar–based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice–packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope is dispositive. There have been no scope rulings for the subject order.

Period of Review

This review covers the period July 1, 2006 through December 31, 2006.

Bona Fides Analysis of U.S. Sales

In the preliminary results, we found that C&A's reported U.S. sales during the POR were bona fide sales, as required by 19 CFR 351.214(b)(2)(iv)(c), based on the totality of the facts on the record. *See Memorandum to Barbara E. Tillman, Office Director, from Myrna Lobo, International Trade Compliance Analyst regarding Antidumping Duty New Shipper Review of Canned Pineapple Fruit from Thailand: Bona Fides Analysis of Sales Reported by C & A Products Co., Ltd.*, dated December 19, 2007, for further discussion of our price and quantity analysis. No comments were submitted on our preliminary finding and we found no information at verification which would alter our finding. Therefore, for these final results, the Department continues to find that C&A's U.S. sales during the POR were bona fide commercial transactions.

Verification

As provided in 19 CFR 351.307(b)(1)(iv), the Department conducted verification of C&A's questionnaire responses at the company's offices in Bangkok, Thailand from February 4, 2008 to February 7, 2008. Our verification results are detailed in *Verification Report*. We accepted one minor correction at verification to the inventory turnover days reported by C&A. The corrected inventory turnover days was verified. *See Verification Report* at page 2.

The correction to inventory turnover days results in a revision to inventory carrying costs. However, in this case, these costs are not used in our margin calculation, and this change has no impact on the final margin calculations. Therefore, the final results are the same as the preliminary results.

Final Results of Review

We determine that the following weighted–average margin percentage exists for the period July 1, 2006, through December 31, 2006:

Manufacturer/Exporter	Margin
C & A Products Co., Ltd.	0.00%

Assessment

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. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if the importer–specific assessment rate calculated in the final results of this review is above *de minimis (i.e.*, at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis (i.e.*, less than 0.50 percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the Department revoked this order effective October 31, 2007. *See Canned Pineapple Fruit from Thailand: Notice of Final Results of Changed Circumstances Review of the Antidumping Duty Order and Revocation of Antidumping Duty Order*, 73 FR 21311 (April 21, 2008). The Department notified U.S. Customs and Border Protection (CBP) to discontinue suspension of liquidation on entries of the subject merchandise entered or withdrawn from warehouse on or after October 31, 2007, the effective date of revocation of the antidumping duty order. Therefore, cash deposits of estimated antidumping duties are no longer required.

Notification to Importers

This notice 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 double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. 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 violation which is subject to sanction.

This new shipper review is issued and published in accordance with sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act, as well as 19 CFR 351.214(i).

Dated: May 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–10278 Filed 5–7–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Certification Requirements for Distributors of NOAA Electronic Navigational Charts/NOAA Hydrographic Products

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 7, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Julia Powell, (301) 713–0388 ext. 169, or *Julia.Powell@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Ocean Service (NOS), Office of Coast Survey manages the Certification Requirements for Distributors of NOAA Electronic Navigational Charts (NOAA ENCs®). The certification allows entities to download, redistribute, repackage, or in some cases reformat, official NOAA ENCs and retain the NOAA ENC's official status. The regulations for implementing the Certification are at 15 CFR part 995.

The recordkeeping and reporting requirements of 15 CFR part 995 form the basis for this collection of information. This information allows the Office of Coast Survey to administer the regulation, and to better understand the marketplace resulting in products that meet the needs of the customer in a timely and efficient manner.

II. Method of Collection

Electronic reports are required from participants, and methods of submittal include Internet and e-mail.

III. Data

OMB Number: 00648–0508.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; and business or other for-profit organizations.

Estimated Number of Respondents: 8.

Estimated Time per Response: 1 hour to provide a distribution report twice a year; and 18 hours for reporting of errors in the ENC.

Estimated Total Annual Burden Hours: 320.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 5, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–10225 Filed 5–7–08; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AW75

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Scoping Process

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and notice of initiation of scoping process; request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intent to prepare an amendment (Amendment 4) to the Fishery Management Plan (FMP) for Atlantic Herring and to prepare an EIS to analyze the impacts of any proposed management measures. The goals of the amendment are to improve monitoring of catch in the Atlantic herring (herring) fishery and to manage the fishery at long-term sustainable levels, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The Council is initiating a public process to determine the scope of alternatives to be addressed in the amendment and EIS. NMFS is alerting the interested public of the commencement of the scoping process and providing for public participation in compliance with environmental documentation requirements.

DATES: Written and electronic scoping comments must be received on or before 5 p.m., local time, June 30, 2008.

ADDRESSES: Written comments on Amendment 4 may be sent by any of the following methods:

- E-mail to the following address: *HerringAmendment4@noaa.gov*;
- Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Scoping Comments on Herring Amendment 4;'' or
- Fax to Patricia A. Kurkul, 978–281–9135.

Requests for copies of the scoping document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone 978–465–0492. The scoping document is accessible electronically via the Internet at *http://www.nefmc.org*.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, 978–465–0492.

SUPPLEMENTARY INFORMATION:

Background

The U.S. herring fishery is managed as one stock complex along the East Coast from Maine to Cape Hatteras, NC, although evidence suggests that separate spawning components exist within the stock complex. The Council and the Atlantic States Marine Fisheries Commission (ASMFC) adopted management measures for the herring fishery in state and Federal waters in 1999, and NMFS approved most of the management measures in the Herring

FMP on October 27, 1999. The Herring FMP became effective on January 10, 2001.

The state and Federal management plans contain similar management measures. The state and Federal management plans for herring establish total allowable catches (TACs) levels in each of four management areas. Under ASFMC's management plan, there are spawning area restrictions and requirements for vessels to take specified days out of the fishery for state waters. Both plans include limits on the size of vessels that can take, catch, or harvest herring. Each plan includes administrative elements, such as requirements for vessel, dealer, and processor permits and reporting requirements.

Amendment 1 to the Herring FMP was developed by the Council and became effective on June 1, 2007. It established elements of a limited access program for the herring fishery and a seasonal purse seine and fixed gear-only area in the inshore Gulf of Maine. Several additional management measures were also included which primarily addressed issues related to the herring fishery specifications, management area boundaries, fixed gear fisheries for herring, and the regulatory definition of midwater trawl gear.

Amendment 2 to the Herring FMP was part of an omnibus amendment developed by NMFS to ensure that all FMPs of the Northeast Region comply with the Standardized Bycatch Reporting Methodology (SBRM) requirements of the MSA. The purpose of the SBRM amendment was to: (1) Explain the methods and processes by which bycatch is currently monitored and assessed for Northeast Region fisheries; (2) determine whether these methods and processes need to be modified and/or supplemented; (3) establish standards of precision for bycatch estimation for all Northeast Region fisheries; and (4) document the SBRMs established for all fisheries managed through the FMPs of the Northeast Region.

Amendment 3 to the Herring FMP is currently under development by the Council and represents an omnibus amendment to all Council FMPs to address Essential Fish Habitat (EFH) consistent with the MSA. The amendment proposes to redefine, refine, or update the identification and description of all EFH for those species of finfish and mollusks managed by the Council, and identify and implement mechanisms to minimize to the extent practicable the adverse effects of fishing on the EFH.

For Federal waters, the Council developed, and NMFS, approved 3-year specifications (2007–2009) that specify an Allowable Biological Catch (ABC) of 194,000 mt and established an optimum yield (OY) of 145,000 mt for the herring fishery. Based on data and analysis presented in the most recent stock assessment and at the 2006 Transboundary Resource Assessment Committee (TRAC) Meeting, the Area 1A TAC was reduced from 60,000 mt to 50,000 mt for 2007, and 45,000 mt for 2008 and 2009. The Area 3 TAC was set at 55,000 mt in 2007, and increased to 60,000 mt in 2008 and 2009. The Area 1B and Area 2 TACs were set at 10,000 mt and 30,000 mt, respectively, and remain constant during the 3-year specification period.

Additional management measures are being considered in Amendment 4 to the Herring FMP for several reasons. The original Herring FMP and Amendment 1 represent important milestones in the Council's efforts to maintain a sustainably managed herring fishery throughout the Northeast. Recently, concerns about the fishery have led the Council to determine that additional action is needed to further address issues related to the health of the herring resource throughout its range, how the resource is harvested, how catch/bycatch are accounted for, and the important role of herring as a forage fish in the Northeast region. These concerns are reflected in the unprecedented level of interest in managing this fishery by New England's commercial and recreational fishermen, eco-tourism and shoreside businesses, and the general public.

Finally, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) requires that NMFS and the Councils establish Annual Catch Limits (ACLs) and Accountability Measures (AMs) by the year 2011 for every federally managed fishery that is not subject to overfishing. The MSRA also includes new provisions for the formation of Limited Access Privilege Programs (LAPPs). Amendment 4 is therefore necessary to update the Herring FMP in a manner that is consistent with the new requirements of the MSRA.

Measures Under Consideration

The Herring Committee and the Council, through public meetings and after taking public comment, have identified a set of goals and objectives for this management action. In general, the goal of the amendment is to improve catch monitoring and ensure compliance with the MSRA. The management measures developed in this amendment may address one or more of the following objectives:

1. To implement measures to improve the long-term monitoring of catch (landings and bycatch) in the herring fishery;

2. To implement ACLs and AMs consistent with the MSRA;

3. To implement other management measures as necessary to ensure compliance with the new provisions of the MSRA;

4. To develop a sector allocation process or other LAPP for the herring fishery; and

5. In the context of objectives 1–4 (above), to consider the health of the herring resource and the important role of herring as a forage fish and a predator fish throughout its range.

The Council will develop conservation and management measures to address the issues identified above and meet the goals/objectives of the amendment. Any conservation and management measures developed in this amendment also must comply with all applicable laws.

The Council is also considering measures in this amendment to address concerns about potential herring bycatch in the Atlantic mackerel fishery and is seeking scoping comments on this issue. The concerns relate to vessels that may be directing on mackerel without a limited access permit for herring, and consequently without the ability to retain the herring they may catch incidentally when targeting mackerel. The TAC in Areas 2 and 3 is not fully utilized at this time, so it may be appropriate to provide vessels in these areas an opportunity to retain the herring they may catch when fishing for mackerel. This may help to better achieve OY for the fishery, while minimizing bycatch.

All persons affected by or otherwise interested in herring management are invited to participate in determining the scope and significance of issues to be analyzed in Amendment 4 by submitting written comments (see **ADDRESSES**) or by attending one of the meetings where scoping comments will be taken. Scoping consists of identifying the range of actions, alternatives, and impacts to be considered. Alternatives include the following: Not amending the FMP (taking no action); developing an amendment that addresses the goal and objectives discussed in this notice; or other reasonable courses of action. Impacts may be direct, individual, or cumulative. This scoping process will also identify and eliminate from detailed analysis issues that are not significant. When, after the scoping process is completed, the Council

proceeds with the development of an amendment to the Herring FMP, the Council will prepare an EIS to analyze the impacts of a range of alternatives under consideration. The Council will hold public hearings to receive comments on the draft amendment and on the analysis of its impacts presented in the EIS.

Scoping Hearing Schedule

The Council will discuss and take scoping comments at the following public meetings:

1. *Thursday, May 22, 2008, 9 a.m.*; Clarion Hotel Portland, 1230 Congress Street, Portland, ME 04102; telephone: (207) 774–5611.

2. *Monday, June 2, 2008, 5 p.m.*; Holiday Inn By The Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311.

3. *Tuesday, June 10, 2008, 6 p.m.*; Sheraton Atlantic City Convention Center Hotel, 2 Miss America Way, Atlantic City, NJ 08401; telephone: (609) 344–3535.

Special Accommodations

The meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to this meeting date.

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

Dated: May 1, 2008.

Emily H. Menashes,

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

[FR Doc. E8–10275 Filed 5–7–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG95

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notification and clarification of a proposal to conduct exempted fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EFP) application that would authorize the harvest of set-aside herring awarded to Gulf of Maine Research Institute (GMRI) through the 2008/2009 Atlantic Herring (herring) Research Set-Aside (RSA) Program should be issued for public comment. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Herring Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made.

DATES: Comments on this document must be received on or before May 23, 2008.

ADDRESSES: Comments may be submitted by e-mail to: *herring.efp@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on GMRI herring EFP.'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on GMRI herring EFP.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Cooperative Research Program Specialist, phone: 978–281–9326, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: Pending final approval by NOAA's Grants Management Division, the Science and Research Director for NMFS's Northeast Fisheries Science Center has preliminarily selected an Atlantic Herring RSA proposal submitted by GMRI to conduct a study entitled ''Effects of Fishing on Herring Aggregations,'' which would assess the effects of midwater trawling on herring aggregations. GMRI submitted a separate EFP request for research activities, which published in the **Federal Register** for public comment on March 10, 2008 (73 FR 12707). A final determination on the research EFP is pending.

GMRI was awarded the following total allowable catch (TAC) set-asides for both 2008 and 2009 to fund the proposed research and to compensate compensation fishing vessels: Management Area 1A/2,976,240 lb (1,350 mt); and Management Area 1B/661,380 lb (300 mt). The subject EFP would exempt vessels conducting compensation fishing from herring Management Area 1A, 1B, 2, and 3 quota closures, and herring trip possession limits, as specified at 50 CFR 648.201 and 648.204, respectively. All compensation trips would be completed prior to the end of the fishing year from which the compensation was awarded. GMRI proposes to combine some research and compensation fishing trips, although compensation trips would also occur separately from research activities. If a TAC set aside allocation limit is caught while on a compensation/research trip, research activities would be required to cease in order to prevent the project from exceeding a set-aside allocation. If the research project is terminated for any reason prior to completion, any unused funds collected from catch sold to pay for research expenses may be required to be refunded to NOAA.

The quota closure and possession limit exemptions would apply only to the 2008 fishing year. A subsequent EFP application would need to be approved prior to any 2009 compensation fishing.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs. The applicant may place requests for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal so as not to change the scope or impact of the initially approved EFP request.

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

Dated: May 2, 2008.

Emily H. Menashes

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

[FR Doc. E8–10176 Filed 5–7–08; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2 p.m., Wednesday, May 21, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

FOR FURTHER INFORMATION CONTACT: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–1237 Filed 5–6–08; 12:38 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of US Patent Concerning Assembled Hematin, Method for Forming Same and Method for Polymerizing Aromatic Monomers Using Same

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR Part 404.6, announcement is made of the availability for licensing of U.S. Patent No. U.S. 7,358,327 entitled ''Assembled Hematin, Method for Forming Same and Method for Polymerizing Aromatic Monomers Using Same'' issued April 15, 2008. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone; (508) 233–4184 or E-mail: *Jeffrey.Ditullio@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–10287 Filed 5–7–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Bossier Parish, LA, Flood Risk Management Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Vicksburg District Corps of Engineers, in conjunction with the Bossier Levee District, the non-Federal sponsor, are undertaking studies to investigate possible solutions to improve the flood risk management capability of Bayou Bodcau Dam, Bossier Parish, LA.

DATES: Initiate EIS, May 13, 2008.

ADDRESSES: Correspondence may be sent to Mr. Marvin Cannon at U.S. Army Corps of Engineers, Vicksburg District, CEMVK–PP–PQ, 4155 Clay Street, Vicksburg, MS 39183–3435.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin Cannon at U.S. Army Corps of Engineers, Vicksburg District, phone (601) 631–5437, fax number (601) 631–5115, or E-mail at *marvin.cannon@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

Proposed Action. A feasibility level study will identify and evaluate alternatives that would modify Bayou Bodcau Dam to address flooding problems downstream of the dam.

Alternatives. Alternatives to address flooding problems would be identified and evaluated in cooperation with state and Federal agencies, local government, and the public.

Scoping. Scoping is the process for determining the range of the alternatives and significant issues to be addressed in the EIS. For this analysis, a letter will be sent to all parties believed to have an interest in the analysis, requesting their input on alternatives and issues to be evaluated. The letter will also notify interested parties of the public scoping meeting that will be held in the local area. A notice will be sent to the local news media. All interested parties are invited to comment at this time, and anyone interested in the study should request to be included on the mailing list.

A public scoping meeting will be held June 17, 2008, from 7 p.m. to 9 p.m. at the Bossier Parish Courthouse, Police Jury Meeting Room, 204 Burt Blvd., Benton, LA.

Significant Issues. The tentative list of resources and issues to be evaluated in the EIS includes aquatic resources, fisheries and wildlife resources, timber resources, water quality, air quality, threatened or endangered species, recreation resources, and cultural resources. Tentative socio economic items to be evaluated in the EIS include residential housing and business activity, tax revenues, population, community and regional growth, transportation, and community cohesion.

Environmental Consultation and Review. The U.S. Fish and Wildlife Service (FWS) will be asked to assist in the documentation of existing conditions, impact analysis of alternatives, and overall study review through the Fish and Wildlife Coordination Act consultation procedures. The FWS would provide a Fish and Wildlife Coordination Act report to be incorporated into the EIS. The draft EIS or a notice of availability will be distributed to all interested agencies, organizations, and individuals.

Estimated Date of Availability. The earliest that the draft EIS is expected to be available is March, 2011.

Douglas J. Kamien,

Chief, Planning, Programs, and Project Management Division.

[FR Doc. E8–10286 Filed 5–7–08; 8:45 am]

BILLING CODE 3710–PU–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Cross Lake Water Supply Feasibility Study, Shreveport, LA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Vicksburg District Corps of Engineers, in conjunction with the City of Shreveport, the non-Federal sponsor, are undertaking studies to investigate the feasibility of water supply improvements for the City of Shreveport and Caddo Parish.

DATES: Initiate EIS, May 13, 2008.

ADDRESSES: Correspondence may be sent to Mr. Larry Marcy at U.S. Army Corps of Engineers, Vicksburg District, CEMVK–PP–PQ, 4155 Clay Street, Vicksburg, MS 39183–3435.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Marcy at U.S. Army Corps of Engineers, Vicksburg District, phone (601) 631–5965, fax number (601) 631–5115, or E-mail at *larry.e.marcy@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

Proposed Action. A feasibility level study will identify and evaluate alternatives to increase water supply for the City of Shreveport and Caddo Parish. Water supply may include improvements to Cross Lake and/or improvements in adjacent streams, rivers, and water bodies.

Alternatives. Alternative sources of water will be identified to meet existing and future water supply needs and evaluated in cooperation with state and Federal agencies, local government, and the public.

Scoping. Scoping is the process for determining the range of the alternatives and significant issues to be addressed in the EIS. For this analysis, a letter will be sent to all parties believed to have an interest in the analysis, requesting their input on alternatives and issues to be

evaluated. The letter will also notify interested parties of the public scoping meeting that will be held in the local area. A notice will be sent to the local news media. All interested parties are invited to comment at this time, and anyone interested in the study should request to be included on the mailing list.

A public scoping meeting will be held June 16, 2008, from 7 p.m. to 9 p.m. at the Louisiana State Exhibit Museum Auditorium, 3015 Greenwood Road, Shreveport, LA.

Significant Issues. The tentative list of resources and issues to be evaluated in the EIS includes aquatic resources, recreational and commercial fisheries, wildlife resources, water quality, air quality, threatened or endangered species, recreation resources, and cultural resources. Tentative socio economic items to be evaluated in the EIS include business and industrial activity, tax revenues, population, community and regional growth, transportation, housing, community cohesion, and navigation.

Environmental Consultation and Review. The U.S. Fish and Wildlife Service (FWS) will be asked to assist in the documentation of existing conditions, impact analysis of alternatives, and overall study review through the Fish and Wildlife Coordination Act consultation procedures. The FWS would provide a Fish and Wildlife Coordination Act report to be incorporated into the EIS. The draft EIS or a notice of availability will be distributed to all interested agencies, organizations, and individuals.

Estimated Date of Availability. The earliest that the draft EIS is expected to be available is March 31, 2010.

Douglas J. Kamien,

Chief, Planning, Programs, and Project Management Division.

[FR Doc. E8–10264 Filed 5–7–08; 8:45 am]

BILLING CODE 3710–PU–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies; Initiation of Revision and Request for Suggested Changes

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Request for suggestions and notice of public meeting.

SUMMARY: Section 2031 of the Water Resources Development Act of 2007 (Pub. L. 110–114) directs the Secretary of the Army to revise the ''Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies'', dated March 10, 1983 consistent with a number of considerations enumerated in the statute. Upon completion the revision will apply to water resources projects, project reevaluations, or project modifications and project feasibility studies carried out by the Secretary except those commenced prior to the completion of the revised guidance. The Secretary intends to craft the revision in two phases, with the first phase of this revision to address revisions to the 1983 Principles and Standards (Chapter I of the existing Guidelines) and the second phase to address revisions to the Procedures (Chapters II through IV of the 1983 Guidelines). The purpose of this notice is to provide opportunity for interested individuals and organizations to submit suggestions for revising the Principles and Standards. Using that input the Secretary intends for the initial draft of the revision to be prepared in June and released for public comments by July.

DATES: A public meeting to hear recommendations will be held on June 5, 2008. Written suggestions are being accepted now and will be accepted through the end of the public meeting, 5 p.m., June 5, 2008.

ADDRESSES: Suggestions should be submitted in writing to HQUSACE, Attn: P&G Revision, CECW–ZA, 441 G Street, NW, Washington, DC 20314–1000, by E-mail to: *larry.j.prather@usace.army.mil* or FAX: 202–761–5649.

FOR FURTHER INFORMATION CONTACT: Larry J. Prather, Assistant Director of Civil Works, at 202–761–0106.

SUPPLEMENTARY INFORMATION: Section 2031 of the Water Resources Development Act of 2007 (Pub. L. 110–114) directs the Secretary of the Army to revise the ''Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies'', dated March 10, 1983 and when completed to apply the revision to planning studies of water resources projects within his jurisdiction. The Secretary is initiating the first phase of this revision to include the 1983 Principles and Standards (Chapter I of the Guidelines). Revision of Chapters II through IV of the Guidelines will be initiated at a later date. The Secretary requests interested individuals and organizations to submit suggestions for revision of the 1983 Principles and Standards. In view of subparagraph (b)(5)(A)(ii) of Section 2031 of the Public Law 110–114, the Secretary requests that each suggested revision be accompanied by a statement of the intent of the revision. Written suggestions (by mail, fax, or e-mail) are preferred and should be submitted to (see **ADDRESSES**).

In addition, the Assistant Secretary of the Army (Civil Works) and staff of the United States Army Corps of Engineers will hold a public meeting to hear suggestions for proposed revisions on June 5, 2008 in the Atrium Ballroom; Washington Court Hotel; 525 New Jersey Avenue, NW; Washington, DC from 8:30 a.m. to 5 p.m. Those wishing to make oral suggestions and ask questions are encouraged to attend this meeting but written suggestions will be appreciated even if an interested party wishes to provide suggestions orally. To facilitate oral suggestions for revision, the time available for making oral suggestions will be divided among those wishing to speak by a random drawing. To accommodate those who may be able to participate for only part of the day, one drawing will be held at the start of the meeting for the morning time blocks and another at about 1 p.m. for the afternoon time slots.

Interested individuals and organizations may request copies of the following documents by mail or e-mail or access them at the Internet addresses indicated: ''Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies, dated March 10, 1983 (*http://www.usace.army.mil/cw/cecw-cp/library/Principles_Guidelines.pdf*), Water Resources Development Act of 2007 (Pub. L. 110–114) (*http://www.usace.army.mil/cw/cecw-cp/links/wrda2007_hr1495.pdf*).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–10288 Filed 5–7–08; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Closed Meetings of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Naval Research Advisory Committee (NRAC) will meet to discuss classified information from government organizations and proprietary information from commercial organizations. With the exception of participants' registration and introduction/welcoming remarks on Monday, June 16, 2008, all sessions of the meeting will be devoted to briefings, discussions and technical examination of information related to the study of undersea maritime domain awareness technologies and disruptive commercial technologies to U.S. Navy and U.S. Marine combat operations. Discussions will focus on the exploitation of physical vulnerabilities and the tactical applications of known and emerging technologies. Each session will examine vulnerabilities of individuals and systems, and how the enemy is exploiting these vulnerabilities.

The sessions will also include proprietary information regarding technology applications and systems under development in the private sector between competing companies. The sessions will also focus on the assessment of the emerging concepts of operations in each of these areas and evaluate appropriate options in such areas as: training, S&T funding allocation, technology monitoring, and progress assessments; and probable time frames for transformation and implementation.

The sessions will also identify, review, and assess challenges with the utilization and fielding of various technology applications.

DATES: With the exception of the registration session from 8 a.m. to 9 a.m., the introduction/welcoming remarks session from 9 a.m. to 12 p.m., and the lunch session from 12 p.m. to 1 p.m. on Monday, June 16, 2008, all remaining sessions on June 16, 2008 from 1 p.m. to 5 p.m. will be closed to the public. In addition, all the sessions for the meetings to be held on Tuesday, June 17, 2008 through Friday, June 20, 2008, from 8 a.m. to 5 p.m.; and Monday, June 23, 2008, through Thursday, June 26, 2008, from 8 a.m. to 5 p.m. will be closed to the public.

ADDRESSES: The meeting will be held at the Space and Naval Warfare Systems Center, 53560 Hull Street, San Diego, CA 92152.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Ellis, Jr., Program Director, Naval Research Advisory Committee, 875 North Randolph Street, Arlington, VA 22203–1955, 703–696–5775.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). With the exception of participants' registration and introduction/welcoming remarks on Monday, June 16, 2008 all sessions of the meeting will be devoted to executive sessions that will include discussions and technical examination of information related to undersea domain awareness and disruptive commercial technologies to U.S. Navy and U.S. Marine Corps combat operations.

These briefings and discussions will contain proprietary information and classified information that is specifically authorized under criteria established by Executive Order to be kept Secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order and SECNAV Instructions M–5510.36 of June 2006.

The proprietary, classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening these sessions of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that these sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1), (4) and SECNAV Instructions M–5510.36 of June 2006.

Dated: May 2, 2008.

T.M. Cruz,

Lieutenant, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–10222 Filed 5–7–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC08–603–001, FERC–603]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

May 1, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of February 7, 2008 (73 FR 8651–52) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by June 6, 2008.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC08–603–001.

Documents filed electronically via the Internet must be prepared in the acceptable filing format and in compliance with the Federal Energy Regulatory Commission's submission guidelines. Complete filing instructions and acceptable filing formats are available at (*http://www.ferc.gov/help/submission-guide/electronic-media.asp*). To file the document electronically, access the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*, and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by

telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–603 ''Critical Energy Infrastructure Information.''

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0197.

The Commission is now requesting that OMB approve with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* The information is used by the Commission to implement procedures for gaining access to critical energy infrastructure information (CEII) that would not otherwise be available under the Freedom of Information Act (FOIA) (5 U.S.C. 552). On February 21, 2003, the Commission issued Order No. 630 (68 FR 9857–9873), and then issued subsequent Order Nos. 630–A (68 FR 46456–60), and 649 (69 FR 48386–91) to address the appropriate treatment of CEII in the aftermath of the September 11, 2001 terrorist attacks and to restrict unrestrained general access due to the ongoing terrorism threat. These steps enable the Commission to keep sensitive infrastructure information out of the public domain, decreasing the likelihood that such information could be used to plan or execute terrorist attacks. The process adopted in these orders is a more efficient alternative for handling request for previously public documents than FOIA.

The Commission has defined CEII to include information about existing or proposed critical infrastructure that (i) Relates to the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person planning an attack on critical infrastructure, (iii) is exempt from mandatory disclosure under the Freedom of Information Act, and (iv) does not simply give the location of the critical infrastructure. Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters. A person seeking access to CEII may file a request for that information by providing information about their identity and reason for the need for the information. Through this process, the Commission is able to review the requester's need for the information against the sensitivity of the information. The Commission implements these requirements in 18 CFR 388.113 of its regulations.

5. *Respondent Description:* The respondent universe currently comprises all entities requesting access to CEII information submitted to or issued by the Commission.

6. *Estimated Burden:* 46 total hours, 182 respondents (average per year), 1 response per respondent, and .25 hours per response (average).

7. *Estimated Cost Burden to respondents:* The estimated total cost to respondents is $3,646. The cost per respondent = $18. (60 hours @ $61 hourly rate ÷ 200).

Statutory Authority: 15 U.S.C. 717, *et seq.*, 16 U.S.C. 791a, *et seq.*, section 313(b) of the Federal Power Act, 16 U.S.C. 824 l(b) and section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b).

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10197 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13058–000]

Grays Harbor Ocean Energy Company, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

April 30, 2008.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–13058–000.

c. *Date Filed:* November 5, 2007.

d. *Applicant:* Grays Harbor Ocean Energy Company, LLC.

e. *Name of the Project:* Grays Harbor Ocean Energy Project.

f. *Location:* The project would be located in the Pacific Ocean in Grays Harbor County, Washington. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. W. Burton Hamner, President, Grays Harbor Ocean Energy Company, LLC, 5534 30th Avenue, NE., Seattle, WA 98105, 206/491–0945.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P–13058–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 12 proposed generating units having a total installed capacity of 6-megawatts; (2) a proposed transmission line; and (3) appurtenant facilities. The project would have an average annual generation of 316-gigawatt-hours and be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to

the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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.

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 at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10128 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13123–000]

Eagle Crest Energy Company; Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

April 30, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13123–000.

c. *Date filed:* March 3, 2008.

d. *Applicant:* Eagle Crest Energy Company.

e. *Name and Location of Project:* The proposed Eagle Mountain Pumped Storage Project would be located in Riverside County, California. The project would use federal land managed by the U.S. Bureau of Land Management (BLM).

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Arthur W. Lowe, 1 El Paseo West, Suite 204, 74199 El Paseo, Palm Desert, CA 92260, (760) 779–0040, and Mr. Donald H. Clarke, Esq., Law Offices of GKRSE, 1500 K St., NW., Suite 330, Washington, DC 20005, (202) 408–5400.

h. *FERC Contact:* Kelly Houff, (202) 502–6393.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P–13123–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Existing Facilities and Proposed Project:* The proposed pumped storage project would consist of: (1) Two upper reservoir dams; the first proposed dam would be 1,100 to 1,600-foot-long, 60-foot-high, and the second proposed dam would be 1,100 to 1,600-foot-long, 120-foot-high, (2) a proposed upper reservoir having a surface area of 193 acres, with a storage capacity of 20,000 acre-feet and a normal water surface elevation of 2,485

feet mean sea level (msl), (3) a proposed lower reservoir having a surface area of 164 acres, with storage capacity of 21,900 acre-feet and normal water surface elevation of 926 feet msl located within the East Pit of the inactive Eagle Mountain Mine, (4) proposed intake and outlet structures for both reservoirs, (5) a proposed upper ''low head'' pressure 4,400-foot-long, 35-foot-diameter tunnel and a lower tunnel 1,500 feet in length and 35 feet in diameter, which will extend to a penstock manifold. These two tunnels will be joined by a 35-foot-diameter vertical shaft 1,333-foot deep, (6) a proposed powerhouse containing four generating units having a total installed capacity of 1,300 megawatts, (7) a proposed 6,835-foot-long, 35-foot-diameter tailrace tunnel, (8) a proposed 46-mile-long, 500 kilovolt transmission line, (9) a desalination facility, and (10) appurtenant facilities.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *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.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *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. E8–10129 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13055–000]

Blue Light Power, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 1, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13055–000.

c. *Date filed:* November 6, 2007.

d. *Applicant:* Blue Light Power, LLC.

e. *Name of Project:* Chatfield Dam Hydroelectric Project.

f. *Location:* Nevada Ditch and Platte River in Arapahoe County, Colorado. The project would use the U.S. Army Corps of Engineers' Chatfield Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Mike Zink, Blue Light Power, LLC, 1648 S. Adams, Denver, CO 80210, (303) 568–9640.

i. *FERC Contact:* Henry Woo, (202) 502–8872.

j. *Deadline for filing motions to intervene, protests, and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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 ''eFiling'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13055–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project, using the U.S. Army Corps of Engineers' Chatfield Dam, would consist of: (1) An intake structure; (2) a new powerhouse containing a generating unit with a total installed capacity of 250 kilowatts; (3) a new 500-foot long, 480-volt transmission line; and (4) appurtenant facilities. The proposed Chatfield Dam Hydroelectric Project would have an average annual generation of 1.3 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. The Commission strongly encourages electronic filings.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10199 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: 803–087]

Pacific Gas and Electric Company (PG&E); Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

May 1, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 803–087.

c. *Date filed:* October 2, 2007.

d. *Applicant:* Pacific Gas and Electric Company (PG&E).

e. *Name of Project:* DeSabla-Centerville Hydroelectric Project.

f. *Location:* The existing project is located on Butte Creek and the West Branch Feather River in Butte County, California. The project affects 145.7 acres of federal lands administered by the Lassen National Forest, 2.1 acres of federal lands administered by the Plumas National Forest, and 11.6 acres of federal lands administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Randal S. Livingston, Vice President-Power Generation, Pacific Gas and Electric Company, P.O. Box 770000, Mail Code: N11E, San Francisco, CA 94177; Telephone (415) 973–7000.

i. *FERC Contact:* Kenneth Hogan, (202) 502–8434 or *kenneth.hogan@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing and is now ready for environmental analysis.

The Toadtown development, which diverts water from the West Branch Feather River, consists of the following constructed facilities: (1) Round Valley Reservoir, a 98 acre reservoir with a gross storage capacity of 1,700 acre-feet; (2) Round Valley dam, an earthfill dam, 29-feet high and 810-feet long; (3) a 40-foot-wide overflow spillway; (4) a 15-inch outlet pipe at the base of Round Valley dam, and manual low level outlet valve; (5) Philbrook Reservoir, a 173 acre reservoir with a gross storage capacity of 4,985 acre-feet; (6) Philbrook main dam (located on Philbrook Creek), a compacted earthfill dam, 87-feet high and 850-feet long; (7) Philbrook auxiliary dam (170 feet to the right of the main dam), a compacted earthfill dam, 24-feet high and 470-feet long; (8) a 29.7-foot-wide spillway with 5 flashboard bays; (9) a 10.75-foot-long and 14.75-foot-wide spillway with a single, manual radial gate; (10) a 33-inch diameter, 460-foot-long outlet conduit from Philbrook Reservoir; (11) a 17-foot high, 8-feet diameter submerged vertical concrete intake, controlled by a 30-inch diameter manual needle valve; (12) Hendricks Head Dam, a concrete gravity dam, 15-feet high with an overflow spillway section 98-feet wide; (13) a 8.66-mile-long Hendricks Canal, composed mostly of earthen ditch with several flume and tunnel sections, with a capacity of 125 cfs; (14) feeder diversions from 4 creeks into Hendricks/Toadtown canal; (15) a 40-inch diameter, 1,556-foot-long steel penstock; (16) Toadtown Powerhouse, a 28- by 44-foot reinforced concrete building, with one turbine-generator unit and a normal operating capacity of 1.5 MW; (17) a 1500-foot-long 12 kv tapline connecting Toadtown Powerhouse to a distribution system; and (18) appurtenant facilities.

The DeSabla development, which diverts water from upper Butte Creek and uses the outflow of the Toadtown development, consists of the following constructed facilities: (1) The 2.4-mile-long Toadtown Canal, an earthen canal with a capacity of 125 cfs; (2) Butte Creek Diversion Dam, a 50-foot-high, 100-foot-long, concrete arch dam with an overflow spillway; (3) a 11.4-mile-long Butte Canal, composed of earthen berm sections, gunited sections, tunnel sections, a siphon, and flume sections, with a capacity of 91 cfs; (4) a 0.7-mile-long canal that combines Butte Canal with Toadtown Canal, with a capacity of 191 cfs; (5) feeder diversions from 4 creeks that flow into Butte Canal (1 not in use); (6) DeSabla Dam, a 50-foot-high, 100-foot-wide earthen embankment with a spillway canal; (7) DeSabla Forebay, a 15 acre reservoir with a gross storage capacity of 163 acre-feet (originally 188 acre-feet); (8) a 66-inch diameter, reduced to 42-inch diameter, 1.3-mile-long steel penstock; and (9) DeSabla Powerhouse, a 26.5- by 41-foot reinforced concrete building, with one turbine-generator unit and a normal operating capacity of 18.5 MW; (10) a 0.25-mile-long transmission tapline connecting DeSabla Powerhouse to the 60 kV Oro Fino Tap Line; and (11) appurtenant facilities.

The Centerville development, which diverts the flow of Butte Creek downstream of the DeSabla development, consists of the following constructed facilities: (1) The Upper Centerville Canal, that originates at DeSabla Powerhouse and ends at Helltown Ravine (currently carries a few cfs for local water uses and has not been used for power generation for many years); (2) Lower Centerville Diversion Dam, a 12-foot high, 72.5 foot-wide concrete arch dam with an overflow spillway; (3) an 8-mile long Lower Centerville Canal, composed of earthen canal and several flume sections, with a capacity of 183 cfs; (4) feeder diversions from 3 creeks that flow into Lower Centerville Canal (all 3 no longer in use); (5) one 30-inch diameter and one 42-inch diameter, reduced to 36-inch diameter, 2,559-foot long steel penstocks; (6) Centerville Forebay, a 27- by 37-foot concrete header box with a spillway channel; (7) Centerville Powerhouse, a 32- by 109-foot reinforced concrete building, with two turbine-generator units and a total normal operating capacity of 6.4 MW; and (8) appurtenant facilities.

PG&E operates the project primarily as a run-of-river system and operates on a continuous basis, using the water supply available after satisfaction of the minimum instream flow requirements. During the winter and spring, base flows in the West Branch of the Feather River and Butte Creek typically provide

adequate flow for full operation of the Project powerhouses. During the summer months, the available base flow water is augmented by water releases from Round Valley and Philbrook reservoirs.

During the fall months, Project powerhouses are operated at reduced capacities due to low stream flows.

Water releases from Round Valley reservoir flow down the West Branch Feather River, and water releases from Philbrook reservoir pass down natural channels of Philbrook Creek and the West Branch Feather River about 8 miles to Hendricks Head dam. Then water is conveyed in the Hendricks canal, through Toadtown Powerhouse, then into the Toadtown canal. From this point, the water is conveyed in the Butte Creek canal to DeSabla Forebay then discharged into Butte Creek. Water flow is then diverted into the Lower Centerville canal to the Centerville header box, through the Centerville Powerhouse, and finally discharged to Butte Creek.

PG&E proposes to continue operating the Project with no change to Project generation facilities or features other than adoption of resource management measures and the deletion of five feeder diversions.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. 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.

All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

n. *Procedural Schedule:*

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target Date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	June 30, 2008.
Commission issues Draft EA.	December 27, 2008.
Comments on Draft EA.	January 26, 2009.
Modified Terms and Conditions.	March 27, 2009.
Commission Issues Final EA.	June 25, 2009.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

p. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in § 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10195 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13058–000]

Grays Harbor Ocean Energy Company, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

April 30, 2008.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–13058–000.

c. *Date Filed:* November 5, 2007.

d. *Applicant:* Grays Harbor Ocean Energy Company, LLC.

e. *Name of the Project:* Grays Harbor Ocean Energy Project

f. *Location:* The project would be located in the Pacific Ocean in Grays Harbor County, Washington. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. W. Burton Hamner, President, Grays Harbor Ocean Energy Company, LLC, 5534 30th Avenue, NE., Seattle, WA 98105, 206/491–0945.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P–13058–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on

each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 12 proposed generating units having a total installed capacity of 6-megawatts; (2) a proposed transmission line; and (4) appurtenant facilities. The project would have an average annual generation of 316-gigawatt-hours and be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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.

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 at *http://www.ferc.gov* under the ''e-Filing'' link.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10169 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13123–000]

Eagle Crest Energy Company; Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

April 30, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13123–000.

c. *Date filed:* March 3, 2008.

d. *Applicant:* Eagle Crest Energy Company.

e. *Name and Location of Project:* The proposed Eagle Mountain Pumped Storage Project would be located in Riverside County, California. The project would use federal land managed by the U.S. Bureau of Land Management (BLM).

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Arthur W. Lowe, 1 El Paseo West, Suite 204, 74199 El Paseo, Palm Desert, CA 92260, (760) 779–0040, and Mr. Donald H. Clarke, Esq., Law Offices of GKRSE, 1500 K St., NW., Suite 330, Washington, DC 20005, (202) 408–5400.

h. *FERC Contact:* Kelly Houff, (202) 502–6393.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P–13123–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Existing Facilities and Proposed Project:* The proposed pumped storage project would consist of: (1) Two upper reservoir dams, the first proposed dam would be 1,100 to 1,600-foot-long, 60-foot-high, and the second proposed dam would be 1,100 to 1,600-foot-long, 120-foot-high, (2) a proposed upper reservoir having a surface area of 193 acres, with a storage capacity of 20,000 acre-feet and a normal water surface elevation of 2,485 feet mean sea level (msl), (3) a proposed lower reservoir having a surface area of 164 acres, with storage capacity of 21,900 acre-feet and normal water surface elevation of 926 feet msl located within the East Pit of the inactive Eagle Mountain Mine, (4) proposed intake and outlet structures for both reservoirs, (5) a proposed upper ''low head'' pressure 4,400-foot-long, 35-foot-diameter tunnel and a lower tunnel 1,500 feet in length and 35 feet in diameter, which will extend to a penstock manifold. These two tunnels will be joined by a 35-foot-diameter vertical shaft 1,333-foot deep, (6) a proposed powerhouse containing four generating units having a total installed capacity of 1,300 megawatts, (7) a proposed 6,835-foot-long, 35-foot-diameter tailrace tunnel, (8) a proposed 46-mile-long, 500 kilovolt transmission line, (9) a desalination facility, and (10) appurtenant facilities.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *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.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *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. E8–10170 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP08–158–000; CP08–184–000]

Williston Basin Interstate Pipeline Company; Notice of Application and Petition for Declaratory Order

May 1, 2008.

Take notice that on April 18, 2008, Williston Basin Interstate Pipeline Company (Williston Basin), P.O. Box 5601, Bismarck North Dakota 58506–5601, filed in Docket Number CP08–158–000, pursuant to section 7(c) of the Natural Gas Act (NGA), an application for authority to expand the existing certificated boundary and add a buffer zone to its Elk Basin Storage Reservoir located in Park County, Wyoming and Carbon County, Montana. Also, take notice that on April 24, 2008, Williston Basin filed in Docket Number CP08–184–000, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, a petition for a declaratory order to confirm the scope of its certificate for the Elk Basin Storage Reservoir and the jurisdictional status under the NGA of the Elk Basin cushion gas. These filings are 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this Application or Petition should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs for Williston Basin, 1250 West Century Avenue, Bismarck, North Dakota 58503, by phone at (701) 530–1560 or by e-mail at *keith.tiggelaar@wbip.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, 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.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: May 22, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10203 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13088–000]

KC LLC; Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

May 1, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13088–000.

c. *Date filed:* December 20, 2007, and revised March 21, 2008.

d. *Applicant:* KC LLC.

e. *Name and Location of Project:* The proposed Tinemaha Hydro Project would be located near the town of Big Pine on the Owens River at the existing Tinemaha Reservoir in Inyo County, California.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Ms. Kelly Sackheim, Principal, KC LLC, 5096 Cocoa Palm Way, Fair Oaks, CA 95628, (916) 962–2271.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P–13088–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Existing Facilities and Proposed Project:* The proposed Tinemaha Hydro Project would include an existing dam owned by the Los Angeles Department of Water and Power, and its existing impoundment, Tinemaha Reservoir, which has a surface area of 2,098 acres at an elevation of 3,871 feet above mean sea level. The proposed project would also consist of the following new facilities: (1) A 200-foot-long, 6-foot-wide steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 1.4 MW, (3) a 1-mile-long, 25 kV transmission line, connecting to an existing power line, and (4) appurtenant facilities. The project would have an annual generation of 8 GWh, which would be sold to a local utility.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *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.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *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. E8–10200 Filed 5–7–08; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 02, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP05–164–012.

Applicants: Equitrans, L.P.

Description: Equitrans LP submits Twelfth Revised Sheet 11 to FERC Gas Tariff, First Revised Volume 1, to become effective 6/1/08.

Filed Date: 04/30/2008.

Accession Number: 20080501–0089.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP07–690–002.

Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas Company submits Fifth Revised Sheet 123 et al to FERC Gas Tariff, Seventh Revised Volume 1.

Filed Date: 04/30/2008.

Accession Number: 20080501–0090.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–336–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas LLC submits Second Revised Sheet 15 to FERC Gas Tariff, Third Revised Volume 1, to become 6/1/08.

Filed Date: 04/30/2008.

Accession Number: 20080501–0026.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–338–000.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Company submits Third Revised Sheet 158 et al to FERC Gas Tariff, Fifth Revised Volume 1, to become effective 6/1/08.

Filed Date: 04/30/2008.

Accession Number: 20080501–0025.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–350–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Southern Star Central Gas Pipeline submits Volume IV—Notice of Rate Change to be effective June 1, 2008.

Filed Date: 04/30/2008.

Accession Number: 20080501–0076.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–351–000.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Sea Robin Pipeline Company submits Third Revised Sheet 4 to its FERC Gas Tariff, Second Revised Volume 1, to become effective 6/1/08.

Filed Date: 04/30/2008.

Accession Number: 20080501–0091.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–352–000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Panhandle Eastern Pipe Line Company, LP submits Fourth Revised Sheet 3B to its FERC Gas Tariff, Third Revised Volume 1 proposed to become effective June 1, 2008.

Filed Date: 04/30/2008.

Accession Number: 20080502–0002.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–353–000.

Applicants: Trunkline Gas Company, LLC.

Description: Trunkline Gas Company, LLC submits Third Revised Sheet 6 et al. to its FERC Gas Tariff, Third Revised Volume 1 proposed to be effective June 1, 2008.

Filed Date: 04/30/2008.

Accession Number: 20080502–0001.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–354–000.

Applicants: Guardian Pipeline, L.L.C.

Description: Guardian Pipeline, LLC submits Original Sheet 43D.01 et al. to its FERC Gas Tariff, Original Volume 1.

Filed Date: 04/30/2008.

Accession Number: 20080502–0004.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–355–000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corporation submits 114th Revised Sheet 9 to its FERC Gas Tariff, Fourth Revised Volume 1, to become effective May 1, 2008.

Filed Date: 04/30/2008.

Accession Number: 20080502–0003.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

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 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–10156 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

April 29, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–75–000; EL08–57–000.

Applicants: KeySpan-Ravenswood, LLC; TransCanada Facility USA, Inc.

Description: KeySpan-Ravenswood, LLC submits an application for Petitions for issuance of declaratory orders etc.

Filed Date: 04/21/2008.

Accession Number: 20080422–0157.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Docket Numbers: EC08–80–000.

Applicants: Celerity Energy Partners San Diego LLC.

Description: Application of Celerity Energy Partners San Diego LLC for Authorization for Disposition of Jurisdictional Facilities.

Filed Date: 04/25/2008.

Accession Number: 20080425–5129.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–67–000.

Applicants: CPV Maryland, LLC.

Description: Notice of Exempt Wholesale Generator Status of CPV Maryland, LLC.

Filed Date: 04/28/2008.

Accession Number: 20080428–5110.

Comment Date: 5 p.m. Eastern Time on Monday, May 19, 2008.

Docket Numbers: EG08–68–000.

Applicants: Montgomery L'Energia Power Partners LP.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Montgomery L'Energia Power Partners LP.

Filed Date: 04/28/2008.

Accession Number: 20080428–5133.

Comment Date: 5 p.m. Eastern Time on Monday, May 19, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–1522–004; ER02–723–003; ER04–359–002; ER06–796–002; ER07–553–001; ER07–554–001; ER07–555–001; ER07–556–001; ER07–557–001.

Applicants: Bangor Hydro-Electric Company; Emera Energy Services, Inc.; Emera Energy U.S. Subsidiary No. 1, Inc; Emera Energy U.S. Subsidiary No. 2, Inc.; Emera Energy Services Subsidiary No. 3 LLC; Emera Energy Services Subsidiary No. 1 LLC; Emera Energy Services Subsidiary No. 4 LLC; Emera Energy Services Subsidiary No. 2 LLC; Emera Energy Services Subsidiary No. 5 LLC.

Description: Bangor Hydro-Electric Company *et al.* submits a second errata to the 1/14/08 and additional revisions to their market-based rate tariff.

Filed Date: 04/23/2008.

Accession Number: 20080425–0062.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 14, 2008.

Docket Numbers: ER99–2251–008; ER99–2252–009; ER98–2491–014; ER97–705–019; ER02–2080–008; ER02–2546–009; ER99–3248–011; ER99–1213–009; ER01–1526–009.

Applicants: Consolidated Edison Company of New York, Inc.; Orange and Rockland Utilities, Inc.; Consolidated Edison Energy, Inc; Consolidated Edison Solutions, Inc.; Ocean Peaking Power, L.L.C.; CED Rock Springs, Inc.; Consolidated Edison Energy of Massachusetts; Lakewood Cogeneration, L.P.; Newington Energy, L.L.C.

Description: The Con Edison Companies submit their Triennial Market Power Analysis and request for shortened comment period.

Filed Date: 04/21/2008.

Accession Number: 20080424–0207.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: ER02–506–009; ER98–2783–012; ER99–3822–012; ER07–841–002; ER01–140–008; ER07–842–002; ER00–1895–010; ER07–843–002; ER07–844–002; ER07–845–002; ER07–846–002; ER99–4160–013; ER01–141–008; ER07–847–002; ER00–3696–009; ER01–943–008; ER05–1266–006; ER08–451–001; ER01–3109–010; ER01–1044–009; ER99–2157–009; ER02–553–008; ER03–42–013.

Applicants: Bluegrass Generation Company, LLC; Bridgeport Energy, LLC; Casco Bay Energy Company, LLC; Dynegy Arlington Valley, LLC; Dynegy Danskammer, L.L.C.; Dynegy Kendall Energy, LLC; Dynegy Midwest Generation, Inc.; Dynegy Mohave, LLC; Dynegy Morro Bay, LLC; Dynegy Moss Landing, LLC; Dynegy Oakland, LLC; Dynegy Power Marketing, Inc.; Dynegy Roseton, L.L.C.; Dynegy South Bay, LLC; Griffith Energy LLC; Heard County Power, LLC; Ontelaunee Power Operating Co, LLC; Plum Point Energy Associates, LLC; Renaissance Power, L.L.C; Riverside Generating Company, LLC; Rocky Road Power, LLC; Rolling Hills Generating, LLC; Sithe/Independence Power Partners, L.P.

Description: Supplemental Information—Joint Notification of Change in Status of Bluegrass Generation Company, LLC, *et al.*

Filed Date: 04/18/2008.

Accession Number: 20080421–5082.

Comment Date: 5 p.m. Eastern Time on Friday, May 09, 2008.

Docket Numbers: ER01–316–028.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits their Index of Customers for the first quarter of 2008 under the ISO's FERC Tariff for Transmission Dispatch and Power Administration Services.

Filed Date: 04/21/2008.

Accession Number: 20080423–0023.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: ER01–989–005.

Applicants: Green Mountain Power Corporation.

Description: Green Mountain Power Corp. submits an updated market power analysis and revisions to its market-based rate power sales tariff.

Filed Date: 04/24/2008.

Accession Number: 20080428–0111.

Comment Date: 5 p.m. Eastern Time on Thursday, May 15, 2008.

Docket Numbers: ER05–320–005; ER02–999–007; ER97–2460–010; ER97–2463–007.

Applicants: Unitil Energy Systems, Inc.; Unitil Power Corporation; Fitchburg Gas and Electric Light Company.

Description: Unitil Energy Systems, Inc *et al.* submit their substitute tariff sheets in compliance with Order 697.

Filed Date: 04/23/2008.

Accession Number: 20080425–0064.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 14, 2008.

Docket Numbers: ER05–905–001.

Applicants: Celerity Energy Partners San Diego, LLC.

Description: Celerity Energy Partners San Diego, LLC submits notice of change in status, in compliance with Order 652.

Filed Date: 04/25/2008.

Accession Number: 20080428–0118.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: ER07–1332–003.

Applicants: Smoky Hills Wind Farm, LLC.

Description: Smoky Hills Wind Farm, LLC submits notice of non-material change in status.

Filed Date: 04/25/2008.

Accession Number: 20080428–0119.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: ER08–28–002.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy Inc. submits revisions to PSE's Open Access Transmission Tariff to comply with the directives of the December 4 Order and the April 9 Order, PSE enclosed revisions as FERC Electric Tariff Eighth Revised Volume 7 *et al.*

Filed Date: 04/24/2008.

Accession Number: 20080428–0018.

Comment Date: 5 p.m. Eastern Time on Thursday, May 15, 2008.

Docket Numbers: ER08–397–002.

Applicants: ALLETE, Inc.

Description: ALLETE, Inc. dba Minnesota Power submits an errata to correct the base fuel cost included in the wholesale energy and capacity full requirements contracts, etc.

Filed Date: 04/24/2008.

Accession Number: 20080428–0017.

Comment Date: 5 p.m. Eastern Time on Thursday, May 15, 2008.

Docket Numbers: ER08–782–000.

Applicants: Union Electric Company.

Description: Union Electric Company submits notice of withdrawal of its application under Section 205 of the Federal Power Act.

Filed Date: 04/24/2008.

Accession Number: 20080428–0109.

Comment Date: 5 p.m. Eastern Time on Thursday, May 15, 2008.

Docket Numbers: ER08–783–000.

Applicants: Ameren Energy Marketing Company.

Description: Ameren Energy Marketing Co submits notice of withdrawal of its application under section 205 of the Federal Power Act submitted on 4/2/08.

Filed Date: 04/24/2008.

Accession Number: 20080428–0110.

Comment Date: 5 p.m. Eastern Time on Thursday, May 15, 2008.

Docket Numbers: ER08–860–000.

Applicants: CER Generation II, LLC.

Description: CER Generation II, LLC submits an Application for Order Authorizing Market-Based rates, Certain Waivers, and Blanket Authorizations of CER Generation II, LLC.

Filed Date: 04/22/2008.

Accession Number: 20080425–0095.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 13, 2008.

Docket Numbers: ER08–867–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits an Agreement to Amend Joint Operating Agreement Among with PJM Interconnection, LLC etc.

Filed Date: 04/23/2008.

Accession Number: 20080428–0114.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 14, 2008.

Docket Numbers: ER08–866–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits Seventh Revised Sheet 70 and 71 to their First Revised Rate Schedule 62, comprising its Interchange Service Contract etc.

Filed Date: 04/25/2008.

Accession Number: 20080428–0113.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: ER08–868–000.

Applicants: Commonwealth Edison Company.

Description: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc's CD containing its revision of Attachment H–13 of the PJM Open Access Transmission Tariff.

Filed Date: 04/24/2008.

Accession Number: 20080424–4001.

Comment Date: 5 p.m. Eastern Time on Thursday, May 15, 2008.

Docket Numbers: ER08–869–000.

Applicants: Montana-Dakota Utilities Co.

Description: Montana-Dakota Utilities Co's CD containing notice of cancellation of its Open Access Transmission Tariff for the Wyoming System.

Filed Date: 04/24/2008.

Accession Number: 20080424–4002.

Comment Date: 5 p.m. Eastern Time on Thursday, May 15, 2008.

Docket Numbers: ER08–870–000.

Applicants: Ameren Services Company.

Description: Central Illinois Public Service Company submits an executed service agreement for Wholesale Distribution Service with Illinois Municipal Electric Agency.

Filed Date: 04/25/2008.

Accession Number: 20080428–0115.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: ER08–871–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revisions to its Membership Agreement, to become effective 8/10/05.

Filed Date: 04/25/2008.

Accession Number: 20080428–0116.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: ER08–872–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Co submits its Seventh Revised Sheet 118 for inclusion in Second Revised Rate Schedule 49 etc.

Filed Date: 04/25/2008.

Accession Number: 20080428–0117.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: ER08–874–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits revised rate schedule sheets for inclusion in the rate schedules comprising Tampa Electric bilateral interchange contracts with 16 other utilities.

Filed Date: 04/25/2008.

Accession Number: 20080428–0122.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08–42–000.

Applicants: Southern Indiana Gas & Electric Company.

Description: Revision to Application of Southern Indiana Gas and Electric Company for Authority to Issue Short-Term Debt.

Filed Date: 04/25/2008.

Accession Number: 20080428–5028.

Comment Date: 5 p.m. Eastern Time on Friday, May 9, 2008.

Docket Numbers: ES08–46–000.

Applicants: Consumers Energy Company.

Description: Application of Consumers Energy Company for Authority to Issue Long Term Securities Under Section 204 of the Federal Power Act.

Filed Date: 04/25/2008.

Accession Number: 20080425–5096.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: ES08–47–000.

Applicants: Consumers Energy Company.

Description: Application for Authority to Issue Short Term Securities of Consumers Energy Company.

Filed Date: 04/25/2008.

Accession Number: 20080428–5050.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–105–001.

Applicants: Puget Sound Energy, Inc.

Description: Order No. 890 OATT Filing of Puget Sound Energy, Inc.

Filed Date: 04/25/2008.

Accession Number: 20080425–5091.

Comment Date: 5 p.m. Eastern Time on Friday, May 16, 2008.

Docket Numbers: OA07–114–001.

Applicants: PacifiCorp.

Description: PacifiCorp submits revised Open Access Transmission Tariff sheets for Attachment C, request that the Revised Attachment C be accepted for filing, effective 9/11/07, in compliance with the Commission's 3/25/08 letter order.

Filed Date: 04/24/2008.

Accession Number: 20080428–0021.

Comment Date: 5 p.m. Eastern Time on Thursday, May 15, 2008.

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 .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 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–10160 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 1, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–320–088.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Co, LP submits negotiated rate contracts re Southeast Expansion Project.

Filed Date: 04/29/2008.

Accession Number: 20080430–0153.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP96–272–075.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits 51 Revised Sheet 66A et al to FERC Gas Tariff, Fifth Revised Volume 1.

Filed Date: 04/30/2008.

Accession Number: 20080501–0031.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP97–255–002.

Applicants: TransColorado Gas Transmission Company.

Description: TransColorado Gas Transmission Company LLC submits First Revised Sheet 23 to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 04/30/2008.

Accession Number: 20080501–0029.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP99–518–106.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corp submits Forty-Fourth Revised Sheet 15 et al to FERC Gas Tariff, Third Revised Volume 1–A.

Filed Date: 04/30/2008.

Accession Number: 20080501–0032.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP00–426–034.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Second Revised Sheet 51A and Thirteenth Revised Sheet 56 to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 04/30/2008.

Accession Number: 20080501–0030.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP02–361–071.

Applicants: Gulfstream Natural Gas System, L.L.C.

Description: Gulfstream Natural Gas System, LLC submits Original Sheet 8.02m to FERC Gas Tariff, Original Volume 1, to be effective 5/1/08.

Filed Date: 04/29/2008.

Accession Number: 20080430–0154.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–198–001.

Applicants: Gulf South Pipeline Company, LP.

Description: Additional Information of Gulf South Pipeline Company, LP.

Filed Date: 04/14/2008.

Accession Number: 20080414–5032.

Comment Date: 5 p.m. Eastern Time on Thursday, May 8, 2008.

Docket Numbers: RP08–331–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits Thirty-Fifth Revised Sheet 1 et al to FERC Gas Tariff, Second Revised Volume 1A, to be effective 5/30/08.

Filed Date: 04/29/2008.

Accession Number: 20080430–0155.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–332–000.

Applicants: Great Lakes Gas Transmission Limited Partnership.

Description: Great Lakes Gas Transmission, Limited Partnership submits Thirteenth Revised Sheet 3, Twelfth Revised Sheet 3B to FERC Gas Tariff, Second Revised Volume 1, to be effective 1/1/08.

Filed Date: 04/29/2008.

Accession Number: 20080430–0156.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–334–000.

Applicants: Algonquin Gas Transmission LLC.

Description: Algonquin Gas Transmission, LLC submits Second Revised Sheet 15 to FERC Gas Tariff, Fifth Revised Volume 1.

Filed Date: 04/30/2008.

Accession Number: 20080501–0028.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–337–000.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits Fourth Revised Sheet 4 et al to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 04/30/2008.

Accession Number: 20080501–0037.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–339–000.

Applicants: Williston Basin Interstate Pipeline Co.

Description: Williston Basin Interstate Pipeline Company submits Eighteenth Revised Sheet 5 et al. to FERC Gas Tariff, Second Revised Volume 1, to become effective 4/30/08.

Filed Date: 04/30/2008.

Accession Number: 20080501–0039.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–340–000.

Applicants: Cheyenne Plains Gas Pipeline Company LLC.

Description: Cheyenne Plains Gas Pipeline Company LLC submits Sixth Revised Sheet 20 to its FERC Gas Tariff, Original Volume 1, to become effective 6/1/08.

Filed Date: 04/30/2008.

Accession Number: 20080501–0024.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–342–000.

Applicants: Blue Lake Gas Storage Company.

Description: Blue Lake Gas Storage Company submits First Revised Sheet 2A to FERC Gas Tariff, First Revised Volume 1, to become effective 6/1/08.

Filed Date: 04/30/2008.

Accession Number: 20080501–0023.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–343–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits the Second Revised Sheet 12 et al. to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 04/30/2008.

Accession Number: 20080501–0035.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–344–000.

Applicants: ANR Storage Company.

Description: ANR Storage Company submits First Revised Sheet 2A for inclusion in their FERC Gas Tariff, Original Volume 1, to become effective 6/1/08.

Filed Date: 04/30/2008.

Accession Number: 20080501–0022.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–345–000.

Applicants: Distrigas of Massachusetts LLC.

Description: Distrigas of Massachusetts, LLC submits its Twenty-Fifth Revised Sheet 94 et al. to FERC Gas Tariff, First revised Volume 1.

Filed Date: 04/30/2008.

Accession Number: 20080501–0034.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–346–000.

Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas Company submits Second Revised Sheet 5 et al. to FERC Gas Tariff, Seventh Revised Volume 1, to become effective 6/1/08.

Filed Date: 04/30/2008.

Accession Number: 20080501–0021.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–347–000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits Forty Fifth Revised Sheet 18 et al. to FERC Gas Tariff, Second Revised Volume 1, to become effective 6/1/08.

Filed Date: 04/30/2008.

Accession Number: 20080501–0019.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–348–000.

Applicants: Texas Eastern Transmission LP.

Description: Texas Eastern Transmission, LP submits Second Revised Sheet 11 et al. to FERC Gas Tariff, Seventh Revised Volume 1.

Filed Date: 04/30/2008.

Accession Number: 20080501–0033.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Docket Numbers: RP08–349–000.

Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas Company submits a refund report showing that there are no refunds to be distributed in 2008.

Filed Date: 04/30/2008.

Accession Number: 20080501–0020.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

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 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–10173 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–60–000]

Union Electric Company, Complainant, v. Entergy Arkansas, Inc. and Entergy Services, Inc., Respondents; Notice of Complaint

May 1, 2008.

Take notice that on April 30, 2008, Union Electric Company (d/b/a/ AmerenUE) filed a complaint pursuant to sections 206 and 309 of the Federal Power Act, 16 U.S.C. 824e and 825h, and section 385.206 of the Commission's regulations issued thereunder, against Entergy Arkansas, Inc. (EAI) and Entergy Services, Inc. (collective, Respondents). In the Complaint AmerenUE ultimately seeks an order from the Commission compelling Respondents to adhere to the rates, terms and conditions of an existing, Commission-approved long-term service agreement between EAI and AmerenUE, cease charging AmerenUE a charge in violation of that agreement and in violation of the filed rate doctrine, and provide AmerenUE with refunds, including interest calculated pursuant to 18 CFR 35.19a, for all overcollections.

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 Respondent's answer, 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 May 20, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10196 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12486–003]

Twin Lakes Canal Company; Notice Dismissing Request for Rehearing

May 1, 2008.

On March 10, 2008, the Secretary issued a notice dismissing as moot a motion filed by PacifiCorp on October 24, 2007, seeking, *inter alia*, to cancel a preliminary permit issued to Twin Lakes Canal Company (Twin Lakes) for the proposed Bear River Narrows Project No. 12486, to be located on the Bear River in Franklin County, Idaho. The notice explained that the request to cancel the preliminary permit was moot because the permit had expired. On April 3, 2008, PacifiCorp filed a request for rehearing of the Secretary's notice.

On rehearing, PacifiCorp does not allege error with the conclusion that the request to cancel the permit was rendered moot when the permit expired. Instead, PacifiCorp argues, as it did in its October 24, 2007 motion, that Twin Lakes' preparation of a license application using the Commission's Integrated Licensing Process (ILP) should be terminated because Twin Lakes' project would impermissibly conflict with PacifiCorp's upstream licensed Bear River Project No. 20.[1]

The Secretary's March 10, 2008 notice dismissed PacifiCorp's motion only to the extent that it sought cancellation of Twin Lakes' permit. It took no action with respect to the other arguments raised by PacifiCorp in its filing, which remain in the public record of Project No. 12486 and will be considered in the context of the ILP.[2]

Accordingly, because PacifiCorp does not raise any issues or arguments relating to the mootness of its request to cancel the initial preliminary permit in Project No. 12486, its request for rehearing of the March 10, 2008 notice is dismissed.

This notice constitutes final agency action. Requests for rehearing of this dismissal notice must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713 (2007).

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10198 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–8–000]

Leaf River Energy Center LLC; Notice of Availability of the Environmental Assessment for the Proposed Leaf River Storage Project

April 30, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Leaf River Energy Center LLC (Leaf River) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers is a federal cooperating agency for the development of this EA. A federal cooperating agency has jurisdiction by law or special expertise with respect to the proposed action and participates in the NEPA analysis.

The EA assesses the potential environmental effects of the construction and operation of Leaf River's proposed Leaf River Storage (LRS) Project. The LRS Project would involve construction of the following facilities in Smith, Jasper, and Clarke Counties, Mississippi:

- Four storage wells and caverns with a total working gas capacity of 32 billion cubic feet (Bcf);
- Seven 4,800-horsepower gas driven reciprocating compressor units at its proposed compressor station/gas handling facility along with gas dehydration equipment;
- Four water supply wells and four deep saltwater disposal wells, and construct a 16-inch-diameter water supply pipeline and a 16-inch-diameter saltwater disposal pipeline to these wells;
- 6.6 miles of dual bi-directional 24-inch-diameter natural gas pipelines called the Dome Lateral;
- The West-East Lateral which consists of a single 6.9 mile 24-inch-diameter natural gas pipeline to the west of the junction with the Dome Lateral and 30.2 miles of dual 24-inch-diameter natural gas pipelines to the east of the junction which would follow the corridor to be occupied by Gulf South Pipeline Company, LP's Southeast Expansion Project currently under construction;
- A fiber optic cable communication system from the gas handling facility along the header system to the interconnect locations to the cavern wells to transmit communications to operate the storage facility;
- A fiber optic cable from the gas handling facility to the water supply wells and salt water disposal wells and to the cavern wells to transmit communications to develop the cavern wells; and
- Four meter and regulator stations and five interstate gas transmission pipeline interconnections.

The purpose of the project is to provide high-deliverability, multi-cycle natural gas storage services to multiple interstate gas transmission systems.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local agencies, public

[1] The ILP is set forth in Part 5 of the Commission's regulations, 18 CFR Part 5 (2007). Twin Lakes initiated an ILP by filing a notice of intention and preliminary application document for the Bear River Narrows Project on February 23, 2007.

[2] In addition, on February 5, 2008, Twin Lakes filed an application for second preliminary permit for the Bear River Narrows Project (docketed Project No. 12486–002). Notice of the application was issued on April 8, 2008, and established June 9, 2008, as the deadline for filing comments, protest, and motions to intervene. If PacifiCorp has concerns regarding Twin Lake's second preliminary permit application, it should raise them in that proceeding.

interest groups, interested individuals, newspapers, and libraries in the project area, and parties to this proceeding. Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See Title 18 of the Code of Federal Regulations, Part 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the link to ''Documents and Filings'' and ''eFiling.'' eFiling is a file attachment process and requires that you prepare your submission in the same manner as you would if filing on paper, and save it to a file on your computer's hard drive. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister.*'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.'' In addition, there is a ''*Quick Comment*'' option available, which is an easy method for interested persons to submit text only comments on a project. The *Quick-Comment User Guide* can be viewed at *http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf.* Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid e-mail address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket.

If you are filing written comments, please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP08–8–000;
- Label one copy of the comments for the attention of the Gas Branch 1, PJ–11.1; and
- Mail your comments so that they will be received in Washington, DC on or before May 30, 2008.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10172 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–8–000]

Leaf River Energy Center LLC; Notice of Availability of the Environmental Assessment for The Proposed Leaf River Storage Project

April 30, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Leaf River Energy Center LLC (Leaf River) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers is a federal cooperating agency for the development of this EA. A federal cooperating agency has jurisdiction by law or special expertise with respect to the proposed action and participates in the NEPA analysis.

The EA assesses the potential environmental effects of the construction and operation of Leaf River's proposed Leaf River Storage (LRS) Project. The LRS Project would involve construction of the following facilities in Smith, Jasper, and Clarke Counties, Mississippi:

- Four storage wells and caverns with a total working gas capacity of 32 billion cubic feet (Bcf);
- Seven 4,800-horsepower gas driven reciprocating compressor units at its proposed compressor station/gas handling facility along with gas dehydration equipment;
- Four water supply wells and four deep saltwater disposal wells, and construct a 16-inch-diameter water supply pipeline and a 16-inch-diameter saltwater disposal pipeline to these wells;
- 6.6 miles of dual bi-directional 24-inch-diameter natural gas pipelines called the Dome Lateral;
- The West-East Lateral which consists of a single 6.9 mile 24-inch-diameter natural gas pipeline to the west of the junction with the Dome Lateral and 30.2 miles of dual 24-inch-diameter natural gas pipelines to the east of the junction which would follow the corridor to be occupied by Gulf South Pipeline Company, LP's Southeast Expansion Project currently under construction;
- A fiber optic cable communication system from the gas handling facility along the header system to the interconnect locations to the cavern wells to transmit communications to operate the storage facility;
- A fiber optic cable from the gas handling facility to the water supply wells and salt water disposal wells and to the cavern wells to transmit communications to develop the cavern wells; and
- Four meter and regulator stations and five interstate gas transmission pipeline interconnections.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

The purpose of the project is to provide high-deliverability, multi-cycle natural gas storage services to multiple interstate gas transmission systems.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local agencies, public interest groups, interested individuals, newspapers, and libraries in the project area, and parties to this proceeding. Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See Title 18 of the Code of Federal Regulations, Part 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the link to ''Documents and Filings'' and ''eFiling.'' eFiling is a file attachment process and requires that you prepare your submission in the same manner as you would if filing on paper, and save it to a file on your computer's hard drive. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.'' In addition, there is a ''*Quick Comment*'' option available, which is an easy method for interested persons to submit text only comments on a project. The Quick-Comment User Guide can be viewed at *http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf*. Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid e-mail address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket.

If you are filing written comments, please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP08–8–000;
- Label one copy of the comments for the attention of the Gas Branch 1, PJ–11.1; and
- Mail your comments so that they will be received in Washington, DC on or before May 30, 2008.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10131 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM05–25–000; RM05–17–000]

Preventing Undue Discrimination and Preference in Transmission Service; Errata Notice

April 30, 2008.

On April 29, 2008, the Commission issued a Notice of Extension of Time in the above-referenced proceeding. In the second paragraph of the notice, change ''February 19, 2008'' to read ''February 19, 2009.'' The sentence should read as follows:

Public utilities are also granted an extension of time to and including November 27, 2008, to develop, through the North American Energy Standards Review Board (NAESB), business practices that support the Revisions to the NERC reliability standards MOD–001, MOD–008, MOD–028, MOD–029, and MOD–030 and an extension of time to and including February 19, 2009, to develop, through NAESB, business practices that complement the revisions to the NERC reliability standard MOD–004.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10130 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM05–25–000; RM05–17–000]

Preventing Undue Discrimination and Preference in Transmission Service; Errata Notice

April 30, 2008.

On April 29, 2008, the Commission issued a Notice of Extension of Time in the above-referenced proceeding. In the second paragraph of the notice, change ''February 19, 2008'' to read ''February 19, 2009.'' The sentence should read as follows:

Public utilities are also granted an extension of time to and including November 27, 2008, to develop, through the North American Energy Standards Review Board (NAESB), business practices that support the Revisions to the NERC reliability standards MOD–001, MOD–008, MOD–028, MOD–029, and MOD–030 and an extension of time to and including February 19, 2009, to develop, through NAESB, business practices that

complement the revisions to the NERC reliability standard MOD–004.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10171 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM07–10–000]

Transparency Provisions of Section 23 of the Natural Gas Act; Notice of Form No. 552 Follow-Up Workshop

April 30, 2008.

The follow-up staff workshop in the above-referenced proceeding is scheduled for May 19, 2008, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in the Commission Meeting Room (2–C) from 9:30 a.m. until 3:30 p.m. (EDT). This is a continuance of the April 22, 2008, Form No. 552 Technical Conference.

Order No. 704, Transparency Provisions of Section 23 of the Natural Gas Act,[1] requires certain natural gas buyers and sellers to identify themselves to the Commission and report certain information about their physical natural gas transactions for the previous calendar year on Form No. 552, established for the purpose of obtaining information about the amount of daily or monthly fixed-price trading that is eligible to be reported to price index publishers as compared to the amount of trading that uses or refers to price indices. This workshop will address the questions submitted prior to the April 22 Technical Conference in connection with the filing of Form No. 552 as well as issues brought up at that conference.

Staff is issuing this Notice to alert interested individuals of the date for the upcoming workshop, and to note that on May 12, 2008, staff will post a link on the FERC calendar announcing the May 19 workshop, to access staff's draft responses to the questions that have been submitted and an agenda for the May 19 workshop.

The session will neither be web-cast nor transcribed. All interested persons are invited to attend in person or participate via teleconference in the May 19 workshop. There is no fee to register, to participate via teleconference, or to attend the conference.

Those interested in participating by phone must register no later than May 14, 2008, on the FERC Web site at *https://www.ferc.gov/whats-new/registration/form-552-05-19-form.asp.* Those who will participate in person are encouraged, but not required, to register. Information for the conference call will be e-mailed to registered participants. For additional information, please contact Michelle Reaux of FERC's Office of Enforcement at (202) 502–6497 or by e-mail at *michelle.reaux@ferc.gov.*

Commission 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10164 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

[1] *Transparency Provisions of Section 23 of the Natural Gas Act*, Order No. 704, 73 Fed. Reg. 1014 (Jan. 4, 2008), FERC Stats. & Regs. ¶ 31,260 (2008).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–650–000]

Mountain Wind Power, LLC; Notice of Issuance of Order

April 30, 2008.

Mountain Wind Power, LLC (Mountain Wind) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. Mountain Wind also requested waivers of various Commission regulations. In particular, Mountain Wind requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Mountain Wind.

On April 9, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Mountain Wind, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov.*

Notice is hereby given that the deadline for filing protests is May 9, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Mountain Wind is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Mountain Wind, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Mountain Wind's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10166 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–776–000]

Panda-Brandywine, L.L.P.; Notice of Issuance of Order

April 30, 2008.

Panda-Brandywine, L.L.P. (Panda) filed an application for market-based

rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Panda also requested waivers of various Commission regulations. In particular, Panda requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Panda.

On April 30, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Panda should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov*.

Notice is hereby given that the deadline for filing protests is May 30, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Panda is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Panda, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Panda's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10167 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–784–000]

West Valley Leasing Company, LLC; Notice of Issuance of Order

April 30, 2008.

West Valley Leasing Company, LLC (West Valley) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. West Valley also requested waivers of various Commission regulations. In particular, West Valley requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by West Valley.

On April 30, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by West Valley should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov*.

Notice is hereby given that the deadline for filing protests is May 30, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, West Valley is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of West Valley, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of West Valley's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10168 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket Nos. ER08–609–000; ER08–609–001

Endure Energy, L.L.C.; Notice of Issuance of Order

April 30, 2008.

Endure Energy, L.L.C. (Endure Energy) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Endure Energy also requested waivers of various Commission regulations. In particular, Endure Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Endure Energy.

On April 25, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the

Federal Register establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Endure Energy, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov.*

Notice is hereby given that the deadline for filing protests is May 27, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Endure Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Endure Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Endure Energy's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10124 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket Nos. ER08–609–000; ER08–609–001

Endure Energy, L.L.C.; Notice of Issuance of Order

April 30, 2008.

Endure Energy, L.L.C. (Endure Energy) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Endure Energy also requested waivers of various Commission regulations. In particular, Endure Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Endure Energy.

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Notice is hereby given that the deadline for filing protests is May 27, 2008.

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The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Endure Energy's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10165 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–650–000]

Mountain Wind Power, LLC; Notice of Issuance of Order

April 30, 2008.

Mountain Wind Power, LLC (Mountain Wind) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. Mountain Wind also requested waivers of various Commission regulations. In particular, Mountain Wind requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Mountain Wind.

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Procedure. 18 CFR 385.211, 385.214 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov.*

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Kimberly D. Bose,

Secretary.

[FR Doc. E8–10125 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–776–000]

Panda-Brandywine, L.L.P.; Notice of Issuance of Order

April 30, 2008.

Panda-Brandywine, L.L.P. (Panda) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Panda also requested waivers of various Commission regulations. In particular, Panda requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Panda.

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Kimberly D. Bose,

Secretary.

[FR Doc. E8–10126 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–784–000]

West Valley Leasing Company, LLC; Notice of Issuance of Order

April 30, 2008.

West Valley Leasing Company, LLC (West Valley) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. West Valley also requested waivers of various Commission regulations. In particular, West Valley requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by West Valley.

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Notice is hereby given that the deadline for filing protests is May 30, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, West Valley is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object

within the corporate purposes of West Valley, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of West Valley's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10127 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM07–10–000]

Transparency Provisions of Section 23 of the Natural Gas Act; Notice of Form No. 552 Follow-Up Workshop

April 30, 2008.

The follow-up staff workshop in the above-referenced proceeding is scheduled for May 19, 2008, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in the Commission Meeting Room (2–C) from 9:30 a.m. until 3:30 p.m. (EDT). This is a continuance of the April 22, 2008, Form No. 552 Technical Conference.

Order No. 704, Transparency Provisions of Section 23 of the Natural Gas Act,[1] requires certain natural gas buyers and sellers to identify themselves to the Commission and report certain information about their physical natural gas transactions for the previous calendar year on Form No. 552, established for the purpose of obtaining information about the amount of daily or monthly fixed-price trading that is eligible to be reported to price index publishers as compared to the amount of trading that uses or refers to price indices. This workshop will address the questions submitted prior to the April 22 Technical Conference in connection with the filing of Form No. 552 as well as issues brought up at that conference.

Staff is issuing this Notice to alert interested individuals of the date for the upcoming workshop, and to note that on May 12, 2008, staff will post a link on the FERC calendar announcing the May 19 workshop, to access staff's draft responses to the questions that have been submitted and an agenda for the May 19 workshop.

The session will neither be web-cast nor transcribed. All interested persons are invited to attend in person or participate via teleconference in the May 19 workshop. There is no fee to register, to participate via teleconference, or to attend the conference.

Those interested in participating by phone must register no later than May 14, 2008, on the FERC Web site at *https://www.ferc.gov/whats-new/registration/form-552-05-19-form.asp*. Those who will participate in person are encouraged, but not required, to register. Information for the conference call will be e-mailed to registered participants. For additional information, please contact Michelle Reaux of FERC's Office of Enforcement at (202) 502–6497 or by e-mail at *michelle.reaux@ferc.gov*.

Commission 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10123 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

[1] *Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704, 73 FR 1014 (Jan. 4, 2008), FERC Stats. & Regs. ¶ 31,260 (2008).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13089–000]

KC LLC; Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

May 1, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13089–000.

c. *Date filed:* December 20, 2007, and revised March 21, 2008.

d. *Applicant:* KC LLC.

e. *Name and Location of Project:* The proposed Conway Ranch Hydropower Project would be located near the town of Mono City on the Virginia Creek at the existing Conway Ranch diversion ditch in Mono County, California, on public lands administered by the U.S. Bureau of Land Management.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Ms. Kelly Sackheim, Principal, KC LLC, 5096 Cocoa Palm Way, Fair Oaks, CA 95628, (916) 962–2271.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P–13089–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Existing Facilities and Proposed Project:* The proposed Conway Ranch Hydropower Project would include a proposed notched weir at the existing Conway Ranch diversion ditch. *The proposed project would also consist of the following new facilities:* (1) A 2-mile-long, 8-inch-wide penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 500 kW, (3) a 360-foot-long transmission line, connecting to an existing power line, and (4) appurtenant facilities. The project would have an

annual generation of 2.3 GWh, which would be sold to a local utility.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *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.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *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. E8–10201 Filed 5–7–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8535–7]

Proposed CERCLA Administrative Cashout Settlement; Elite Laundry Superfund Site, Jaffrey, NH

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future response costs concerning the Elite Laundry Superfund Site in Jaffrey, New Hampshire with the following settling parties: Route 202 at Route 124, Jaffrey, New Hampshire, LLC; Rared Jaffrey, LLC; and, Guilford Transportation. The settling parties have agreed to reimburse the United States $56,250, and have also agreed to reimburse the State of New Hampshire $56,250. The settlement includes a covenant not to sue the settling parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). For thirty (30) days following the date of publication of this notice, the United States will receive written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The United States' response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02114–2023.

DATES: Comments must be submitted by June 9, 2008.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100 (RAA), Boston, Massachusetts 02114–2023 and should refer to: In re: The Elite Laundry Superfund Site, U.S. EPA Docket Number CERCLA–01–2007–0137.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Steven Schlang, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region I, Office of Environmental Stewardship, One Congress Street, Suite 1100 (SES), Boston, MA 02114–2023 or at (617) 918–1773.

Dated: February 25, 2008.

Richard Cavagnero,

Acting Director, Office of Site Remediation and Restoration.

[FR Doc. E8–10310 Filed 5–7–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 29, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by July 7, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC). To submit your comments by email send them to: *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an email to: *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1087.

Title: Broadband Power Line Systems, ET Docket No. 04–37.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 100 respondents; 100 responses.

Estimated Time per Response: .05 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 2,600 hours.

Annual Cost Burden: $60,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in reporting, recordkeeping and/or third party disclosure requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. The Commission adopted a *Report and Order, FCC 04–245* on October 28, 2004. The *Report and Order* requires that entities operating Access Broadband over Power Lines (BPL) systems shall supply to an industry-recognized entity, information on all existing Access BPL systems and all proposed Access BPL systems for inclusion into a publicly available database, within 30 days prior to initiation of service. The following information should be provided to the database manager; the name of the Access BPL provider; the frequencies of the Access BPL operation; the postal ZIP codes served by the specific Access BPL operation; the manufacturer and type of Access BPL equipment and its associated FCC ID number, or in the case of Access BPL equipment that has been subject to verification, the Trade Name and Model Number, as specified on the equipment label; the contact information, including both phone number and e-mail address of a person at, or associated with, the BPL operator's company, to facilitate the resolution of any interference complaint; and the proposed/or actual date of Access BPL operation. The Access BPL operator can begin operations once the 30-day advance notification timeframe is over, then the Access BPL operator must notify the database manager of the date of commencement of actual operations for inclusion in the database. The database manager shall be required to enter this information into the publicly accessible database within three business days of receipt.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–9974 Filed 5–7–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 08–32; Report No. AUC–08–77–B (Auction 77); DA 08–926]

Closed Auction of Licenses For Cellular Unserved Service Areas Scheduled for June 17, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 77

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming Closed Auction of Licenses for Cellular Unserved Service Areas (Auction 77). This document is intended to familiarize prospective

bidders with the procedures and minimum opening bids for the auction.

DATES: Short Form Applications to participate in Auction 77 must be filed before 6 p.m. ET on May 14, 2008. The upfront payments deadline for Auction 77 is June, 2, 2008, 6 p.m. ET. Bidding for Auction No. 77 is scheduled to begin on June 17, 2008.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions Spectrum and Access Division:* For legal questions: Sayuri Rajapakse at (202) 418–0660. For general auction questions: Barbara Sibert at (717) 338–2868. *Mobility Division:* For service rule questions: Erin McGrath (legal), Gabriel Ubieta (engineering) and Denise Walter (licensing) at (202) 418–0620. To request materials in accessible formats (Braille, large print, electronic files or audio format) for people with disabilities, send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 77 Procedures Public Notice* which was released on April 25, 2008. The complete text of the *Auction 77 Procedures Public Notice*, including attachments, as well as related Commission documents are available for public inspection and copying at the FCC Reference Information Center. The *Auction 77 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or Web site: *http://www.BCPIWEB.com*. The *Auction 77 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/77/*.

I. General Information

A. Introduction

1. The Wireless Telecommunications Bureau (Bureau) announces the procedures and minimum opening bid amounts for the upcoming closed auction of Cellular Radiotelephone Service licenses covering two different unserved areas (Auction 77). Auction 77 is scheduled to begin on June 17, 2008.

i. Background of Proceeding

2. On March 21, 2008, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended, the Bureau released a public notice seeking comment on competitive bidding procedures to be used in Auction 77. In the *Auction 77 Comment Public Notice*, 73 FR 18276, April 3, 2008, the Bureau proposed to award the licenses using a single-round sealed-bid auction and sought comment on procedures for the conduct of Auction 77. The Bureau received one comment and no reply comments in response to the *Auction 77 Comment Public Notice*.

ii. Licenses To Be Offered in Auction 77

3. The spectrum to be auctioned is the subject of two groups of pending mutually exclusive long-form applications (FCC Form 601s) for unserved area licenses in the Cellular Radiotelephone Service. Participation in Auction 77 will be limited to those applicants identified in Attachment A of the *Auction 77 Procedures Public Notice*. Licenses will be auctioned for each mutually exclusive applicant group (MX group) identified in Attachment A. The winning bidder in each group will be licensed to serve only the unserved area proposed in its long-form application(s) for that MX group.

4. Consistent with the Commission's determination in the *Competitive Bidding Ninth Report and Order*, 61 FR 58333, November 14, 1996, all pending mutually exclusive applications for unserved area licenses in the Cellular Radiotelephone Service must be resolved through a system of competitive bidding. When the short-form applications of two or more applicants within an MX group are accepted for filing, mutual exclusivity exists for auction purposes. Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX group submits an upfront payment, that applicant is required to submit a bid in order to obtain the license. Any applicant that submits a short-form application but fails to timely submit an upfront payment will not be eligible to bid.

B. Rules and Disclaimers

i. Relevant Authority

5. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules set forth in 47 CFR part 1 and 22 including recent amendments and clarifications; rules relating to the Cellular Radiotelephone Service and rules relating to applications, environment, practice and procedure. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, terms) contained in the *Auction 77 Procedures Public Notice* and the Commission's decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.

6. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auction 77.

ii. Prohibition of Collusion; Compliance With Antitrust Laws

7. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) of the Commission's rules prohibits auction applicants for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii). This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. Section 1.2105(c)'s anti-collusion prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it must report such communication in writing to the Commission immediately and in no case later than five business days after the communication occurs. The *Auction 77 Procedures Public Notice* contains specific guidance for applicants on the applicability of and compliance with the Commission's anti-collusion rule and antitrust laws. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment D of the *Auction 77 Procedures Public Notice*.

iii. Due Diligence

8. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

9. Potential bidders are strongly encouraged to conduct their own

research prior to the beginning of bidding in Auction 77 in order to determine the existence of any pending legislative, administrative or judicial proceedings that might affect their decision regarding participation in the auction. Participants in Auction 77 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements as well as other applicable Federal, state, and local laws.

10. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction 77. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

11. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses being offered.

iv. Use of Integrated Spectrum Auction System

12. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 77 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with Auction 77. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

C. Auction Specifics

i. Auction 77 Start Date

13. Bidding in Auction 77 will be held on Tuesday, June 17, 2008. Unless otherwise announced, the licenses to provide cellular service in the two different unserved areas will be offered at the same time.

14. The start and finish time of bidding will be announced by public notice approximately ten days before the start of the auction.

ii. Bidding Methodology

15. The bidding methodology for Auction 77 will be single-round sealed-bid. The single-round sealed-bid format will consist of one bidding round followed by the release of auction results. In the event of tied bids in an MX group, the Commission will post an announcement in the FCC Auction System to announce an additional round of bidding for that MX group. The Commission will conduct Auction 77 over the Internet using the FCC Auction System, and telephonic bidding will be available as well. All telephone calls are recorded.

iii. Pre-Auction Dates and Deadlines

16. The following dates and deadlines apply:

Auction 77 Short-Form Application (FCC Form 175) Filing Window Opens—May 14, 2008; 9 a.m. ET.

Auction 77 Short-Form Application (FCC Form 175) Filing Window Deadline—May 16, 2008; prior to 6 p.m. ET.

Auction 77 Upfront Payment Deadline (via wire transfer)—June 2, 2008; 6 p.m. ET.

Auction 77 Begins—June 17, 2008.

iv. Requirements for Participation in Auction 77

17. Those wishing to participate in Auction 77 must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. ET, May 16, 2008, following the electronic filing procedures set forth in Attachment B of the *Auction 77 Procedures Public Notice;* (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, June 2, 2008, following the procedures and instructions set forth in Attachment C of the *Auction 77 Procedures Public Notice;* and (3) comply with all provisions outlined in the *Auction 77 Procedures Public Notice* and applicable Commission rules.

II. Short-Form Application (FCC Form 175) Requirements

18. Entities seeking licenses available in Auction 77 must file a short-form application (FCC Form 175) electronically following the procedures prescribed in Attachment B of the *Auction 77 Procedures Public Notice.* Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning on the deadline for filing. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment B of the *Auction 77 Procedures Public Notice* carefully and should consult the Commission's rules to ensure that all the information that is required under the Commission's rules is included with their short-form applications.

19. An entity may not submit more than one short-form application for Auction 77. If a party submits multiple short-form applications for Auction 77, only one application will be accepted for filing.

20. Applicants also should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. License Selection

21. On its short-form application for Auction 77, an applicant must select the license for which it has filed a long-form application. Applicants will not be able to select the license for which they have not filed a long-form application.

22. Applicants will not be able to change their license selections after the short-form application filing deadline. Applicants interested in participating in Auction 77 must have selected license(s) available in the respective

auction by the short-form application deadline. Applicants must confirm their license selections before the deadline for submitting FCC Form 175. The FCC Auction System will not accept bids from an applicant on individual licenses that the applicant has not selected on its FCC Form 175.

B. Disclosure of Bidding Arrangements

23. Applicants will be required to identify in their short-form application for Auction 77 all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned in Auction 77, including any agreements relating to post-auction market structure.

24. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application to participate in Auction 77 regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

C. Ownership Disclosure Requirements

25. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing the short-form application for Auction 77, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112 of the Commission's rules. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

D. Provisions Regarding Former and Current Defaulters

26. Each applicant must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must certify under penalty of perjury on its short-form application that, as of the short-form filing deadline, the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, are not in default on any payment for Commission licenses (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution. These statements and certifications are prerequisites to submitting an application in the FCC Auction System.

27. Former defaulters—i.e., applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction 77, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

28. Current defaulters—i.e., applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that are in default on any payment for any Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications—are not eligible to bid in Auction 77.

29. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process.

E. Minor Modifications to Short-Form Applications (FCC Form 175)

30. Applicants are not permitted to make major modifications to their short-form applications (e.g., change their license selections, change control of the applicant, or change the certifying official) after the short-form application deadline. Thus, any change in control of an applicant, resulting from a merger for example, will be considered a major modification to the applicant's FCC Form 175, which will consequently be dismissed.

31. Applicants are, however, permitted to make only minor changes to their FCC Form 175 after the short-form application deadline. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

32. The *Auction 77 Procedures Public Notice* also provides information on the mechanics of making permissible minor changes to its short-form application.

F. Maintaining Current Information in Short-Form Applications (FCC Form 175)

33. 47 CFR 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. If an amendment reporting substantial changes is a major amendment as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.

34. The *Auction 77 Procedures Public Notice* contains instructions on how to make minor changes to their short-form applications.

III. Pre-Auction Procedures

A. Short-Form Applications (FCC Form 175)—Due Prior to 6 p.m. ET on May 16, 2008

35. In order to be eligible to bid in Auction 77, applicants must first follow the procedures set forth in Attachment B of the *Auction 77 Procedures Public Notice* to submit an FCC Form 175 application electronically via the FCC Auction System. This application must be received at the Commission prior to 6 p.m. ET on May 16, 2008. Late applications will not be accepted. There is no application fee required when filing an FCC Form 175, but an applicant must submit an upfront payment to be eligible to bid.

36. Applications may generally be filed at any time beginning at 9 a.m. ET on May 14, 2008, and the filing window will close prior to 6 p.m. ET on May 16, 2008. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline

on May 16, 2008. Applicants must always click on the SUBMIT button on the Certify & Submit screen of the electronic form to successfully submit or modify their FCC Form 175.

Application Processing and Minor Corrections

37. After the deadline for filing short-form applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying: (1) Those applications that are complete; (2) those applications rejected; and (3) those applications that are incomplete because of minor defects that may be corrected, and the deadline for resubmitting corrected applications.

B. Upfront Payments—Due June 2, 2008

38. In order to be eligible to bid in Auction 77, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. All upfront payments for Auction 77 must be received in the proper account at Mellon Bank by 6 p.m. ET on June 2, 2008. The Auction *77 Procedures Public Notice* contains instructions for using wire transfers to meet the upfront payment requirements.

39. Please note that: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction 77 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments; and (4) failure to deliver the upfront payment as instructed by the June 2, 2008, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. FCC Form 159

40. A completed FCC Remittance Advice Form (FCC Form 159, Revised 7/05) must be sent by facsimile to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 7/05) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to this Public Notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

ii. Upfront Payments and Bidding Eligibility

41. Applicants must make the required upfront payment in order to be able to bid in Auction 77.

42. In the *Auction 77 Comment Public Notice,* the Bureau proposed to set the upfront payment at $500 for each applicant. The Bureau did not receive any comments in response to the proposed upfront payments, or on its proposal that the upfront payment amount would determine a bidder's eligibility to participate in the auction. Therefore, the Bureau adopts the upfront payment for each applicant in Auction 77 as proposed and set forth in Attachment A of the *Auction 77 Procedures Public Notice.*

43. Former defaulters must calculate their upfront payment by multiplying the upfront payment amount by 1.5.

C. Auction Registration

44. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for Auction 77. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing, are complete and have timely submitted upfront payments sufficient to make them eligible to bid in Auction 77.

45. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

46. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, June 12, 2008, should call (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

IV. Auction 77

47. Auction 77 will be held on Tuesday, June 17, 2008. The start and finish time of the bidding round will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

A. Auction 77 Structure

i. Single-Round Sealed-Bid Auction

48. In the *Auction 77 Comment Public Notice,* the Bureau proposed to award the licenses included in Auction 77 using a single-round sealed-bid auction. A commenter supports the Bureau's proposal. The Bureau concludes that it is operationally feasible and appropriate to auction the cellular unserved service area licenses through a single-round sealed-bid auction.

ii. Auction Delay, Suspension, or Cancellation

49. In the *Auction 77 Comment Public Notice,* the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau received no comment on this issue.

50. Because the Bureau's approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed rules regarding auction delay, suspension, or cancellation.

B. Bidding Procedures

i. Round Structure

51. The Commission will conduct Auction 77 over the Internet, and telephonic bidding will be available as well. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders. The start and finish time of the bidding round will be announced in the public notice listing qualified bidders, which is released approximately 10 days before the start of the auction.

52. The single-round sealed-bid format will consist of one bidding round followed by the release of auction results. In the event of tied bids in an MX group, the Commission will post an announcement in the FCC Auction System to announce an additional round of bidding for that MX group. The commenter supports the proposal.

ii. Reserve Price or Minimum Bid

53. In the *Auction 77 Comment Public Notice,* the Bureau proposed to set the minimum bid at $500 for each of the two cellular unserved areas in Auction

77. The Bureau received no comments concerning this proposal. Therefore, the minimum bid for each of the two cellular unserved areas is set at $500 and is set forth in Attachment A of the *Auction 77 Procedures Public Notice.*

iii. Bid Amounts

54. Bidders will be able to place a bid in any whole dollar amount equal to or greater than the minimum bid for the cellular unserved area for which they applied.

55. Bidders are also cautioned that they should type their bid amounts carefully because, even if mistakenly or erroneously made, bidders still assume a binding obligation to pay their full bid amount.

iv. Bid Removal and Bid Withdrawal

56. *Bid Removal.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. Once a round closes, a bidder may no longer remove a bid. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. This procedure will enhance bidder flexibility during the auction, and therefore the Bureau adopts these proposals for Auction 77.

57. *Bid Withdrawal.* With respect to bid withdrawals, we proposed not to allow any bid withdrawals (withdrawal of provisionally winning bids from previous rounds) in Auction 77. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposal.

v. Auction Results

58. At the end of the bidding round, the winning bid for each cellular unserved area will be determined based on the highest bid amount received for the area. Bids placed during a round will be made public at the conclusion of that round. Specifically, after a round closes, the Bureau will compile reports of all bids placed and which bidders made them, the random numbers assigned to each bid (for tie-breaking purposes), new minimum acceptable bid amounts, and will post the reports for public access.

59. In the event of identical high bid amounts being submitted in a cellular unserved area (i.e., tied bids), the Bureau proposed to allow an additional bidding round or rounds, if necessary, for bidders to submit higher bids for the cellular unserved area with tied bids. The minimum bid for the next round will be calculated by rounding the tied bid amount up to the next $100. The license(s) will be awarded to the bidder submitting the highest bid in the additional round. If no bids are placed in the additional round, the license(s) will be awarded to the bidder that placed the tied bid that was assigned the higher random number (a random number having previously been assigned to each bid). If there is a tie for the winning bid in the additional round, the FCC may add another tie-breaking round or rounds, or stop the auction without awarding the license(s).

60. The Commission will announce the schedule for a subsequent round via an announcement in the FCC Auction System, concurrent with the release of round results. A commenter stated that it had no objection to the proposal to conduct an additional round in the event of tied bids. The Bureau believes that this approach is efficient and therefore adopts its proposal.

61. Consistent with past practice, the Bureau will announce the winning bid shortly after the close of the auction, and the amounts of all bids submitted during the auction will be made publicly available.

vi. Auction Announcements

62. The Commission will use auction announcements to announce items such as the schedule for a subsequent round in the event of tied bids on a license. All auction announcements will be available by clicking a link in the FCC Auction System.

V. Post-Auction Procedures

A. Down Payments

63. After bidding has ended in Auction 77, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments and final payments due.

64. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for licenses offered in Auction 77 to 20 percent of the net amount of its winning bids.

B. Final Payments

65. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the applicable deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

66. Within an MX group, the previously filed long-form application(s) (FCC Form 601) of the unsuccessful bidder will be dismissed following the grant of the winning bidder's license(s).

D. Ownership Disclosure Information Report (FCC Form 602)

67. Winning bidders must ensure that ownership information reported on FCC Form 602 is accurate and up to date. Further instructions will be provided to winning bidders at the close of the auction.

E. Default and Disqualification

68. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering substantially the same spectrum and geographic area is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

69. The percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend in part on the auction format ultimately chosen for a particular auction, if the license is subsequently reauctioned. In package auctions without package bidding, the amount can range from three percent up to a maximum of twenty percent, established in advance of the auction and based on the nature of the service and the inventory of the licenses being offered.

70. As previously noted by the Commission, defaults weaken the integrity of the auction process and impede the deployment of service to the public, and an additional default payment of more than three percent will be more effective in deterring defaults. Accordingly, in the *Auction 77 Comment Public Notice,* the Bureau proposed to set the additional default payment for the auction of the two cellular unserved areas licenses at twenty percent of the applicable bid. Since Auction 77 is being conducted strictly to resolve conflicts between entities in two cellular unserved areas that were unable to resolve their mutually exclusive applications, a default by the winning bidder would suggest that the bidder has not made a good-faith effort to abide by FCC license assignment procedures, thereby weakening the integrity of the auction process. The Bureau proposed to impose the maximum payment percentage to deter such behavior. The Bureau

received no comments on this proposal. Therefore, the Bureau adopts its proposal.

71. Finally, the Bureau notes that in the event of a default, the Commission may reauction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

F. Refund of Remaining Upfront Payment Balance

72. All upfront payments submitted by applicants in Auction 77 may be available to be refunded after the conclusion of the auction; subject to any required payments (i.e. winning bid, deficiency, and/or default payments). All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions Spectrum and Access Division, WTB.

[FR Doc. E8–10381 Filed 5–7–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–0106]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Preventive Health and Health Services Block Grant—Revision—National Center for Chronic Disease and Public Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Preventive Health and Health Services Block Grant program provides awardees with their primary source of flexible funding for health promotion and disease prevention programs. Sixty-one awardees (50 states, the District of Columbia, two American Indian Tribes, and eight U.S. territories) currently receive block grants from CDC in order to address locally defined public health needs in innovative ways. Block Grants allow awardees to prioritize the use of funds to fill funding gaps in programs that deal with leading causes of death and disability, as well as the ability to respond rapidly to emerging health issues.

CDC currently collects standardized application and performance information from each awardee through an electronic Grant Application and Reporting System (GARS). In response to measures described in the Government Performance Results Act, CDC proposes to replace GARS with a web-based Block Grant Management Information System (BG-MIS) that will collect information by the areas described in Healthy People 2010 and improve adherence to its goals. Concurrent with conversion to the BG-MIS, minor changes to the questions and response options, and other features, will be implemented to reduce respondent burden and support the Healthy People 2010 framework. These features include increased utilization of pre-defined response options, start and end dates, the SMART (Specific, Measurable, Achievable, Realistic, and Time-based) format for describing objectives, and identification of Evidence Based Guidelines and Best Practices used as the basis for public health programs and interventions. In addition, a Compliance Review section has been added to provide each awardee with general information regarding the Compliance Review process and specific information pertaining to its past reviews.

Information will be collected twice per year. Each awardee will submit an annual Work Plan outlining awardee-specific health outcome objectives and an Annual Report describing progress toward its goals.

There are no costs to respondents except their time. The estimated annualized burden hours are 3,355.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
PHHS Block Grant Awardees	Work Plan	61	1	25
	Annual Report	61	1	30

Dated: April 30, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–10215 Filed 5–7–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0063] (formerly Docket No. 2008N–0016)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Exports: Notification and Recordkeeping Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 9, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0482. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Exports: Notification and Recordkeeping Requirements—(OMB Control Number 0910–0482)—Extension

The respondents to this information collection are exporters who have notified FDA of their intent to export unapproved products that may not be sold or marketed in the United States as allowed under section 801(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(e)). In general, the notification identifies the product being exported (e.g. name, description, and in some cases, country of destination) and specifies where the notification should be sent. These notifications are sent only for an initial export; subsequent exports of the same product to the same destination (or, in the case of certain countries identified in section 802(b) of the act (21 U.S.C. 382(b)), to any of those countries would not result in a notification to FDA.

The recordkeepers to this information collection are exporters who export human drugs, biologics, devices, animal drugs, foods and cosmetics that may not be sold in the United States to maintain records demonstrating their compliance with the requirements in section 801(e)(1) of the act.

The total burden estimate of 39,120 is based on the number of notifications received by the relevant FDA centers in fiscal year 2007, or the last year the figures were available.

In the **Federal Register** of January 28, 2008 (73 FR 4874), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1.101(d) and (e)	400	3	1,200	15	18,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
1.101(b) and (c)	320	3	960	22	21,120

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 1, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–10204 Filed 5–7–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 16, 2008, from 8 a.m. to 5 p.m.

Location: Food and Drug Administration, Center for Drug Evaluation and Research Advisory

Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Sohail Mosaddegh, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *sohail.mosaddegh@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512530. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 022–171, doripenem powder for reconstitution and intravenous administration, Johnson and Johnson Pharmaceutical Research and Development, LLC, proposed for the treatment of nosocomial pneumonia, including ventilator-associated pneumonia.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 1, 2008. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 23, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 24, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Sohail Mosaddegh at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 29, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–10307 Filed 5–7–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 30, 2008, from 8 a.m. to 12:30 p.m.

Location: Hyatt Regency McCormick Place, Regency Ballroom, 2233 South Martin L. King Dr. , Chicago, IL. The hotel phone number is 312–567–1234.

Contact Person: Nicole Vesely, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–6793, fax: 301–827–6776, e-mail: *nicole.vesely@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the new drug application (NDA) 022–291, proposed trade name PROMACTA (eltrombopag olamine), by GlaxoSmithKline, proposed indication for the short-term treatment of previously-treated patients with chronic idiopathic thrombocytopenic purpura (ITP) to increase platelet counts and reduce or prevent bleeding.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 21, 2008. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11:30 a.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 15, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to

speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 16, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nicole Vesely at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 10, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–10258 Filed 5–7–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Board to the Food and Drug Administration; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration (Science Board).

General Function of the Committee: The Science Board provides advice primarily to the Commissioner of Food and Drugs and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the Science Board provides advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science, on formulating an appropriate research agenda, and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

Date and Time: The meeting will be held on Friday, May 30, 2008, from 8 a.m. to 3:30 p.m.

Location: Washington DC North/Gaithersburg Hilton, 620 Perry Pkwy., Gaithersburg, MD 20877, Salons A, B, and C.

Contact Person: Carlos Peña, Office of the Commissioner, Food and Drug Administration (HF–33), 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687, *carlos.peña@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512603. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The Science Board will hear about and discuss a subcommittee review of the National Center for Toxicological Research and Office of Regulatory Affairs. The Science Board will discuss keeping pace with technical and scientific evolutions in the fields of regulatory science. The Science Board will also hear about and discuss updates on a subcommittee review of the agency's science programs and infrastructure from the June 14, 2007, and December 3, 2007, Science Board meetings.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 23, 2008. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 15, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 16, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Dr. Carlos Peña at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 1, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–10257 Filed 5–7–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, NIH.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, NIH.

Date: June 6, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: Among the topics proposed for discussion are: (1) NIH Director's Report; (2) NIH Director's Council of Public Representatives Liaison Report; (3) Peer Review; (4) Report from the Working Group on Participant and Data Protection for Gene-Wide Association Studies; and (5) Report from NIH Blue Ribbon Panel on the National Emerging Infectious Disease Lab at Boston University Medical Center.

Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Penny W. Burgoon, PhD, Senior Assistant to the Deputy Director, Office of the Director, National Institutes of Health, 1 Center Drive, Building 1, Room 114, Bethesda, MD 20892, 301–451–5870, *burgoonp@od.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/about/director/acd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: April 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9870 Filed 5–7–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflicts: Visual and Cognitive Neuroscience.

Date: May 20–21, 2008.

Time: 6 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Taste.

Date: May 27, 2008.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Pain.

Date: May 28–29, 2008.

Time: 8 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Development and Regeneration.

Date: June 4–5, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Rajiv Kumar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurodevelopment and Synaptic Plasticity.

Date: June 4–5, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Carol Hamelink, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040H, MSC 7850, Bethesda, MD 20892, (301) 451–1328, *hamelinc@csrnih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, LCMI Member Conflicts.

Date: June 4, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2159, MSC 7818, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cell Death in Neurodegeneration.

Date: June 5–6, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Jerry L. Taylor, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301–435–1175, *taylorje@csr.nih.gov*.

Name of Committee: Digestive Sciences Integrated Review Group, Hepatobiliary Pathophysiology Study Section.

Date: June 12–13, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Express Hotel and Suites, Fisherman's Wharf, 550 North Point Street, San Francisco, CA 94133.

Contact Person: Rass M. Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Biobehavioral Regulation, Learning and Ethology Study Section.

Date: June 12–13, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbicsr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, National Study of Disability Trends and Dynamics (U01).

Date: June 13, 2008.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel Chicago, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Jose Fernando Arena, PhD, M.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–435–1735, *arenaj@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative Applications In Child Psychopathology.

Date: June 13, 2008.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bolger Center Hotel, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov*.

Name of Committee: Hematology Integrated Review Group, Hemostasis and Thrombosis Study Section.

Date: June 19, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Bukhtiar H. Shah, PhD, D.V.M., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive II, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 435–1233, *shahb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuropharmacology SBIR.

Date: June 19, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Aidan Hampson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7850, Bethesda, MD 20892, (301) 435–0634, *hampson@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: GMPB.

Date: June 19, 2008.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dental and Enamel: Developmental Biology.

Date: June 20, 2008.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, 301–451–1327, *tthyagar@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Infectious Agent Detection/Diagnosis, Sterilization/Disinfection and Bioremediation.

Date: June 23, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692, (301) 435–1149, *elzaataf@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, High End NMR.

Date: June 25–26, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Nitsa Rosenzweig, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, BST–Q Meeting.

Date: June 25–26, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: George W. Chacko, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7849, Bethesda, MD 20892, 301–435–1245, *chackoge@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Oral, Dental and Craniofacial Sciences.

Date: June 25, 2008.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: J. Terrell Hoffeld, DDS, PhD, USPHS Dental Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781, *th88q@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Biology and Therapy Pilot Studies.

Date: June 26–27, 2008.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Joanna M. Watson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, 301–435–1048, *watsonjo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

Date: June 26–27, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Vilen A. Movsesyan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR: Risk Prevention and Health Behavior Across the Lifespan.

Date: June 26–27, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Palomar Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Claire E. Gutkin, PhD, MPH., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health Behavior and Risk Prevention Fellowships.

Date: June 27, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Gabriel B. Fosu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Sciences Small Business Activities.

Date: June 30–July 1, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Mark Hopkins, 999 California Street, San Francisco, CA 94108.

Contact Person: Lawrence E. Boerboom, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vascular Biology.

Date: June 30, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, CA 94133.

Contact Person: Bukhtiar H. Shah, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095J, MSC 7822, Bethesda, MD 20892, (301) 435–1233, *shahb@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9865 Filed 5–7–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: June 19, 2008.

Closed: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Grand Hyatt Washington, 1000 H Street, NW., Washington, DC 20001.

Open: 1:30 p.m. to Adjournment.

Agenda: Following opening remarks by the Director, NEI there will be presentations by the staff of the Institute and discussions concerning Institute programs.

Place: Grand Hyatt Washington, 1000 H Street, NW., Washington, DC 20001.

Contact Person: Lore Anne McNicol, PhD, Director Division of Extramural Research, National Eye Institute, National Institutes of Health, Bethesda, MD 20892, (301) 451–2020.

Information is also available on the Institute's/Center's home page: *http://www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9864 Filed 5–7–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Primate Tissue Bank.

Date: May 22, 2008.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging Gateway Building, 7201 Wisconsin Avenue, Suite, 2C–212, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Primate Aging Database.

Date: May 29, 2008.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–9868 Filed 5–7–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0263]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0011

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0011, Applications for Private Aids to Navigation and for Class I Private Aids to Navigation on Artificial Islands/Fixed Structures. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before July 7, 2008.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2008–0263], please use only one of the following means:

(1) Online: *http://www.regulations.gov*.

(2) Mail: Docket Management Facility (DMF) (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) Hand deliver between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: 202–493–2251.

The DMF 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://www.regulations.gov*.

A copy of the complete ICR is available through this docket on the Internet at *http://www.regulations.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:

Public Participation and Request for Comments

The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary for 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.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–0263], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF 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. We 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: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Enter the docket number for this notice [USCG–2008–0263] in the Search box, and click ''Go >>.'' You may also visit the DMF 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 by visiting *http://DocketsInfo.dot.gov*.

Information Collection Request

Title: Applications for Private Aids to Navigation and for Class I Private Aids to Navigation on Artificial Islands/Fixed Structures.

OMB Control Number: 1625–0011.

Summary: Under provisions of 14 U.S.C. 633 and 33 U.S.C. 409, the Secretary of the Department of Homeland Security may prescribe regulations for the marking of sunken vessels. These requirements for notifying the Coast Guard are set forth in 33 CFR 64.11. The information collected for the rule can only be obtained from the owners of sunken vessels. The information collection requirements for private aids to navigation and aids to navigation on artificial islands/fixed structures are contained in 33 CFR 66.01–5 and 67.35–5, respectively.

Need: The information on these private aid applications (CG Forms 2554 and 4143) provides the Coast Guard with vital information about private aids to navigation and is essential for safe marine navigation. These forms are required under 33 CFR parts 66 and 67. The information is processed to ensure the private aid is in compliance with current regulations. Additionally, these forms provide the Coast Guard with

information which is distributed to the public to advise of new or changes to private aids to navigation.

Respondents: Owners of private aids to navigation.

Frequency: On occasion.

Burden Estimate: The estimated burden remains 3,000 hours a year.

Dated: April 28, 2006.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–10265 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0244]

Information Collection Request to Office of Management and Budget; OMB Control Numbers: 1625–0081, and 1625–0083

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) and Analyses to the Office of Management and Budget (OMB) requesting an extension of their approval for the following collections of information: (1) 1625–0081, Alternate Compliance Program and; (2) 1625–0083, Operational Measures for Existing Tank Vessels without Double Hulls. Before submitting these ICRs to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before July 7, 2008.

ADDRESSES: To avoid duplicate submissions to the docket [2008–0244], please use only one of the following means:

(1) Online: *http://www.regulations.gov.*

(2) Mail: Docket Management Facility (DMF) (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) Hand deliver between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: 202–493–2251.

The DMF 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://www.regulations.gov.*

Copies of the completed ICRs are available through this docket on the Internet at *http://www.regulations.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:

Public Participation and Request for Comments

The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary for 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.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–0244], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF 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. We 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: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Enter the docket number [USCG–2008–0244] in the Search box, and click, ''Go>>.'' You may also visit the DMF 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 by visiting *http://DocketsInfo.dot.gov.*

Information Collection Requests

1. *Title:* Alternate Compliance Program.

OMB Control Number: 1625–0081.

Summary: This information is used by the Coast Guard to assess vessels participating in the voluntary Alternate Compliance Program (ACP) before issuance of a Certificate of Inspection.

Need: U.S.C. 46 3306 and 3316 authorize the Coast Guard to establish vessel inspection regulations and inspection alternatives. 46 CFR part 8 prescribes the Coast Guard regulations for recognizing classification societies and enrollment of U.S.-flag vessels in ACP.

Forms: CG–3752.

Respondents: Recognized classification societies.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 164 hours to 212 hours a year.

2. *Title:* Operational Measures for Existing Tank Vessels without Double Hulls.

OMB Control Number: 1625–0083.

Summary: The information is needed to ensure compliance with U.S. regulations regarding operational measures for certain tank vessels while operating in the U.S. waters.

Need: 46 U.S.C. 3703 and 3703a authorize the Coast Guard to establish regulations for tank vessels to promote the safety of life for increased protection against hazards to life and property, for navigation and vessel safety, and for enhanced protection of the marine environment. 33 CFR part 157 and subparts G, H and I contain Coast Guard regulations regarding operational measures for certain tank vessels without double hulls.

Forms: None.

Respondents: Owners, operators and masters of certain tank vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 6,807 hours to 3,474 hours a year.

Dated: April 28, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–10267 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0251]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0010

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0010, Defect/Noncompliance Report and Campaign Update Report. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before July 7, 2008.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2008–0251], please use only one of the following means:

(1) Online: *http://www.regulations.gov.*

(2) Mail: Docket Management Facility (DMF) (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) Hand deliver between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: 202–493–2251.

The DMF 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://www.regulations.gov.*

A copy of the complete ICR is available through this docket on the Internet at *http://www.regulations.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.

Public Participation and Request for Comments

The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary for 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.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–0251], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF 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. We 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: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Enter the docket number for this notice [USCG–2008–0251] in the Search box, and click ''Go >>.'' You may also visit the DMF 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 by visiting *http://DocketsInfo.dot.gov.*

Information Collection Request

Title: Defect/Noncompliance Report and Campaign Update Report.

OMB Control Number: 1625–0010.

Summary: Manufacturers whose products contain defects that create a substantial risk of personal injury to the public or fail to comply with an applicable Coast Guard safety standard are required to conduct defect notification and recall campaigns in accordance with 46 U.S.C. 4310. Regulations in 33 CFR 179 require manufacturers to submit certain reports to the Coast Guard concerning progress made in notifying owners and making repairs.

Need: Under 46 U.S.C. 4310(d) and (e); and 33 CFR 179.13 and 179.15, the manufacturer shall provide the Commandant of the Coast Guard with an initial report consisting of certain information about the defect notification and recall campaign being conducted and follow up reports describing progress. Upon receipt of information from a manufacturer indicating the initiation of a recall, the Recreational Boating Product Assurance Branch assigns a recall campaign number, and sends the manufacturer CG Forms CG–4917 and CG–4918 for supplying the information.

Respondents: Manufacturers of boats and certain items of ''designated'' associated equipment (inboard engines, outboard motors, or sterndrive engines).

Frequency: Quarterly.

Burden Estimate: The estimated burden has decreased from 315 to 291 hours annually.

Dated: April 28, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–10268 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0307]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee will meet in New Orleans to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. This meeting will be open to the public.

DATES: The Committee will meet on Thursday, June 26, 2008 from 9 a.m. to 12 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before June 12, 2008. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before June 12, 2008.

ADDRESSES: The Committee will meet at the New Orleans Yacht Club, 403 North Roadway, West End, New Orleans, LA 70124. Send written material and requests to make oral presentations to Sector Commander, Designated Federal Officer (DFO) of Lower Mississippi River Waterway Safety Advisory Committee, USCG Sector New Orleans, ATTN: Waterways Management, 1615 Poydras St., New Orleans, LA 70112.

FOR FURTHER INFORMATION CONTACT: LT Tonya Lim, Assistant to DFO of Lower Mississippi River Waterway Safety Advisory Committee, telephone 504–565–5108.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of Meeting

The agenda for the June 26, 2008 Committee meeting is as follows:

(1) Introduction of committee members.

(2) Opening Remarks.

(3) Approval of the March 20, 2008 minutes.

(4) Old Business.

(a) Captain of the Port status report.

(b) VTS update report.

(c) Subcommittee/Working Groups update reports.

(5) New Business

(6) Adjournment

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at a meeting, please notify the DFO no later than June 12, 2008. Written material for distribution at a meeting should reach the Coast Guard no later than June 12, 2008. If you would like a copy of your material distributed to each member of the committee in advance of a meeting, please submit 25 copies to the DFO no later than June 12, 2008.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the DFO as soon as possible.

Dated: April 17, 2008.

J.H. Korn,

Captain, U.S. Coast Guard Commander, 8th Coast Guard District, Acting.

[FR Doc. E8–10260 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3283–EM]

Illinois; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Illinois (FEMA–3283–EM), dated March 13, 2008, and related determinations.

EFFECTIVE DATE: April 30, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Illinois is hereby amended to include the following area among those affected by the event for which the President declared a state of emergency on March 13, 2008.

Ogle County for emergency protective measures (Category B), including snow removal, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially

Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–10332 Filed 5–7–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1751–DR]

Arkansas; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA–1751–DR), dated March 26, 2008, and related determinations.

EFFECTIVE DATE: April 28, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 28, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–10331 Filed 5–7–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1751–DR]

Arkansas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–1751–DR), dated March 26, 2008, and related determinations.

DATES: *Effective Date:* May 1, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 26, 2008.

Desha and Poinsett Counties for Individual Assistance.

Arkansas and Van Buren Counties for Individual Assistance (already designated for Public Assistance.)

Hempstead County for Individual Assistance and Public Assistance.

Benton County for Public Assistance (already designated for Individual Assistance and emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

Miller and Sebastian Counties for Public Assistance (already designated for Individual Assistance.)

Nevada County for Public Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–10342 Filed 5–7–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–884, Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form G–884, Request for the Return of Original Document(s); OMB Control No. 1615–0100.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 4, 2008, at 73 FR 11654, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 9, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0100. Written comments

and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate 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;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Request for the Return of Original Document(s).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–884. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information provided will be used by the USCIS to determine whether a person is eligible to obtain original document(s) contained in an alien file.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 7,500 responses at 30 minutes (0.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,750 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: May 5, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–10311 Filed 5–7–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–243, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–243, Application for Removal; OMB Control No. 1615–0019.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 3, 2008, at 73 FR 11429, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 9, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0019 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Removal.

(3) *Agency form number, if any, and the applicable Department of Homeland Security component sponsoring the collection:* Form I–243. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The information provided on this form allows the USCIS to determine eligibility for an applicant's request for removal from the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 41 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: May 5, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–10314 Filed 5–7–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–4, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form N–4, Monthly Report Naturalization Papers; OMB Control Number 1615–0051.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 3, 2008, at 73 FR 11430, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 9, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0051 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Monthly Report Naturalization Papers.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–4; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State or local Governments. Section 339 of the Immigration and Nationality Act (Act) requires that the clerk of each court that administers the oath of allegiance notify U.S. Citizenship and Immigration Services (USCIS) of all persons to whom the oath of allegiance for naturalization is administered, within 30 days after the close of the month in which the oath was administered. This form provides a format for submitting a list of those persons to USCIS and provides accountability for the delivery of the certificates of naturalization as required under that section of law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 160 respondents at 12 responses annually at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 960 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: May 5, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–10315 Filed 5–7–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

Name	License #	Issuing port
International Cargo Systems, Inc.	15594	Boston.
Florida National Brokers, Inc.	09082	Miami.

Dated: April 29, 2008.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E8–10319 Filed 5–7–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of

Federal Regulations at section 111.51(a), the following individual Customs broker license and any and all permits have been cancelled due to the death of the broker:

Name	License #	Port name
Harris M. Steward.	09974	Mobile.

Dated: April 29, 2008.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E8–10318 Filed 5–7–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Issuance of Final Determination Concerning Electric Mini-Trucks

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that the Bureau of Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain electric mini-trucks to be offered to the United States Government under an undesignated government procurement contract. Based on the facts presented, the final determination found that the United States is the country of origin of the electric mini-trucks for purposes of U.S. Government procurement.

DATES: The final determination was issued on May 2, 2008. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within June 9, 2008.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202–572–8740).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 2, 2008, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain electric mini-trucks to be offered to the United States Government under an undesignated government procurement contract. The CBP ruling number is H022169. This final determination was issued at the request of Global Electric Motorcars under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18).

The final determination concluded that, based upon the facts presented, assembly in the United States of an imported mini-truck glider with a substantial number of components of U.S. and foreign origin substantially transforms the imported mini-truck glider into a product of the United States. Therefore, the country of origin of the resulting electric mini-truck is the United States for purposes of U.S. Government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: May 2, 2008.

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

H022169

May 2, 2008

OT:RR:CTF:VS H022169 GG

CATEGORY: Marking

Mr. Lawrence M. Friedman & Ms. Nicole A. Kehoskie
Barnes, Richardson & Colburn
1420 New York Avenue, NW.,
7th Floor
Washington, DC 20005

RE: U.S. Government Procurement; Final Determination; country of origin of electric mini-trucks; substantial transformation; 19 CFR part 177

Dear Mr. Friedman & Ms. Kehoskie:

This is in response to your letter dated December 20, 2007, requesting a final determination on behalf of Global Electric Motorcars (''GEM'') pursuant to subpart B of part 177, Customs and Border Protection (''CBP'') Regulations (19 C.F.R. § 177.21 *et seq.*). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (codified at 19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of electric mini-trucks. We note that GEM is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

GEMS imports a mini-truck glider from India. The glider consists of a frame, finished cab, axles, and wheels in one unit. The glider—so called because it can be rolled much like a dolly or scooter—does not include the normal critical components of an internal-combustion vehicle such as an engine, transmission, drive shaft, exhaust system, fuel system, or rear axle differential. It also does not have the critical components of an electric vehicle including the motor, battery pack, differential, or electronics necessary to control the electric vehicle. The brake assembly included with the glider will be removed and replaced with another after importation. The truck bed will be imported separate from the glider and installed after importation and upfitting as an electric vehicle.

The glider is claimed to be non-functional and not intended for sale to retail motor vehicle purchasers in its imported state. Once in the United States, GEM manufactures an electric mini-truck from the glider and various other assemblies. GEM will fit the complete mini-truck with an electric motor to create an energy efficient, zero emissions mini-truck for sale to certain U.S. government agencies.

As noted above, the glider is imported from India. According to GEM's December 20, 2007 request, the glider is assembled with approximately 87 different component parts, 68 of which are of U.S. origin. In response to a request from this office of a more detailed breakdown of the components, GEM submitted a costed bill of materials with country of origin for elective drive conversion components. This indicates that U.S. components amount to approximately 51% of the total component cost. The U.S. assembly process will require eight work stations, details of which are as follows:

Station 0—The glider is unloaded, the wheels and tires are removed and the glider is put on the conveyor for assembly.

Station 1—The rear axle and brake assembly shipped with the glider are removed and replaced with one that is compatible with the electric function of

the truck. The replacement gear box and axles are of U.S. origin, while the replacement brakes are of Indian origin. The motor of Canadian origin is attached onto the rear axle/gear box/differential assembly of U.S. origin; the controller and charger of Canadian origin are also attached to the glider.

Station 2—The wiring harnesses of U.S. origin are integrated.

Station 3—The battery tray, batteries and cable of U.S. origin are assembled and incorporated.

Station 4—The electronic driver information display of U.S. origin is incorporated.

Station 5—The optional electric cab heater is installed.

Station 6—The wheels and tires are reinstalled.

Station 7—The fully assembled electric mini-truck is test run.

Station 8—The electric mini-truck is unloaded and inspected for precision of assembly and operation.

Quality control will occur at each of the eight work stations and at two more off-line stations.

ISSUE:

What is the country of origin of the electric mini-truck for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR § 25.403(c)(1). The Federal Procurement Regulations define ''U.S.-made end product'' as:

...an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR § 25.003.

Therefore, the question presented in this final determination is whether, as a result of the operations performed in the United States, the glider is substantially transformed into a product of the United States.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens* v. *United States,* 6 Ct. Int'l Trade 204, 573 F. Supp. 1149 (1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal Inc.* v. *United States,* 3 Ct. Int'l Trade 220, 542 F. Supp. 1026 (1982). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80–111, C.S.D. 85–25, and C.S.D. 90–97.

In order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed articles, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article's components, the extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, or use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

You assert that the electric motor (Canada), batteries (United States), charger (Canada), gear box (United States) and brakes (India) of the electric mini-truck form the heart of the mini-truck, and are all installed in the United States, changing the identity of the imported glider from a body into a self-propelled truck. These components allegedly provide the power source to the truck and enable it to carry out its intended use. Accordingly, it is argued, the U.S. components added and the assembly and testing performed in the U.S. are substantial.

GEM cites to several Headquarters rulings (''HQ'') to support its analysis. Specifically, it refers to HQ 558919, dated March 20, 1995; HQ 559887, dated October 3, 1996; and HQ 562502, dated November 8, 2002. We find HQ 558919 to be most analogous to the situation before us. There, CBP held that an extruder subassembly manufactured in England was substantially transformed in the United States when it was wired and combined with U.S. components (motor, electrical controls and extruder screw) to create a vertical extruder. In reaching that decision, CBP emphasized that the imported extruder subassembly and the U.S. components each had important attributes that were functionally necessary to the operation of the vertical extruder. Although HQ 558919 may be distinguished because the components that were assembled with the imported extruder subassembly were exclusively of U.S. origin, the two cases are similar to the extent that the imported articles (extruder subassembly and glider) and certain of the other components with which the imported articles are combined are ''functionally necessary'' to the operation of the finished product. In GEM's situation, the glider could not be used as an electric mini-truck on its own, but requires assembly with other, crucial components.

We also take note of HQ 731076, dated November 1, 1988, which addressed country of origin marking requirements for an automobile assembled in Taiwan with components from Japan, the United States, and Taiwan. The U.S. components consisted of an oxygen sensor, a catalytic converter and two roll over valves. The Taiwanese components included trim pad assemblies, head linings, front and rear seats, glass, instrument panels, arm rests, support rod, leaf springs, heat protectors, carpet, brake pipes, fuel pipes, cable harnesses, battery cables, axle assemblies, tension rods, battery and tires. Associated materials such as

glue, paint and coating were also procured in Taiwan. All other components were of Japanese origin. CBP held that the automobile components lost their separate identities and consequently were substantially transformed when they were assembled into vehicles in Taiwan. As a result, the country of origin of the imported automobiles for marking purposes was Taiwan, which precluded the various components from having to be separately marked with their original countries of origin. Customs indicated that it considered the manufacture of an automobile much more than a mere assembly operation and also considered it persuasive that the Taiwanese input to the final product contributed 38% of its value and took 33 hours to accomplish.

Based upon the totality of the circumstances and consistent with the CPB rulings cited above, we find that the imported mini-truck glider is substantially transformed as a result of the assembly operations performed in the United States to produce an electric mini-truck. Under the described assembly process, the imported glider loses its individual identity and becomes an integral part of a new article possessing a new name, character and use. Further, we note a substantial number of the components added to the imported glider are of U.S. origin. Therefore, based upon the specific facts, the country of origin of the electric mini-truck for purposes of U.S. Government procurement is the United States.

HOLDING:

The imported mini-truck gliders are substantially transformed when they are assembled in the United States with other imported and domestic components. As a result, the country of origin of the electric mini-trucks for purposes of U.S. Government procurement is the United States.

Notice of this final determination will be given in the Federal Register as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director Office of International Trade

[FR Doc. E8–10119 Filed 5–7–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5188–N–05]

Notice of Proposed Information Collection: Optional Relocation Payment Claim Forms; Comment Request

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 7, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Pamela Williams, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7234, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Janice Olu, Relocation Specialist, Relocation and Real Estate Division, DGHR, Department of Housing and Urban Development, 451 7th Street, SW., Room 7168, Washington, DC 20410; e-mail *Janice.P.Olu@hud.gov*, (202) 708–2684. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from HUD's Web site at *http://www.hud.gov/offices/cpd/library/relocation/forms.cfm* or from Ms. Olu.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Optional Relocation Payment Claim Forms.

OMB Control Number, if applicable: 2506–0016.

Description of the need for the information and proposed use: Application for displacement/relocation assistance for persons (families, individuals, businesses, nonprofit organizations and farms) displaced by, or temporarily relocated for, certain HUD programs. No changes are being made for Forms HUD–40054, HUD–40055, HUD–40056, HUD–40057, HUD–40058, HUD–40061, and HUD–40072.

A new form HUD–40030, ''Claim for Temporary Relocation Expenses (Residential Moves)'' has been added based on requests from HUD program participants for such a form to help them calculate payments. Revised government-wide URA regulations were published by the Department of Transportation on January 4, 2005 (effective February 3, 2005). Under the regulations, agencies are required to reimburse residential occupants of a dwelling who will not be permanently displaced for all reasonable out-of-pocket expenses incurred in connection with temporary relocation. These expenses may include moving expenses and increased housing costs during the temporary relocation (49 CFR 24.2(9)(ii)(D), Appendix A).

Agency form numbers, if applicable: HUD–40030, HUD–40054, HUD–40055, HUD–40056, HUD–40057, HUD–40058, HUD–40061, and HUD–40072.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response.

Status of the proposed information collection: Revision.

Number of Respondents: 37,800.

Frequency of Response: 3.

Hours per Response: .8.

Total Estimated Burden Hours: 91,000.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 25, 2008.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E8–10181 Filed 5–7–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–29]

Section 5(h) Homeownership Program for Public Housing: Submission of Plan and Reporting

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Public Housing Agencies (PHAs) maintain sales and financial records of their plan. Residents may apply to PHAs to purchase units.

DATES: *Comments Due Date: June 9, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0201) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Section 5(h) Homeownership Program for Public Housing: Submission of Plan and Reporting.

OMB Approval Number: 2577–0201.

Form Numbers: None.

Description of The Need for the Information and its Proposed Use:

Public Housing Agencies (PHAs) maintain sales and financial records of their plan. Residents may apply to PHAs to purchase units.

Frequency Of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	73	10		0.3		219

Total Estimated Burden Hours: 219.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 2, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–10333 Filed 5–7–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–28]

Loan Guarantee Recovery Fund Established Pursuant to the Church Arson Prevention Act of 1996

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Section 4 of the Church Arson Prevention Act of 1996 authorizes the Secretary to guarantee loans made to certain nonprofit organizations whose properties have been damaged by an act or acts of arson or terrorism.

DATES: *Comments Due Date: June 9, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0159) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to

be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Loan Guarantee Recovery Fund established pursuant to the Church Arson Prevention Act of 1996.

OMB Approval Number: 2506–0159.

Form Numbers: HUD–40076–LGA, SF–424.

Description of the Need for the Information and its Proposed Use: Section 4 of the Church Arson Prevention Act of 1996 authorizes the Secretary to guarantee loans made to certain nonprofit organizations whose properties have been damaged by an act or acts of arson or terrorism.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	71	5.95		3.76		1,592

Total Estimated Burden Hours: 1,592.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 2, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–10334 Filed 5–7–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

Privacy Act of 1974, as Amended; New System of Records

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a (Privacy Act), the Office of Federal Housing Enterprise Oversight (OFHEO) is issuing public notice of its intent to establish a new Privacy Act system of records. The new system is titled Litigation and Enforcement Information System (LEIS). The proposed system of records is necessary, as it will contain OFHEO generated records in connection with civil and administrative proceedings, including enforcement actions brought by or against OFHEO, and other proceedings in which OFHEO participates or has an interest in, and are relative to enforcement of the Safety and Soundness of Freddie Mac and Fannie Mae. OFHEO will use the LEIS to assess and maintain administrative enforcement actions under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) (12 U.S.C. 4501 *et seq.*) to defend itself and its interests in administrative or civil litigation relating to the Safety and Soundness Act and to make necessary referrals to other government agencies in the enforcement of Federal laws.

DATES: Written comments must be received by or before June 9, 2008. If no public comments are received, the proposed new system of records will become effective on June 17, 2008.

ADDRESSES: You may submit comments, identified by ''LEIS,'' by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://www.ofheo.gov.* Follow the instructions for submitting comments on the OFHEO Web site.
- *E-mail: RegComments@OFHEO.gov.* Please include ''LEIS'' in the subject line of the message.
- *Mail:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments ''LEIS,'' Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier:* The address for hand delivery/courier is: Alfred M. Pollard, General Counsel, Attention: Comments ''LEIS,'' Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 3 p.m.

See **SUPPLEMENTARY INFORMATION** for additional information on submission and posting of comments.

FOR FURTHER INFORMATION CONTACT: Mark D. Laponsky, Deputy General Counsel, telephone (202) 414–3832 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339 (TDD *Only*).

SUPPLEMENTARY INFORMATION:

Instructions: OFHEO seeks public comments on the proposed new system and will take all comments into consideration before issuing the final notice. Comments should include the agency name and the reference ''LEIS'' as well as your name and other contact information in the body of your comment. OFHEO further requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft® Word or in portable document format (PDF) on 3.5″ disk or CD–ROM.

Posting and Public Availability of Comments: All comments received will be posted without change to *http://www.regulations.gov,* as well as on the OFHEO Internet Web site at *http://www.ofheo.gov,* and will include any personal information provided. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

Introduction: This notice informs the public of OFHEO's proposal to establish and maintain a new system of records. This notice satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when there is an addition to the agency's system of records. The proposed new system of records is: OFHEO–11–Litigation and Enforcement Information System (LEIS).

Application of Privacy Act exemptions: It has been recognized by Congress that application of all requirements of the Act to certain categories of records may have an undesirable and often unacceptable effect upon agencies in the conduct of

necessary public business. Consequently, Congress established general exemptions and specific exemptions that could be used to exempt records from provisions of the Privacy Act. Congress also required that exempting records from provisions of the Privacy Act would require the head of an agency to publish a determination to exempt a record from the Act as a rule in accordance with the Administrative Procedures Act. Therefore, the Director of OFHEO has determined that certain records and information in the LEIS are exempt from certain requirements of the Privacy Act under 5 U.S.C. 552a(k)(2) as investigatory materials compiled for law enforcement purposes.

As required by 5 U.S.C. 552a(r) of the Privacy Act, and pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, OFHEO has submitted a report describing the new system of records covered by this notice to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget. The proposed new system of records described above is set forth in its entirety below.

Dated: April 28, 2008.

James B. Lockhart III,

Director.

OFHEO–11

SYSTEM NAME:

Litigation and Enforcement Information System.

SECURITY CLASSIFICATION:

Most records are not classified. However, in some cases, records of certain individuals, or portions of some records may be classified in the interest of national security.

SYSTEM LOCATION:

The LEIS is located in the Office of Federal Housing Enterprise Oversight, 1700 G Street, NW, Fourth Floor, Washington, DC 20552, and any alternate work site utilized by employees of the Office of Federal Housing Enterprise Oversight (OFHEO) or individuals assisting such employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The LEIS contains information about individuals in connection with civil, regulatory and administrative proceedings, including enforcement proceedings, brought by or against OFHEO, and other proceedings in which OFHEO participates or has an interest. The LEIS contains the names and other personally identifiable information of individuals who are parties to such proceedings and actual or potential witnesses in connection with such proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

The LEIS includes records generated or assembled in connection with civil, regulatory and administrative proceedings, including enforcement proceedings, other proceedings brought by or against OFHEO, and other proceedings in which OFHEO participates or has an interest. Such records may include but are not limited to intra- or inter-agency correspondence or memoranda; criminal referral reports; federal, state or local criminal law enforcement agency investigatory reports, intra-agency investigative reports; citizen accounts of events that may include allegations of wrongdoing; evidentiary material, transcripts of testimony and exhibits thereto, names of witnesses, discovery materials, and other documents generated or obtained in connection with the proceeding. The LEIS also includes records and documents generated in connection with court or administrative tribunal databases and electronic access services such as Public Access to Court Electronic Records (PACER). Note: Certain records contained in this system of records may be proprietary to other federal agencies. OFHEO will notify the proprietary agency of any request relating to such records and seek its guidance with respect to disposition. OFHEO may forward such a request to the proprietary agency for disposition under its regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Safety and Soundness Act (12 U.S.C. 4513(b); and 12 U.S.C. 4631–4636.)

PURPOSES:

Information in this system is used by OFHEO to support its regulatory, supervisory and enforcement functions, and to represent its interests in connection with civil, regulatory or administrative proceedings, including enforcement actions brought by or against OFHEO, or in which OFHEO participates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the conditions of disclosure under 5 U.S.C. 552a(b) and in addition to the general routine uses identified in the Prefatory Statement of General Routine Uses, 63 FR 9007 (February 23, 1998), it shall be a routine use to disclose information contained in this system for the purposes and to the users identified below:

1. To the Department of Justice or any other federal government agency such as the Securities and Exchange Commission, or Congress or any foreign, state or local agency responsible for enforcing, investigating or prosecuting civil or criminal laws or regulations where the information is relevant to an enforcement proceeding, investigation or prosecution within such agency's jurisdiction, and as may be necessary to pursue or coordinate enforcement, administrative, regulatory, or other proceedings, investigations and inquiries;

2. To a Federal or State court, magistrate, administrative law judge, administrative tribunal, or grand jury in the course of presenting evidence, including disclosures to counsel or witnesses in the course of discovery, litigation, or settlement negotiations and/or in response to subpoenas seeking documents or testimony relevant or potentially relevant to the subject proceeding; and, where relevant or potentially relevant to the proceeding, to the court or administrative tribunal databases and electronic access services such as PACER;

3. To a consultant, person, or entity, including outside counsel, contractors, copying services, document database service providers, or other firms or individuals who contract or subcontract with OFHEO, to the extent necessary for the performance of the contract or subcontract and consistent with the purposes of this system of records. The recipient of the records shall be required to comply with the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a).

4. To the General Services Administration and the National Archives and Records Administration for the purpose of records management inspections conducted under statutory authority of 44 U.S.C. 2904 and 2906.

5. To appropriate agencies, entities, and persons when (a) OFHEO suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) OFHEO 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 that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OFHEO's efforts to respond to the

suspected or confirmed compromise and prevent, minimize or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system pursuant to 5 U.S.C. 552a(b)(12) to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) when OFHEO is trying to collect a claim of the Government under a law, except the Internal Revenue Code of 1986, in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic format and in paper format in a secure location. Paper records are maintained in file folders, index cards, rolodex-type files, notebooks, or files. Electronic records are maintained on computer hard drives, network systems, magnetic tape, diskette, or other machine readable formats.

RETRIEVABILITY:

Records are retrievable by subject name, title, or other personal identifier.

SAFEGUARDS:

Electronic records are password protected and available only to authorized personnel. Paper documents are kept in locked offices and only available to authorized personnel. Access is restricted to staff who have a need to access the system in performance of their duties. Back up tapes are stored in a locked, controlled room in a secure location.

RETENTION AND DISPOSAL:

These records will be retained for a minimum of seven years. The National Archives and Records Administration (NARA) will determine if the retention period should be longer than seven years. Paper records that have met the NARA approved schedule will be disposed of by shredding. Electronic records that have met the NARA approved schedule will be deleted, erased, or overwritten.

SYSTEM MANAGER AND ADDRESS:

General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Contact the Privacy Act Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD ACCESS PROCEDURES:

The OFHEO regulation for providing access to records appears at 12 CFR part 1702. If additional information or assistance is required, contact the Privacy Act Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Access to certain materials in this System of Records may be withheld or exempted under 5 U.S.C. 552a(d)(5) if compiled in reasonable anticipation of litigation or if subject to the attorney-client privilege or other recognized privileges.

CONTESTING RECORD PROCEDURES:

The OFHEO regulation for contesting records procedures appears at 12 CFR part 1702. If additional information or assistance is required, contact the Privacy Act Appeals Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by the individual who is the subject of the record, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation (collectively, ''Enterprises'') for whom the individual works or worked; witnesses; consultants to the Enterprise for whom the individual works or worked; consultants to OFHEO; U.S. attorneys, administrative tribunals, U.S. district courts; other federal, state, or local agencies; parties to the proceedings; or other sources of discovery relevant to the proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records and information in this system that are investigatory and compiled for law enforcement purposes are exempt under subsection 552a(k)(2) of the Privacy Act to the extent that information within the system meets the criteria of that subsection of the Act. Such information has been exempted from the provisions of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1), (3), (4)(G) and (I); and (f) of the 5 U.S.C. 552a; see 12 CFR part 1702.

The exemption is necessary in order to protect information relating to law enforcement investigations from disclosure to subjects of investigations and others who could interfere with investigatory and law enforcement activities. Exemption will preclude subjects of investigations from frustrating investigations, will avoid disclosure of investigative techniques, will protect the identities and safety of confidential informants and of law enforcement personnel, will ensure OFHEO's ability to obtain information from human sources, will protect the privacy of third-parties, and will safeguard sensitive information.

Certain records contained in this system of records may be proprietary to other federal agencies and subject to exemptions imposed by those agencies, including the criminal law enforcement investigatory material exemption of 5 U.S.C. 552a(j)(2).

[FR Doc. E8–10254 Filed 5–7–08; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2008–N0076; 10120–1113–0000–F5]

Endangered Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of application to amend permit; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), invite the public to comment on the following application to amend an existing permit to conduct certain activities with endangered species.

DATES: We must receive your written data or comments by June 9, 2008.

ADDRESSES: Program Manager, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Grant Canterbury, Fish and Wildlife Biologist, at the above address or by telephone (503–231–2063) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicant has applied to amend an existing scientific research permit to conduct certain activities with endangered species under section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We solicit review and comment from local, State, and Federal agencies and the public.

Permit No. TE–146777

Applicant: Arleone Dibben-Young, Kaunakakai, Molokai, Hawaii

The applicant requests an amendment to an existing permit to take (capture, measure, band, mark, release, and recapture) the Hawaiian duck (*Anas wyvilliana*) in conjunction with research on the Island of Molokai in the State of Hawaii, for the purpose of enhancing its

survival. This permit currently covers capture and banding of the Hawaiian coot (*Fulica alai*) and Hawaiian stilt (*Himantopus mexicanus knudseni*), for which a notice was originally published in the **Federal Register** on May 22, 2007 (72 FR 28709).

Public Review of Comments

Please refer to the permit number for the application when submitting comments.

We solicit public review and comment on this recovery permit application. 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.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: April 10, 2008.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E8–10233 Filed 5–7–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2008–N0049; 40136–1265–0000–S3]

Black Bayou Lake National Wildlife Refuge, Ouachita Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and associated National Environmental Policy Act (NEPA) documents for Black Bayou Lake National Wildlife Refuge. We provide this notice in compliance with our CCP policy to advise other agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, we must receive your written comments by June 23, 2008. An open house meeting will be held during the scoping phase of the Draft CCP development process. The date, time, and place for the meeting will be announced in the local media.

ADDRESSES: Comments, questions, and requests for information should be sent to: Tina Chouinard, Natural Resource Planner, Hatchie National Wildlife Refuge, 6772 Highway 76 South, Stanton, TN 38069.

FOR FURTHER INFORMATION CONTACT: Tina Chouinard, Natural Resource Planner; Telephone: 318/305–0643; Fax: 771/772–7839; E-mail: *tina_chouinard@fws.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Black Bayou Lake National Wildlife Refuge in Ouachita Parish, LA.

This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge; and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us 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 to the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each unit of the National Wildlife Refuge System is established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Black Bayou Lake National Wildlife Refuge. Special mailings, newspaper articles, and other media outlets will be used to announce opportunities for input throughout the planning process.

We will conduct the environmental assessment in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

The Black Bayou Lake Refuge is a unit of the North Louisiana National Wildlife Refuge Complex. Other refuges in the Complex include D'Arbonne, Upper Ouachita, Handy Brake, and Red River, and the Louisiana Wetlands Management District. The refuge, established in 1997, is three miles north of Monroe, Louisiana, just east of Highway 165 in Ouachita Parish. The refuge contains 4,522 acres of lacustrine, bottomland hardwood, and upland mixed pine/hardwood habitats. Although the suburban sprawl of Monroe surrounds much of its boundary, the refuge, itself, is home to a diversity of plants and animals. The refuge is situated in the Mississippi Flyway, the West Gulf Coastal Plain Bird Conservation Region, and the Lower Mississippi River Ecosystem.

Black Bayou Lake Refuge was established for ''. . .the conservation of the wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions. . .'' (16 U.S.C. 3901(b)) (Wetlands Resources Act).

The central physical feature of the refuge is the lake itself. Black Bayou

Lake, approximately 1,500 acres in size, is studded with baldcypress and water tupelo trees. The western half of the lake is open and deeper, unlike the eastern side, which is thick with trees and emergent vegetation. The lake is owned by the city of Monroe, which manages the water level as a secondary source of municipal water. The Service has a 99-year free lease on the lake and some of its surrounding land, constituting a total of 1,620 acres. The refuge owns the remaining 2,902 acres.

Three species of special concern that utilize the refuge include the alligator snapping turtle, the Rafinesque's big-eared bat, and the southeastern Myotis bat.

The refuge offers the six priority wildlife-dependent recreational activities as identified in the Improvement Act. Resident game and migratory game bird hunting occurs on the refuge. Black Bayou Lake is popular with the public, especially nearby residents. The lake attracts many fishermen during spring and summer, most fishing for bream, crappie, and bass.

Public Availability of Comments

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.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: March 17, 2008.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E8–10344 Filed 5–7–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[FWS–R7–R–2008–N0070; 70133–1265–0000–S3]

Kenai National Wildlife Refuge, Soldotna, AK

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of the Draft Revised Comprehensive Conservation Plan and Environmental Impact Statement for the Kenai National Wildlife Refuge; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service, we), announce that the Draft Revised Comprehensive Conservation Plan (Draft Plan) and Environmental Impact Statement (EIS) for the Kenai National Wildlife Refuge is available for public comment. The Draft Plan/EIS was prepared pursuant to the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), the National Wildlife Refuge System Administration Act of 1966 (Refuge Administration Act) as amended by the National Wildlife Refuge System Improvement Act of 1997 (Refuge Improvement Act), and the National Environmental Policy Act of 1969 (NEPA). It describes five alternatives for managing the Kenai Refuge for the next 15 years, including continuing current management. We will use special mailings to inform the public of opportunities to provide input on the Draft Plan/EIS and will hold public meetings in Anchorage and various communities on the Kenai Peninsula to obtain public comments.

DATES: Comments on the Draft Plan/EIS must be received on or before September 1, 2008.

ADDRESSES: To provide written comments or to request a paper copy or a compact disk of the Draft Plan/EIS, contact Rob Campellone, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Rd., MS–231, Anchorage, Alaska 99503; telephone: (907) 786–3982; fax: (907) 786–3965; e-mail: *fw7_kenai_planning@fws.gov*. You may also view or download a copy of the Draft Plan/EIS at the following Web site: *http://alaska.fws.gov/nwr/planning/kenpol.htm.*

Copies of the Draft Plan/EIS may be viewed at the Kenai Refuge Office in Soldotna, Alaska, and the U.S. Fish and Wildlife Service Regional Office in Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Rob Campellone at the address or phone number provided above.

SUPPLEMENTARY INFORMATION: The ANILCA (16 U.S.C. 410hh *et seq.*, 43 U.S.C. 1602 *et seq.*) requires development of a Comprehensive Conservation Plan for all national wildlife refuges in Alaska. The Draft Plan/EIS for the Kenai Refuge was developed consistent with Section 304(g) of ANILCA and the Refuge Administration Act as amended by the Refuge Improvement Act (16 U.S.C. 668dd *et seq.*). The purpose of developing a Comprehensive Conservation Plan is to provide refuge managers with a 15-year management strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish, wildlife, and habitat management and conservation; legal mandates; and Service policies. Comprehensive Conservation Plans define long-term goals and objectives toward which refuge management activities are directed, and identify which uses may be compatible with the purposes of a refuge. Comprehensive Conservation Plans are reviewed and updated every 15 years in accordance with direction in Section 304(g) of ANILCA, the Refuge Improvement Act, and NEPA (42 U.S.C. 4321 *et seq.*).

Background: In 1941, President Franklin D. Roosevelt signed Executive Order 8979 creating the 1,730,000-acre Kenai National Moose Range. In 1980, ANILCA changed the name of the Range to the Kenai National Wildlife Refuge and substantially increased the size of the Refuge. As of 2007, the Kenai Refuge encompasses approximately 1,988,000 acres. Section 303(4)(B) of ANILCA states that the purposes for which Kenai Refuge was established include: (i) To conserve fish and wildlife populations and habitats in their natural diversity; (ii) to fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to ensure water quality and necessary water quantity within the refuge; (iv) to provide opportunities for scientific research, interpretation, environmental education, and land management training; and (v) to provide opportunities for fish and wildlife-oriented recreation. A Comprehensive Conservation Plan and EIS were completed for the Kenai Refuge in 1985 following direction in Section 304(g) of ANILCA.

The ANILCA requires the Service to designate areas according to their respective resources and values and to specify programs and uses within the areas designated. To meet these requirements, the Alaska Region established management categories. A management category is a set of refuge management directions applied to an area to accomplish refuge purposes and goals. Appropriate public uses, commercial uses, facilities, and human activities are identified for each management category. Five management categories currently apply to the Kenai Refuge including (1) Intensive, (2) Moderate, (3) Traditional, (4) Minimal, and (5) Wilderness.

The 1997 Refuge Improvement Act includes additional direction for conservation planning throughout the

National Wildlife Refuge System. This direction has been incorporated into national planning policy for the National Wildlife Refuge System, including refuges in Alaska. The Draft Plan/EIS for the Kenai Refuge meets the requirements of both ANILCA and the Refuge Administration Act as amended by the Refuge Improvement Act.

An Overview of Management Alternatives: The Draft Plan/EIS describes and evaluates five alternatives (A–E) for managing the Kenai Refuge for the next 15 years. Alternatives are different sets of objectives and strategies for achieving refuge purposes and goals. Alternatives A through E are each consistent with the purposes of the Kenai Refuge as mandated by ANILCA.

Alternative A (the No-Action Alternative) is required under NEPA and describes continuation of current management activities. Alternative A serves as a baseline against which to compare the other four alternatives, including Alternative E—the Service's Preferred Alternative. Under Alternative A, management of the Kenai Refuge would continue to follow direction described in the 1985 Comprehensive Conservation Plan/EIS and Record of Decision and subsequent step-down management plans. Under Alternative A, the Kenai Refuge would continue to be managed under five management categories.

Alternatives B through E would generally continue to follow management direction as described in the 1985 Comprehensive Conservation Plan/EIS and Record of Decision and subsequent step-down management plans, however some specific direction occurring under current management (Alternative A) would be altered or no longer pursued under Alternatives B through E. For example, under Alternatives B through E, four management categories, not five, would be applied to the Kenai Refuge, eliminating the Traditional management category. Alternative B would convert Kenai Refuge lands that are currently managed as Traditional to the Moderate or the Minimal management categories, and Alternatives C through E would convert Refuge lands that are currently managed as Traditional to the Minimal management category.

The Alternatives by Specific Issues: Five central planning issues were raised during scoping and public involvement. The Draft Plan/EIS for the Kenai Refuge describes and evaluates, in detail, specific management actions under Alternatives A through E and how each alternative addresses the five central planning issues. In this notice, we highlight key changes in management of the Kenai Refuge under Alternatives A through E for each planning issue:

Issue 1: Large-Scale Habitat Change and the Use of Fire

Under Alternatives A through C, prescribed fire use would be allowed on 31 percent of the Refuge, though such use would be limited under Alternative A on approximately 10 percent of the Refuge identified as Minimal Management. Alternatives D and E (Alternative E is the Preferred Alternative) would allow prescribed fire use on 97.5 percent of the Refuge.

Under Alternative A, wildland fire use would be allowed on 95 percent of the Refuge, and Alternative B would allow such use on 84.5 percent of the Refuge. Wildland fire use is the management of naturally ignited wildland fire to accomplish resource management objectives for specific areas. Alternatives C through E (the Preferred Alternative) would allow wildland fire use on 97.5 percent of the Refuge—with wildland fire use only being the default management action in designated Wilderness (66.4 percent of the Refuge) under Alternative C. Under Alternatives D and E (the Preferred Alternative), wildland fire use would be the default management action in Minimal and designated Wilderness management categories (95 percent of the Refuge).

Issue 2: Manage Existing Facilities for Public Use While Ensuring Resource Protection

Presently, there are three active oil and gas leases (13,252 acres) on the Kenai Refuge that were granted under the Mineral Leasing Act of 1920. These leases are not anticipated to end during the life of this plan (15 years) but could in the foreseeable future. For two of the leases, the Swanson River and Beaver Creek Oil and Gas units, some of the existing industrial roads and operating facilities would be retained (in the event that operations cease) for public use (except bicycle use) under Alternative A, though none would be retained under Alternative B. Most industrial roads would be retained and converted to trails for pedestrian and horse use only under Alternative C; and Alternatives D and E (the Preferred Alternative) would retain and maintain most roads for public use, including bicycle use. No existing facilities would be retained for public use under Alternatives C through E (the Preferred Alternative) in these oil and gas units. In the Swanson River Oil and Gas Unit, up to five primitive camping areas would be provided for walk-in use only under Alternative C, and two developed campgrounds would be constructed under Alternatives D and E (the Preferred Alternative). In the Beaver Creek Oil and Gas Unit, up to two primitive camping areas would be provided for walk-in use only under Alternative C, one developed campground would be constructed under Alternative D, and no camping facilities would be provided under Alternative E (the Preferred Alternative).

Public vehicle use on the unimproved Mystery Creek Access Road and pipeline corridor north to Chickaloon Bay would be allowed from the start of moose hunting season (approximately August 9) until snow cover under Alternative A. Under Alternative B, the access road would be improved; and public vehicle use would be allowed July 1 to November 30 throughout the area, including southwest access to the East Fork of the Moose River. Alternatives C and E (the Preferred Alternative) would improve the access road to ensure public safety and environmental protection while providing for a primitive backcountry experience; and public vehicle use would be allowed August 9 to November 30 throughout the area, including southwest access to the East Fork of the Moose River. Under Alternative D, public vehicle use on the access road and pipeline corridor would not be allowed. Pedestrian, horse, and snowmachine use would be allowed under all the alternatives. Bicycle use would be allowed from August 9 until snow cover under Alternatives A, C, and E (the Preferred Alternative), and May 1 to November 30 under Alternative B. Alternative D would not allow bicycle use. Public use registration would not be required under Alternatives A or D, but it would be required under Alternatives B, C, and E (the Preferred Alternative).

Issue 3: Enhance Wildlife-Dependent Recreation Opportunities

Under Alternative A, personal collection of berries, mushrooms, and other edible plants, and/or the collection of shed antlers would not be allowed. Under Alternatives B through E (the Preferred Alternative), personal collection and use of unlimited quantities of berries, mushrooms, and other edible plants; and up to eight naturally shed moose or caribou antlers per person per year would be allowed.

Issue 4: Manage Increasing Public Use To Ensure Resource and Visitor-Experience Protection

For the Upper Kenai River (Russian River to Skilak Lake), non-guided public use would be allowed without

restriction under Alternative A. Alternative B would modify existing management agreements and/or plans cooperatively with stakeholders to address non-guided public use; and Alternatives C through E (the Preferred Alternative) would implement a limited permit program.

Under all of the Alternatives, sportfishing guides would be required to have special use permits. Permits would be limited to 20 under Alternatives A and B, reduced to 18 under C and E (the Preferred Alternative), and reduced to 15 under Alternative D. Permits would be reduced through attrition and issued competitively. Each permit would allow 10 starts per week with no more than 4 starts per day—except under Alternative B, which would require additional restrictions on the timing and starts of boats beyond such levels.

State-licensed sportfishing guides not having Refuge special use permits may be issued Incidental Use Permits (IUPs) under all the alternatives except Alternative D, which would eliminate the IUP Program. Alternatives A, C, and E (the Preferred Alternative) would issue up to three IUPs per year subject to quotas and blackout dates; and Alternative B would limit the number of IUPs to one per year.

Dispersed camping would be allowed (except within one-quarter mile of the Sterling Highway) under all of the alternatives but would be limited to 14 days in any 30-day period under Alternative A; limited to 24 hours within any 14-day period within 100 yards of the river under Alternative B; not allowed within 100 yards of the river under Alternatives C and E (the Preferred Alternative); limited to 48 hours within any 14-day period within 100 yards of the river and within one mile of the Kenai River/Skilak Lake inlet/outlet under Alternative D.

For the Middle Kenai River (Skilak Lake downstream to the Refuge boundary), non-guided public use would be allowed without restriction under Alternatives A and B. Such use would be allowed without restriction under Alternatives C and E (the Preferred Alternative) until a Limits-of-Acceptable Change planning process is completed with stakeholders; and Alternative D would implement a limited permit program after a public rulemaking process is conducted.

Sportfishing guides would be required to have special use permits under all of the alternatives, though such permits would be issued without limit under Alternative A. Under Alternative B, the need to implement a permitting process would be evaluated after the conclusion of the ongoing Kenai River-wide guide process. Under Alternatives C and E (the Preferred Alternative), permits would be limited to the number of existing permittees, and existing permittees would be ''grandfathered''; under Alternative D, permits would be limited to 20 through a competitive selection process, and management of the timing and starts of boats would be initiated.

Issue 5: Balance Motorized Access With Resource and Visitor-Experience Protection

Under all the alternatives, airplane access would not be allowed May 1 to September 30 on any lake where nesting trumpeter swans and/or their broods are present except on two lakes in designated Wilderness—where the closure would be May 1 to September 10 under Alternatives A through C and E (the Preferred Alternative)—and five lakes in designated Wilderness plus one lake outside of designated Wilderness under Alternative D. Airplane access would be allowed on 46 lakes in designated Wilderness under Alternative A and E (the Preferred Alternative); 45 lakes under Alternative B; 50 lakes under Alternative C; and 59 lakes under Alternative D.

Under all the alternatives, floatplane access to Chickaloon Flats would be allowed on 6.5 miles of the Chickaloon River. Under Alternative A, wheeled airplane access would be allowed year-round within designated areas of the Chickaloon Flats area including three upland landing zones, a designated beach zone, and the unmaintained Big Indian Creek airstrip. Under Alternatives B through E (the Preferred Alternative), wheeled airplane access would be allowed on 21 square miles of unvegetated portions of the Chickaloon Flats area. Access would also be allowed on the unmaintained Big Indian Creek airstrip under Alternatives B and E (the Preferred Alternative). Under Alternatives C and D, access would be allowed on the Big Indian Creek airstrip, which would be maintained by the Service; and under Alternative D, an additional 6.8 square miles of unvegetated portions of the Chickaloon Flats would be accessible September 1 to December 15 (or to coincide with future waterfowl hunting seasons).

Under Alternatives A through C and E (the Preferred Alternative), snowmachines would be allowed in designated areas December 1 to April 30 when the refuge manager determines there is adequate snow cover. Under Alternative C, certain zones within designated areas may be opened earlier (than December 1) or later (than April 30) depending on local snow conditions.

Under Alternative D, the December 1 to April 30 time restriction would be eliminated, and certain zones within designated areas may be opened depending on local snow conditions. Under Alternatives B through E (the Preferred Alternative), research studies would be conducted with stakeholders to evaluate the effects of snowmachine use on Refuge resources and visitor experiences, and the results of those studies would be used to support future management decisions.

Public Availability of Comments: Before including your name, 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. We will make all comments from individual persons part of the official public record. We will handle requests for such comments in accordance with the Freedom of Information Act, NEPA, and Departmental policies and procedures.

Dated: May 2, 2008.

Gary Edwards,

Acting Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. E8–10236 Filed 5–7–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Mechoopda Indian Tribe, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Agency Determination to Take Land into Trust under 25 CFR Part 151.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 631.05 acres of land into trust for the Mechoopda Indian Tribe of California on March 14, 2008. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

FOR FURTHER INFORMATION CONTACT: George Skibine, Office of Indian Gaming, MS–3657 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On March 14, 2008, the Assistant Secretary—Indian Affairs decided to accept approximately 631.05 acres of land into trust for the Mechoopda Indian Tribe of California under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The 631.05 acres are located in Butte County, California. The parcel will be used for the purpose of construction and operation of a class II and class III gaming facility.

The real property consists of approximately 631.05 acres situated in the State of California, County of Butte. The legal description of the property is as follows:

Parcel I

All that portion of the east half of the northeast quarter of Section 1, Township 20 North, Range 2 East, M.D.B. & M., lying easterly of U.S. Highway 99E. Excepting therefrom that portion thereof, heretofore conveyed to the State of California by deed recorded July 27, 1951, in Book 575, Page 326, Official Records, recorded October 9, 1974, in Book 1944, Page 64, Official Records and October 9, 1974, in Book 1944, Page 68, Official Records and Parcel 1 of the Grant Deed recorded January 15, 2004, under Butte County Recorder's Serial No. 2004–0002294. APN 041–190–048 (formerly 038–150–026).

Parcel II

The north half of the northwest quarter, the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter of Section 5, and all that portion of Section 6 lying northeasterly of the Oroville Chico Highway, all in Township 20 North, Range 3 East, M.D.B. & M.

Excepting therefrom said Section 6, that portion conveyed to the State of California by Deeds recorded February 8, 1951 in Book 555, Page 329, Official Records, and July 27, 1951, in Book 575, Page 326, Official Records. Also excepting therefrom that portion conveyed to the State of California by Deed recorded October 9, 1974, in Book 1944, Page 64, Official Records and Parcel 1 of Grant Deed recorded January 15, 2004, under Butte County Recorder's Serial No. 2004–002294. APN 041–190–045 (formerly 041–190–020).

Dated: March 25, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–10279 Filed 5–7–08; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–21870–15, F–21870–16, F21870–19, and F–19154–05; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to NANA Regional Corporation Inc. The lands are in the vicinity of the Native villages of Ambler, Kobuk, and Shungnak, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 19 N., R. 3 E.,
Secs. 4 to 9, inclusive;
Secs. 13 to 36, inclusive.
Containing approximately 18,996 acres.

T. 19 N., R. 7 E.,
Secs. 1 to 36, inclusive.
Containing approximately 22,660 acres.

T. 18 N., R. 10 E.,
Secs. 1 to 16, inclusive;
Secs. 21 to 28, inclusive;
Secs. 33 to 36, inclusive.
Containing approximately 17,596 acres.

T. 17 N., R. 11 E.,
Secs. 1 to 36, inclusive.
Containing approximately 20,981 acres.

Aggregating approximately 80,233 acres.

Notice of the decision will also be published four times in The Arctic Sounder.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 9, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Jason Robinson,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–10224 Filed 5–7–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–050–1430–FR; WYW 49773]

Notice of Realty Action; Recreation and Public Purposes Act Classification of Public Lands in Fremont County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 73.42 acres of public land in Fremont County, Wyoming. The Wyoming Department of State Parks and Cultural Resources (WDSPCR), proposes to use the land as part of the South Pass City State Historic Site.

DATES: Interested parties may submit comments regarding the proposed conveyance or classification of the lands until *June 23, 2008.*

ADDRESSES: Send written comments to the Field Manager, Lander Field Office, 1335 Main Street, Lander, Wyoming 82520.

FOR FURTHER INFORMATION CONTACT: Robert B. Ross, Jr., Field Manager, Bureau of Land Management, Lander Field Office, at (307) 332–8400.

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act, (43 U.S.C. 315f), and Executive Order No. 6910, the following described public land in Fremont

County, Wyoming, has been examined and found suitable for classification for conveyance under the provisions of the R&PP Act, as amended, (43 U.S.C. 869 *et seq.*):

Sixth Principal Meridian, Wyoming

T. 29 N., R. 100 W.,
Sec. 20, lots 6, 7, 9, 19 and 24.

The land described contains 73.42 acres, more or less.

The following described public land was previously classified for lease only under the R&PP Act on June 2, 1976, and has been leased to WDSPCR as part of the South Pass City State Historic Site since July 21, 1976:

Sixth Principal Meridian, Wyoming

T. 29 N., R. 100 W.,
Sec. 20, lots 7 and 9.

The land described contains 25.47 acres, more or less.

In accordance with the R&PP Act, WDSPCR filed an application for the above-described 73.42 acres of public land to be developed as part of the South Pass City State Historic Site. The additions include restoration of historic town-site buildings, an interpretive trail for historic gold mining features, a primitive camping area that would accommodate tent campers, restroom facilities, hiking trails, and day-use facilities. Additional detailed information pertaining to this application, plan of development, and site plan is in case file W–49773, located in the BLM Lander Field Office at the above address.

The land is not needed for any Federal purpose. The conveyance is consistent with the Lander Resource Management Plan dated June 9, 1987, and would be in the public interest. The patent, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The patent will be subject to all valid existing rights documented on the official public land records at the time of patent issuance.

On May 8, 2008, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a State Historic Park Site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use.

Confidentiality of Comments: 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. Only written comments submitted by postal service or overnight mail to the Field Manager—BLM Lander Field Office will be considered properly filed. Electronic mail, facsimile or telephone comments will not be considered properly filed.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective July 7, 2008. The lands will not be available for conveyance until after the classification becomes effective.

Authority: 43 CFR 2740.

Dated: April 30, 2008.

Robert B. Ross, Jr.,

Field Manager, Lander, WY.

[FR Doc. E8–10234 Filed 5–7–08; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–646]

In the Matter of Certain Power Supplies; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 4, 2008, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Ultra Products, Inc. of Fletcher, Ohio and Systemax Inc. of Port Washington, New York. A supplement to the complaint was filed on May 1, 2008. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain power supplies that infringe certain claims of U.S. Patent No. 7,133,293. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint and the supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 1, 2008, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain power supplies that infringe one or more of claims 1 and 4 of U.S. Patent No. 7,133,293, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Ultra Products, Inc., 6910 State Road 36, Fletcher, Ohio 45326. Systemax, Inc.,11 Harbor Park Drive, Port Washington, New York 11050.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Aerocool Advanced, Technologies Corporation, 13F–2, No. 75, Hsin Tai Wu Road, Sec. 1 Hsi Chih, Taipei Hsien 221, Taiwan.

Langears, Inc. d/b/a Aerocool US, 41662 Christy Street, Fremont, California 94538. Andyson International Co., Ltd.,Third Floor, 153 Pei-Shen Road, Sec. 3, Shen-Keng Village,Taipei 222, Taiwan.

Atng Power Co., Ltd. a/k/a I Horng, Power Co., Ltd., Third Floor-9, 14 Lane 609 Chung Shin Road, Sec. 5, San Chung, Taipei Hsien 241, Taiwan.

Coolmax Technology Inc., 8F, No. 165, Sec. 2, Datung Road, Hsi-Chih City, Taipei 221,Taiwan.

Enermax Technology Corporation, 15F–2, No. 888, Jing-Kuo Road, Taoyuan, Taiwan. Enermax USA Corporation, 17733 Rowland Street, City of Industry, California 91748.

High Performance Enterprise PLC, d/b/a High Performance Group or Hiper Group, Unit 1, The I/O Centre, Fingle Drive, Milton Keynes, MK13 OAT,United Kingdom.

High Performance Group Inc., d/b/a High Performance Group or Hiper Group, Foster City Executive Park, 551 Foster City Boulevard, Suite D, San Mateo, California 94404.

KWI Technology Inc. d/b/a Kingwin, 18221 Railroad Street, City of Industry, California 91748. San Hawk Technic Co., Ltd., a/k/a Sky Hawk Group, 6F, No. 665, Chung Cheng Road, Hsin Chuang, Taipei, Taiwan.

Eagle Technology Inc., a/k/a Sky Hawk USA or Eagle Tech, 18539 East Gale Avenue, City of Industry, California 91748.

Sunbeam Company, Room 406, Building A, No. 18, Sihyuan Street, Jhongjheng District, Taipei City 100, Taiwan.

Sunbeamtech, Inc., 15339 Don Julian Road, Hacienda Heights, California 91748.

(c) The Commission investigative attorney, party to this investigation, is Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401B, Washington, DC 20436; and

(4) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 2, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–10175 Filed 5–7–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–452 (Final) and 731–TA–1129 and 1130 (Final)]

Raw Flexible Magnets From China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–452 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigations Nos. 731–TA–1129 and 1130 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China and Taiwan of raw flexible magnets, provided for in subheadings 8505.19.10 and 8505.19.20 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* April 25, 2008.

FOR FURTHER INFORMATION CONTACT: Olympia Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''certain flexible magnet sheeting, strips, and profile shapes.''

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China and Taiwan of raw flexible magnets, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on September 21, 2007, by Magnum Magetics Corp., Marietta, OH.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on June 25, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on July 10, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 2, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 3, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is July 2, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is July 17, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before July 17, 2008. On August 5, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 7, 2008, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: May 2, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–10177 Filed 5–7–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act of 1970, as Amended

Pursuant to 28 CFR 50.7, notice is hereby given that on April 29, 2008, a proposed consent decree in *United States* v. *Sun State Builders, Inc.*, Civil Action No. 2:08–CV–00816–HRH, was lodged with the United States District Court for the District of Arizona.

This Consent Decree will resolve claims asserted by the United States against Sun State for injunctive relief and civil penalties based on violations of Maricopa County dust control regulations incorporated in the Arizona State Implementation Plan under the Clean Air Act (''the Act''). The complaint in this action seeks civil penalties and injunctive relief under

Section 113(b) of the Act, 42 U.S.C. 7413(b), against the Defendant for failure to install suitable trackout control devices, failure to immediately clean up trackout, failure to implement dust control measures, and failure to operate a water application system while conducting earth moving, in violation of Rule 310 of Regulation 3 of the Maricopa County Air Quality Department (MCAQD), which is part of the federally approved and federally enforceable State Implementation Plan (SIP) submitted to EPA by the State of Arizona pursuant to Section 110 of the Act, 42 U.S.C. 7410.

The proposed Consent Decree settles these claims by providing for payment by the Defendant of $106,000 in civil penalties to the United States. The Consent Decree also requires implementation of measures designed to abate fugitive dust emissions, including the designation of qualified dust control coordinators at sites with five acres or more of disturbed surface area and requiring dust control training for employees whose job responsibilities involve dust generating operations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and 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. *Sun State Builders, Inc.*, D.J. Ref. #90–5–2–1–09146.

The consent decree may be examined at the Office of the United States Attorney for the District of Arizona, 40 N. Central Ave., Suite 1200, Phoenix, Arizona 85004, and at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the consent decree 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 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 $5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–10241 Filed 5–7–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

''Ensuring Benefits in the Formal Sector in El Salvador''

May 8, 2008.

AGENCY: Bureau of International Labor Affairs, Department of Labor.

Announcement Type: New. Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications. The full announcement is posted on *http://www.Grants.Gov* as well as on the DOL Web site at *http://www.dol.gov/ilab.*

Funding Opportunity Number: SGA 08–05.

Key Dates: The closing date for receipt of applications is June 6, 2008, via *Grants.gov.*

Funding Opportunity Description: The U.S. Department of Labor, Bureau of International Labor Affairs, announces the availability of funds to be granted by cooperative agreement to one or more qualifying organizations. The Department will award up to U.S. $940,000 through one grant to an organization or organizations to increase compliance with laws regarding employer payments to the Salvadoran Social Security Institute. Specifically, the project will improve current systems to enforce compliance with laws regarding payments to the Salvadoran Social Security Institute, and it will raise awareness among workers and employers about how they can verify that correct payments are being made and where to go if they are not being made. The duration of the project funded by this solicitation is three to four years. The start date of program activities will be negotiated upon award of the Cooperative Agreement, but will be no later than September 30, 2008.

ILAB is authorized to award and administer this program by the Consolidated Appropriations Act, 2008, Public Law No. 110–161, 121 Stat. 1844 (2007).

The full Solicitation for Grant Application is posted on *http://www.Grants.Gov* under U.S. Department of Labor/ILAB. Only Applications submitted through *http://www.Grants.Gov* will be accepted. If you need to speak to a person concerning these grants, or if you have issues regarding access to the *Grants.gov* Web site, you may telephone Lisa Harvey at 202–693–4592 (not a toll-free number).

Signed at Washington, DC, this 2nd day of May 2008.

Lisa Harvey,

Grant Officer.

[FR Doc. E8–10270 Filed 5–7–08; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

''Strengthening Labor Law Compliance in the United Republic of Tanzania''

AGENCY: Bureau of International Labor Affairs, Department of Labor.

Announcement Type: New. Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications. The full announcement is posted on *http://www.Grants.Gov* as well as on the DOL Web site at *http://www.dol.gov/ilab.*

Funding Opportunity Number: SGA 08–08.

Key Dates: The closing date for receipt of applications is May 30, 2008.

Funding Opportunity Description: The U.S. Department of Labor (USDOL), Bureau Of International Labor Affairs (ILAB), Announces the Availability of $1,710,000 to be awarded by cooperative agreement (hereinafter referred to as ''Grant'' or ''Cooperative Agreement'') to an international organization for the purpose of improving labor law compliance in Tanzania. ILAB is authorized to award and administer this program by the Consolidated Appropriations Act, 2008, Public Law No. 110–161, 121 Stat. 1844 (2007). The Cooperative Agreement awarded under this initiative will be managed by ILAB's Office of Trade and Labor Affairs. The duration of the project funded by this solicitation is three to four years. The start date of program activities will be negotiated upon award of the cooperative agreement, but will be no later than September 30, 2008.

The full solicitation for grant application is posted on *http://www.Grants.Gov* under U.S. Department of Labor/ILAB. Only applications submitted through *http://www.Grants.Gov* will be accepted. If you need to speak to a person concerning these grants, or if you have issues regarding access to the Grants.gov Web site, you may telephone Lisa Harvey at 202–693–4592 (not a toll-free number).

Signed at Washington, DC, this 2nd day of May 2008.

Lisa Harvey,

Grant Officer.

[FR Doc. E8–10269 Filed 5–7–08; 8:45 am]

BILLING CODE 4510–28–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of National Council on the Humanities

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, DC on May 22–23, 2008.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on May 22–23, 2008, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on May 22, 2008 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9–10:30 a.m.

Challenge Grants and Education Programs—Room M–07

Federal/State Partnership—Room 510A

Preservation and Access—Room 415

Public Programs—Room 421

Research Programs—Room 315

(Closed to the Public)

Discussion of Specific Grant Applications and Programs Before the Council

10:30 a.m. until adjourned

Challenge Grants and Education Programs—Room M–07

Federal/State Partnership—Room 510A

Preservation and Access—Room 415

Public Programs—Room 421

Research Programs—Room 315

2–3 p.m.

Jefferson Lecture—Room 527

The morning session of the meeting on May 23, 2008 will convene at 9 a.m., in the first floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting

B. Reports

1. Introductory Remarks
2. Staff Report
3. Congressional Report
4. Budget Report
5. Reports on Policy and General Matters

a. Challenge Grants

b. Education Programs

c. Federal/State Partnership

d. Preservation and Access

e. Public Programs

f. Research Programs

g. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of specific applications and will be closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Heather C. Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Heather C. Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. E8–10207 Filed 5–7–08; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–020]

Massachusetts Institute of Technology; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Massachusetts Institute of Technology Research Reactor Facility Operating License No. R–37 for an Additional 20-Year Period

The U. S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Facility Operating License No. R–37, which authorizes the Massachusetts Institute of Technology (the licensee) to operate the Massachusetts Institute of Technology Research Reactor (MITR) at a maximum steady-state thermal power of 6 Megawatts (MW) thermal power. The proposed action would renew Facility License No. R–37 for a period of twenty years from the date of issuance of the renewed license. The current license for the MITR expired on August 8, 1999.

On July 8, 1999, the Commission's staff received an application from the licensee filed pursuant to 10 CFR Part 50.51(a), to renew Facility Operating License No. R–37 for the MITR. Because the license renewal application was filed in a timely manner in accordance with 10 CFR 2.109, the license will not be deemed to have expired until the license renewal application has been finally determined.

The Commission's staff has determined that the licensee has submitted sufficient information in accordance with 10 CFR 50.33 and 50.34 that the application is acceptable for docketing. The current Docket No. 50–020 for Facility Operating License No. R–37, will be retained.

The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to

intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon

depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

Detailed guidance which the NRC uses to review applications for the renewal of non-power reactor licenses can be found in the document NUREG–1537, entitled ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors,'' can be obtained from the Commission's PDR. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The detailed review guidance (NUREG–1537) may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession No. ML042430055 for part one and ML042430048 for part two. Copies of the application to renew the facility license for the licensee are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852–2738. The initial application and other related documents may be accessed through the NRC's Public Electronic Reading Room, at the address mentioned above, under ADAMS Accession Nos.: ML080950435, ML003683419, ML053190384, ML053190234, ML081000626, ML081000625, ML081000627, ML021500351, ML081020537, ML080710352, ML080240038, ML073340485, ML011420515, ML010950291, ML003698347. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of May, 2008.

For the Nuclear Regulatory Commission

Daniel Collins,

Chief, Research and Test Reactors Branch A, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E8–10283 Filed 5–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The *title of the information collection:* 10 CFR Part 31, General Domestic Licenses for Byproduct Material.

2. *Current OMB approval number:* 3150–0016.

3. *How often the collection is required:* Reports are submitted as events occur. General license registration requests may be submitted at any time. Changes to the information on the registration may be submitted as they occur.

4. *Who is required or asked to report:* Persons receiving, possessing, using, or transferring devices containing byproduct material.

5. *The number of annual responses:* 35,663 (1,073 NRC responses + 3,900 NRC recordkeepers + 11,290 Agreement State responses + 19,400 Agreement State recordkeepers).

6. *The number of annual respondents:* Approximately 3,900 NRC general licensees and 19,400 Agreement State general licensees.

7. *The number of hours needed annually to complete the requirement or request:* 10,868 (1,460 hours for NRC licensees [975 hours recordkeeping and 485 hours reporting] and 9,408 hours for Agreement State licensees [4,850 hours recordkeeping and 4,558 hours reporting].

8. *Abstract:* 10 CFR Part 31 establishes general licenses for the possession and use of byproduct material in certain devices and a general license for use of byproduct material. General licensees are required to keep records and submit reports identified in Part 31 in order for NRC to determine with reasonable assurance that devices are operated safely and without radiological hazard to users or the public.

Submit, by July 7, 2008, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by e-mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 2nd day of May 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–10249 Filed 5–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Office of New Reactors; Notice of Availability of the Final Interim Staff Guidance COL–ISG–02 on Financial Qualifications of Applicants

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability.

SUMMARY: The NRC is issuing its Final Interim Staff Guidance (ISG) COL–ISG–02. This COL–ISG provides guidance on financial qualifications for and combined license (COL) applicants. This COL–ISG summarizes the requirements under Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.33(f)(1) for COL applicants and corrects the information provided in Section C.IV.5.1 of Regulatory Guide 1.206, ''COL Applications for Nuclear Power Plants (LWR Edition).''

The NRC staff issues ISGs to facilitate timely implementation of the current staff guidance and to facilitate activities associated with review of applications for design certifications and COLs for the Office of New Reactors. The NRC staff will also incorporate the approved DC/COL–ISGs into the next revision of the appropriate review guidance documents.

ADDRESSES: The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet 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 in ADAMS should contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Arlon O. Costa, Acting Branch Chief, Financial, Policy and Rule Making Branch, Division of Policy and Rule Making, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–6402 or e-mail at *roc@nrc.gov.*

SUPPLEMENTARY INFORMATION: COL–IGS–02 is posted on the agency's external web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this 2nd day of May 2008.

For the Nuclear Regulatory Commission,

William D. Reckley,

Branch Chief Rulemaking, Guidance and Advanced Reactors Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–10248 Filed 5–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 070–00008]

Notice of Issuance of License Amendment for Termination of License SNM–00007 for Battelle Memorial Institute, West Jefferson, OH

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: George M. McCann, Senior Health Physicist, Decommissioning Branch, Division of Nuclear Material Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; Telephone: (630) 829–9856; fax number: (630) 515–1259; e-mail: *Mike.McCann@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing a license amendment to terminate Special Nuclear Material License No. SNM–00007 issued to Battelle Memorial Institute (the licensee) and to authorize for unrestricted use its former North Nuclear Sciences Site, located near West Jefferson, Ohio. An NRC approved decommissioning plan (DP) (ML003711118), which references an U.S. Department of Energy Environmental Assessment, and Finding of No Significant Impact, was incorporated into the licensee's license by Amendment No. 23, on August 25, 2000 (ML010410001). These documents addressed the impacts of the licensee's actions to decommission its former byproduct and special nuclear materials research facilities and associated site, including final status survey plans and the licensee's intent to terminate license SNM–00007. In a letter dated August 3, 2006, (ML062200140) the licensee requested termination of its NRC radioactive source material license. The NRC's staff review of the Battelle Memorial Institute's termination request and final status surveys are documented in a Safety Evaluation Report. Based on the staff review, the NRC concluded that all licensable radioactive material has been removed from the licensee's former North Nuclear Sciences Site and residual radioactive material attributable to licensed activities does not exceed NRC unrestricted use criteria.

II. Licensee Background and Staff Review Findings

The purpose of the amendment is to terminate Battelle Memorial Institute's special nuclear material license and authorize for unrestricted release the licensee's former Nuclear Sciences Site located near West Jefferson, Ohio.

Battelle's DP (ML003711118) was originally approved by the NRC during 1993, before implementation of the current NRC ''License Termination Rule.'' The unrestricted release criterion cited in the DP was based on current regulatory guidance in effect at that time, that is, concentration and surface release tables, and consistent with criteria outlined in an NRC letter to the licensee dated April 17, 1992 (ML070180226). The licensee's DP was incorporated into NRC Special Nuclear Materials License No. SNM–00007 by License Amendment No. 23 on August 25, 2000 (ML010410001). This action was consistent with Title 10 of the Code of Federal Regulations (CFR), Part 20, Section 20.1401(b)(2), General provisions and scope, which states in part that ''(b) The criteria in this subpart do not apply to sites which: (2) have previously submitted and received Commission approval on a license termination plan (LTP) or decommissioning plan that is compatible with the Site Decommissioning Management Program Action Plan criteria.'' Thus, the incorporation of the DP into Battelle Memorial Institute's license did not change the previously approved release criteria, but the licensee voluntarily implemented an administrative ''as low as reasonably achievable'' limit of 25 mrem per year dose limit throughout the West Jefferson North decommissioning project.

Historically, Battelle performed atomic energy research and development for the U.S. Department of Energy (DOE) and its predecessor agencies between 1943 and 1986 at its Columbus Laboratories sites. The licensee's special nuclear material license SNM–00007 authorized byproduct and special nuclear materials for commercial nuclear research activities at the same locations. Between the late 1980s and 1993, DOE and the NRC met to discuss coordination of the Battelle Columbus Laboratories Decommissioning Project. As a result, DOE decided to not impose DOE Orders where such orders would duplicate existing regulations which the project

was already required to follow. It was agreed that the DOE would maintain day-to-day operational responsibility for the decontamination and decommissioning project, and that the NRC would impose three statutory responsibilities, which were to: (1) Conduct periodic inspections; (2) approve the release criteria used; and (3) certify the final release of the Battelle site. The NRC met with DOE and the Ohio Department of Public Health on a number of occasions to ensure good communications and coordination between the respective agencies.

The NRC Safety Evaluation Report was issued in support of the license amendment. Based on this review, the NRC staff has determined that the licensee's final status surveys are adequate to demonstrate compliance with radiological criteria for license termination, and that Battelle Memorial Institute has demonstrated that the former nuclear research site's radiological condition complies with the radiological criteria for license termination. The NRC staff has reviewed the proposed amendment and has determined that the proposed termination will have no adverse effect on the public health and safety or the environment.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are listed in the NRC Safety Evaluation Report (Accession No. ML081210718). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 1st day of May 2008.

For the Nuclear Regulatory Commission.

Patrick L. Louden,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. E8–10281 Filed 5–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 70–7001 And 70–7002]

Paducah Gaseous Diffusion Plant; Portsmouth Gaseous Diffusion Plant; United States Enrichment Corporation; Notice of Request for Certificate Renewal and Opportunity for Comment

I. Receipt of Application and Availability of Documents

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC or the Commission) has received by letters dated April 10, 2008, applications from the United States Enrichment Corporation (USEC) for the renewal of the 10 CFR Part 76 certificates of compliance for the gaseous diffusion plants (GDPs) located near Paducah, Kentucky and Piketon, Ohio. The NRC issued the initial certificates of compliance for the GDPs on November 26, 1996 and assumed regulatory oversight for the GDPs on March 3, 1997. The GDPs were last issued renewed certificates of compliance on December 29, 2003 and those certificates expire December 31, 2008. The USEC renewal requests are for a five-year period, extending from the current expiration date of December 31, 2008 to December 31, 2013. The USEC applications for renewal do not contain any other changes to the existing Application and Safety Analysis Report. The USEC application for the renewal of the Paducah Gaseous Diffusion Plant is based on USEC's previous application, as revised through Revision 111 dated April 4, 2008. No additional changes to the application are requested.

The USEC application for the renewal of the Portsmouth Gaseous Diffusion Plant is based on USEC's previous application, as revised through Revision 89 dated April 15, 2008. No additional changes to the application are requested.

Copies of the renewal application for certification (except for classified and proprietary portions which are withheld in accordance with 10 CFR 2.390, ''Availability of Public Records'') are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ML081070220 and ML081070229). Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

II. Notice of Comment Period

Pursuant to 10 CFR 76.37(b), any interested party may submit written comments on the application for renewal of the certificate of compliance, for either the Paducah plant or the Portsmouth plant for consideration by the staff. To be certain of consideration, comments must be received by June 9, 2008.

Comments received after the due date will be considered, if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Written comments on the application should be mailed to the Chief, Rules Review and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand delivered to 11545 Rockville Pike, Rockville, MD 20852 between 7:45 a.m. and 4:15 p.m. Federal workdays. Comments should be legible and reproducible and include the name, affiliation (if any) and address of the comment provider. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room located in Rockville, MD.

In addition, the NRC will conduct public meetings, in the vicinity of both GDPs, in May and June of 2008. Notice of the meetings will be posted on the NRC Web site, *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

Following evaluation of USEC's applications for renewal and any public comments received, the NRC staff will issue a written Director's decision and publish notice of the decision in the **Federal Register**. Upon publication of the notice of decision, any person whose interest may be affected may then request review of the decision within 30 days, pursuant to 10 CFR 76.62(c) or 76.64(d), whichever applies.

III. Further Information

For further information, please contact Mr. Michael G. Raddatz, at (301) 492–3108 of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 29th day of April, 2008.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E8–10284 Filed 5–7–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: C. Penn, Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between March 1, 2008, and March 31, 2008. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for March 2008.

Schedule B

No Schedule B appointments were approved for March 2008.

Schedule C

The following Schedule C appointments were approved during March 2008.

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS80003 Deputy to the Associate Director for Legislative Affairs. Effective March 10, 2008.

Section 213.3304 Department of State

DSGS61259 Public Affairs Specialist to the Principal Deputy Assistant Secretary. Effective March 06, 2008.

DSGS69726 Protocol Officer to the Foreign Affairs Officer (Visits). Effective March 11, 2008.

DSGS61040 Staff Assistant to the Deputy Assistant Secretary. Effective March 19, 2008.

DSGS69727 Special Assistant to the Deputy Assistant Secretary. Effective March 26, 2008.

DSGS69728 Legislative Management Officer to the Deputy Assistant Secretary. Effective March 26, 2008.

Section 213.3305 Department of the Treasury

DYGS60401 Special Assistant to the Chief of Staff. Effective March 07, 2008.

DYGS60307 Senior Advisor to the Treasurer of the United States. Effective March 14, 2008.

DYGS60381 Special Assistant to the Deputy Assistant Secretary for Legislative Affairs (International). Effective March 25, 2008.

Section 213.3306 Department of Defense

DDGS17137 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective March 06, 2008.

DDGS17138 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Asian and Pacific Security Affairs). Effective March 06, 2008.

DDGS17139 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective March 06, 2008.

DDGS17140 Public Affairs Analyst to the Public Affairs Specialist. Effective March 06, 2008.

DDGS17142 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective March 07, 2008.

DDGS17141 Special Assistant for Research to the Supervisory Speechwriter. Effective March 10, 2008.

DDGS17136 Special Assistant to the Assistant Secretary of Defense (Special Operations/Low Intensity Conflict and Interdependent Capabilities). Effective March 18, 2008.

DDGS17143 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective March 20, 2008.

DDGS17144 Personal and Confidential Assistant to the Under Secretary of Defense (Comptroller). Effective March 20, 2008.

Section 213.3307 Department of the Army

DWGS00092 Special Assistant to the General Counsel. Effective March 07, 2008.

DWGS00090 Special Assistant to the General Counsel. Effective March 10, 2008.

DWGS00095 Personal and Confidential Assistant (Installations and Environment) to the Assistant Secretary of the Army (Installations and Environment). Effective March 14, 2008.

DWGS00096 Personal and Confidential Assistant to the Deputy Under Secretary of the Army. Effective March 14, 2008.

Section 213.3308 Department of the Navy

DNGS08115 Staff Assistant (Policy) to the Deputy Under Secretary of the Navy. Effective March 31, 2008.

DNGS08116 Staff Assistant (Policy) to the Deputy Under Secretary of the Navy. Effective March 31, 2008.

Section 213.3309 Department of the Air Force

DFGS00011 Director for Strategic Initiatives to the Assistant Secretary (Financial Management and Comptroller). Effective March 04, 2008.

DFGS60047 Financial Management Specialist to the Assistant Secretary (Financial Management and Comptroller). Effective March 04, 2008.

Section 213.3310 Department of Justice

DJGS00204 Senior Counsel to the Deputy Attorney General. Effective March 07, 2008.

DJGS00086 Senior Press Assistant to the Director, Office of Public Affairs. Effective March 14, 2008.

DJGS00081 Special Assistant to the Chairman Effective March 21, 2008.

DJGS00106 Special Assistant and Media Affairs Coordinator to the Assistant Attorney General. Effective March 21, 2008.

DJGS00318 Press Assistant to the Director, Office of Public Affairs. Effective March 21, 2008.

DJGS00084 Senior Counsel to the Assistant Attorney General Environment and Natural Resources. Effective March 26, 2008.

DJGS00082 Special Assistant to the Assistant Attorney General Environment and Natural Resources. Effective March 28, 2008.

Section 213.3311 Department of Homeland Security

DMGS00523 Special Assistant to the Assistant Secretary, Immigration and Customs Enforcement. Effective March 21, 2008.

Section 213.3312 Department of the Interior

DIGS01116 Special Assistant to the Director, External and Intergovernmental Affairs. Effective March 05, 2008.

DIGS01118 Special Assistant—Scheduling and Advance to the Director—Scheduling and Advance. Effective March 20, 2008.
DIGS01119 Special Assistant—Fish and Wildlife and Parks to the Special Assistant. Effective March 20, 2008.
DIGS01120 Special Assistant to the Director—Scheduling and Advance. Effective March 20, 2008.
DIGS01117 Director of Scheduling and Advance to the Chief of Staff. Effective March 27, 2008.

Section 213.3313 Department of Agriculture

DAGS00938 Director of Communications and Governmental Affairs to the Administrator, Food and Nutrition Service. Effective March 11, 2008.
DAGS00937 Chief of Staff to the Chief, Natural Resources Conservation Service. Effective March 12, 2008.
DAGS00936 Special Assistant to the Administrator, Rural Housing Service. Effective March 14, 2008.
DAGS00939 Staff Assistant to the Director of External Affairs. Effective March 26, 2008.
DAGS00940 Special Assistant to the Administrator. Effective March 26, 2008.

Section 213.3314 Department of Commerce

DCGS00469 Deputy Director to the Director Office of White House Liaison. Effective March 11, 2008.
DCGS60321 Director of Public Affairs to the Under Secretary for International Trade. Effective March 11, 2008.
DCGS00435 Confidential Assistant to the Deputy Secretary. Effective March 14, 2008.
DCGS60532 Senior Counsel to the General Counsel. Effective March 14, 2008.

Section 213.3315 Department of Labor

DLGS60132 Senior Advisor to the Associate Deputy Secretary. Effective March 04, 2008.
DLGS60135 Agency Liaison Officer to the Executive Secretary. Effective March 04, 2008.
DLGS60015 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 13, 2008.
DLGS60260 Staff Assistant to the Director, 21st Century Office and Deputy Assistant Secretary for Intergovernmental Affairs. Effective March 13, 2008.
DLGS60175 Special Assistant to the Counselor In the Office of the Secretary. Effective March 28, 2008.

Section 213.3316 Department of Health and Human Services

DHGS60011 Special Assistant to the Commissioner of Food and Drugs. Effective March 04, 2008.
DHGS60374 Confidential Assistant to the Executive Secretary to the Department. Effective March 11, 2008.

Section 213.3317 Department of Education

DBGS00467 Director, Faith-Based and Community Initiatives Center to the Chief of Staff. Effective March 04, 2008.
DBGS00262 Confidential Assistant to the Special Assistant. Effective March 05, 2008.
DBGS00626 Confidential Assistant to the Special Assistant. Effective March 13, 2008.
DBGS00200 Special Assistant to the Special Assistant. Effective March 21, 2008.

Section 213.3325 United States Tax Court

JCGS60066 Trial Clerk to the Chief Judge. Effective March 07, 2008.

Section 213.3331 Department of Energy

DEGS00642 Special Assistant to the Assistant Secretary (Electricity Delivery and Energy Reliability). Effective March 10, 2008.
DEGS00641 Special Assistant to the Assistant Secretary (Electricity Delivery and Energy Reliability). Effective March 11, 2008.
DEGS00644 Senior Advisor for Intergovernmental Affairs to the Director of Congressional Intergovernmental and Public Affairs. Effective March 19, 2008.
DEGS00645 Deputy Press Secretary to the Director, Public Affairs. Effective March 19, 2008.

Section 213.3332 Small Business Administration

SBGS00655 Director of Scheduling to the Chief of Staff. Effective March 13, 2008.
SBGS00657 Counselor to the Deputy Administrator Effective March 26, 2008.
SBGS00660 Research Analyst to the Deputy Associate Administrator for Office of Communications and Public Liaison. Effective March 25, 2008.
SBGS00662 Deputy Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs. Effective March 26, 2008.
SBGS00663 Assistant Administrator for Policy and Strategic Planning to the Chief of Staff. Effective March 26, 2008.
SBGS00665 Congressional Liaison to the Assistant Administrator for Congressional and Legislative Affairs. Effective March 26, 2008.
SBGS00664 Senior Advisor to the Administrator to the Chief of Staff. Effective March 28, 2008.

Section 213.3337 General Services Administration

GSGS60100 Deputy Associate Administrator for Performance Improvement to the Associate Administrator for Performance Improvement. Effective March 28, 2008.

Section 213.3342 Export-Import Bank

EBGS44070 Administrative Assistant to the Member Board of Directors. Effective March 07, 2008.

Section 213.3379 Commodity Futures Trading Commission

CTOT00089 Administrative Assistant to the Commissioner. Effective March 26, 2008.

Section 213.3391 Office of Personnel Management

PMGS30993 Special Assistant to the Director, Office of Communications and Public Liaison. Effective March 24, 2008.
PMGS30995 Special Assistant to the Director, Office of Communications and Public Liaison. Effective March 24, 2008.

Section 213.3392 Federal Labor Relations Authority

FAGS00001 Management Assistant to the Chairman. Effective March 14, 2008.

Section 213.3394 Department of Transportation

DTGS60237 Press Secretary to the Assistant to the Secretary and Director of Public Affairs. Effective March 11, 2008.
DTGS60017 Assistant to the Secretary for Policy to the Secretary. Effective March 26, 2008.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

Howard C. Weizmann,

Deputy Director.

[FR Doc. E8–10221 Filed 5–7–08; 8:45 am]

BILLING CODE 6325–39–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.™

ACTION: Notice of modifications to three existing systems of records.

SUMMARY: The Postal Service proposes to revise the following existing systems of records titled, ''USPS 810.100, *http://www.usps.com Registration*,'' ''USPS 810.200, *http://www.usps.com Ordering, Payment and Fulfillment*,'' and ''USPS 860.000, *Financial Transactions*.'' The modifications clarify user information in Categories of Records in the System, Purpose, Retention and Disposal and Systems Manager(s).

Background: The Postal Service's commitment to universal service is based on a foundation of providing secure products and services to postal customers. As a trusted organization, the Postal Service faces a variety of security challenges which require investigative, preventive, and security responses.

The Postal Service works collaboratively with internal and external groups to ensure new postal products and services are secure, thus maintaining customers' confidence in the mail and satisfying their personal and business needs.

This includes providing postal customers with secure access to products and services in all channels. As online access to retail products and services has grown, new types of fraudulent activities have emerged to challenge the security of online transactions.

The Postal Service has responded by developing fraud prevention initiatives designed to protect the security of financial transactions on usps.com. These initiatives include enhanced capabilities for ensuring the accuracy and security of credit card transactions conducted by national and international customers on usps.com. Modifications to the systems of records will be reflected in the Categories of Records in the System as it relates to business-specific and user information, purpose, and retention and disposal of online user information.

DATES: The revisions will become effective without further notice on June 9, 2008 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to the Records Office, United States Postal Service, 475 L'Enfant Plaza, SW., Room 5821, Washington, DC 20260–2200. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Deborah D. Hubbard, 202–268–7119.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. The Postal Service has reviewed its systems of records and has determined that USPS 810.100, *http://www.usps.com Registration,* should be revised to modify existing categories of records in the system, and retention and disposal of such records. Collection, retention, and disposal of user information will be added to enhance the understanding and fulfillment of customer needs and for ensuring the security of registration transactions conducted on usps.com.

In addition, the Postal Service has reviewed its systems of records and has determined that USPS 810.200, *http://www.usps.com Ordering, Payment and Fulfillment,* should be revised to modify existing categories of records in the system, purpose, and retention and disposal of such records. Categories of records in the system will be revised to include online user information. The purpose of collection will be revised to support law enforcement investigations, and retention and disposal of this information will be added.

The Postal Service has also determined that USPS 860.000, *Financial Transactions,* should be revised to include online user information within the categories of records in the system. The purpose of collection will be revised to support law enforcement investigations, and retention and disposal of this information will be added.

Privacy Act Systems of Records USPS 810.100, USPS 810.200, and USPS 860.000 were originally published in the **Federal Register** on April 29, 2005 (70 FR 22548).

The Postal Service proposes amending the systems as shown below:

USPS 810.100, *http://www.usps.com Registration*

CATEGORIES OF RECORDS IN THE SYSTEM AND RETENTION AND DISPOSAL:

[Revise to read as follows:]

* * * * *

Categories of Records in the System will be changed to read:

7. Online user information: Internet Protocol (IP) address, domain name, operating system versions, browser version, date and time of connection, and geographic location.

Retention and Disposal will be changed to read:

4. Online user information may be retained for 6 months.

Additionally, the System Manager(s) title has been changed to Chief Marketing Officer and Executive Vice President.

USPS 810.200, *http://www.usps.com Ordering, Payment and Fulfillment*

CATEGORIES OF RECORDS IN THE SYSTEM, PURPOSE, RETENTION AND DISPOSAL, AND SYSTEM MANAGER:

[Revise to read as follows:]

* * * * *

Categories of Records in the System will be changed to read:

5. Online user information: Internet Protocol (IP) address, domain name, operating system version, browser version, date and time of connection, and geographic location.

Purpose will be changed to read:

5. To support investigations related to law enforcement for fraudulent financial transactions.

Retention and Disposal will be changed to read:

3. Online user information may be retained for 6 months.

Additionally, the System Manager(s) and Address will reflect the following addition:

Chief Financial Officer and Executive Vice President, 475 L'Enfant Plaza, SW., Washington, DC 20260.

Also, the existing System Manager's title has been changed to Chief Marketing Officer and Executive Vice President.

USPS 860.000, *Financial Transactions*

CATEGORIES OF RECORDS IN THE SYSTEM, PURPOSE AND RETENTION AND DISPOSAL AND SYSTEM MANAGER:

[Revise to read as follows:]

* * * * *

Categories of Records in the System will be changed to read:

7. Online user information: Internet Protocol (IP) address, domain name, operating system version, browser version, date and time of connection, and geographic location.

Purpose will be changed to read:

4. To support investigations related to law enforcement for fraudulent financial transactions.

Retention and Disposal will be changed to read:

8. Online user information may be retained for 6 months.

Additionally, the System Manager(s) title has been changed to Chief

Marketing Officer and Executive Vice President.

* * * * *

USPS 810.100, *http://www.usps.com Registration*

SYSTEM LOCATION:

Computer Operations Service Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who register via the USPS Web site at *http://www.usps.com.*

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Customer information:* Name; customer ID(s); company name; job title and role; home, business, and billing address; home and business phone and fax number; e-mail; URL; and Automated Clearing House (ACH) information.

2. *Identity verification information:* Question, answer, username, user ID, and password.

3. *Business-specific information:* Business type and location, business IDs, annual revenue, number of employees, industry, nonprofit rate status, product usage information, annual and/or monthly shipping budget, payment method and information, planned use of product, and age of Web site.

4. *Customer preferences:* Preferences to receive USPS marketing information, preferences to receive marketing information from USPS partners, preferred means of contact, preferred e-mail format, product and/or service marketing preference.

5. *Customer feedback:* Method of referral to Web site.

6. *Registration information:* Date of registration.

7. *Online user Information:* Internet Protocol (IP) address, domain name, operating system versions, browser version, date and time of connection, and geographic location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To provide online registration with single sign on services for customers.

2. To obtain accurate contact information in order to deliver requested products, services, and other material.

3. To authenticate customer logon information for *http://www.usps.com.*

4. To permit customer feedback in order to improve *http://www.usps.com* or USPS products and services.

5. To enhance understanding and fulfillment of customer needs.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1 through 7, 10, and 11 apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated database, computer storage media, and paper.

RETRIEVABILITY:

By customer name, customer ID(s), phone number, or mail or e-mail address.

SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software. Online data transmissions are protected by encryption.

For small business registration, computer storage tapes and disks are maintained in controlled-access areas or under general scrutiny of program personnel. Access is controlled by logon ID and password as authorized by the Marketing organization via secure Web site. Online data transmissions are protected by encryption.

RETENTION AND DISPOSAL:

1. ACH records are retained up to 2 years.

2. Records stored in the registration database are retained until the customer cancels the profile record, 3 years after the customer last accesses records, or until the relationship ends.

3. For small business registration, records are retained 5 years after the relationship ends.

4. Online user information may be retained for 6 months.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Marketing Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

NOTIFICATION PROCEDURE:

Customers wanting to know if information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain name, address, and other identifying information.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers.

USPS 810.200, *http://www.usps.com Ordering, Payment, and Fulfillment*

SYSTEM LOCATION:

Computer Operations Service Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who place orders and/or make payment for USPS products and services through *http://www.usps.com.*

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Customer information:* Name, customer ID(s), phone and/or fax number, mail address and e-mail address.

2. *Payment information:* Credit and/or debit card number, type, and expiration date, billing information, ACH information.

3. *Shipping and transaction information:* Product and/or service ID numbers, descriptions, and prices; name and address(es) of recipients; order number and delivery status; electronic address lists; electronic documents or images; job number.

4. Claims submitted for defective merchandise.

5. *Online user information:* Internet Protocol (IP) address, domain name, operating system versions, browser version, date and time of connection, and geographic location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To fulfill orders for USPS products and services.

2. To promote increased use of the mail by providing electronic document preparation and mailing services for customers.

3. To provide shipping supplies and services, including return receipts and labels.

4. To provide recurring ordering and payment services for products and services.

5. To support investigations related to law enforcement for fraudulent financial transactions.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1 through 7, 10, and 11 apply. In addition:

a. Customs declaration records may be disclosed to domestic and foreign customs officials pursuant to 19 U.S.C. 2071 (note) and international agreements or regulations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases, computer storage media, and paper.

RETRIEVABILITY:

By customer name, customer ID(s), phone number, mail or e-mail address, or job number.

SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

Online data transmission is protected by encryption, dedicated lines, and authorized access codes. For shipping supplies, data is protected within a stand-alone system within a controlled-access facility.

RETENTION AND DISPOSAL:

1. Records related to mailing online and online tracking and/or confirmation services supporting a customer order are retained for up to 30 days from completion of fulfillment of the order, unless retained longer by request of the customer. Records related to shipping services and domestic and international labels are retained up to 90 days. Delivery Confirmation and return receipt records are retained for 6 months. Signature Confirmation records are retained for 1 year. ACH records are retained for up to 2 years.

2. Other customer records are retained for 3 years after the customer relationship ends.

3. Online user information may be retained for 6 months.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer and Executive Vice President, 475 L'Enfant Plaza, SW., Washington, DC 20260.

Chief Marketing Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

NOTIFICATION PROCEDURE:

Customers wanting to know if information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain name, address, customer ID(s), and order number, if known.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers.

USPS 860.000, Financial Transactions

SYSTEM LOCATION:

USPS Headquarters; Integrated Business Solutions Services Centers; Accounting Service Centers; anti-money laundering support group; and contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Customers who use online payment or funds transfer services.

2. Customers who file claims or make inquiries related to online payment services, funds transfers, money orders, and stored-value cards.

3. Customers who purchase funds transfers or stored-value cards in an amount of $1000 or more per day, or money orders in an amount of $3000 or more per day, or who purchase or redeem any such services in a manner requiring collection of information as potential suspicious activities under anti-money laundering requirements. Recipients of funds transfers and the beneficiaries of funds from money orders totaling $10,000 in 1 day.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Customer information:* Name, customer ID(s), mail and e-mail address, telephone number, occupation, type of business, and customer history.

2. *Identity verification information:* Date of birth, username and/or ID, password, Social Security Number (SSN) or tax ID number, and driver's license number (or other type of ID if driver's license is not available, such as Alien Registration Number, Passport Number, Military ID, Tax ID Number).

(Note: For online payment services, SSNs are collected, but not retained, in order to verify ID.)

3. *Billers registered for online payment services:* Biller name and contact information, bill detail, and bill summaries.

4. *Transaction information:* Name, address, and phone number of purchaser, payee, and biller; amount, date, and location; credit and/or debit card number, type, and expiration; sales, refunds, and fees; type of service selected and status; sender and recipient bank account and routing number; bill detail and summaries; transaction number, serial number, and/or reference number or other identifying number, pay out agent name and address; type of payment, currency, and exchange rate; Post Office information such as location, phone number, and terminal; employee ID numbers, license number and state, and employee comments.

5. *Information to determine credit worthiness:* Period at current residence, previous address, and period of time with same phone number.

6. *Information related to claims and inquiries:* Name, address, phone number, signature, SSN, location where product was purchased, date of issue,

amount, serial number, and claim number.

7. *Online user information:* Internet Protocol (IP) address, domain name, operating system versions, browser version, date and time of connection, and geographic location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404; 31 U.S.C. 5318, 5325, 5331, and 7701.

PURPOSE(S):

1. To provide financial products and services.

2. To respond to inquiries and claims related to financial products and services.

3. To fulfill requirements of anti-money laundering statutes and regulations.

4. To support investigations related to law enforcement for fraudulent financial transactions.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1 through 7, 10, and 11 apply. Legally required disclosures to agencies for law enforcement purposes include disclosures of information relating to money orders, funds transfers, and stored-value cards as required by anti-money laundering statutes and regulations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated database, computer storage media, microfiche, and paper.

RETRIEVABILITY:

For online payment and funds transfer services, information is retrieved by customer name, customer ID(s), transaction number, or address.

Claim information is retrieved by name of purchaser or payee, claim number, serial number, transaction number, check number, customer ID(s), or ZIP Code.

Information related to anti-money laundering is retrieved by customer name; SSN; alien registration, passport, or driver's license number; serial number; transaction number; ZIP Code; transaction date; data entry operator number; and employee comments.

SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software. Online data transmissions are protected by encryption.

RETENTION AND DISPOSAL:

1. Summary records, including bill due date, bill amount, biller information, biller representation of account number, and the various status indicators, are retained 2 years from the date of processing.

2. For funds transfers, transaction records are retained 3 years.

3. Records related to claims are retained up to 3 years from date of final action on the claim.

4. Forms related to fulfillment of anti-money laundering requirements are retained 5 years from the end of the calendar quarter in which they were created.

5. Related automated records are retained the same 5-year period and purged from the system quarterly after the date of creation.

6. Enrollment records related to online payment services are retained 7 years after the subscriber's account ceases to be active or the service is cancelled.

7. Account banking records, including payment history, Demand Deposit Account (DDA) number, and routing number, are retained 7 years from the date of processing.

8. Online user information may be retained for 6 months.

Records existing on paper are destroyed by burning, pulping, or shredding.

Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer and Executive Vice President, 475 L'Enfant Plaza, SW., Washington DC 20260.

Chief Marketing Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

NOTIFICATION PROCEDURE:

For online payment services, funds transfers, and stored-value cards, individuals wanting to know if information about them is maintained in this system must address inquiries in writing to the Chief Marketing Officer. Inquiries must contain name, address, and other identifying information, as well as the transaction number for funds transfers.

For money order claims and anti-money laundering documentation, inquiries should be addressed to the Chief Financial Officer. Inquiries must include name, address, or other identifying information of the purchaser (such as driver's license, Alien Registration Number, Passport Number, etc.), and serial or transaction number. Information collected for anti-money laundering purposes will only be provided in accordance with Federal anti-money laundering laws and regulations.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers, recipients, financial institutions, and USPS employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

USPS has established regulations at 39 CFR 266.9 that exempt information contained in this system of records from various provisions of the Privacy Act in order to conform to the prohibition in the Bank Secrecy Act, 31 U.S.C. 5318(g)(2), against notification of the individual that a suspicious transaction has been reported.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–10183 Filed 5–7–08; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57757; File No. SR–BSE–2008–23]

Self-Regulatory Organizations; Boston Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc.

May 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 2008, the Boston Stock Exchange, Incorporated (''Exchange'' or ''BSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes: (i) To amend and restate its Certificate of Incorporation and its Constitution in their entirety to reflect the planned acquisition of the Exchange by The NASDAQ OMX Group, Inc. (''NASDAQ OMX''); (ii) to redesignate its Constitution as the By-Laws of the Exchange (''By-Laws''); (iii) to amend the governance framework of Boston Options Exchange Regulation, LLC (''BOXR'') by adopting a written operating agreement and amending the BOXR by-laws (''BOXR By-Laws''); (iv) to obtain approval for a change of control of BSX Group, LLC (''BSX'') and make related amendments to the Third Amended and Restated Operating Agreement of BSX; (v) to adopt two related rules; and (vi) to obtain Commission approval for affiliation between the Exchange and certain broker-dealer subsidiaries of NASDAQ OMX. The text of the proposed rule change is available on the Exchange's Web site (*http://www.bostonstock.com*), at the Exchange, and at the Commission's Public Reference Room. The text of Exhibit 5 of the proposed rule change is also available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Merger

On October 2, 2007, the Exchange announced that it had entered into an agreement with The Nasdaq Stock Market, Inc. (now NASDAQ OMX) pursuant to which NASDAQ OMX will acquire all of the outstanding membership interests in the Exchange and the Exchange will be merged with and into Yellow Merger Corporation, a Delaware corporation and wholly owned subsidiary of NASDAQ OMX, with the Exchange surviving the merger (''Merger''). As a result of the Merger, the Exchange will become a Delaware stock corporation, with 100% of its outstanding stock owned by NASDAQ OMX. Exchange Members will receive cash as consideration for their ownership interests, and therefore will not retain ownership interests in the Exchange or its affiliates. NASDAQ OMX will then operate the Exchange as a wholly owned subsidiary, with rules, membership rosters, and listings that are separate and distinct from the rules, membership rosters, and listings of The NASDAQ Stock Market LLC (''Nasdaq Exchange''). The Exchange will propose substantial amendments to its rules in a separate filing.

To reflect its changed status from an independent membership corporation to a wholly owned stock corporation, the Exchange proposes to amend and restate its Certificate of Incorporation and its Constitution in their entirety. The amended Constitution will be redesignated as the By-Laws of the Exchange. In addition, the Exchange proposes to adopt two new rules to reflect its status as a subsidiary of NASDAQ OMX, which is a public company.

The Exchange also proposes to amend the governance framework of BOXR by adopting a written operating agreement (the Amended and Restated Limited Liability Company Agreement of Boston Options Exchange Regulation, LLC (''BOXR LLC Agreement'')) and amending the BOXR By-Laws. BOXR is a wholly owned subsidiary of the Exchange that regulates the Boston Options Exchange (''BOX''), an electronic options market operated as a facility of the Exchange by Boston Options Exchange Group LLC (''BOX LLC''). BOX LLC was established in 2002 as a joint venture among the Exchange, Bourse de Montréal (''MX''), and several other investors. The Exchange has agreed to sell its equity interest in BOX LLC to MX, but the Exchange will continue to regulate BOX through BOXR for a period of time following the Merger. BOXR's operations are governed by a Plan of Delegation of Functions and Authority by the Exchange to BOXR and by its by-laws, both of which are rules of the Exchange approved by the Commission. The BOXR LLC Agreement, and the BOXR By-Law amendments reflect changes that will be made to the governance and management of BOXR as it remains the designated entity that will regulate the BOX market until alternative arrangements acceptable to the Commission are made. The amendments to the BOXR By-Laws also make technical amendments to conform to the changes proposed to the Exchange Constitution.[3]

Finally, under Section 8.1 of the Third Amended and Restated Operating Agreement of BSX dated March 13, 2007 (''BSX Operating Agreement''), the Exchange must obtain Commission approval for certain transfers of ownership interests in BSX. In connection with the Merger, NASDAQ OMX will acquire direct interests in BSX, which, together with the Exchange's interests, will result in BSX becoming a wholly owned subsidiary of NASDAQ OMX. Specifically, following the Merger, the Exchange will continue to own ''Units'' of ownership interest in BSX equivalent to 53.21% of the outstanding Units, while NASDAQ OMX will own the remaining 46.79%.

[3] In a separate filing (SR–BSE–2008–27), the Exchange is proposing to amend the BOX LLC Operating Agreement and to adopt resolutions establishing an independent committee of the Exchange's Board of Governors (to be redesignated as the Board of Directors) that will review BOX rule changes and certain other BOX-related regulatory matters. In addition, the Exchange has submitted a filing to amend the Exchange's Certificate to allow for the distribution of the net proceeds from the Exchange's intended sale of its equity interests in BOX (SR–BSE–2008–02).

Accordingly, the filing seeks approval for this transfer. The filing also proposes amendments to the BSX Operating Agreement to reflect BSX's acquisition.

Exchange Certificate of Incorporation

Article First and Second of the amended and restated Certificate (as proposed to be amended and restated, the ''Restated Certificate'') state the name and registered agent of the Exchange. Although NASDAQ OMX may propose to change the name of the Exchange in the future, at closing, the name of the Exchange will remain ''Boston Stock Exchange, Incorporated.''

Article Third of the Restated Certificate provides that the Exchange may engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware and any and all activities necessary or incidental to the foregoing. Without limiting these general powers, Article Third also specifically provides that the Exchange's activities shall include actions that support its regulatory responsibilities under the Act.[4]

Article Fourth of the Restated Certificate provides that the Exchange is authorized to issue 1,000 shares of common stock, par value $0.01, all of which shall be held by NASDAQ OMX. The Restated Certificate further provides that NASDAQ OMX may not transfer or assign any shares of stock of the Exchange, in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder.

Article Fifth pertains to the governing board of the Exchange, which is being designated as a Board of Directors (''Board''), rather than a Board of Governors. The total number of Directors constituting the entire Board will be fixed from time to time by the stockholders (*i.e.*, NASDAQ OMX), and will be elected by the stockholders to hold office until their respective successors have been duly elected and qualified, subject, however, to prior death, resignation, retirement, disqualification, or removal from office. However, the exact composition of the Board is also subject to the requirements of the By-Laws relating to independence and fair representation of members, which are described in detail below.

Article Fifth also contains standard corporate provisions governing meetings of stockholders. Because NASDAQ OMX will be the sole stockholder, however, Article Seventh provides that any action required or permitted to be taken at an annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Thus, it is expected that most stockholder actions will be taken through written consent, rather than meetings.

Finally, Article Fifth provides that vacancies or newly created directorships resulting from an increase in the authorized number of Directors are filled as provided in the By-Laws (described below); that no decrease in the number of Directors shortens the term of an incumbent Director; and that Directors may be removed by the holders of a majority of the shares at the time entitled to vote at an election of Directors. However, the stockholders' removal authority is also limited by the By-Laws (as described below).

Article Sixth limits the liability of Directors to the Exchange in the manner permitted under Delaware law; and Article Eighth provides that the Board (in addition to the stockholders) may adopt, amend or repeal By-Laws. Article Ninth reserves the right to amend, alter, change, or repeal any provisions contained in the Restated Certificate; [5] and Article Tenth provides that the Exchange has perpetual existence.

By-Laws

The By-Laws reflect NASDAQ OMX's expectation that the Exchange will be operated with governance, regulatory, and market structures similar to those of the Nasdaq Exchange. Accordingly, the Exchange proposes to adopt By-Laws that are similar in all material respects to the By-Laws of the Nasdaq Exchange. The most significant differences result from the fact that the Nasdaq Exchange is a limited liability company whereas the Exchange will be organized as a stock corporation.

Article I of the By-Laws contains key definitions used in the By-Laws. Article II provides for the registered office of the Exchange in Delaware and such other offices as it may establish. Article III contains standard corporate provisions governing meetings of stockholders, as well as a provision consistent with the Restated Certificate allowing stockholder action by written consent.

Article IV contains key provisions regarding the powers, composition, and selection of the Board. The property, business, and affairs of the Exchange will be managed under the direction of the Board. The exact number of Directors will be determined by the stockholders of the Exchange (*i.e.*, NASDAQ OMX), but shall in no event be less than ten Directors. No decrease in the number of Directors shall shorten the term of any incumbent Director.

As is the case with the Nasdaq Exchange, the Board composition will be required to reflect a balance among ''Industry Directors,'' ''Member Representative Directors,'' and ''Non-Industry Directors,'' including ''Public Directors.'' An Industry Director is a person with direct ties to the securities industry as a result of connections to a broker-dealer, the Exchange or its affiliates, the Financial Industry Regulatory Authority, Inc. (''FINRA''), or certain service providers to such entities.[6] The By-Laws also permit up to

[4] In a separate filing (SR–NASDAQ–2008–035), NASDAQ OMX is proposing to amend its by-laws to reflect the proposed acquisition of the Exchange. The proposed amendments include, among other protections, a stipulation that for so long as NASDAQ OMX shall control the Exchange, the board of directors, officers, employees and agents of NASDAQ OMX shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange and to its obligations to investors and the general public and shall not take any actions which would interfere with the effectuation of any decisions by the board of directors of the Exchange relating to its regulatory functions (including disciplinary matters) or the market structure which it regulates or which would interfere with the ability of the Exchange to carry out its responsibilities under the Act.

[5] All such changes must be filed with the Commission under Section 19(b) of the Act, 15 U.S.C. 78s(b), and become effective thereunder before being implemented.

[6] Specifically, Article I of the By-Laws defines an Industry Director as a person who: (i) Is or has served in the prior 3 years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than 10% of the equity of a broker or dealer, and the broker or dealer accounts for more than 5% of the gross revenues received by the consolidated entity; (iii) owns more than 5% of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed 10% of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20% or more of the professional revenues received by the Director or 20% or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50% or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20% or more of the professional revenues received by the

two officers of the Exchange, who would otherwise be considered Industry Directors, to be designated as ''Staff Directors'' and thereby be excluded from the definition of Industry Director. With the exception of the initial Member Representative Directors, Member Representative Directors are nominated by a Member Nominating Committee composed of registered representatives of Exchange Members, or are voted upon by Exchange Members.[7] A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member. The process for election of Member Representative Directors is described in greater detail below. A Non-Industry Director is a Director (excluding Staff Directors) who is: (i) A Public Director; (ii) an officer or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry Director. A Public Director is a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. With the exception of the initial Directors, Directors other than the Member Representative Directors are nominated by a Nominating Committee appointed by the Board and are then elected by NASDAQ OMX as the sole stockholder.

Section 4.3 of the By-Laws provides that the number of Non-Industry Directors, including at least three Public Directors and at least one Director representative of issuers and investors,[8] must equal or exceed the sum of the number of Industry Directors and Member Representative Directors. At least 20% of the Directors must be Member Representative Directors. The By-Laws further stipulate that, as is currently the case, one Industry Director must be selected as a representative of a firm or organization that is registered with the Exchange for the purposes of participating in options trading on BOX.[9] A Director may not be subject to a statutory disqualification.[10]

The process for selecting Member Representative Directors is described in Section 4.4 and Section 4.14. Section 4.14 provides that the Board will appoint a Member Nominating Committee consisting of no fewer than three and no more than six members. All members of the Member Nominating Committee must be a current associated person of a current Exchange Member. The Board will appoint such individuals after appropriate consultation with representatives of Exchange Members. The Member Nominating Committee will then nominate a slate of candidates for Member Representative Director positions to be filled. Although the Member Nominating Committee would have authority to nominate a number of candidates in excess of the number of Board seats up for election, the Member Nominating Committee would likely nominate a number of candidates equal to the number of seats. The candidates nominated by the Member Nominating Committee will be stated on a formal ''List of Candidates.''

An Exchange Member may nominate an additional candidate for inclusion on the List of Candidates by submitting a timely and duly executed written petition to the Secretary of the Exchange. To be timely, an Exchange Member's notice must be delivered to the Secretary at the principal executive offices of the Exchange not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's ''Voting Date'' [11] (provided, however, that in the event that the Voting Date is more than 30 days before or more than 70 days after such anniversary date, notice by the Exchange Member must be so delivered not earlier than the close of business on the 120th day prior to such Voting Date and not later than the close of business on the later of the 90th day prior to such Voting Date or the 10th day following the day on which public announcement of such Voting Date is first made by the Exchange).[12] The Exchange Member's notice must include: (i) As to the person whom the Exchange Member proposes for election as a Member Representative Director, all information relating to that person that is required to be disclosed in solicitations of proxies for election of Directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Act and the rules thereunder (and such person's written consent to be named in the List of Candidates and to serving as a Director if elected); (ii) a petition in support of the candidate duly executed by the authorized representatives of 10% or more of all Exchange Members; and (iii) the name and address of the Exchange Member making the proposal. The Exchange may require any proposed candidate to furnish such other information as it may reasonably require to determine the eligibility of such person to serve as a Member Representative Director.

After the Member Nominating Committee creates the List of Candidates, the Board will determine a Voting Date and a ''Member Voting Record Date.'' [13] Promptly after selection of the Voting Date, in a Notice to Exchange Members and in a prominent location on a publicly accessible Web site, the Exchange will announce the Voting Date and the List of Candidates, and describe the procedures for Exchange Members to propose candidates for election at the

Director or 20% or more of the gross revenues received by the Director's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA or has had any such relationship or provided any such services at any time within the prior 3 years.

[7] Article I defines a Member Representative Director as a Director who has been elected by the stockholders after having been nominated by the Member Nominating Committee or voted upon by Exchange Members pursuant to the By-Laws (or elected by the stockholders without such nomination or voting in the case of the initial Member Representative Directors elected pursuant to Section 4.3(b) of the By-Laws).

[8] Section 6(b)(3) of the Act, 15 U.S.C. 78f(b)(3), requires that one or more directors shall be representative of issuers and investors and not be associated with a member of the Exchange, broker, or dealer.

[9] Section 6(b)(3) of the Act, 15 U.S.C. 78f(b)(3), requires that the rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs. The Member Representative Directors and the BOX Participant Director satisfy this requirement because they are selected through processes that rely on nominations made by nominating committees composed of representatives of member firms, with an opportunity for nomination of alternate candidates by members. *See* Section 4.4 of the proposed By-Laws of the Exchange and Section 14 of the BOXR By-Laws.

[10] Section 3(a)(39) of the Act, 15 U.S.C. 78c(a)(39).

[11] The By-Laws define Voting Date as ''a date selected by the Board for Exchange Members to vote with respect to Member Representative Directors in the event of a Contested Vote.'' As described below, the Board will select a Voting Date each year; however, a vote would be conducted on the Voting Date only in the event of a Contested Vote (*i.e.*, if there is more than one candidate for a Board seat).

In order to make the intent of this definition clearer, immediately following the closing of the Merger, the Exchange will propose to the newly constituted Board of the Exchange an amendment to the definition to read as follows: '' 'Voting Date' means the date selected by the Board on an annual basis, on which Exchange Members may vote with respect to Member Representative Directors in the event of a Contested Vote.'' Following approval by the Board, the Exchange will file the amendment as a proposed rule change for approval by the Commission.

[12] Because the voting procedures contemplated by the By-Laws are new, the alternate time frames would apply in the case of the first annual meeting held under the By-Laws. Therefore, a nomination would be considered timely if delivered not earlier than the close of business on the 120th day prior to the first Voting Date and not later than the close of business on the later of the 90th day prior to the first Voting Date, or the 10th day following the day on which public announcement of such Voting Date is first made.

[13] The By-Laws define ''Member Voting Record Date'' as a date selected by the Board for the purpose of determining the Exchange Members entitled to vote for Member Representative Directors on a Voting Date in the event of a Contested Vote.

next annual meeting. If, by the date on which an Exchange Member may no longer submit a timely nomination, there is only one candidate for each Member Representative Director seat, the Member Representative Directors would be elected by the stockholders directly from the List of Candidates nominated by the Member Nominating Committee. If, however, there is more than one candidate for a seat (*i.e.*, if there is a contested vote), a formal notice of the Voting Date and the List of Candidates will be sent by the Exchange at least 10 days but no more than 60 days prior to the Voting Date to the Exchange Members who were Exchange Members on the Member Voting Record Date, by any means, including electronic transmission, as determined by the Board or a committee thereof.

In the event of a Contested Vote, each Exchange Member will have the right to cast one vote for each Member Representative Director position to be filled;[14] provided, however, that any such vote must be cast for a person on the List of Candidates. The votes may not be cumulated. The votes shall be cast by written ballot, electronic transmission or any other means as set forth in a notice to the Exchange Members sent by the Exchange prior to the Voting Date. Only votes received prior to 11:59 p.m. Eastern Time on the Voting Date shall be counted. The persons on the List of Candidates who receive the most votes shall be submitted to the stockholders for election, and the stockholders shall elect that candidate.

Notwithstanding the foregoing, the initial Board immediately following the Merger and the adoption of these By-Laws will be selected by NASDAQ OMX (as the sole stockholder) without use of the nomination or election processes required for subsequent elections. Specifically, the stockholders will hold a special meeting (or sign a consent in lieu thereof) for the purpose of electing the Board, which shall include individuals satisfying the classifications required by Section 4.3(a) of the By-Laws but which shall not have been nominated or voted upon in accordance with Section 4.4. The initial Member Representative Directors will be officers, directors or employees of Exchange Members. The initial Board will consist of at least three Public Directors, one or two Staff Directors, at least two Member Representative Directors, an Industry Director representing ''BOX Participants,'' [15] at least one Non-Industry Director representative of issuers and investors, and such additional Industry and Non-Industry Directors as NASDAQ OMX as the sole stockholder shall deem appropriate, consistent with the compositional requirements of the By-Laws. As soon as practicable thereafter, the Exchange shall hold its annual meeting for the purpose of electing Directors in accordance with the normal processes contemplated by the By-Laws.

Section 4.5 of the By-Laws provides that Directors may be removed from office by the stockholders, with the vacancy thus created also filled by the stockholders, but that the stockholders may remove a Member Representative Director only for cause, which shall include, without limitation, the failure of such Director to be free of a statutory disqualification. In addition, a Director is disqualified and his or her term of office terminates immediately upon a determination by the Board, by a majority vote of the remaining Directors: (a) that the Director no longer satisfies the classification for which the Director was elected; and (b) that the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. Thus, for example, if a Public Director became employed by a broker-dealer and the Board thereby had an inadequate number of Public Directors, the Director would be disqualified and removed. If a Director is disqualified and removed, and the remaining term of office of such Director at the time of termination is not more than 6 months, a replacement for the Director is not required until the next annual meeting.

Section 4.7 of the By-Laws provides that if any Director position other than a Member Representative Director position becomes vacant, the Nominating Committee will nominate, and the Board will appoint by majority vote, a person satisfying the classification (Industry, Non-Industry, or Public Director) for the directorship to fill the vacancy. Whenever a Member Representative Director position becomes vacant, the Member Nomination Committee will nominate, and the Board will appoint by majority vote, a person to fill the vacancy, except that if the remaining term of office for the vacant Member Representative Director position is less than 6 months, no replacement is required.

Sections 4.8, 4.9, and 4.10 contain standard provisions for a Delaware corporation governing the quorum and voting requirements of the Board, the appropriateness of reliance by Directors upon the records, officers, and agents of the Exchange, and the rules governing conduct of meetings of the Board. Section 4.9 also recognizes the Exchange's status as a self-regulatory organization by providing that the Board, when evaluating any proposal, shall, to the fullest extent permitted by applicable law, take into account: (i) The potential impact thereof on the integrity, continuity and stability of the Exchange and the other operations of the Exchange, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

Section 4.12 provides that the Board may delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of the Exchange. However, no committee may have the power or authority of the Board in reference to: (i) Approving or adopting, or recommending to the stockholders, any action or matter (other than the election of Directors) expressly required by Delaware law to be submitted to stockholders for approval; or (ii) adopting, amending, or repealing any By-Law of the Exchange. The section also contains standard provisions for a Delaware corporation pertaining to the conduct and populating of Board committees.

Section 4.13 establishes several standing Board committees and delineates their general duties and compositional requirements:

- The Executive Committee may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange between meetings of the Board (subject to the limits described above). The number of Non-Industry Directors on

[14] In order to limit the influence that a single affiliated group of members might exercise over the Exchange, immediately following the closing of the Merger, the Exchange will propose to the newly constituted Board of the Exchange an amendment to stipulate that no Member, either alone or together with its affiliates, may account for more than 20% of the votes cast for a candidate, and any votes cast by such Member, either alone or together with its affiliates, in excess of such 20% limitation shall be disregarded. Following approval by the Board, the Exchange will file the amendment as a proposed rule change for approval by the Commission.

[15] ''BOX Participant'' means a firm or organization that is registered with the Exchange for the purposes of participating in options trading in the BOX market.

the Executive Committee must equal or exceed the number of Industry Directors on the Executive Committee. The percentage of Public Directors on the Executive Committee must be at least as great as the percentage of Public Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee must be at least as great as the percentage of Member Representative Directors on the whole Board.

• The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the Exchange, including recommendations for the Exchange's annual operating and capital budgets and proposed changes to the rates and fees charged by the Exchange.

• The Management Compensation Committee shall consider and recommend compensation policies, programs, and practices for employees of the Exchange. A majority of Management Compensation Committee members shall be Non-Industry Directors. The Chief Executive Officer of the Exchange shall be an ex-officio, non-voting member of the Management Compensation Committee.

• The Audit Committee shall consist of four or five Directors, none of whom shall be officers or employees of the Exchange. A majority of the Audit Committee members shall be Non-Industry Directors. The Audit Committee shall include two Public Directors. A Public Director shall serve as Chair of the Committee. The Audit Committee shall: (A) Provide oversight over the Exchange's financial reporting process and the financial information that is provided to the stockholders and others; (B) provide oversight over the systems of internal controls established by management and the Board and the Exchange's legal and compliance process; (C) select, evaluate and, where appropriate, replace the Exchange's independent auditors (or nominate the independent auditors to be proposed for ratification by the stockholders); and (D) direct and oversee all the activities of the Exchange's internal audit function, including but not limited to management's responsiveness to internal audit recommendations. The Audit Committee shall have exclusive authority to: (A) Hire or terminate the head of the Exchange's Internal Audit Department; (B) determine the compensation of the head of the Internal Audit Department; and (C) determine the budget for the Internal Audit Department. The Internal Audit Department and its head shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Internal Audit Department also report to senior management of the Exchange on matters the Audit Committee deems appropriate and may request that senior management of the Exchange perform such operational oversight as necessary and proper, consistent with preservation of the independence of the internal audit function. The Internal Audit Department and its head may also be employees of one or more affiliates of the Exchange (*i.e.*, NASDAQ OMX), and may serve in a similar capacity with respect to such affiliate(s).

• The Regulatory Oversight Committee shall: (i) Oversee the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities; (ii) assess the Exchange's regulatory performance; and (iii) assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Exchange's regulatory functions. In furtherance of its functions, the Regulatory Oversight Committee shall: (A) Review the Exchange's regulatory budget and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (B) meet regularly with the Exchange's Chief Regulatory Officer in executive session; and (C) be informed about the compensation and promotion or termination of the Chief Regulatory Officer and the reasons therefore. The Regulatory Oversight Committee shall consist of three members, each of whom shall be a Public Director and an ''independent director'' as defined in Rule 4200 of the Rules of the Nasdaq Stock Market.

Section 4.14 and Articles VI and VII govern the appointment by the Board of certain standing committees, not composed of Directors, to be appointed to administer various provisions of the rules that the Exchange expects to propose with respect to governance, listing, equity trading, and member discipline:

• The Member Nominating Committee will nominate candidates for each Member Representative Director position on the Board, and will also nominate candidates for appointment by the Board for positions on certain standing committees with positions reserved for Member Representatives. The Member Nominating Committee shall consist of no fewer than three and no more than six members. All members of the Member Nominating Committee shall be a current associated person of a current Exchange Member. The Board will appoint such individuals after appropriate consultation with representatives of Exchange Members.

• The Nominating Committee will nominate candidates for all other vacant or new Director positions on the Board, and candidates for all other vacant or new positions on certain standing committees. In nominating an Industry Director who is representative of BOX Participants, the Nominating Committee shall adopt the recommendation of the Nominating Committee of the Exchange's subsidiary, BOXR, and the stockholders of the Exchange (*i.e.*, NASDAQ OMX) shall elect the candidate.[16] The Nominating Committee shall consist of no fewer than six and no more than nine members. The number of Non-Industry members on the Nominating Committee must equal or exceed the number of Industry members on the Nominating Committee. If the Nominating Committee consists of six members, at least two shall be Public members. If the Nominating Committee consists of seven or more members, at least three shall be Public members. No officer or employee of the Exchange shall serve as a member of the Nominating Committee in any voting or non-voting capacity. No more than three of the Nominating Committee members and no more than two of the Industry members shall be current Directors. A Nominating Committee member may not simultaneously serve on the Nominating Committee and the Board, unless such

[16] As noted above in footnote 8, the BOX Participant Director, together with the Member Representative Directors, allow the Exchange to fulfill the requirement of Section 6(b)(3) of the Act, 15 U.S.C. 78f(b)(3) that the rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs. Article II, Section 4 of the Exchange's Constitution currently requires that the Exchange's Board of Governors select and appoint as governor a candidate put forth by the BOXR Nominating Committee for the position on the Board of Governors reserved for a representative of BOX Participants. It is the intent of the Exchange that a person nominated by the BOXR Nominating Committee for this position will, consistent with the current requirement in the Exchange's Constitution, continue to be automatically nominated and elected through the Exchange's Board selection process, unless such nominee is not eligible for service under Section 4.3 of the By-Laws (*i.e.*, because the nominee is subject to a statutory disqualification). The Exchange believes that this intent is reflected in the text of the Restated Certificate and By-Laws as approved by the Exchange's members, but could be reflected with greater clarity through further limited amendments to the text of the By-Laws. Accordingly, immediately following the closing of the Merger, the Exchange will propose to the newly constituted Board of the Exchange an amendment to the By-Laws to make it clear that the person nominated by the BOXR Nominating Committee shall also be nominated by the Exchange Nominating Committee and elected by the stockholders, unless such nominee is not eligible for service under Section 4.3; and the Exchange shall file the amendment as a proposed rule change for approval by the Commission.

member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee.

• The composition and duties of the Exchange Listing and Hearings Review Council are described in Articles VI. Under the rules to be proposed with respect to listings on the Exchange, the Exchange Listing and Hearing Review Council will review appeals from decisions to deny issuers listings on the Exchange, and will also consider and make recommendations to the Board on policy and rule changes relating to issuer listings. The Exchange Listing and Hearing Review Council will consist of no fewer than eight and no more than eighteen members, of which not more than 50% may be engaged in market-making activity or employed by an Exchange Member whose revenues from market-making activity exceed 10% of its total revenues. The Exchange Listing and Hearing Review Council will include at least five Non-Industry members (including at least two Public members), and a number of Member Representative members that is equal to at least 20% of the total number of members of the Exchange Listing and Hearing Review Council. A quorum of the Exchange Listing and Hearing Review Council will consist of a majority of its members, including one Non-Industry member and one Member Representative member.

• The composition and duties of the Exchange Review Council are described in Article VII. Under the disciplinary and membership rules to be proposed for the Exchange, the Exchange Review Council may be authorized to act with respect to an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive authority; and such other proceedings or actions as may be authorized by the Exchange Rules.[17] The Exchange Review Council also may consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of Exchange Members and associated persons and enforcement policies, including policies with respect to fines and other sanctions. The Exchange Review Council shall consist of no fewer than eight and no more than twelve members. The Exchange Review Council shall include a number of Member Representative members that is equal to at least 20% of the total number of members of the Exchange Review Council. The number of Non-Industry members, including at least three Public members, shall equal or exceed the sum of the number of Industry members and Member Representative members. A quorum of the Exchange Review Council will consist of a majority of its members, including not less than 50% of its Non-Industry members and one Member Representative member.

• The Quality of Markets Committee will: (A) Provide advice and guidance to the Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the Exchange from the perspective of investors, both individual and institutional, retail firms, market making firms, companies listed on the Exchange, and other market participants; and (B) advise the Board with respect to national market system plans and linkages between the facilities of the Exchange and other markets. The Quality of Markets Committee shall include broad representation of participants in the Exchange, including investors, market makers, integrated retail firms, and order entry firms. The Quality of Markets Committee shall include a number of Member Representatives that is equal to at least 20% of the total number of members of the Quality of Markets Committee. The number of Non-Industry members of the Quality of Markets Committee shall equal or exceed the sum of the number of Industry members and Member Representative members. A quorum of the Quality of Markets Committee will consist of a majority of its members, and at least 50% of its Non-Industry members must either be present or must waive attendance after receiving an agenda of the meeting.

• The Market Operations Review Committee will administer certain rules planned for the Exchange, notably appeals from decisions to cancel or modify clearly erroneous trades on the Exchange. The Market Operation Review Committee must include a number of Member Representatives that is equal to at least 20% of the total number of members of the Market Operations Review Committee. No more than 50% of the members of the Market Operations Review Committee shall be engaged in market making activity or employed by an Exchange Member firm whose revenues from market making activity exceed 10% of its total revenues.

• The Arbitration and Mediation Committee will: (i) Advise the Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and Exchange Members; (ii) shall monitor rules and procedures governing the conduct of dispute resolution; and (iii) shall have such other powers and authority as are necessary to effectuate the purposes of the Exchange Rules. The Arbitration and Mediation Committee must consist of no fewer than three and no more than ten members, and shall have at least 50% Non-Industry members. As is the case with the Nasdaq Exchange, the Arbitration Committee may be populated with members of FINRA's Arbitration and Mediation Committee, assuming the Exchange receives regulatory services from FINRA.[18] A quorum of the Arbitration and Mediation Committee will consist of a majority of its members, and at least 50% of its Non-Industry members must either be present or must waive attendance after receiving an agenda of the meeting.

• The Market Regulation Committee will: (i) Advise the Board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting, and trading practices; (ii) advise the Board in its administration of programs and systems for the surveillance and enforcement of rules governing Exchange Member's conduct and trading activities in the Exchange; (iii) provide a pool of attorney panelists for hearing panels under the Exchange Rules; (iv) participate in the training of hearing panelists on issues relating to quotations, executions, trade reporting, and trading practices; and (v) review and recommend to the Exchange Review Council changes to the Exchange's guidelines for sanctions to be imposed on members for violations of Exchange Rules. The Market Regulation Committee shall not have any involvement in deciding whether or not to institute disciplinary proceedings. The Market Regulation Committee shall have at least 50% Non-Industry members. As is the case with the Nasdaq Exchange, the Market Regulation Committee may be

[17] As provided in the current rules relating to BOX, certain disciplinary matters pertaining to BOX Participants may be subject to review by the BOXR Board of Directors and the Exchange Board. The Exchange Review Council is not expected to have a role in BOX matters.

[18] ''The Board shall appoint an Arbitration and Mediation Committee, or shall cause the Corporation to enter into an agreement with a self-regulatory organization that provides regulatory services pursuant to which such self-regulatory organization shall appoint an Arbitration and Mediation Committee on the Corporation's behalf.'' Section 4.14(e) of the Restated Certificate.

populated with members of FINRA's Market Regulation Committee, assuming the Exchange receives regulatory services from FINRA.[19] A quorum of the Market Regulation Committee will consist of a majority of its members, and at least 50% of its Non-Industry members must either be present or must waive attendance after receiving an agenda of the meeting.

Sections 4.15, 4.16, and 4.17 contain standard provisions for a Delaware corporation requiring: (i) Recusal by Directors and committee members subject to conflicts of interest; (ii) providing for the enforceability of contracts in which a Director has an interest if appropriately approved or ratified by disinterested Directors or by stockholders, or if fair to the Exchange; (iii) allowing for compensation of Board members; and (iv) allowing for Board action by unanimous written consent.

Article V governs the appointment by the Board of the Exchange's officers, agents, and employees, and specifically provides for the appointment of a Chair of the Board,[20] a Chief Executive Officer, a President, Vice Presidents, a Chief Regulatory Officer, a Secretary, an Assistant Secretary, a Treasurer, and an Assistant Treasurer.

The Chief Regulatory Officer shall have general supervision of the regulatory operations of the Exchange, including responsibility for overseeing the Exchange's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another self-regulatory organization to which the Exchange is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Exchange in executive session at regularly scheduled meetings of such committee, and at any time upon request of the Chief Regulatory Officer or any member of the Regulatory Oversight Committee. The Chief Regulatory Officer may also serve as the General Counsel of the Exchange.

Article VIII provides for indemnification by the Exchange of Directors, officers, employees and agents in a manner consistent with that of most Delaware stock corporations, and allows for the purchase of director and officer liability insurance. Article IX contains standard corporate provisions relating to the Exchange's capital stock, including provisions relating to stock certificates, the Exchange's stock ledger, and transfers of stock. However, like the Restated Certificate, the By-Laws also contain a stipulation that all shares of Common Stock are held by NASDAQ OMX, which may not transfer or assign any shares of stock of the Exchange, in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder. The Article also contains a stipulation that dividends may not be paid to the stockholders (*i.e.*, to NASDAQ OMX) using ''Regulatory Funds,'' which are defined as fees, fines, or penalties derived from the regulatory operations of the Exchange. The definition further provides, however, that the term shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Exchange, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Exchange.

Article X contains miscellaneous standard corporate provisions relating to the corporate seal, the fiscal year of the Exchange, waiver of notice of meetings, and the Exchange's contracting authority. Article XI authorizes amendments to the By-Laws by either the stockholders or the vote of a majority of the whole Board,[21] as well as the adoption of emergency by-laws by the Board. Article XII contains specific authorization for the Board to adopt rules needed to effect the Exchange's obligations as a self-regulatory organization, to establish disciplinary procedures and impose sanctions on members, to establish standards for membership, and to impose dues, fees, assessments, and other charges. Finally, Section 12.5 authorizes the Board, or such person or persons as may be designated by the Board, in the event of an emergency or extraordinary market conditions, to take any action regarding: (a) The trading in or operation of the Exchange or any other organized securities markets that may be operated by the Exchange, the operation of any automated system owned or operated by the Exchange, and the participation in any such system or any or all persons or the trading therein of any or all securities; and (b) the operation of any or all offices or systems of Exchange Members, if, in the opinion of the Board or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.

BOXR LLC Agreement

Upon the creation of BOXR, the Exchange filed a Certificate of Formation with the State of Delaware.[22] The purpose of the creation of BOXR was specifically for supporting the operation, regulation, and surveillance of the BOX facility. In connection with that, the Exchange drafted and filed with the Commission the BOXR By-Laws, which filing was approved on January 13, 2004,[23] and incorporated into the BOX Rules. However, no written LLC operating agreement was created for the entity. Accordingly, since the time of formation, BOXR has operated under an unwritten operating agreement, with its written By-Laws standing in place for, and reflecting, the intention of the agreement of BOXR. The Exchange therefore proposes to adopt the BOXR LLC Agreement, which includes all standard provisions typically found in a State of Delaware Limited Liability Company operating agreement. These provisions include a statement, found in Section 22 of the agreement, that the BOXR LLC Agreement may not be deemed to provide rights to any persons other than those named specifically in the agreement. The provision stipulates, however, that such rights include the rights of BOX Participants in the selection of directors of BOXR in the manner currently provided by the BOXR By-Laws. In addition, Section 20 of the BOXR LLC Agreement will provide that a transfer or assignment of the Exchange's limited liability company interests in BOXR must be filed with and approved by the Commission under Section 19 of the Act. The BOXR LLC Agreement also expands the recognized officers of BOXR to include its Chief Legal Officer and includes Schedules that list the directors and officers of BOXR as of April 15, 2008.

BOXR By-Laws

The BOXR By-Laws are being amended for consistency with other

[19] The Board shall appoint a Market Regulation Committee, or shall cause the Corporation to enter into an agreement with a self-regulatory organization that provides regulatory services pursuant to which such self-regulatory organization shall appoint a Market Regulation Committee on the Corporation's behalf.

[20] The designation by the By-Laws of the Chair of the Board as an officer of the Corporation within the meaning of the By-Laws reflects standard corporate practice for a Delaware corporation and would not cause an independent Director chosen who is selected as the Chair to cease to be an independent Director.

[21] All such changes must be filed with the Commission under Section 19(b) of the Act, 15 U.S.C. 78s(b), and become effective thereunder before being implemented.

[22] The Certificate of Formation was filed on March 25, 2002.

[23] *See* Securities Exchange Act Release No. 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR–BSE–2003–04).

changes being made in the governance of the Exchange. Specifically, the proposed changes: (i) Replace references to the Constitution of the Exchange with references to the By-Laws and references to the Board of Governors with references to the Board of Directors; (ii) add appropriate references to the BOXR LLC Agreement; (iii) amend the definition of ''Public Director'' to exclude persons having a material business relationship with affiliates of the Exchange, BOX, or BOXR; and (iv) make several clarifying and corrective edits. In addition, Section 14 is being amended to state that the BOX Participant nominee selected by BOX Participants for service on the Exchange Board is recommended for service on such Board, but is not directly elected, to reflect the fact that BOX Participants are not stockholders of the Exchange. Section 14 is also amended to provide that a disciplinary decision of a BOXR Hearing Committee or panel with respect to any BOX Participant that is an affiliate of NASDAQ OMX within the meaning of proposed Chapter XXXIX, Section 2 of the rules of the Exchange (as described below) may not be appealed to or reviewed by the BOXR Board of Directors or the Exchange Board of Directors, but rather shall constitute final disciplinary action of the Exchange for purposes of Commission Rule 19d–1(c)(1) and may be appealed to the Commission. Together with the new rules described below, the limitation is intended to guard against any possibility that the Exchange may exercise, or forebear to exercise, regulatory authority with respect to an affiliated member in a manner that is influenced by commercial considerations.[24] Finally, the Exchange is proposing to replace the indemnification provisions of Section 24 with a cross-reference to updated indemnification provisions being adopted in the BOXR LLC Agreement.

Change of Control of BSX

BSX was formed in 2004 as a joint venture between the Exchange and several investors to operate an electronic trading facility (''Boston Equities Exchange'' or ''BeX'') for trading cash equities. BeX ended its operations in September 2007. In connection with the Merger, NASDAQ OMX is purchasing all of the outstanding limited liability company interests in BSX held by investors other than the Exchange. By virtue of this purchase, NASDAQ OMX will directly own 46.79% of these interests, and will indirectly, through the Exchange, own the remainder of the outstanding interests in BSX. Section 8.1 of the BSX Operating Agreement provides that the Exchange must obtain Commission approval for certain transfers of ownership interests in BSX. Accordingly, the Exchange, through this filing, seeks Commission approval for the transfer of ownership interests to NASDAQ OMX contemplated by the Merger. Following such transfer, the Exchange and NASDAQ OMX will be the sole members of BSX, and the admission of additional or substitute members would require approval by the Commission pursuant to a filing under Section 19 of the Act. In addition, the Exchange is also proposing amendments to the BSX Operating Agreement to reflect its status as a wholly owned subsidiary of NASDAQ OMX, and to remove references to BeX. Notably, the Exchange is proposing to make the following amendments:

- Section 4.1 is amended to provide that a five-member Board of Directors will be selected by BSE.
- Section 4.4 is amended to replace a provision requiring a super-majority of director votes in favor of BSX taking certain significant actions, such as entry into a new line of business or replacing BSE as BSX's regulatory service provider, with more general authority of BSE to veto or mandate actions as dictated by regulatory requirements.
- Article VII and Sections 8.2 and 8.3 are amended to remove provisions that allow members to exercise rights of first refusal in the event that one member proposes to transfer its ownership interests in BSX to another member or BSX proposes to issue additional units of ownership.
- Section 8.4(f) (redesignated as 8.2(f)) is amended to clarify terms used to describe certain ownership interests in a Member of BSX.
- Various amendments are being made to delete references to BeX.
- Sections 8.5 and 8.6 (redesignated as Sections 8.3 and 8.4), which restricted ownership and voting of ownership interests in BSX above the 20% level by a BeX participant or its affiliates, are being retained but amended. The amendments replace ''BeX Participant'' with ''BSE member'' to apply more broadly to any person that is a member of the Exchange. However, the amendments also provide that the restrictions of these provisions shall not be construed to limit the ownership of membership interests by NASDAQ OMX or BSE. This proviso is necessary because, as discussed in greater detail below, the Nasdaq Exchange owns two broker-dealers, the ownership of which has been previously approved by the Commission. These broker-dealers are, and will continue to be, members of the Exchange.
- Article 9, which governs distributions to Members, is being amended to adopt a restriction on distributions of Regulatory Funds comparable to the restriction proposed for inclusion in the Exchange's By-Laws.
- Article 13, which governs disputes among members via arbitration, is being deleted to reflect the BSX's wholly owned status.
- Section 16.2, which governs the confidentiality obligations of Members, is being amended: (i) To clarify that Members may use confidential information pursuant to the Act and the rules and regulations thereunder; (ii) to stipulate that directors, officers, and employees receiving confidential information must themselves be under confidentiality obligations; and (iii) to require Members to conduct their business activities so as to limit the applicability of legal disclosure obligations that may supersede the confidentiality requirements of the BSX Operating Agreement.
- New Section 16.7 is being added to provide that to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the Exchange or the Exchange's equity business (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of BSX shall: (a) Not be made available to any person (other than as provided in the proviso of this sentence) other than to those officers, directors, employees and agents of BSX who have a reasonable need to know the contents thereof; (b) be retained in confidence by BSX and its officers, directors, employees and agents; and (c) not be used for any commercial purposes; provided, that nothing in this sentence shall be interpreted so as to limit or impede the rights of the Commission or the Exchange to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of BSX to disclose such confidential information to the Commission or the Exchange.
- Amending Section 18.6 to clarify that the jurisdiction of the U.S. federal courts, the Commission, and the

[24] Prior to resuming trading of equities securities, the Exchange will propose new rules that will include a comparable restriction on review of disciplinary decisions affecting an affiliated member trading equities through the Exchange.

Exchange over BSX, its Members, and the officers, directors, agents, and employees of the Company and its Members is exclusive (subject, however, to Delaware jurisdiction over matters relating to the organization or internal affairs of BSX), adding conforming references with respect to the provision's waiver of claims as to lack of personal jurisdiction, and providing for the waiver of any foreign secrecy or blocking statutes or regulations to the fullest extent permitted by law.

Prior to resuming trading of cash equities, the Exchange will file amended rules with the Commission that would replace the current BeX rules, as well as certain other rules of the Exchange. At this time, the Exchange expects to operate its cash equities market through the BSX entity. However, the Exchange will not resume cash equities trading until the new rule set is approved. If necessary to accurately reflect BSX's operations and to impose any additional regulatory safeguards deemed necessary by the Exchange or the Commission, the new rule set will include further amendments to the BSX Operating Agreement. In addition, the Exchange will provide the Commission with the opportunity to review, and if necessary, approve, any agreements between BSX and the Exchange or any third party to support BSX's operations of a facility of the Exchange, such as an amended BSE Facility Services Agreement. References to superseded agreements that formerly supported BeX, such as agreements with Lava Trading, Inc., and Atos Euronext S.A., are being deleted from the BSX Operating Agreement, as are other provisions that were applicable to BSX's initial formation and operation.

New Rules

The Exchange proposes to adopt two new rules that will reflect its status as a wholly owned subsidiary of NASDAQ OMX upon the effectiveness of the Merger. The purpose of the rules is to guard against any possibility that the Exchange may exercise, or forebear to exercise, regulatory authority with respect to an affiliated member in a manner that is influenced by commercial considerations, to provide an opportunity for Commission review of certain proposed affiliations, and to ensure that certain affiliated members do not receive advantaged access to information in comparison with unaffiliated members. The Exchange believes that the proposed rules will provide added assurance of regulatory integrity without subjecting the Exchange and its affiliates to unwarranted restrictions on their commercial activities.

First, Chapter XXXIX, Section 1 will limit ownership of NASDAQ OMX's voting securities by members of the Exchange and their associated persons (*i.e.*, their registered representatives). The rule is comparable to Rule 2130 of the Nasdaq Exchange, and provides that no member or associated person of a member shall be the beneficial owner of greater than 20% of the then-outstanding voting securities of NASDAQ OMX. ''Beneficial ownership'' is defined with reference to NASDAQ OMX's Certificate of Incorporation, which in turn provides that a person shall be deemed the ''beneficial owner'' of, shall be deemed to have ''beneficial ownership'' of, and shall be deemed to ''beneficially own'' any securities: (i) Which such person or any of such person's affiliates is deemed to beneficially own, directly or indirectly, within the meaning of Rule 13d–3 under the Act * * *;[25] (ii) subject to certain narrow exceptions described in the certificate of incorporation, which such person or any of such person's affiliates has the right to acquire or to vote pursuant to any agreement, arrangement, or understanding; or (iii) subject to certain narrow exceptions described in the certificate of incorporation, which are beneficially owned, directly or indirectly, by any other person and with respect to which such person or any of such person's affiliates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of such securities.

Second, Chapter XXXIX, Section 2 regulates affiliation between the Exchange and its affiliates, on the one hand, and Exchange members, on the other hand, in a manner comparable to Rule 2140 of the Nasdaq Exchange. In general, the proposed rule provides that the Exchange must file a proposed rule change with the Commission before the Exchange or an entity with which it is affiliated acquires or maintains an ownership interest in, or engages in a business venture with, an Exchange member or an affiliate of an Exchange member.[26] The rule defines ''affiliate'' with reference to Rule 12b–2 under the Act,[27] which provides that if one person controls, is controlled by, or is under common control another person, the persons are affiliates.

The proposed rule would make it clear that in a case where the Exchange or an affiliate of the Exchange proposes an acquisition of, or a merger or business venture with an Exchange member, a Commission filing will be required. In order to make it clear that the obligation to avoid affiliations that have not been filed is imposed by the rule both on the Exchange and its members, moreover, the rule provides that an Exchange member shall not be or become an affiliate of the Exchange, or an affiliate of any entity affiliated with the Exchange, without a Commission filing.

The term ''business venture,'' as used in the rule, is defined as an arrangement under which the Exchange or an entity with which it is affiliated, on the one hand, and an Exchange member or affiliate thereof, on the other hand, engage in joint activities with an expectation of shared profit and a risk of shared loss from common entrepreneurial efforts. Thus, the term does not include, and the proposed rule does not regulate, contracts with members or their affiliates to provide goods, products, or services for consideration, including, but not limited to, asset or stock purchase agreements that do not result in ongoing ties with a member or its affiliates,[28] credit or debt facilities, licenses of intellectual property, contracts for investment banking, financial advisory, or consulting services,[29] or the provision of transaction services or data to a broker-dealer member or products or services to a listed company that is or that owns a member broker-dealer.

The rule limits possible expansive interpretations of the term ''affiliate'' by stipulating that one entity is not deemed to be an affiliate of another entity solely by virtue of having a common director. For example, if one of the member representative directors of the Exchange is also a director of an Exchange member, that member would not be deemed to be an affiliate of the

[25] Rule 13d-3 under the Act, 17 CFR 240.13d–3, in turn provides that a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares voting power or investment power.

[26] As used in the rule, the term ''affiliate'' includes natural persons, but the term ''entity,'' when used to describe an affiliate, excludes natural persons.

[27] 17 CFR 240.12b–2.

[28] For example, in the case of an acquisition of a non-member subsidiary of a member in a transaction that did not result in an ongoing affiliation with the member, the transaction would not be regulated by the rule.

[29] In some cases, such contracts may involve sharing of confidential information with a member in circumstances where a member acts as a fiduciary for BSE or one of its affiliates. The member would be required to take measures to prevent such information from being misused, and a failure to do so would constitute a violation of BSE rules, including, depending on the circumstances, Chapter II, Sections 14, 25, and 36, and Chapter XXXVII, Section 11. Amended rules to be proposed by BSE to govern equity trading in the future will maintain comparable prohibitions.

Exchange solely because of the common director. In addition, the rule should not be construed to regulate in any manner the selection of directors or standing committee members of the Exchange, NASDAQ OMX, the Nasdaq Exchange, or their affiliates, provided such selections are conducted in accordance with applicable provisions of governing corporate documents.

In circumstances where a Commission filing is required, the rule may, in appropriate cases, permit a filing to be submitted on an immediately effective basis under Section 19(b)(3)(A) of the Act[30] and Rule 19b–4(f) thereunder.[31] For example, in cases where a proposed affiliation or business venture would not result in the establishment of a ''facility'' of the Exchange within the meaning of Section 3 of the Act,[32] a filing to establish rules to govern the operation of the affiliate or business venture would not be required or appropriate. Rather, in such circumstances, the Exchange would expect to engage in informal consultation with the Division of Trading and Markets and/or members of the Commission, and would then submit a filing to amend the rule itself, to establish that the affiliation or business venture could exist as an exception to the rule. Depending on the circumstances, such a filing might be submitted on an immediately effective basis.

There are also several important exceptions to the general filing requirement of the rule. First, the rule would not require a filing for transactions that result in an Exchange member acquiring or holding an interest in NASDAQ OMX that is consistent with Chapter XXXIX, Section 1 (discussed above). Second, no filing is required for the Exchange or an entity affiliated with the Exchange acquiring or maintaining an ownership interest in, or engaging in a business venture with, an affiliate of an Exchange member if there are information barriers between the member and the Exchange and its facilities, such that the member: (i) Will not be provided an informational advantage concerning the operation of the Exchange and its facilities, and will not be provided changes or improvements to the trading system that are not available to the industry generally or other Exchange members; (ii) will not have knowledge in advance of other members of proposed changes, modifications, or improvements to the operations or trading systems of the Exchange and its facilities, including advance knowledge of Exchange filings pursuant to Section 19(b) of the Act; (iii) will be notified of any proposed changes, modifications, or improvements to the operations or trading systems of the Exchange and its facilities in the same manner as other Exchange members are notified; and (iv) will not share employees, office space, or databases with the Exchange or its facilities, NASDAQ OMX, or any entity that is controlled by NASDAQ OMX.[33] The Exchange's Regulatory Oversight Committee must certify, on an annual basis, to the Director of the Division of Trading and Markets, that the Exchange has taken all reasonable steps to implement the foregoing requirements with respect to any affiliate to which they apply and is in compliance therewith.

This exception is aimed at circumstances in which the Exchange or an affiliated entity acquires, or enters into a business venture with, an affiliate of an Exchange member, and the Exchange erects information barriers between the member and the Exchange and its facilities. Thus, the Exchange ensures that the member does not receive any advantage as a result of its affiliation.

In connection with the adoption of this rule, it is also necessary for the Exchange to seek Commission approval under the rule for the affiliation that will result by virtue of the Merger between the Exchange and the two broker-dealer subsidiaries of the Nasdaq Exchange: Nasdaq Execution Services, LLC (''NES'') and NASDAQ Options Services, LLC (''NOS''). The acquisition of the entities that are now NES and NOS by The Nasdaq Stock Market, Inc. (now NASDAQ OMX) was approved by the Commission in 2004 and 2005.[34] The rules under which NES currently routes orders to other market centers were approved by the Commission in 2006 and subsequently amended on several occasions.[35] Notably, Nasdaq Exchange Rule 4758(b) establishes the parameters for operation of NES as follows: (1) All routing of equities by the Nasdaq Exchange is performed by NES, which, in turn, routes orders to other market centers as directed by the Nasdaq Exchange; (2) NES will not engage in any business other than: (a) As a outbound router for the Nasdaq Exchange and (b) any other activities it may engage in as approved by the Commission; (3) NES will operate as a facility, as defined in Section 3(a)(2) of the Act, of the Nasdaq Exchange; (4) for purposes of Commission Rule 17d–1, the designated examining authority of NES will be a self-regulatory organization unaffiliated with the Nasdaq Exchange or any of its affiliates; (5) the Nasdaq Exchange shall be responsible for filing with the Commission rule changes related to the operation of, and fees for services provided by, NES, and NES shall be subject to exchange non-discrimination requirements; (6) the books, records, premises, officers, agents, directors and employees of NES, as a facility of the Nasdaq Exchange, shall be deemed to be the books, records, premises, officers, agents, directors and employees of the Nasdaq Exchange for purposes of, and subject to oversight pursuant to, the Act, and the books and records of NES, as a facility of the Nasdaq Exchange, shall be subject at all times to inspection and copying by the Commission; and (7) use of NES is optional.

Currently, routing by NES on behalf of the Nasdaq Exchange takes two forms: (i) Orders that access any liquidity on the Nasdaq Exchange book that has a price equal to or superior to the prices available on other ''automated market centers'' and thereafter route to seek the best available price, and (ii) routing of ''directed orders'' to automated market centers other than the Nasdaq Exchange on an ''immediate-or-cancel'' basis. Such directed orders may be designated as ''intermarket sweep orders,'' which may be executed by the receiving venue based on the representation of the market participant that it has routed to

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f).

[32] 15 U.S.C. 78c.

[33] BSE will not construe these limitations to bar an employee of an affiliated member from serving on a BSE advisory committee, since: (i) Such committee members will be required to sign confidentiality agreements with regard to information received through committee service, and (ii) the committee member employed by the affiliate would receive information provided through committee service at the same time as other committee members.

[34] *See* Order Granting Application for a Temporary Conditional Exemption Pursuant To Section 36(a) of the Exchange Act by the National Association of Securities Dealers, Inc. Relating to the Acquisition of an ECN by The Nasdaq Stock Market, Inc., Securities Exchange Act Release No. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004); Order Approving a Proposed Rule Change To Establish Rules Governing the Operation of the INET System, Securities Exchange Act Release No. 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SR–NASD–2005–128).

[35] *See* Securities Exchange Act Release No. 56867 (November 29, 2007), 72 FR 69263 (December 7, 2007) (SR–NASDAQ–2007–065); Securities Exchange Act Release No. 56708 (October 26, 2007), 72 FR 61925 (November 1, 2007) (SR–NASDAQ–2007–078); Securities Exchange Act Release No. 55335 (February 23, 2007), 72 FR 9369 (March 1, 2007) (SR–NASDAQ–2007–005); Securities Exchange Act Release No. 54613 (October 17, 2006), 71 FR 62325 (October 24, 2006) (SR–NASDAQ–2006–043); Securities Exchange Act Release No. 54271 (August 3, 2006), 71 FR 45876 (August 10, 2006) (SR–NASDAQ–2006–027); and Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001).

all superior protected quotations, or not so designated, in which case the orders will execute only if their execution would not result in a trade-through.

NOS serves as the outbound router for the Nasdaq Options Market (''NOM''), which commenced operations on March 31, 2008. Under NOM Rule Chapter VI, Section 11: (1) NOM will route orders in options via NOS, which serves as the sole ''Routing Facility'' of NOM; (2) the sole function of the Routing Facility will be to route orders in options listed and open for trading on NOM to away markets pursuant to NOM rules, solely on behalf of NOM; (3) NOS is a member of an unaffiliated self-regulatory organization which is the designated examining authority for the broker-dealer; (4) the Routing Facility is subject to regulation as a facility of the Nasdaq Exchange, including the requirement to file proposed rule changes under Section 19 of the Act; (5) NOM shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Nasdaq Exchange and its facilities (including the Routing Facility), and any other entity; and (6) the books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of the Nasdaq Exchange, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Nasdaq Exchange for purposes of and subject to oversight pursuant to the Act, and the books and records of the Routing Facility, as a facility of the Exchange, shall be subject at all times to inspection and copying by the Nasdaq Exchange and the Commission.[36]

Unlike NES, NOS does not have a ''directed order'' for options that are trading on NOM; rather, all routable orders for options that are trading on NOM check the NOM book prior to routing. However, NOS also routes orders in options that are not trading on NOM. When routing orders in options that are not listed and open for trading on NOM, NOS will not be regulated as a facility of the Nasdaq Exchange but rather as a broker-dealer regulated by its designated examining authority. However, as provided by Chapter IV, Section 5 of the NOM Rules, all orders routed by NOS under these circumstances will be routed to away markets that are at the best price, and solely on an immediate-or-cancel basis.

Although not explicitly stated in Chapter VI, Section 11, NOS, like NES, will be subject to exchange non-discrimination requirements, and the use of NOS will be optional.[37] In addition, NOS will not engage in any business other than the activities approved by the Commission in the NOM Approval Order and such other activities as may be approved by the Commission at a later date.

In order to further restrict the interaction between the Exchange and NES and NOS, the Nasdaq Exchange has agreed that it will, prior to the closing of the Merger, amend its rules to change the routing practices of NES and NOS. With respect to NES, directed orders will not be eligible for routing to Exchange facilities (including a planned Exchange facility for trading equities). With respect to NOS, when routing orders in options that are not listed and open for trading on NOM, NOS will not route to Exchange facilities (including BOX). Routing of orders that check the Nasdaq Exchange and NOM books prior to routing to the Exchange will continue.

The Exchange notes that at a later date, an equity trading system operated by the Exchange may opt to use NES to route on behalf of the Exchange. Similarly, if the Exchange operates an options trading system other than BOX following a future termination of relations between the Exchange and BOX, the Exchange may opt to use NOS to perform routing.[38] Such future uses of NES or NOS would be reflected in filings to establish the terms and conditions of such routing, but would not allow for routing of directed orders to the Nasdaq Exchange, NOM, or any other affiliated exchange or trading facility thereof.

In light of the foregoing facts and circumstances, and in accordance with proposed Exchange Rule Chapter XXXIX, Section 2(a)(2), the Exchange proposes that NES and NOS be permitted to become affiliates of the Exchange subject to the following:

- *With respect to NES:* NES remains a facility of the Nasdaq Exchange; use of NES's routing function by Nasdaq Exchange members continues to be optional; and NES does not provide routing of directed orders to the Exchange or any trading facilities thereof, unless such orders first attempt to access any liquidity on the Nasdaq Exchange book.
- *With respect to NOS:* NOS remains a facility of the Nasdaq Exchange; use of NOS's Routing Facility function by Nasdaq Exchange members continues to be optional; and NOS does not provide routing of orders in options that are not listed and open for trading on NOM to the Exchange or any trading facilities thereof.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[39] in general, and with Sections 6(b)(1), (b)(3) and (b)(5) of the Act,[40] in particular, in that the proposal: enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by Exchange Members and persons associated with Exchange Members with provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; is designed to assure a fair representation of Exchange Members in the selection of Directors; and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 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

[36] *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and –080) (''NOM Approval Order'').

[37] Consistent with this restriction, Chapter VI, Section 11 currently states that NOM participants can designate orders as either available for routing or not available for routing.

[38] In this regard, it should be noted that both the New York Stock Exchange LLC and NYSE Arca, Inc. (''NYSE Arca'') use NYSE Arca's broker-dealer subsidiary to perform routing.

[39] 15 U.S.C. 78f.

[40] 15 U.S.C. 78f(b)(1), (3) and (5).

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–BSE–2008–23 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–2008–23. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2008–23 and should be submitted on or before May 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10093 Filed 5–7–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57762; File No. SR–BSE–2008–25]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Proposal to Transfer Boston Stock Exchange, Inc.'s Ownership Interest in Boston Options Exchange Group, LLC

May 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2008, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to transfer its 21.87% ownership interest in the Boston Options Exchange Group, LLC (''BOX''), the operator of its Boston Options Exchange facility (''BOX Market'')[3] to MX US 2, Inc. (''MX US''), a wholly-owned U.S. subsidiary of the Montréal Exchange Inc. (''MX''), such that, following the transfer, the Exchange's aggregate Percentage Interest will be 0% and MX US's Percentage Interest will increase to 53.24%.[4] The Exchange will remain the Regulatory Authority[5] for the BOX Market and is submitting the proposed rule change to the Commission to approve the transfer of interests to MX US and to amend the Fifth Amended and Restated Operating Agreement (the ''5th BOX LLC Agreement'') of BOX accordingly (such agreement, as amended, the ''6th BOX LLC Agreement'').[6] The Exchange is requesting confidential treatment of the sections of the 6th BOX LLC Agreement, which contain confidential business information and do not relate to the control and governance of BOX.

The text of the proposed rule change is available at the BSE, the Commission's Public Reference Room, and *http://www.bostonstock.com.* The text of Exhibits 3A and 3B of the proposed rule change are also available on the Exchange's Web site and on the Commission's Web site (*http://www.sec.gov/rules/sro/bse.shtml*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 13, 2004, the Commission approved four BSE proposals that together established the BOX Market as a facility of the Exchange.[7] This

[41] 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. 78c(a)(2).

[4] MX US currently has a 31.37% ownership interest in BOX. The BSE notes that in SR–BSE–2008–06, MX US's ownership interest in BOX was rounded up to 31.4%. *See* Securities Exchange Act Release No. 57260 (February 1, 2008), 73 FR 7617 (February 8, 2008) (SR–BSE–2008–06).

[5] The ''Regulatory Authority'' is defined as the BSE as the non-equity, non-Member authority of BOX and, together with and pursuant to delegated authority from BSE, the Boston Options Exchange Regulation LLC (''BOXR''), as approved by the SEC. *See* Section 1.1, 6th BOX LLC Agreement.

[6] Capitalized terms not otherwise defined herein shall have the meanings set forth in the 6th BOX LLC Agreement.

[7] *See* Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR–BSE–2003–17) (establishing a fee schedule for the proposed BOX Market); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR–BSE–2003–04) (creating BOXR to which the BSE would delegate its self-regulatory functions with respect to the BOX Market); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15) (approving trading rules for the BOX Market); and 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (SR–BSE–2003–19) (approving certain regulatory provisions of the operating agreement of BOX).

proposal relates to Section 8.4(f) of the 5th BOX LLC Agreement, which requires that any Transfer [8] that results in the acquisition and holding by any Person, alone or together with any Affiliate of such Person, of an aggregate Percentage Interest level which meets or crosses the threshold level of 20% or any successive 5% Percentage Interest level [9] be subject to the rule filing process pursuant to Section 19(b)(1) of the Act [10] and Rule 19b–4 thereunder.[11]

BSE Transfer of BOX Units

The NASDAQ OMX Group, Inc. (''Nasdaq'') has entered into an agreement to purchase the BSE but not the BSE's BOX Units. In conjunction therewith, the BSE proposes to Transfer such BOX Units to MX US. The BSE is proposing to Transfer all of its BOX Units to MX US, which would result in the BSE's Percentage Interest falling to 0% and MX US's Percentage Interest increasing from 31.37% to 53.24%. Since MX US already holds an ownership interest in BOX in excess of 20% and the BSE's proposed Transfer of its BOX Units to MX US would cross the 5% threshold specified in Section 8.4(f) of the 5th BOX LLC Agreement, such Transfer necessitates SEC approval.[12] MX US, as a current Member of BOX, is already a party to, and is therefore bound by the provisions of, the 5th BOX LLC Agreement.[13]

The BSE states that the Act does not require that a self-regulatory organization (''SRO'') have any ownership interest in the operator of one of its facilities. The Commission has stated in a similar case involving the establishment of Archipelago Exchange (''ArcaEx'') as a facility of the Pacific Exchange, Inc. (''PCX''), that a national securities exchange need not have a significant ownership interest in the operator of one of its facilities.[14] Although the BSE will no longer hold an ownership interest in BOX, the BSE will continue to act as the SRO and regulatory services provider for the BOX Market. The BSE and BOXR, by delegated authority, will act as the Regulatory Authority for the BOX Market. Furthermore, the BOX Market will remain a facility of the BSE pursuant to Section 3(a)(2) of the Act.[15]

Amendments to BOX LLC Agreement

In conjunction with the BSE's Transfer of its BOX Units to MX US, the BSE is proposing to amend the 5th BOX LLC Agreement to reflect modifications to the BSE's role as Regulatory Authority of the BOX Market. Below is a description of certain proposed amendments to the 5th BOX LLC Agreement.

Regulatory Director

Since the BSE's Percentage Interest in BOX will be less than 8%, the BSE will no longer be entitled to maintain two directors on the BOX Board, but the BSE will have the right to designate one non-voting Regulatory Director [16] to the BOX Board, pursuant to Section 4.1(a)(i) of the 6th BOX LLC Agreement.[17]

Regulatory Veto

Under the provisions of the 5th BOX LLC Agreement, the BSE holds veto power over certain ''Major Actions,'' which relate to both commercial and regulatory actions.[18] After the sale of the BSE's BOX Units to MX US, the BSE will continue to have a regulatory interest in the BOX Market but will no longer have a commercial interest in BOX. Consequently, the BSE will no longer hold veto power over Major Actions of BOX but will instead hold veto power over all regulatory actions (''Regulatory Veto''). The terms of the Regulatory Veto provide that the Regulatory Authority shall receive notice of planned or proposed changes to BOX (except certain Non-Market Matters) [19] or the BOX Market (including, but not limited to, the System) pursuant to procedures established by the mutual agreement of BOX and the Regulatory Authority, which will require an affirmative approval of such changes by the Regulatory Authority prior to implementation.[20] *The planned or proposed changes subject to the Regulatory Veto shall include, without limitation:* (A) Planned or proposed changes to the System; (B) the sale by BOX of any material portion of its assets; (C) taking any action to effect a voluntary, or which would precipitate an involuntary, dissolution or winding up of BOX; or (D) obtaining regulatory services from a regulatory services provider other than the Regulatory Authority.[21] The Regulatory Authority, in its sole discretion, may direct BOX, subject to approval of the BOXR Board, to modify a proposal as necessary to ensure that it does not cause a Regulatory Deficiency if the Regulatory Authority, in its sole discretion, determines that the proposed or planned changes to BOX or the BOX Market (including, but not limited to, the System) could cause a Regulatory Deficiency if implemented.[22] The Regulatory Authority will also have the authority to direct BOX, subject to the approval of the BOXR Board, to undertake modifications to BOX (but not to include Non-Market Matters) or the BOX Market as are necessary or appropriate to eliminate or prevent a Regulatory Deficiency in the event that the Regulatory Authority, in its sole discretion, determines that a Regulatory Deficiency exists or is planned.[23]

[8] A ''Transfer'' occurs when any member of BOX (''Member'') disposes of, sells, alienates, assigns, exchanges, participates, subparticipates, encumbers, or otherwise transfers in any manner all or any portion of its Units. See Section 8.1(a), 5th BOX LLC Agreement.

[9] *See* Section 8.4(f), 5th BOX LLC Agreement.

[10] 15 U.S.C. 78s(b)(1).

[11] 17 CFR 240.19b–4.

[12] *See* Section 8.4(f), 5th BOX LLC Agreement.

[13] Although MX has transferred its BOX Units to MX US, MX has signed an Instrument of Accession through which MX has agreed to abide by all of the provisions of the 5th BOX LLC Agreement, as amended and in effect from time to time, including those provisions requiring submission to the jurisdiction of the Commission. *See* SR–BSE–2008–28.

[14] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25). ArcaEx was operated by Archipelago Exchange LLC (''Arca LLC''). At the time of its approval, PCX's ownership interest in Arca LLC consisted solely of a 10% interest in Archipelago Holdings, LLC, the parent company of Arca LLC.

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

[16] The ''Regulatory Director'' is defined as the individual designated as such by the BSE pursuant to Section 4.1(b) of the 6th BOX LLC Agreement. The Regulatory Director must be a member of the senior management of the regulation staff of the Regulatory Authority, who is separated from the business operations of the BSE via effective information barriers. The Regulatory Director shall not be an employee, officer, or director of Nasdaq or its Affiliates, other than the BSE and the BSE's subsidiaries. *See* Section 1.1, 6th BOX LLC Agreement.

[17] As long as BOX Market remains a facility of the BSE pursuant to Section 3(a)(2) of the Act, the BSE shall have the right to retain/designate one Regulatory Director, whether or not the BSE is admitted as a Member of BOX. *See* Section 4.1(a)(i), 6th BOX LLC Agreement.

[18] *See* Section 4.4(b), 5th BOX LLC Agreement.

[19] ''Non-Market Matters'' include changes relating solely to one or more of the following: Marketing, administrative matters, personnel matters, social or team-building events, meetings of Members, communication with Members, finance, location and timing of BOX Board meetings, market research, real property, equipment, furnishings, personal property, intellectual property, insurance, contracts unrelated to the operation of the BOX Market, and *de minimis* items. See Section 3.2(a)(ii), 6th BOX LLC Agreement.

[20] *See* Section 3.2(a)(ii), 6th BOX LLC Agreement.

[21] *Id.*

[22] *See* Section 3.2(a)(iii), 6th BOX LLC Agreement. A ''Regulatory Deficiency'' is defined as ''the operation of the BOX (in connection with matters that are not Non-Market Matters) or the BOX Market (including, but not limited to, the System) in a manner that is not consistent with the Regulatory Authority Rules and/or the SEC Rules governing the BOX Market or BOX Options Participants, or that otherwise impedes the Regulatory Authority's ability to regulate the BOX Market or BOX Options Participants or to fulfill its obligations under the Exchange Act as an SRO.'' *See* Section 1.1, 6th BOX LLC Agreement.

[23] *See* Section 3.2(a)(iv), 6th BOX LLC Agreement.

Board Composition

Although BOX itself will not carry out any regulatory functions, all of its activities must be consistent with the Act. For example, provisions set forth in Sections 4.2(a) and 5.3 of the 6th BOX LLC Agreement state that each unit holder and director of BOX agrees to cooperate with the Commission and the BSE in carrying out their regulatory responsibilities. The BOX Market, as a facility of an exchange, is not solely a commercial enterprise; it is an integral part of an SRO registered pursuant to the Act and is subject to the obligations imposed by the Act. These obligations endure so long as the BOX Market is a facility of the Exchange, regardless of whether the BSE has an ownership interest in BOX. In recognition of these obligations, the BSE has agreed that for so long as the BOX Market remains a facility of the BSE pursuant to Section 3(a)(2) of the Act, BOX shall have the right to recommend at least 10% of the BOXR Board (but no fewer than one director) for election to the BOXR Board.[24] *The BOXR director* recommended by BOX shall: (1) Have the right to attend all BOXR Board meetings and committees thereof; (2) receive equivalent notice of BOXR Board meetings and committees thereof as other BOXR directors; and (3) receive a copy of the meeting materials provided to other BOXR directors, including, without limitation, agendas, action items, and minutes.[25]

The BSE has also agreed to delegate all actions and decisions relating to the Regulatory Authority Rules,[26] regulation of the BOX Market (except regulatory actions and decisions delegated to the BSE Regulatory Oversight Committee) and appeals from regulatory decisions of the BOXR Board to a committee of the BSE Board (the ''BOX Committee'').[27] The resolutions to be adopted by the BSE Board to establish the BOX Committee are being filed herein as proposed rules of the Exchange. The resolutions reflect the compositional requirements for the BOX Committee that are also required by the 6th BOX LLC Agreement.[28] In addition, the resolutions provide that the BOX Committee may not be dissolved, and the resolutions and the powers of the BOX Committee established thereby may not be altered, amended, removed, or abridged, without the express written consent of BOX. In addition, any resolution or other action that would have the effect of dissolving the BOX Committee or altering, amending, removing, or abridging the resolutions or the powers of the BOX Committee established thereby must be submitted to the BSE Board, and if the same must be filed with, or filed with and approved by, the SEC under Section 19 of the Act, then it shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

The BSE has also agreed that for so long as the BOX Market remains a facility of the BSE pursuant to Section 3(a)(2) of the Act, BOX shall have the right to designate one non-voting participant (''Non-Voting Participant'') to the BSE Board.[29] *The Non-Voting Participant shall:* (1) Have the right to attend all meetings of the BOX Committee and all BOX-related deliberations of the BSE Board and committees thereof (collectively, ''BOX-Related Meetings''); (2) receive equivalent notice of BOX-Related Meetings as BSE directors; and (3) receive a copy of the meeting minutes provided to BSE directors, including agendas, action items, and minutes for all BOX-Related Meetings.[30]

The BSE has agreed that the directors sitting on the BOXR Board or any committees thereof or the BOX Committee or otherwise engaged in BOX-Related Meetings (other than by membership on the BSE Regulatory Oversight Committee) shall not have a material direct or indirect relationship with Nasdaq or its Affiliates or any Regulatory Outsourcing provider (other than service as directors of the BSE and/or BOXR).[31] Furthermore, all other persons permitted to attend meetings of the BOXR Board or any committees thereof or the BOX Committee or otherwise engaged in BOX-Related Meetings shall not have a material direct or indirect relationship with Nasdaq or its Affiliates or any Regulatory Outsourcing provider unless they are: (i) Permitted Recipients;[32] (ii) BOXR directors, officers, or employees; (iii) other parties making presentations to directors of the BSE Board engaged in BOX-Related Meetings, the BOXR Board, BOX Committee, or BSE Regulatory Oversight Committee, if such parties' participation is only to the extent necessary to make such presentations; or (iv) consented to by BOX.[33]

Books and Records

In accordance with the BSE's obligations as the SRO for the BOX Market, the books, records, premises, officers, directors, agents, and employees of BOX shall be deemed to be the books, premises, officers, directors, agents, and employees of the Regulatory Authority for the purpose of, and subject to, oversight pursuant to the Act.[34] Furthermore, the books and records of BOX shall be subject at all times to inspection and copying by the Regulatory Authority and the SEC.[35]

[24] *See* Section 4.1(f), 6th BOX LLC Agreement. The BOXR Board shall also include at least two BOX Options Participant directors (but not less than 20% of all directors on the BOXR Board) selected in accordance with the BOXR Limited Liability Company Agreement and By-Laws and at least four directors who do not have a material direct or indirect relationship with Nasdaq, its Affiliates, or any Regulatory Outsourcing provider (other than service solely as a director of BOXR and/or BSE). *Id.*

''Regulatory Outsourcing'' is defined as all BOX-related regulatory functions that are outsourced by the BSE to the Financial Industry Regulatory Authority or other service provider that is an SRO. *See* Section 1.1, 6th BOX LLC Agreement.

[25] *See* Section 4.1(f), 6th BOX LLC Agreement.

[26] ''Regulatory Authority Rules'' are defined as the rules of the Regulatory Authority, including for the avoidance of doubt, the BOX Rules, that constitute ''rules of an exchange,'' within the meaning of Section 3 of the Act, and that pertain to the BOX Market. *See* Section 1.1, 6th BOX LLC Agreement.

[27] *See* Section 4.1(f), 6th BOX LLC Agreement.

[28] The BOX Committee of the BSE Board shall include a BOX Options Participant representative, in accordance with the BSE's By-Laws, to serve as a representative of BOX Options Participants and four other directors who do not have a material direct or indirect relationship with Nasdaq, its Affiliates, or any Regulatory Outsourcing provider (other than service as directors of the BSE and/or BOXR). Furthermore, at least 50% of the BOX Committee must be Public Directors, as defined in the BSE's By-Laws. *Id.*

[29] *Id.*

[30] *Id.*

[31] *See* Section 4.1(f), 6th BOX LLC Agreement. Material direct or indirect relationship includes, without limitation, any of the following: Being an Affiliate; serving as a board member, employee, officer, consultant, advisor, or any Regulatory Outsourcing provider; being a party to any contractual or other relationship pursuant to which more than $50,000 is paid; reporting to, controlling, being controlled by, or holding an investment greater than 5% in any such Person; and being a parent, child, sibling, spouse, or in-law of such Person. *Id.*

[32] *''Permitted Recipients'' are defined as:* (A) The BSE's Chief Regulatory Officer and only those members of his regulatory staff responsible for regulatory technology and budget, counsel to the BSE's Chief Regulatory Officer, or staff of the BSE's internal audit department (it being agreed and understood, for purposes of this definition that these roles may be performed for the BSE by Nasdaq employees serving comparable regulatory functions for Nasdaq), (B) any member of the BSE Board serving on the BOX Committee or the BSE Regulatory Oversight Committee, (C) Nasdaq's Chief Regulatory Officer and his staff in the Office of General Counsel, (D) any member of the Nasdaq Board of Directors serving on the Nasdaq Regulatory Oversight Committee, and (E) any Professional Services provider. *See* Section 1.1, 6th BOX LLC Agreement.

''Professional Services'' is defined as services performed by outside counsel, consultants, Regulatory Outsourcing, or subcontractors for the benefit of BOX or the BOX Market. *Id.*

[33] *See* Section 4.1(f), 6th BOX LLC Agreement.

[34] *See* Section 12.1, 6th BOX LLC Agreement.

[35] *Id.* BOX shall not be entitled to refuse the inspection, review, or copying of its books and records by the Regulatory Authority as provided in

Inspection, copying, and review of the books and records of BOX by the Regulatory Authority at the premises of BOX, and access to any copied books and records removed from the premises of BOX or produced to the Regulatory Authority at its request, shall in all cases be conducted by, or limited to, BSE employees who are Permitted Recipients and/or directors or employees of BOXR.[36]

Confidential Information

All Members of BOX and the Regulatory Authority are prohibited from using BOX Confidential Information [37] otherwise than in connection with its respective activities contemplated by the 6th BOX LLC Agreement and other related agreements (the ''Agreements'') or pursuant to the Act and the rules and regulations thereunder.[38] All Members of BOX and the Regulatory Authority are prohibited from disclosing any BOX Confidential Information to any Person except as expressly permitted by the Agreements and pursuant to the Act and the rules and regulations thereunder.[39] The Commission and the Regulatory Authority, however, are not limited or impeded in their right to access and examine BOX Confidential Information. In addition, the 6th BOX LLC Agreement does not limit or impede the ability of a Member, officer, director, agent, or employee of a Member to disclose BOX Confidential Information to the SEC or the Regulatory Authority.[40]

Furthermore, all confidential information, including BOX Confidential Information, pertaining to regulatory matters of BOX and the BOX Market (including, but not limited to, disciplinary matters, trading data, trading practices, and audit information) contained in the books and records of BOX shall: (i) Not be made available to any persons other than to those officers, directors, employees, and agents of BOX that have a reasonable need to know the contents thereof; (ii) be retained in confidence by BOX and the officers, directors, employees, and agents of BOX; and (iii) not be used for any commercial purposes.[41]

Future Amendments to BOX LLC Agreement

When BOX formally presents any amendments, modifications, waivers, or supplements to the 6th BOX LLC Agreement or any future amended BOX LLC Agreement (''BOX LLC Agreement'') to the BOX Board for approval, BOX represents that it will provide prompt notice to the Regulatory Authority and the Regulatory Director and submit any proposed amendments to the BOX Committee for its review and filing with the SEC if deemed necessary under Section 19 of the Act and the rules promulgated thereunder.[42] BOX, however, shall not be required to obtain the approval of the Regulatory Authority for any amendment to the BOX LLC Agreement pursuant to which the BOX Market would cease to be a facility of the BSE within the meaning of Section 3 of the Act, provided that such amendment shall be filed with, or filed with and approved by, the SEC, as the case may be, before such amendment may be effective.[43] In the event the BSE ceases to be the Regulatory Authority, the BSE shall no longer be a party to the BOX LLC Agreement and thereafter the provisions of the BOX LLC Agreement shall not apply to the BSE or BOXR except for certain delineated provisions, which shall survive.[44]

Jurisdiction

Each Member of BOX acknowledges that, to the extent that they are related to BOX activities, the books, records, premises, officers, directors, agents, and employees of the Members shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Regulatory Authority for the purpose of and subject to oversight pursuant to the Act.[45] BOX, the Members and the officers, directors, agents, and employees of each, irrevocably submit to the exclusive jurisdiction of the U.S. federal courts, the SEC, and the Regulatory Authority for the purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of, or relating to, BOX activities or Section 19.6(a) of the 6th BOX LLC Agreement.[46] Furthermore, BOX, the Regulatory Authority, and each Member are required to take necessary action to ensure that the officers, directors, and employees of BOX, the Regulatory Authority, and each Member consent to the applicability of certain of the provisions in the 6th BOX LLC Agreement, including provisions relating to confidentiality, books and records, and jurisdiction.[47]

Conclusion

The BSE will remain the SRO for the BOX Market, and the BSE will continue to provide the regulatory services for the BOX Market in order for BOX to conduct BOX's business in a manner consistent with the regulatory and oversight responsibilities of the BSE, even though the BSE will no longer have an ownership interest in BOX. The BSE proposes to amend the 5th BOX LLC Agreement to make the aforementioned changes and reflect the BSE's status as the Regulatory Authority.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[48] in general, and furthers the objectives of Section 6(b)(1) of the Act,[49] in particular, in that it ensures that the Exchange is so organized and has the capacity to carry out the purposes of the Act and to comply and to enforce compliance by the Exchange's members with the Act, the rules and regulations of the Act, and the rules of the Exchange. The Exchange also believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[50] in particular, in that it is designed to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

Section 12.1 of the 6th BOX LLC Agreement but shall be entitled to damages in the event any inspection, copying, or review of BOX books and records by the Regulatory Authority is, in whole or in part, used by the Regulatory Authority or any of its Affiliates for any purpose other than to fulfill the Regulatory Authority's regulatory obligations. *Id.*

[36] *Id.*

[37] ''BOX Confidential Information'' includes any financial, scientific, technical, trade, or business secrets of BOX and any financial, scientific, technical, trade, or business materials that BOX treats, or is obligated to treat, as confidential or proprietary, including, but not limited to, innovations or inventions belonging to BOX and confidential information obtained by or given to BOX about or belonging to its suppliers, licensors, licensees, partners, affiliates, customers, potential customers, or others. The definition of BOX Confidential Information, with respect to any Person, shall not include information which: (i) *Is* publicly known through publication or otherwise through no wrongful act of such Person; or (ii) is received by such Person from a third Party who rightfully discloses it to such Person without restriction on its subsequent disclosure. *See* Section 1.1, 6th BOX LLC Agreement.

[38] *See* Section 16.2, 6th BOX LLC Agreement.

[39] *Id.* No Member or Regulatory Authority shall share BOX Confidential Information with Nasdaq or its Affiliates, other than BSE and BOXR, or as permitted in the Regulatory Services Agreement. *Id.*

[40] *See* Section 16.5, 6th BOX LLC Agreement.

[41] *See* Section 16.6, 6th BOX LLC Agreement.

[42] *See* Section 19.1, 6th BOX LLC Agreement.

[43] *Id.*

[44] *Id.*

[45] *See* Section 19.6(a), 6th BOX LLC Agreement.

[46] *See* Section 19.6(b), 6th BOX LLC Agreement.

[47] *See* Section 19.6(c), 6th BOX LLC Agreement.

[48] 15 U.S.C. 78f(b).

[49] 15 U.S.C. 78f(b)(1).

[50] 15 U.S.C. 78f(b)(5).

persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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

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

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 Number SR–BSE–2008–25 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BSE–2008–25. 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–2008–25 and should be submitted on or before May 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10094 Filed 5–7–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57767; File No. SR–CHX–2008–06]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Regarding the Definition of Qualified Contingent Trade

May 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2008, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by CHX. On May 1, 2008, CHX submitted Amendment No. 1 to the proposed rule change. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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

The Exchange proposes to amend its rules to delete from the definition of Qualified Contingent Trade the requirement that such transactions be for a minimum size of either 10,000 shares or $200,000 in transaction value. The text of the proposed rule change is available at CHX, the Commission's Public Reference Room, and *http://www.chx.com/rules/proposed_rules.htm*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX 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. CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's rules currently define the term ''Qualified Contingent Trade'' according to the definition included in an exemptive order issued by the Commission on August 31, 2006.[5] Pursuant to the Exemptive Order, Qualified Contingent Trades are exempt from the trade-through restrictions of

[51] 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)(6).

[5] See Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Order Granting an Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS) (''Exemptive Order'').

Regulation NMS.[6] The Exchange has incorporated an identical definition of Qualified Contingent Trades in order that such trades could also be exempted from Exchange rules restricting intermarket trade-throughs.

On April 4, 2008, the Commission issued a revised exemptive order eliminating one of the elements of the original Qualified Contingent Trade definition.[7] Based upon a request from the Chicago Board Options Exchange, Incorporated, the Revised Exemptive Order deleted the minimum size restrictions of 10,000 shares or $200,000 in transaction value which were part of the original definition. The Exchange proposes to eliminate the size and value restrictions from its own definition of Qualified Contingent Trade in order to operate its marketplace in a manner consistent with Commission directives. The Exchange proposes to change its rules to eliminate any minimum size or value restrictions in its definition of the term Qualified Contingent Trade. The Exchange also proposes to eliminate an obsolete reference in the rule to the prospective application of Regulation NMS and to correct an erroneous citation in Article 20, Rule 5 to the Qualified Contingent Trade definition.

2. Statutory Basis

CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] The Exchange believes that the proposed changes are consistent with Section 6(b)(5) of the Act,[9] because they would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest by allowing CHX to amend its rules to reflect the Revised Exemptive Order defining the term Qualified Contingent Trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] 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 believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to implement the proposal without needless delay. The Commission notes that it recently modified the definition of Qualified Contingent Trade originally adopted in the Exemptive Order.[14] For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[15]

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 or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[16]

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–CHX–2008–06 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–CHX–2008–06. 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 the filing also will be available for inspection and copying at the principal office of CHX. 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

[6] 17 CFR 242.600 *et seq. See* 17 CFR 242.611.

[7] *See* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (Order Modifying the Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS) (''Revised Exemptive Order'').

[8] 15 U.S.C. 78(f)(b).

[9] 15 U.S.C. 78(f)(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to 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 notice requirement.

[13] *Id.*

[14] *See* Revised Exemptive Order, *supra* note 7.

[15] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on May 1, 2008, the date on which the Exchange submitted Amendment No. 1.

should refer to File Number SR–CHX–2008–06 and should be submitted on or before May 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10210 Filed 5–7–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57769; File No. SR–FINRA–2008–015]

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Effective Date of Certain FINRA Rule Changes Approved in SR–NASD–2004–183

May 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 17, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by 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

FINRA is proposing a rule change to delay the effective date of paragraphs (c) and (d) of Rule 2821, as approved in SR–NASD–2004–183, until after the Commission has approved or disapproved a proposed substantive rule change to Rule 2821 that FINRA intends to file in the near future. That substantive rule change is not included in this proposed rule change, but will be the subject of a separate filing with the SEC.[4] There are no changes to the text of NASD Rule 2821 in this proposed rule 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, 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

On September 7, 2007, the Commission noticed the filing of Amendment Nos. 3 and 4 and granted accelerated approval of SR–NASD–2004–183, FINRA's new NASD Rule 2821, regarding broker-dealers' compliance and supervisory responsibilities for transactions in deferred variable annuities.[5] On November 6, 2007, FINRA published *Regulatory Notice* 07–53, which announced the Commission's approval of Rule 2821 and established May 5, 2008 as the rule's effective date. Following SEC approval of the rule and publication of the *Regulatory Notice*, several firms requested that the effective date of the approved rule be delayed to allow firms additional time to make necessary systems changes. In addition, some firms raised various concerns regarding paragraph (c) of Rule 2821 (Principal Review and Approval), which had been revised by Amendment No. 4.

Rule 2821(c), in part, requires principal review and approval ''[p]rior to transmitting a customer's application for a deferred variable annuity to the issuing insurance company for processing, but no later than seven business days after the customer signs the application.'' A number of firms asserted that seven business days beginning at the time when the customer signs the application may not allow for a thorough principal review in all cases. These firms asked that a different timing mechanism be used.

Rule 2821(c) also states that a principal must treat ''all transactions as if they have been recommended for purposes of this principal review'' and may only approve the transaction if he or she determines ''that there is a reasonable basis to believe that the transaction would be suitable based on the factors delineated in paragraph (b) of this Rule.'' A principal who determines that the transaction is unsuitable nonetheless may authorize the processing of the transaction if the principal determines that the transaction was not recommended and that the customer, after being informed of the reason why the principal found it to be unsuitable, affirms that he or she wants to proceed with the purchase or exchange of the deferred variable annuity. Some firms questioned whether broker-dealers that do not make any recommendations to customers (and generally do not employ principals to perform suitability reviews) should be subject to this provision.

Finally, in Regulatory Notice 07–53, FINRA stated that Rule 2821(c) does not permit the depositing of a customer's funds in an account at the insurance company prior to completion of principal review. In response to the *Regulatory Notice,* a number of firms explained that insurers' financial controls regarding the receipt of money from customers often include holding such funds in a general ''suspense'' account at the insurer. According to these firms, insurers use an identifier to track money held in the suspense account and, if a contract is not issued, the funds are promptly returned to the customer. The firms further stated that this process has been used for many years without complications, makes processing much more efficient and effective, and receives significant scrutiny by examiners from the SEC and state insurance departments. Accordingly, these firms asked that insurers be allowed to deposit customer funds in suspense accounts under certain circumstances.

In light of those concerns, among others, FINRA staff believed it was prudent to give further consideration to paragraph (c) of Rule 2821 and the

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] In the separate filing, FINRA plans to propose changing the event that triggers the beginning of the period within which the principal must review and determine whether to approve or reject the application. FINRA also intends to propose limiting application of the rule to recommended transactions. Finally, FINRA plans to propose to clarify various other issues, including whether (and, if so, under what circumstances) a broker-dealer can forward funds to an affiliated insurance company prior to the principal's approval of the transactions.

[5] *See* SEC Order Approving FINRA's NASD Rule 2821 Regarding Members' Responsibilities for Deferred Variable Annuities, Securities Exchange Act Release No. 56375 (Sept. 7, 2007), 72 FR 52403 (Sept. 13, 2007) (SR–NASD–2004–183); SEC Corrective Order, Securities Exchange Act Release No. 56375A (Sept. 14, 2007), 72 FR 53612 (Sept. 19, 2007) (SR–NASD–2004–183) (correcting the rule's effective date).

interpretation addressed in the *Regulatory Notice* to determine whether the original scheduled effective date might cause certain unintended and potentially harmful consequences. FINRA then asked the Commission to delay the effective date of paragraph (c) of Rule 2821, approved in SR–NASD–2004–183, until August 4, 2008. FINRA explained that all other parts of Rule 2821 approved in SR–NASD–2004–183 would become effective as scheduled on May 5, 2008. Finally, FINRA stated that if, based on this additional review, FINRA concluded that further rulemaking was warranted, FINRA would file a separate rule change with the Commission. On January 29, 2008, the Commission granted FINRA's proposed rule change to delay implementation of certain FINRA rule changes approved in SR–NASD–2004–183 until August 4, 2008.[6]

FINRA has now concluded its review and will soon propose substantive amendments to Rule 2821, as discussed above. FINRA is filing this proposed rule change to delay the effective dates of paragraphs (c) and (d) of Rule 2821 until 180 days following the SEC's approval or disapproval of the substantive amendment that FINRA plans to file in the near future. FINRA has filed this proposed rule change as a ''non-controversial'' rule change that is effective upon filing. FINRA is proceeding in this manner to give firms notice that they will not need to comply with these provisions until a later date. Paragraphs (a), (b), and (e) of Rule 2821, as approved in SR–NASD–2004–183, will become effective as scheduled on May 5, 2008.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] 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. The rule change will promote investor protection because it will allow firms to better prepare procedures and systems to implement paragraphs (c) and (d) of Rule 2821 and will allow the Commission to more fully consider the new substantive rule change that FINRA intends to file in the near future.

[6] *See* Securities Exchange Act Release No. 57228 (Jan. 29, 2008), 73 FR 7017 (Feb. 6, 2008) (Order approving SR–FINRA–2007–040).

[7] 15 U.S.C. 78o–3(b)(6).

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

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–FINRA–2008–015 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–2008–015. 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, NW., 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–2008–015 and should be submitted on or before May 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harman,

Deputy Secretary.

[FR Doc. E8–10253 Filed 5–7–08; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57753; File No. SR–NASDAQ–2008–036]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the Nasdaq Market Center

May 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by Nasdaq. Pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) [4] thereunder, Nasdaq has designated this proposal as establishing or changing a member due, fee, or other charge, which renders the proposed rule change effective immediately upon filing.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify pricing for Nasdaq members using the Nasdaq Market Center. Nasdaq will implement this proposed rule change on May 1, 2008. The text of the proposed rule change is available at *http://nasdaq.complinet.com,* Nasdaq, and 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is adopting a more unified pricing schedule for fees charged for order execution and routing of orders that check the Nasdaq Market Center book prior to routing.[5] The new fees apply to (i) Execution and routing of orders for securities listed on Nasdaq (''Nasdaq Trades''); (ii) execution of securities listed on the New York Stock Exchange (''NYSE''), routing of NYSE-listed securities to venues other than the NYSE, and routing of NYSE-listed exchange-traded funds to the NYSE (collectively, ''Covered NYSE Trades''); and (iii) execution and routing of orders for securities listed on exchanges other than Nasdaq and NYSE (''Regional Trades''). The changes are designed to promote Nasdaq as a liquid and transparent venue for executing all exchange-listed securities by, in general, increasing the credit provided to members providing displayed liquidity through Nasdaq and decreasing the credit provided to members providing non-displayed liquidity. Nasdaq is also increasing the fees to access and/or route liquidity using orders that check the Nasdaq book prior to routing. Fees for routing orders that do not check the Nasdaq book prior to routing will remain unchanged, as will the fees for routing orders other than exchange-traded funds to the NYSE. Similarly, fees for securities priced at less than $1, fees for routing odd-lots, and fees for routing orders that are charged a fee by exchange specialists are not changing.

Under the revised pricing schedule, a member with an average daily volume through the Nasdaq Market Center in all securities during the month of (i) more than 35 million shares of liquidity provided, and (ii) more than 55 million shares of liquidity accessed and/or routed will pay $0.0029 per share executed,[6] and other members will pay $0.003. However, a member that would otherwise pay $0.003 to execute trades in the Nasdaq Market Center will instead pay $0.00295 if it accesses a daily average of more than 55 million shares of liquidity through the Nasdaq Market Center in the month.[7]

Members that provide an average daily volume through the Nasdaq Market Center in all securities during the month of more than 35 million shares of liquidity provided will receive a credit of $0.0028 per share for executions against displayed liquidity and $0.0015 per share for executions against non-displayed liquidity.[8] Members with an average daily volume through the Nasdaq Market Center in all securities during the month of more than 20 million shares of liquidity provided (but that do not qualify for the higher credit described in the preceding sentence) will receive a credit of $0.0025 per share for executions against displayed liquidity and $0.001 per share for executions against non-displayed liquidity.[9] Other members will receive a credit of $0.002 per share for executions against displayed liquidity and $0.001 per share for executions against non-displayed liquidity.[10] Nasdaq is also eliminating a program under which certain ''low-volume securities'' listed on exchanges other than Nasdaq or NYSE qualified for an enhanced liquidity provider credit of $0.004 for displayed liquidity and $0.0039 for non-displayed liquidity. When Nasdaq introduced this program, it also amended Rule 7013 to eliminate market data revenue sharing for these low-volume securities. Accordingly, Nasdaq is against amending this rule to reinstate revenue sharing for transactions in these securities executed through the Nasdaq Market Center, at the same 50% level previously in effect.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Section 6(b)(4) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. The impact of the changes upon the net fees paid by a particular market participant will depend upon a number of variables, including its monthly volume, the order types it uses, and the prices of its quotes and orders (*i.e.*, its propensity to add or remove liquidity). Nasdaq notes that it

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The proposed rule change also corrects typographical errors in Rule 7018(a)(2).

[6] Currently, members with an average daily volume of (i) more than 20 million shares of liquidity provided and (ii) more than 35 million shares of liquidity accessed and/or routed, pay $0.0028 per share executed for Nasdaq Trades, $0.0029 per share executed for Covered NYSE Trades, $0.0028 per share executed for Regional Trades executed at Nasdaq, and $0.0029 for routing Regional Trades. Members with an average daily volume of more than 35 million shares of liquidity provided and (ii) more than 55 million shares of liquidity accessed and/or routed; or with an average daily volume of (i) more than 25 million shares of liquidity provided, and (ii) more than 65 million shares of liquidity accessed and/or routed currently pay $0.0026 per share executed for Nasdaq Trades, $0.0028 per share executed for Covered NYSE Trades, $0.0026 for Regional Trades executed at Nasdaq, and $0.0028 per share executed for routing Regional Trades. Other members currently pay $0.003 per share executed.

[7] Currently, a member that accesses an average of 55 million shares of liquidity or more through the Nasdaq Market Center in a month pays $0.00265 for Nasdaq Trades and Regional Trades executed in the Nasdaq Market Center and $0.00285 for NYSE Covered Trades executed in the Nasdaq Market Center unless the member qualifies for a better rate.

[8] Currently, members at these volume levels receive $0.0025 for displayed Nasdaq Trades and Regional Trades, $0.024 for non-displayed Nasdaq Trades and Regional Trades, $0.0027 for displayed Covered NYSE Trades, and $0.0026 for non-displayed Covered NYSE Trades.

[9] Currently, members at these volume levels receive $0.0023 for displayed Covered NYSE Trades, $0.0022 for non-displayed Covered NYSE Trades, $0.0022 for displayed Nasdaq Trades and Regional Trades, and $0.0021 for non-displayed Nasdaq Trades and Regional Trades.

[10] Currently, members at these volume levels receive $0.002 for displayed trades in all securities and $0.0019 for non-displayed trades in all securities.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Although the proposed rule change increases order execution and routing fees and decreases liquidity provider credits for non-displayed liquidity, it also increases credits for displayed liquidity. Nasdaq believes that its fees remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to Nasdaq rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act [13] and Rule 19b–4(f)(2) thereunder,[14] in that the proposed rule change establishes or changes a member due, fee, or other charge imposed by the self-regulatory organization. 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–NASDAQ–2008–036 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2008–036. 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 such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–036 and should be submitted on or before May 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10211 Filed 5–7–08; 8:45 am]

BILLING CODE 8010–01–P

[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. 34–57759; File No. SR–NYSEArca–2008–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rule 6.62 To Include an Opening Only Order

May 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by NYSE Arca. NYSE Arca filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 6.62 to include an additional order type, known as the Opening Only Order, to provide investors greater flexibility. The text of the proposed rule change is available at *http://www.nyse.com*, the principal office of NYSE Arca, and 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. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In order to provide additional flexibility and increased functionality to its system and its users, the Exchange proposes to amend NYSE Arca Rule 6.62 in order to add a new order type known as the Opening Only Order.[5] The Opening Only Order will provide investors with the opportunity to enter orders that will participate only in the Opening Auction, and not be available for trading after the opening. Some investors wish to transact business when a series opens for trading, but not later. Currently, without an Opening Only Order, these investors must cancel any unexecuted portion of an order after the opening. During the time between the opening and the submission and processing of the cancellation, the order entrant is exposed to the risk of an unwanted execution. Opening Only Orders that are not executed during the Opening Auction will automatically be cancelled. The Opening Only Order offers investors greater flexibility to manage their risk.[6]

Although not currently a defined order type and not currently accepted by the Exchange, NYSE Arca Rule 6.64A(b) already provides for the implementation and inclusion of ''opening only'' orders in the opening auction.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section (b)(5) of the Act,[9] in particular, in that the proposal is designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] 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 so that the proposal can become operative immediately. The Exchange believes that the creation of an opening only order type helps to promote a fair, orderly and competitive options market. Further, the Exchange notes that waiver of the operative delay will immediately afford market participants on NYSE Arca the same investment opportunities presently available at other option exchanges. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and therefore designates the proposal as operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSEArca–2008–44 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–NYSEArca–2008–44. 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 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

[5] Opening Only Orders will only apply to the Opening Auction on the OX system. This order type will not be available for PCX Plus Opening Rotations. NYSE Arca has decommissioned its PCX Plus system.

[6] This order type is substantially similar to the opening order offered by the Philadelphia Stock Exchange (Rule 1066(c)(5)) and by the Chicago Board Options Exchange (Rule 6.53(l)).

[7] Rule 6.64A(b) reads in part: ''Contingency orders (except for 'opening only' orders) will not participate in the Auction Process.''

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE Arca has complied with this requirement.

[13] *Id.*

[14] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–44 and should be submitted on or before May 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10250 Filed 5–7–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57768; File No. SR–DTC–2007–10]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Accelerated Approval of an Amended Proposed Rule Change To Implement the New Issue Information Dissemination Service for Municipal Securities

May 2, 2008.

I. Introduction

On August 16, 2007, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on September 12, 2007,[1] March 3, 2008,[2] and April 9, 2008 [3] amended proposed rule change SR–DTC–2007–10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[4] Notice of the proposal was published in the **Federal Register** on October 3, 2007,[5] March 24, 2008,[6] and April 16, 2008.[7] The Commission received no comment letters. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

II. Description

The New Issue Identification Dissemination Service (''NIIDS'') is designed to improve the process by which municipal securities new issue information is provided by underwriters to information vendors. NIIDS will provide for the collection of information about new issues from underwriters or their representatives in an electronic format and for making that data available immediately to information vendors. NIIDS is designed to enable the dissemination of new issue information as quickly and efficiently as possible after the information is made available by underwriters.

Municipal Securities Rulemaking Board (''MSRB'') Rule G–14 generally requires municipal securities dealers to report municipal securities transactions to the MSRB within 15 minutes of the time of the trade.[8] Inter-dealer trades eligible for comparison by a clearing agency are required to be submitted to the MSRB through the National Securities Clearing Corporation's (''NSCC'') Real Time Trade Matching System (''RTTM'') within the 15 minute time frame in Rule G–14. NSCC requires certain securities information in order to process and to report transactions involving those securities. Therefore, it is necessary that dealers trading newly issued municipal securities have the securities information needed for trade submission by the time the trade is required to be reported.

Pursuant to current practice in the municipal securities market, each information vendor works separately to obtain information from offering documents and from underwriters. Each information vendor's success in obtaining information about newly issued municipal securities depends in large part upon the voluntary cooperation of the underwriters. It is not unusual for information vendors to have inconsistent information or for some information vendors to receive information before others. Consequently, critical new issue information may be missing, inaccurate, or both in the automated trade processing systems used by dealers to report trades in new issues. This can result in the late submission of trade reports or in trade reports that must be canceled and resubmitted or amended because they contain inaccurate data.

To address concerns that dealers often lack timely access to electronically formatted accurate securities information necessary to process and report municipal securities transactions in real-time, MSRB Rule G–14 provides for reporting of trades within three-hours of the time of trade for a dealer trading in ''when, as, and if issued'' municipal securities if the dealer is not a syndicate manager or syndicate member for the issue, has not traded the issue in the previous year, and does not have the CUSIP information or indicative data for that issue in their securities master file (''Reporting Exemption'').[9] The Reporting Exemption will expire in 2008. In order to prepare for the Reporting Exemption's expiration, the Securities Industry and Financial Markets Association asked DTC to include a centralized automated mechanism for the real-time collection and dissemination of the required information as part of the planned reengineering of DTC's underwriting system. In response to this request, DTC built NIIDS to help make the collection and dissemination of municipal securities new issue information more efficient for the industry.

NIIDS Process

To commence the process, the Dissemination Agent for a new issue municipal security must input the key data elements required for the reporting, comparison, confirmation, and settlement of trades in municipal securities (''NIIDS Data Elements'') into NIIDS. The inputting will constitute a request that DTC make the information available to the industry through NIIDS. DTC will not confirm the accuracy of the NIIDS Data Elements and will act only as a conduit to pass along such information to data vendors.[10] DTC anticipates the data vendors will then disseminate the information to the industry thereby enabling dealers to make timely and accurate reporting of their municipal trades. DTC will record the name of the Dissemination Agent that inputs the NIIDS Data Elements and the time such information is submitted. DTC will begin disseminating the data when it has received authorization from the Dissemination Agent through NIIDS. In addition, NIIDS will contain the contact information for the Dissemination Agent that populated the NIIDS Data Elements for each issue to enable users of the data to contact them with questions or comments.

DTC is providing NIIDS to the industry in order to facilitate the collection and dissemination of municipal securities new issue information. As DTC is only a conduit of the information and does not confirm the validity of any of the NIIDS Data Elements, use of NIIDS by any party will constitute an agreement that DTC shall not be liable for any loss or damages in relation to its collection and dissemination of NIIDS Data Elements. Each NIIDS user will agree to indemnify

[15] 17 CFR 200.30–3(a)(12).

[1] The amendment changed a misplaced word in a footnote.

[2] The amendment changed the implementation date of the service and made other technical changes.

[3] The amendment changed the implementation date of the service.

[4] 15 U.S.C. 78s(b)(1).

[5] Securities Exchange Act Release No. 56552 (September 27, 2007), 72 FR 56407.

[6] Securities Exchange Act Release No. 57513 (March 17, 2008), 73 FR 15548.

[7] Securities Exchange Act Release No. 57647 (April 10, 2008), 73 FR 20727.

[8] MSRB Rule G–14, RTRS Procedures (a)(ii).

[9] MSRB Rule G–14, RTRS Procedures (a)(ii)(C).

[10] Data vendors or others that wish to receive NIIDS Data Elements must register in advance with DTC.

and hold harmless DTC and its affiliates from and against any and all losses, damages, liabilities, costs, judgments, charges, and expenses arising out of or relating to the use of NIIDS.

Optional Use of NIIDS

The MSRB would like dealers to be able to use NIIDS before requiring them to so by rule.[11] The MSRB has filed with the Commission a proposed rule change that ultimately would require underwriters to use NIIDS in 2008.[12] DTC intends to provide the municipal securities industry the opportunity to start using NIIDS on May 5, 2008. Mandated use of NIIDS for municipal securities is expected to commence September 2, 2008. DTC believes that the municipal securities industry will use NIIDS during the period NIIDS is optional (''Optional Period'') in order to become accustomed to it. This may result in Dissemination Agents inputting incomplete or inaccurate NIIDS Data Elements while getting acquainted with NIIDS. Therefore, no one should rely on the accuracy of the NIIDS Data Elements during the Optional Period but rather should continue to also use existing authorized sources of such information.

DTC will not charge a service fee to underwriters that input or receive information through NIIDS. Additionally, DTC will not charge a service fee to information vendors that receive information through NIIDS for further dissemination. DTC will charge a connectivity fee to underwriters, service providers, and information vendors that use NIIDS.

III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[13] Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[14] The Commission finds that DTC's rule change implementing NIIDS is consistent with this requirement because by automating, standardizing, and centralizing the collection and dissemination of new issue information for municipal securities NIIDS should make the reporting and clearance and settlement of trades in municipal securities more timely and accurate. As a result, DTC's proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions.[15]

The Commission believes there is good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because by so approving the proposed rule change DTC will be able to provide a longer Optional Period for users to use and become accustom to NIIDS before its use is mandated and will allow DTC to implement NIIDS according to its system implementation schedule.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (File No. SR–DTC–2007–10) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10213 Filed 5–7–08; 8:45 am]

BILLING CODE 8010–01–P

[11] The MSRB received comment on its proposed rules that would require underwriters of municipal securities to participate in NIIDS. See Comments on MSRB Notice 2007–10 (March 5, 2007) at *http://www.msrb.org/msrb1/rules/RFC/2007/2007–10/2007–10CommentLetters.asp*.

[12] Securities Exchange Act Release No. 57131 (January 11, 2008), 73 FR 3295 (January 17, 2008) [SR–MSRB–2007–08].

[13] 15 U.S.C. 78s(b).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57761; File No. SR–NASDAQ–2008–035]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend the By-Laws of The NASDAQ OMX Group, Inc. in Connection With Acquisitions of Boston Stock Exchange, Incorporated and Philadelphia Stock Exchange, Inc.

May 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 2008, The NASDAQ Stock Market LLC (''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 substantially by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes changes to the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). The proposed changes will be implemented upon approval by the Commission. The text of the proposed rule change is available at the Exchange's Web site at *http://nasdaq.complinet.com*, the Exchange's principal office, and 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

On October 2, 2007, The Nasdaq Stock Market, Inc. announced that it had entered into an agreement with Boston Stock Exchange, Incorporated (''BSE'') pursuant to which NASDAQ OMX will acquire all of the outstanding membership interests in BSE, and BSE will be merged with and into Yellow Merger Corporation, a Delaware corporation and wholly owned subsidiary of NASDAQ OMX, with BSE surviving the merger (the ''BSE Merger''). As a result of the BSE Merger, BSE will become a Delaware stock corporation, with 100% of its outstanding stock owned by NASDAQ

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

OMX. BSE members will receive cash as consideration for their ownership interests, and therefore will not retain ownership interests in BSE or its affiliates. On November 7, 2007, The Nasdaq Stock Market, Inc. announced that it had entered into an agreement with Philadelphia Stock Exchange, Inc. (''PHLX'') pursuant to which NASDAQ OMX will acquire all of the outstanding capital stock of PHLX, and PHLX will be merged with and into Pinnacle Merger Corp., a Delaware corporation and wholly owned subsidiary of NASDAQ OMX, with PHLX surviving the merger (the ''PHLX Merger'', and together with the BSE Merger, the ''Mergers''). NASDAQ OMX will operate BSE and PHLX as wholly owned subsidiaries, with rules, membership rosters, and listings that are separate and distinct from the rules, membership rosters, and listings of the Exchange. By virtue of the BSE Merger and the PHLX Merger, NASDAQ OMX will also acquire control of Boston Stock Exchange Clearing Corporation (''BSECC'') and Stock Clearing Corporation of Philadelphia (''SCCP''), each a registered clearing agency.

To reflect its ownership of these four self-regulatory organizations (''SROs''), NASDAQ OMX is amending its by-laws (''By-Laws'') to make certain governance provisions that are currently applicable to the Exchange also applicable to the newly acquired SROs. The provisions collectively regulate the actions of NASDAQ OMX and its directors, officers and employees in light of its ownership of the SROs.

First, to assist in the clear drafting of the changes, NASDAQ OMX is adopting a definition of ''Self-Regulatory Subsidiary,'' which means each of: (i) the Exchange; (ii) upon the closing of their acquisition by NASDAQ OMX, BSE and BSECC; and (iii) upon the closing of their acquisition by NASDAQ OMX, PHLX and SCPP. Thus, although NASDAQ OMX will adopt the amendment immediately upon Commission approval, provisions of its By-Laws that reference the definition of Self-Regulatory Subsidiary will expand to include the new subsidiaries as each Merger closes. Separately, BSE, BSECC, PHLX and SCPP are filing proposed rule changes to amend their respective charters and by-laws to reflect the Mergers. The BSE Merger will not close until this filing and the filings by BSE and BSECC have been approved by the Commission, and the PHLX Merger will not close until this filing and the filings by PHLX and SCPP have been approved by the Commission. NASDAQ OMX is also amending the definitions of ''Industry Director,'' ''Industry committee member,'' ''Non-Industry Director,'' and ''Non-Industry committee member'' to include appropriate references to the Self-Regulatory Subsidiaries.

Second, NASDAQ OMX is amending Section 11.3 of its By-Laws. This section currently provides for review by the Exchange's board of directors of any proposed adoption, alteration, amendment, change or repeal (an ''amendment'') of any By-Law, and when required by the Act, the filing of such amendments with the Commission prior to implementation. NASDAQ OMX proposes amending this provision to state that any amendment of any By-Law shall be submitted to the board of directors of each Self-Regulatory Subsidiary, and if any such proposed amendment must, under Section 19 of the Act and the rules promulgated thereunder, be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. NASDAQ OMX also proposes adopting new Section 12.6 of its By-Laws to state that any amendment of any provision of the NASDAQ OMX Restated Certificate of Incorporation (''Certificate'') shall be submitted to the board of directors of each Self-Regulatory Subsidiary, and if any such proposed amendment must, under Section 19 of the Act and the rules promulgated thereunder, be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be filed with the Secretary of State of the State of Delaware until filed with, or filed with and approved by, the Commission, as the case may be.

Third, NASDAQ OMX proposes amending each of the existing provisions of Article XII of its By-Laws to make them applicable to each of the Self-Regulatory Subsidiaries. Thus, Section 12.1(a) will provide that for so long as NASDAQ OMX shall control any Self-Regulatory Subsidiary, the board of directors, officers, employees and agents of NASDAQ OMX shall give due regard to the preservation of the independence of the self-regulatory function of each such Self-Regulatory Subsidiary and to its obligations to investors and the general public and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors of any Self-Regulatory Subsidiary relating to its regulatory functions (including disciplinary matters) or the market structures or clearing systems [3] which it regulates, or that would interfere with the ability of any Self-Regulatory Subsidiary to carry out its responsibilities under the Act.

Section 12.1(b) will provide that all books and records of each Self-Regulatory Subsidiary reflecting confidential information pertaining to the self-regulatory function of a Self-Regulatory Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) which comes into the possession of NASDAQ OMX, and the information contained in those books and records, shall be retained in confidence by NASDAQ OMX and NASDAQ OMX's directors, officers, employees and agents, and shall not be used for any non-regulatory purposes. The section will continue to provide that the limit on disclosure is not to be construed to limit the Commission's access to books and records, and that NASDAQ OMX's books and records relating to each Self-Regulatory Subsidiary shall be maintained in the United States.

Section 12.1(c) will provide that to the extent they are related to the activities of a Self-Regulatory Subsidiary, NASDAQ OMX's books, records, premises, officers, directors, agents, and employees shall be deemed to be the books, records, premises, officers, directors, agents, and employees of that Self-Regulatory Subsidiary for the purposes of, and subject to oversight pursuant to, the Act.

Section 12.2 will provide that NASDAQ OMX's officers, directors, employees, and agents will be deemed to agree to cooperate with the Commission and each Self-Regulatory Subsidiary in respect of the Commission's oversight responsibilities regarding the Self-Regulatory Subsidiaries and their self-regulatory functions and responsibilities.

Section 12.3 will provide that NASDAQ OMX and its officers, directors, employees and agents will be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the Commission, and each Self-Regulatory Subsidiary for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of any Self-Regulatory Subsidiary, and will be deemed to waive any defenses based on lack of personal jurisdiction, subject matter jurisdiction, or inconvenient

[3] The reference to ''clearing systems'' is new language that reflects the acquisition of BSECC and SCCP.

venue. NASDAQ OMX and its officers, directors, employees and agents also agree to maintain an agent in the United States for the service of process of a claim arising out of, or relating to, the activities of each Self-Regulatory Subsidiary.

Section 12.4 will provide that NASDAQ OMX will take such action as is necessary to insure that its officers, directors, employees, and agents consent in writing to the applicability of Sections 12.1, 12.2, and 12.3 with respect to activities related to each Self-Regulatory Subsidiary.

Section 12.5 will provide that for as long as NASDAQ OMX owns any Self-Regulatory Subsidiary, a resolution of the Board to approve an exemption for any person under Article Fourth, Section C.6(b) of the Certificate shall not be permitted to become effective until the resolution has been filed with and approved by the Commission under Section 19 of the Act.[4] The referenced provision of the Certificate provides that no NASDAQ OMX stockholder holding voting securities in excess of 5% of the total outstanding voting securities may cast the excess votes, but that the NASDAQ OMX Board may approve an exemption from this restriction in certain very limited circumstances. Section 12.5 will also be amended to include provisions that describe limits on the Board's authority to approve an exemption. Specifically, amended Section 12.5 will provide that the Board may not approve an exemption under Article Fourth, Section C.6(b) of the Certificate: (i) For a registered broker or dealer or an ''Affiliate'' thereof (as defined in the Certificate) (provided that, for these purposes, an Affiliate shall not be deemed to include an entity that either owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity); or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Act. The Board may approve such an exemption only if the Board determines that granting such exemption would (A) Not reasonably be expected to diminish the quality of, or public confidence in, NASDAQ OMX or the Self-Regulatory Subsidiaries or the other operations of the NASDAQ OMX and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, (B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system, and (C) would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), would assure the safeguarding of securities and funds in the custody or control of the Self-Regulatory Subsidiaries that are clearing agencies or securities and funds for which they are responsible, would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

Finally, NASDAQ OMX proposes adopting new Section 12.7 to its By-Laws, which reflects language currently in the Certificate and makes it more generally applicable to all Self-Regulatory Subsidiaries. Specifically, the provision provides that in light of the unique nature of NASDAQ OMX and its subsidiaries, including the status of the Self-Regulatory Subsidiaries as SROs, the NASDAQ OMX Board of Directors, when evaluating any issue (including, but not limited to certain enumerated change of control transactions) will take into account all factors that the Board of Directors deems relevant, including, but not limited to (i) The potential impact thereof on the integrity, continuity and stability of NASDAQ OMX, the Self-Regulatory Subsidiaries, and the other operations of the NASDAQ OMX and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, (ii) whether the considered action would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system, and (iii) whether the considered action would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), would assure the safeguarding of securities and funds in the custody or control of the Self-Regulatory Subsidiaries that are clearing agencies or securities and funds for which they are responsible, would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(1) and (b)(5) of the Act,[6] in particular, in that the proposal enables the Exchange and the other Self-Regulatory Subsidiaries to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by its members and persons associated with its members with provisions of the Act, the rules and regulations thereunder, and the Exchange's rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

[4] In addition to adding the reference to Self-Regulatory Subsidiaries, the amendment to this provision corrects typographical errors.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(1) and (5).

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 Number SR–NASDAQ–2008–035 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–NASDAQ–2008–035. 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 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–NASDAQ–2008–035 and should be submitted on or before May 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10212 Filed 5–7–08; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 6127]

Culturally Significant Objects Imported for Exhibition Determinations: ''Home Delivery: Fabricating the Modern Dwelling''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Home Delivery: Fabricating the Modern Dwelling'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, New York, from on or about July 20, 2008, until on or about October 20, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

[7] 17 CFR 200.30–3(a)(12).

Dated: May 1, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–10261 Filed 5–7–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Approval of Finding of No Significant Impact (FONSI) on a Short Form Environmental Assessment (EA); Chicago/Rockford International Airport, Rockford, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of approval of documents.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of the approval of a Finding of No Significant Impact (FONSI) on an Environmental Assessment for proposed Federal actions at Chicago/Rockford International Airport, Rockford, Illinois. The FONSI specifies that the proposed federal actions and local development projects are consistent with existing environmental policies and objectives as set forth in the National Environmental Policy Act of 1969 and will not significantly affect the quality of the environment.

A description of the proposed Federal actions is: (a) To issue an environmental finding to allow approval of the Airport Layout Plan (ALP) for the development items listed below.

The items in the local airport development project are to: (1) Secure fill material for air cargo development; (2) Construct air cargo development including two buildings and apron area that would provide a total of approximately 184,000 square feet of interior space, approximately 693,000 square feet of apron for taxiing and parking of up to five widebody aircraft, automobile/truck parking and access, and airport service roads, including grading, drainage, sanitary, electrical, and lighting, as necessary; (3) Construct approximately 5,350 linear feet of sanitary sewer, approximately 1,900 linear feet of storm sewer, lift station with a 2.16 million gallon per day capacity and combination and diversion flow structures for the collection and treatment of deicing fluids associated with commercial operations; (4) Obtain Airport Layout Plan approval for this proposed project development; and (5)

removal of the previously abandoned Beltline Road (the roadway was abandoned as a portion of the Runway 7 extension).

Copies of the environmental decision and the Short Form EA are available for public information review during regular business hours at the following locations:

1. Chicago/Rockford International Airport, 60 Airport Drive, Rockford, IL 61109.

2. Division of Aeronautics-Illinois Department of Transportation, One Langhorne Bond Drive, Capital Airport, Springfield, IL 62707.

3. Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Amy B. Hanson, Environmental Protection Specialist, Federal Aviation Administration, Chicago Airports District Office, Room 320, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Ms. Hanson can be contacted at (847) 294–7354 (voice), (847) 294–7046 (facsimile) or by e-mail at *amy.hanson@faa.gov*.

Issued in Des Plaines, Illinois on April 18, 2008.

Mia Ratcliff,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. E8–9833 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for Schedule Information for Chicago O'Hare International Airport for the Winter 2008/2009 Scheduling Season

AGENCY: Department of Transportation, FAA.

ACTION: Notice of submission deadline.

SUMMARY: The FAA announces a May 15, 2008, deadline for submitting requests for domestic and international scheduled arrivals at Chicago O'Hare International Airport (ORD) for the Winter 2008/2009 scheduling season beginning October 26, 2008. The deadline coincides with the submission deadline established by the International Air Transport Association (IATA) for the Winter 2008/2009 Schedules Conference.

DATES: Proposed schedule information must be submitted to the FAA no later than May 15, 2008.

SUPPLEMENTARY INFORMATION: The FAA currently limits arrivals at ORD from 7 a.m. to 9 p.m., Central Time, Monday through Friday, and 12 p.m. to 9 p.m., Central Time, on Sunday, based primarily on runway capacity limits. The FAA's restrictions at ORD in Title 14, Code of Federal Regulations, Part 93, Subpart B, are the equivalent of a Level 3 Fully Coordinated Airport as used in IATA Worldwide Scheduling Guidelines. Separate schedule facilitation is done at the airport level for international passenger flights operating at Terminal 5. In addition to filing schedules for FAA runway capacity review, carriers should also file Terminal 5 schedules, if appropriate, at the address indicated in the IATA Worldwide Scheduling Guidelines, Annex 3. Carriers would obtain separate approval for FAA runway slots and Terminal 5 operations, as appropriate.

The FAA rules limiting flights at ORD will sunset on October 24, 2008, under the terms of the rule effective October 29, 2006. This sunset provision was based on an expected increase in capacity when the first new runway opens under the O Hare Modernization Program (OMP). Runway 9L/27R is currently planned to be commissioned in November 2008. This will provide additional capacity at O'Hare for arriving and departing aircraft under various weather and runway configurations. Capacity projections estimate over 50,000 annual operations, or an average of about 8–10 total operations per hour, may be accommodated. However, additional operations must be reasonably distributed to avoid significant delay consequences. Terminal and gate availability are also expected to be constraints during certain periods.

The FAA is seeking information in order to review projected schedules and to assist the agency in determining whether scheduling limits may continue to be applied at ORD until further runway capacity is realized under Phase II of the OMP. The form of the scheduling limitations, if needed, has not been determined. Options include: (1) Remove FAA scheduling limitations by letting the rule expire; (2) continue the airport's designation as IATA Level 3 and utilize the IATA Worldwide Scheduling Guidelines, with appropriate local rules, to review planned operations and resolve oversubscribed hours that would result in unacceptable delays; and (3) increase the scheduling limits to recognize additional runway capacity and modify the expiration date of the current rule. Any proposal to modify or extend the rule would be in a separate rulemaking process.

The FAA recognizes there is a potential for carriers to file schedules that are preliminary in nature, rather than *bone fide* operational plans, and that some of the proposed flights may not actually operate. We understand that carriers legitimately review schedule plans for the winter 2008/2009 season well beyond the May 15 submission deadline and that it may not be possible to have final schedules at this time, especially for domestic flights. This is particularly true given the increasing fuel and operating costs facing carriers at this time. The FAA expects carriers to provide the government realistic information representative of their schedule plans for winter 2008/2009 as the information will be part of our assessment of the potential operational impacts. The FAA will discuss carrier schedule requests relative to available runway capacity in the weeks following the schedule submissions, including at the IATA Schedules Conference in June. A timetable for a final agency proposal, if any, to continue limits on operations at O'Hare after October 24, 2008, has not been established at this time.

Carriers are requested to provide information on scheduled arrivals including flight number, origin airport, scheduled time of arrival, frequency, effective dates, and equipment. The FAA is primarily concerned about arrival demand, as in the current rule, since most departures would subsequently be constrained by the arrival times given the predominant nature of hub operations at ORD. The FAA will, however, accept information on planned departures by carriers since this may provide more complete information and since many carriers use automated scheduling information systems.

The U.S. winter scheduling season is from November 2, 2008, through March 7, 2009, in recognition of the U.S. standard time dates. The FAA understands the IATA winter 2008/2009 season is October 26, 2008, through March 28, 2009. The FAA will accept schedule information that coincides with the IATA scheduling season, rather than U.S. standard time dates, in order to ease the administrative burdens on carriers conducting international operations and in order to ensure that FAA has the most accurate schedule information.

ADDRESSES: Requests may be submitted by mail to Slot Administration Office, AGC–240, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; facsimile: 202–

267–7277; ARINC: DCAYAXD; or by e-mail to: *7-AWA-slotadmin@faa.gov*.

FOR FURTHER INFORMATION CONTACT: James Tegtmeier, Office of the Chief Counsel, AGC–40, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; e-mail *James.Tegtmeier@faa.gov.*

Issued in Washington, DC on May 2, 2008.

Rebecca B. Macpherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 08–1226 Filed 5–2–08; 4:10 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadlines for Schedule Information for John F. Kennedy International Airport and Newark Liberty International Airport for the Winter 2008/2009 Scheduling Season

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

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces May 15, 2008, as the deadline for submitting schedule information for John F. Kennedy International Airport (JFK) and Newark Liberty International Airport (EWR) for the Winter 2008/2009 scheduling season. The FAA previously designated the airports as Level 3, Coordinated Airports under the International Air Transport Association (IATA) Worldwide Scheduling Guidelines. The FAA deadline coincides with the submission deadline established by IATA for the Winter 2008/2009 Schedules Conference. The FAA requests schedule information for JFK and EWR for planned flights from 6 a.m. through 10:59 p.m., Eastern Time, or 1100 UTC through 0359 UTC.

DATES: Schedules must be submitted no later than May 15, 2008.

SUPPLEMENTARY INFORMATION: The FAA adopted an Order limiting scheduled operations at JFK effective March 30, 2008.[1] The FAA also has proposed operating limitation at EWR beginning June 1, 2008,[2] although a final order has not yet been adopted by the FAA. As noted above, however, the FAA has already designated both EWR and JFK to be IATA Level 3, Coordinated Airports, and schedule information for the winter season should be submitted by the deadline.

The FAA's adopted Order for JFK and the proposed Order for EWR contemplate the allocation of new capacity by an auction. The details of an auction are under development and are not expected to be in place prior to the beginning of the winter scheduling season. As noted in the proposed and adopted orders, any Operating Authorizations for winter 2008/2009 beyond historic levels or the level approved by the FAA in the orders' appendices would be assigned without historical precedence for the following scheduling season.

The FAA is requesting complete schedule submissions from carriers that detail changes from their currently approved schedules. This information may include flight numbers, airport origin and departure information, proposed arrival and departure times, frequency, equipment type, effective dates, type of flight (passenger, cargo, charter, etc.) and other relevant information. Carriers may also indicate there are no changes from the approved summer schedules. The FAA expects only a limited number of Operating Authorizations will be available for the winter scheduling season for new operations or retimed flights during peak hours.

ADDRESSES: Schedules may be submitted by mail to Slot Administration Office, AGC–240, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; facsimile: 202–267–7277; ARINC: DCAYAXD; or by e-mail to: *7–AWA-slotadmin@faa.gov*.

FOR FURTHER INFORMATION CONTACT: James Tegtmeier, Office of the Chief Counsel, AGC–40, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; e-mail *James.Tegtmeier@faa.gov*.

Issued in Washington, DC on May 2, 2008.

Rebecca B. Macpherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 08–1227 Filed 5–2–08; 4:10 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–17]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before May 28, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0379 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 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: Jan Thor, ANM–113, (425) 227–2127, Federal Aviation Administration, 1601

[1] 73 FR 3,510 (Jan. 18, 2008). The FAA published a technical amendment in the **Federal Register** on February 14, 2008, 73 FR 8,737.

[2] 73 FR 14,552 (Mar. 18, 2008).

Lind Avenue, SW., Renton, WA 98057–3356, or Frances Shaver, (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 2, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2008–0379.

Petitioner: Bombardier Aerospace, Shorts Brothers plc.

Section of 14 CFR Affected: § 26.11.

Description of Relief Sought: Bombardier Aerospace requests exemption from the requirements to develop and make available to affected persons Electrical Wiring Interconnection System (EWIS) instructions for continued airworthiness for their Shorts Brothers plc Model SD3–60 aircraft. Although the SD3–60 aircraft is covered by the applicability of this regulation, there are only two SD3–60 aircraft being operated under part 121 regulations.

[FR Doc. E8–10237 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–18]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before May 28, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0379 using any of the following methods:

• Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• Fax: Fax comments to the Docket Management Facility at 202–493–2251.

• Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 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: Jan Thor, ANM–113, (425) 227–2127, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356, or Frances Shaver, (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 2, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2008–0380.

Petitioner: Bombardier Aerospace, Shorts Brothers plc.

Section of 14 CFR Affected: § 26.11.

Description of Relief Sought: Bombardier Aerospace requests exemption from the requirements to develop and make available to affected persons Electrical Wiring Interconnection System (EWIS) instructions for continued airworthiness for their Shorts Brothers plc Model SD3–30 aircraft. Although the SD3–30 aircraft is covered by the applicability of this regulation, there are no SD3–30 aircraft being operated under part 121 regulations.

[FR Doc. E8–10251 Filed 5–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–251701–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–251701–96 (TD 8894), Electing Small Business Trusts.

DATES: Written comments should be received on or before *July 7, 2008* to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Electing Small Business Trusts.

OMB Number: 1545–1591.

Regulation Project Number: REG–251701–96.

Abstract: This regulation provide the rules for an electing small business trust (ESBT), which is a permitted shareholder of an S corporation. With respect to the collections of information, the regulations provide the rules for making an ESBT election, and the rules for converting from a qualified

subchapter S trust (QSST) to an ESBT and the conversion of an ESBT to a QSST. The regulations allow certain S corporations to reinstate their previous taxable year that was terminated under § 1.444–2T by filing Form 8716.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 7,500.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 7,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 23, 2008.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E8–10189 Filed 5–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–242282–97]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–242282–97 (TD 8734), General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties (1.1441–1(e), 1.1441–4(a)(2), 1.1441–4(b)(1) and (2), 1.1441–4(c), (d), and (e), 1.1441–5(b)(2)(ii), 1.1441–5(c)(1), 1.1441–6(b) and (c), 1.1441–8(b), 1.1441–9(b), 1.1461–1(b) and (c), 301.6114–1, 301.6402–3(e), and 31.3401(a)(6)–1(e)).

DATES: Written comments should be received on or before July 7, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties.

OMB Number: 1545–1484.

Regulation Project Number: REG–242282–97 (formerly INTL–62–90; INTL–32–93; INTL–52–86; INTL–52–94).

Abstract: This regulation prescribes collections of information for foreign persons that received payments subject to withholding under sections 1441, 1442, 1443, or 6114 of the Internal Revenue Code. This information is used to claim foreign person status and, in appropriate cases, to claim residence in a country with which the United States has an income tax treaty in effect, so that withholding at a reduced rate of tax may be obtained at source. The regulation also prescribes collections of information for withholding agents. This information is used by withholding agents to report to the IRS income paid to a foreign person that is subject to withholding under Code sections 1441, 1442, and 1443. The regulation also requires that a foreign taxpayer claiming a reduced amount of withholding tax under the provisions of an income tax treaty must disclose its reliance upon a treaty provision by filing Form 8833 with its U.S. income tax return.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

The burden for the reporting requirements is reflected in the burden of Forms W–8BEN, W08ECI, W–8EXP, W–8IMY, 1042, 1042S, 8233, 8833, and the income tax return of a foreign person filed for purposes of claiming a refund of tax.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of

the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 23, 2008.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E8–10190 Filed 5–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

IRS/VA FFRDC Co-Sponsorship

AGENCY: Internal Revenue Service (IRS) Treasury, National Office Procurement.

ACTION: Notice.

SUMMARY: The Internal Revenue Service (IRS) and The Department of Veterans Affairs (VA) executed a Memorandum of Understanding (MOU) on February 7, 2008 to designate VA as a Co-Sponsor of the Federally Funded Research and Development Center (FFRDC), titled The Center for Enterprise Modernization (CEM). CEM is operated by The MITRE Corporation (MITRE). IRS remains the primary sponsor of this enterprise systems engineering and integration FFRDC; VA is a Co-Sponsor.

VA has determined that it requires an FFRDC mission partner to assist in the achievement of its strategic and business enterprise modernization goals and the IRS FFRDC meets this need.

DATES: The Agency must receive comments on or before June 9, 2008.

ADDRESSES: Comments may be submitted by one of the following methods: Mail to: 6009 Oxon Hill Road, Suite 500, Oxon Hill, MD, attn: Carol Gentry, subject: Co-Sponsor Comments, or e-mail to *Carol.A.Gentry@irs.gov,* subject: Co-Sponsor Comments.

FOR FURTHER INFORMATION CONTACT: For further information contact Carol Gentry at *Carol.A.Gentry@irs.gov.*

Carol A. Gentry,

Contracting Officer, Internal Revenue Service.

[FR Doc. E8–10188 Filed 5–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPAA) of 1996. This listing contains the name of each individual losing their United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending March 31, 2008.

Last name	First name	Middle name/initials
LEONTE	LUCIAN.	
FERRARI	BRUNO	F
LEONTE	MARIE.	
KAFIE	CHRISTOPHER.	
HARTWELL	CAROL	R
HARTWELL	PETER	D
KWAN	KENNETH	KWOK YUNG
WONG	WING-WAH	MARY
GARRY	NORENE.	
YIN	ALEC.	
NISHIDA	HISAOKI.	
LEE	BRIAN	JUN-JAEH
LEE	BRIAN	JUN-JAEH
ZENI	VICTORIA	C
LU	CLARK	CHIA-CHUEH
SOSKINE	MICHEL.	
WU	ALAN	KAN WING
FAULK-ANTONAKIS	E	SASKIA
SCHREY nee FRAZIER	DAVID	NEIL
GERRY	JAMES	T
YEH	CHIA LIN	CAROLYN
HODGINS	JESSIE	ELEANOR
SIE	WINSTON.	
LAM	PETER	AR-FU
TATEMATSU	KAORI.	
GATTI	MARCEL	FOSTER
WU	ADRIAN	Y
HO	LUCIA	M
NELSON	RENEE	C
JENNINGS	ALICE	W
HOLMES	PAMELA	EVANS
FULLER	STEWART.	
TANG	HING CHI	WILLIAM
MADELEY	CAROL	A
MCKERN	ROBERT	BRUCE
CHRISTENSEN	BARBARA	D.
D'ARENBERG	PIERRE.	
OHLSTEIN	ADAM	LEE

Last name	First name	Middle name/initials
HALPERN	MARIA	E
GREENLAND	IAN.	
TU	TONG	ZHOU
BALL	GEORGE	DEXTER
BALL	YOANNA.	
MCLEAN	MARGARET.	
SINGER	RHODA.	
WHITMAN	MICHAEL.	
SOHNLE	SUSANNE.	
BIANCARDI	RAUL	F
CHAU	EUGENE.	
WANG	FRANK	JOHN
BARLOW III	CHARLES	B
CHOU	YONCHUN.	
FLORSHEIM	ALEXANDER	CARL GABRIEL
LEE	EDDY	W
COLLINS	NADIA	HODA
NELSON	RON	C
RASKIN	MELANIE	SHUKAMITH
COLLINS	MICHAEL	W
CHANG	CHRISTINA	LEE
KARAM	GEORGE	G
YEOW	ALLEN	YI-PIN
DAHLEN	OVE.	
LIN	ALEXANDER	LANSON
DELESALLE	MARIA.	
GELDERLOOS	PADMINI	BHAVANI
TOENNIES	JAN	PETER
KYRIAKOS-SAAD	FAWZI.	
WONG	BENJAMIN	WAI-BUN
FARABOSCHI	PAOLO.	
BERNSTEIN	YANIV.	
LO	MAY.	
HO	SHUKYEE	SAMATHA
KONG	YAN	YEE, RITA
LEE	DANNY	LAP
WONG	YU	ING
VON WYSS	GEORGE	M.
BONNER JR.	WILLIAM	ROBERT
YAMMINE	BASSAM	ANTOINE
WILLEMSE	NICOLE.	
WILLIMSE-DIETERS	ANNEMARIEKE.	
GARDNER	JOHN	R
LINTON	NORMAN	J.
WONG	JEFFREY	WAI
POSEN	DANIEL.	
SCHLAEPFER	LESLIE.	
ZENG	WEI.	
CHAN	DARRIN	CHEONG HEI
SUN	YI.	
WANG	ZHONGHE.	
BECKMAN	ROBERT	C.
SHELLY	DEVIN	JAY
FARNCOMBE	ELEANOR	CHRISTINA
KUNG	ERIC.	
YU	CHRISTOPHER	YING YEUNG
GIANNIOTIS	SPIRIDON.	
KATSARAS	DIMITRIOS	K.
LEUNG	ERIC	M H
ZHOU	HAO.	
MULLER	MARC.	
IP	ANTONY	REN HAW
SIJI	DOMINIC.	
ENGELMANN	Pamela.	
CHAN	TINA	YUE LAN
WAI	JANET	CHEN TE
BING-DONS	GETRUDE	GUNDELINDE
WONG	CLARE	YUN-YUE
HARRELL	DOUGLAS	C.
STURZENEGGER	THOMAS	O.
TABAR	SAM	VICTOR
WELLBELOVE	ALEXIA.	
TSOI	GARY.	
HERBST	NORMA	J.

Last name	First name	Middle name/initials
CHAN	LILY.	
SHUM	KEY	ADA
SERRA	VICTOR	LUIZ
LEE	EUGENE	YAPP
KARIBIAN	GEORGE	VAHAK
MOFFETT	SARAH.	
LUND	HENRY.	
LUND	MARGARET.	
MOSDOL	KRISTINE	HELGELAND
CONNERTON	KATHERINE	M
CONNERTON	TIMOTHY	P

Dated: April 14, 2008.

Angie Kaminski,

Manager Team 103, Examinations Operations, Philadelphia Compliance Services.

[FR Doc. E8–10193 FILED 5–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of American Eagle Platinum Uncirculated Coin Price Increases

SUMMARY: The United States Mint is adjusting prices for its American Eagle Platinum Uncirculated One-Ounce Coins and its American Eagle Platinum Uncirculated One-Tenth Ounce Coins.

Pursuant to the authority that 31 U.S.C. 5111(a) and 5112(k) grant the Secretary of the Treasury to mint and issue platinum coins, and to prepare and distribute numismatic items, the United States Mint mints and issues 2007 American Eagle Uncirculated Coins with the following weights: One-ounce and one-tenth ounce. In accordance with 31 U.S.C. 9701(b)(2)(B), the United States Mint is changing the price of these coins to reflect the increases in the market price of platinum.

Accordingly, the United States Mint will commence selling the following 2007 American Eagle Uncirculated Coins according to the following price schedule:

Description	Price
American Eagle Platinum Uncirculated Coins	
One-ounce platinum coin	$2,189.95
One-tenth ounce platinum coin	244.95

FOR FURTHER INFORMATION CONTACT: Gloria C. Eskridge, Associate Director for Sales and Marketing; United States Mint; 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: May 5, 2008.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E8–10308 Filed 5–7–08; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee May 2008 Public Meeting

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for May 20, 2008.

Date: May 20, 2008.

Time: Public meeting time: 9 a.m. to 12 p.m.

Location: United States Mint, 801 9th Street, NW., Washington, DC 20220.

Subject: Review candidate designs for the 2009 District of Columbia and United States Territories Quarter Program; and other general business.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 9th Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: May 2, 2008.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E8–10290 Filed 5–7–08; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment of Systems of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that VA is amending its system of records currently entitled ''Healthcare Eligibility Records—VA'' (89VA19) as established in the **Federal Register**, 59 FR 8677 (Feb. 23, 1994), and last amended at 66 FR 27752 (May 18, 2001). VA is amending the system by renaming the system to ''Income Verification Records—VA'' and renumbering the system to 89VA16, as well as revising the ''Description of Systems of Records''; ''Routine Use Disclosures of Data in the System''; ''Categories of Records in the System''; ''Routine Uses of Records Maintained in the System''; and ''Retrievability.'' VA is republishing the system notice in its entirety at this time.

DATES: Comments on the amendment of this system of records must be received no later than June 9, 2008. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective June 9, 2008.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Stephania H. Putt, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION:

I. Description of Revised Systems of Records

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, provides VA the authority to verify veterans' income to determine eligibility for medical benefits. VA's Health Eligibility Center (HEC) in Atlanta, Georgia, originally established as the Income Verification Match Center (IVMC), has authority under section 8051 to verify veterans' income with the Internal Revenue Service (IRS) and Social Security Administration (SSA). With the establishment of a new system of records, ''Enrollment and Eligibility Records—VA'' (147VA16), for certain purposes of ''Health Eligibility Records—VA'' (89VA19), the latter is being renamed to ''Income Verification Records—VA'' and being revised to better reflect the purpose and description of the records and the organizational location of the system of records.

II. Proposed Amendment to Routine Use Disclosures of Data in the System

VA is amending the following routine uses:

- VA is rewriting routine use number three (3) in its entirety.
- VA is adding routine use number sixteen (16) to allow for the disclosure of information to other agencies, entities, and persons to respond to a data breach.
- VA is adding routine use number (17) to allow for the disclosure of information to officials of the Merit Systems Protection Board, or the Office of Special Counsel when investigating appeals.
- VA is adding routine use (18) to allow for the disclosure of information to the Federal Labor Relations Authority when resolving unfair labor practices.
- VA is amending routine use numbers two (2) through eleven (11) and routine use number thirteen (13) to reflect the exception of Federal Tax Information (FTI) from the records that may be disclosed pursuant to these routine uses.

The Department has made minor edits to the System Notice for grammar and clarity purposes, including changes to routine uses. These changes are not, and are not intended to be, substantive, and are not further discussed or enumerated.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or the disclosure is required by law.

Under section 264, Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104–191, 100 Stat. 1936, 2033–34 (1996), the United States Department of Health and Human Services (HHS) published a final rule, as amended, establishing Standards for Privacy of Individually-Identifiable Health Information, 45 CFR Parts 160 and 164. VA may not disclose individually identifiable health information (as defined in HIPAA and the Privacy Rule, 42 U.S.C. 1320(d)(6) and 45 CFR 164.501) pursuant to a routine use unless either: (a) The disclosure is required by law, or (b) the disclosure is also permitted or required by the HHS Privacy Rule. The disclosures of individually identifiable health information contemplated in the routine uses published in this amended system of records notice are permitted under the Privacy Rule or required by law. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is publishing these routine uses and is adding a preliminary paragraph to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule before VA may disclose the covered information.

The notice of intent to publish and an advance copy of this revised system of records notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: April 25, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

89VA19

SYSTEM NAME:

Income Verification Records—VA (89VA19)

SYSTEM LOCATION:

Records are maintained at VA's Health Eligibility Center (HEC) in Atlanta, Georgia, and Austin Automation Center (AAC) in Austin, Texas. Records are also stored at contracted locations in McLean, Virginia, and Atlanta, Georgia.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Veterans who have applied for or have received VA health care benefits under Title 38, United States Code, Chapter 17; veterans' spouses and other dependents as provided for in other provisions of Title 38, United States Code.

CATEGORIES OF RECORDS IN THE SYSTEM

The category of records in the system includes:

Federal Tax Information (FTI) and social security information generated as a result of computer matching activity with records from the IRS and SSA. The records may also include, but are not limited to, correspondence between HEC, veterans, their family members, and veterans' representatives such as Veteran Service Officers (VSOs); copies of death certificates; Notice of Separation; disability award letters; IRS documents (e.g., Form 1040s, Form 1099s, W–2s); workers compensation forms; and various annual earnings statements, as well as pay stubs and miscellaneous receipts.

Note: VA may not disclose to any person in any manner any document that contains FTI received from IRS or SSA in accordance with the Internal Revenue Code (IRC) 26 U.S.C. 6103(l)(7). In addition, VA may not allow access to FTI by any contractor or subcontractor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Sections 501(a), 1705, 1710, 1722, and 5317.

PURPOSE(S):

Information in this system of records is used to verify the household income of certain veterans and, if relevant, their spouses or dependents receiving VA health care benefits. The information in this system of records is also used to validate veterans' and their spouses' social security numbers; provide educational materials related to income verification; respond to veteran and non-veteran inquiries related to income verification; and compile management reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in this system include information protected by 26 U.S.C. 6103(p)(4), i.e., the nature, source and amount of income, that information may not be disclosed under a Routine Use set forth absent specific authorization from the IRS or the VA Office of General Counsel (024).

VA may disclose protected health information pursuant to the following routine uses where required by law, or required or permitted by 45 CFR Parts 160 and 164:

1. VA may disclose the record of an individual who is covered by this system to a member of Congress or staff person acting for the member in response to an inquiry made at the request of that individual.

2. VA may disclose any information in this system of records, except Federal Tax Information (FTI), as deemed necessary and proper to named individuals serving as accredited service organization representatives and other individuals named as approved agents or attorneys for a documented purpose, period of time, or specific income year, to aid beneficiaries in the preparation and presentation of their cases during the verification and/or due process procedures and in the presentation and prosecution of claims under laws administered by VA.

3. VA may disclose, on its own initiative, any information in this system, except the names, home addresses, or FTI of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. Additionally, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

4. VA may disclose relevant information in this system, except FTI, in the course of presenting evidence to a court, magistrate, or administrative tribunal; in matters of guardianship, inquests, and commitments; to private attorneys representing veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; and to probation and parole officers in connection with court-required duties.

5. VA may disclose information in this system, except FTI, to a VA Federal fiduciary or a guardian ad litem in relation to his or her representation of a veteran in any legal proceeding, but only to the extent necessary to fulfill the duties of the fiduciary or the guardian ad litem.

6. VA may disclose relevant information in this system, except FTI, to attorneys, insurance companies, employers, third parties liable or potentially liable under health plan contracts, and to courts, boards, or commissions, but only to the extent necessary to aid VA in the preparation, presentation, and prosecution of claims authorized under Federal, State, or local laws, and regulations promulgated thereunder.

7. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

8. VA may disclose any information in this system, except FTI, to National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under Title 44 of United States Code.

9. VA may disclose information in this system, except FTI, to a third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by VA, but only to the extent that it is reasonably necessary to (a) assist VA in the collection of costs of services provided individuals not entitled to such services; and (b) initiate civil or criminal legal actions for collecting amounts owed to the United States and/or for prosecuting individuals who willfully or fraudulently obtained or seek to obtain Title 38 medical benefits. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

10. VA may disclose the names and address of veterans or their dependents and other information as is reasonably necessary to identify such individual concerning that individual's indebtedness to the United States by virtue of the person's participation in a benefits program administered by VA to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

11. VA may disclose information from this system, except FTI, or information security review purposes to other source Federal agencies who are parties to computer matching agreements involving the information maintained in this system, but only to the extent that the information is necessary and relevant to the review.

12. VA may disclose the name and other identifying information of veterans and their spouses to reported payers of earned or unearned income in order to verify the identifier provided, address, income paid, period of employment, and health insurance information provided on the means test, and to confirm income and demographic data provided by other Federal agencies during income verification computer matching.

13. VA may disclose identifying information other than FTI, such as veterans' and their dependents' social security numbers, to other Federal agencies for purposes of conducting computer matches to obtain valid

identifying, demographic, and income information and to verify eligibility of certain veterans who are receiving VA medical benefits under Title 38, United States Code, or for the purpose of conducting a computer match to obtain information to validate social security numbers maintained in VA records.

14. VA may disclose the name and social security number of a veteran, spouse and dependents, and other identifying information as is reasonably necessary to the Social Security Administration, Department of Health and Human Services, for the purpose of conducting a computer match to obtain information to validate the social security numbers maintained in VA records.

15. VA may disclose relevant information from this system to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA in order for the contractor or subcontractor to perform the services of the contract or agreement.

Note: This routine use does not authorize disclosure of FTI received from the Internal Revenue Service or the Social Security Administration to contractors or subcontractors.

16. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

17. VA may disclose information to officials of the Merit Systems Protection Board, or the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

18. VA may disclose information to the Federal Labor Relations Authority (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tape, magnetic disk, optical disk, and paper.

RETRIEVABILITY:

Records (or information contained in records) maintained on paper documents are indexed and accessed by the applicant's name, social security number or case number and filed in case order number. Automated records are indexed and retrieved by the veteran's name, social security number, ICN, or case number. The spouse's name or social security number may be retrieved from the automated income verification record.

ACCESS:

1. In accordance with national and locally established data security procedures, access to the HEC Legacy system and the Enrollment Database is controlled by unique entry codes (access and verification codes). The user's verification code is set to be changed automatically every 90 days. User access to data is controlled by role-based access as determined necessary by supervisory and information security staff as well as by management of option menus available to the employee. Determination of such access is based upon the role or position of the employee and functionality necessary to perform the employee's assigned duties.

2. On an annual basis, employees are required to sign a computer access agreement acknowledging their understanding of confidentiality requirements. In addition, all employees receive annual privacy awareness and information security training. Access to electronic records is deactivated when no longer required for official duties. Recurring monitors are in place to ensure compliance with nationally and locally established security measures.

3. Access to the AAC is generally restricted to AAC staff, VA Headquarters employees, custodial personnel, Federal Protective Service and authorized operational personnel through electronic locking devices.

4. Specific key staffs are authorized access to HEC computer room and all other persons gaining access to the computer rooms are escorted. Programmer access to the information systems is restricted only to staff whose official duties require that level of access.

SAFEGUARDS:

1. Electronic data transmissions between VA health care facilities, HEC, and AAC are safeguarded by using VA's secure wide area network. The transmission of electronic data between SSA and AAC is safeguarded through the use of a secured, encrypted connection. Back-up of magnetic media containing FTI is transported between AAC and the off-site location in a locked storage container by an off-site vendor. Vendor personnel do not have key access to the locked container. The locked storage container is stored in a safe in a secured room at the off-site storage location. Access to the secured room and the safe is limited to authorized VA IT staff only.

2. The software programs at HEC, AAC, and VA health care facilities automatically flag records or events for transmission via electronic messages based upon functionality requirements. The recipients of the messages are controlled and/or assigned to the mail group based on their role or position. Server jobs at each facility run continuously to check for incoming and outgoing data to be transmitted which needs to be parsed to files on the receiving end. All messages containing data transmissions include header information that is used for validation purposes. Consistency checks in the software are used to validate the transmission, and electronic acknowledgment messages are returned to the sending application. The VA Office of Cyber Security has oversight responsibility for planning and implementing computer security.

3. Working spaces and record storage areas at the HEC are secured during all business hours, as well as during non-business hours. All entrance doors require an electronic pass card, issued by the HEC Security Officer, for entry when unlocked, and entry doors are locked outside normal business hours. Visitors are required to present identification and sign-in at a specified location. Visitors are issued a pass card which restricts access to non-sensitive areas and are escorted by staff through restricted areas. At the end of the visit, visitors are required to turn in their badge. The building is equipped with an intrusion alarm system which is activated during non-business hours. This alarm system is monitored by a private security service vendor. The office space occupied by employees with access to veteran records is secured with an electronic locking system, which requires a card for entry and exit of that office space. Access to the AAC is generally restricted to AAC staff, VA Headquarters employees, custodial personnel, Federal Protective Service and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted.

4. A number of other security measures are implemented to enhance security and safeguard of electronic records such as automatic timeout after a short period of inactivity and device locking after a pre-set number of invalid logon attempts, for example.

5. Electronic data, except FTI, is transmitted from HEC and AAC to VA health care facilities over the Department's secure wide area network.

6. Employees at the health care facility level do not have access to FTI, nor do they have the ability to edit or view income tests received from HEC as a result of the income match with IRS.

7. Only specific key staff and the Information Security Officer are authorized access to the computer room. Programmer access to AAC and HEC databases, which contain FTI, is restricted only to staff whose official duties require that level of access. Contractor staff is not authorized access to the production database.

8. On-line data, including FTI, reside on magnetic media in HEC and AAC computer rooms which are highly secured. Backup media are stored in a combination lock safe in a secured room within the same building and access to the safe is restricted to the information technology staff. Backup media are stored by an off-site media storage vendor who picks up the media on a weekly basis from HEC and AAC and returns the media to the off-site storage via a locked storage container. Vendor personnel do not have key access to the locked container.

9. Any sensitive information that may be downloaded to a personal computer or printed to hard copy format is provided the same level of security as the electronic records. All paper documents and informal notations containing sensitive data are shredded prior to disposal. All magnetic media (primary computer system) and personal computer disks are degaussed prior to disposal or released off site for repair.

10. HEC and AAC fully comply with the Tax Information Security Guidelines for Federal, State and Local Agencies (Department of Treasury IRS Publication 1075) as it relates to access and protection of such data. These guidelines define the management of magnetic media, paper and electronic records, and physical and electronic security of the data.

11. All new HEC employees receive initial information security and privacy training and refresher training is provided to all employees on an annual basis. HEC's Information Security Officer performs an annual information security audit. This annual audit includes the primary computer information system, the telecommunication system, and local area networks. Additionally, the IRS performs periodic on-site inspections to ensure the appropriate level of security is maintained for FTI. HEC and AAC's Information Security Officer and AIS administrator additionally perform periodic reviews to ensure security of the system and databases.

12. Identification codes and codes used to access HEC automated communications systems and records systems, as well as security profiles and possible security violations, are maintained on magnetic media in a secure environment at the Center. For contingency purposes, database back-ups on removable magnetic media are stored off-site by a licensed and bonded media storage vendor.

13. VA field facilities do not receive FTI from AAC or HEC.

14. Contractors and subcontractors are required to adhere to HEC's safeguard and security requirements.

RETENTION AND DISPOSAL:

Depending on the record medium, records are destroyed by either shredding or degaussing. Paper records are destroyed after they have been accurately scanned on optical disks. Optical disks or other electronic medium are deleted when all phases of the veteran's appeal rights have ended (ten years after the income year for which the means test verification was conducted). Electronic data and magnetic media received at AAC from SSA and IRS are destroyed 30 days after the data have been validated as being a true copy of the original data. Summary reports and other output reports are destroyed when no longer needed for current operation. Records are disposed of in accordance with the records retention standards approved by the Archivist of the United States, National Archives and Records Administration, and published in the VHA Records Control Schedule 10–1. Regardless of the record medium, no records will be retired to a Federal records center.

SYSTEM MANAGER(S) AND ADDRESSES:

Official responsible for policies and procedures: Chief Business Office (16), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. *Official maintaining the system:* Director, Health Eligibility Center, 2957 Clairmont Road, Atlanta, Georgia 30329.

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier or wants to determine the contents of such record should submit a written request or apply in person to the Health Eligibility Center. All inquiries must reasonably identify the records requested. Inquiries should include the individual's full name, social security number, and return address.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of income verification records may write to the Director, Health Eligibility Center, 2957 Clairmont Road, Suite 200, Atlanta, Georgia 30329.

CONTESTING RECORD PROCEDURES:

(See Record Access procedures above).

RECORD SOURCE CATEGORIES:

Information in this systems of records may be provided by the applicant, applicant's spouse or other family members; accredited representatives or friends; employers and other payers of earned income; financial institutions and other payers of unearned income; health insurance carriers; other Federal agencies; the ''Patient Medical Records—VA'' (24VA19) and the ''Enrollment and Eligibility Records—VA'' (147VA16) systems of records; and Veterans Benefits Administration automated record systems (including the ''Veterans and Beneficiaries Identification and Records Location

Subsystem—VA'' (38VA23) and the ''Compensation, Pension, Education and Rehabilitation Records—VA'' (58VA21/22).

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Federal Register

Thursday,
May 8, 2008

Part II

Department of the Treasury

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 19

Proposed Revision of Distilled Spirits Plant Regulations (2001R–194P); Proposed Rule

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 19

[Docket No. TTB–2008–0004]; [Notice No. 83]

RIN 1513–AA23

Proposed Revision of Distilled Spirits Plant Regulations (2001R–194P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend its distilled spirits plant regulations. Many of these proposed revisions are the result of comments submitted by the Distilled Spirits Council of the United States in response to a Bureau of Alcohol, Tobacco and Firearms notice of proposed rulemaking (NPRM) published in November 1998. Other proposed revisions are a result of a comprehensive TTB review of the distilled spirits plant regulations. This NPRM supersedes the NPRM issued in November 1998. We believe the proposed amendments will modernize the requirements for operating distilled spirits plants and make the regulations easier to understand, thereby allowing proprietors of such plants to operate in a more efficient manner. The proposed regulations are also written in a plain language format to improve clarity.

DATES: We must receive your written comments on or before August 6, 2008.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2008–0004 on Regulations.gov, the Federal e-rulemaking portal); or
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand Delivery/Courier in lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments we receive about this proposal at *http://www.regulations.gov*. A direct link to the appropriate Regulations.gov docket is available under Notice No. 83 on the TTB Web site at *http://www.ttb.gov/spirits/spirits_rulemaking.shtml*. You also may view copies of this notice and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400.

FOR FURTHER INFORMATION CONTACT: Daniel J. Hiland, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20220; telephone 202–927–8176.

SUPPLEMENTARY INFORMATION:

Table of Contents

Notice to Readers
Impact of the Homeland Security Act on this Rulemaking
I. Background Information for this Notice
A. Distilled Spirits Plant Operations under Current Law
• Basic Definitions
• Federal Laws and Regulatory Authority
• Major Regulatory Provisions
B. Petition to Amend 27 CFR Part 19
C. General Changes Proposed in this Notice
• Plain Language
• Structure of Part 19
• Redundancy with the Law
• Alternate Methods or Procedures
D. Specific Changes Proposed in this Notice
• Subpart A—General Provisions
• Subpart B—Administrative and Miscellaneous Provisions
• Subpart C—Restrictions on Production, Location, and Use of Plants
• Subpart D—Registration of a Distilled Spirits Plant and Obtaining a Permit
• Subpart E—Changes to Registrations and Permits
• Subpart F—Bonds and Consents of Surety
• Subpart G—Construction, Equipment, and Security Requirements ——
• Subpart H—Special (Occupational) Tax
• Subpart I—Distilled Spirits Taxes
• Subpart J—Claims
• Subpart K—Gauging
• Subpart L—Production of Distilled Spirits
• Subpart M—Storage of Distilled Spirits
• Subpart N—Processing of Distilled Spirits
• Subpart O—Denaturing Operations and Manufacture of Articles
• Subpart P—Transfers, Receipts, and Withdrawals
• Subpart Q—Return of Spirits to Bonded Premises and Voluntary Destruction
• Subpart R—Losses and Shortages
• Subpart S—Containers and Marks
• Subpart T—Liquor Bottle, Label, and Closure Requirements
• Subpart U—Reserved
• Subpart V—Records and Reports
• Subpart W—Production of Vinegar by the Vaporizing Process
• Subpart X—Distilled Spirits for Fuel Use
• Subpart Y—Paperwork Reduction Act
II. Derivation Table for Proposed Part 19
III. Public Participation
• Comments Invited
• Submitting Comments
• Confidentiality
• Public Disclosure
IV. Regulatory Analyses and Notices
• Paperwork Reduction Act
• Regulatory Flexibility Act
• Executive Order 12866
• Executive Order 13132
V. Drafting Information
VI. List of Subjects
VII. Authority and Issuance
• Text of the Proposed Rule

Notice to Readers—Impact of the Homeland Security Act on This Rulemaking

Effective January 24, 2003, the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2135 (2002)) divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. The regulation and taxation of alcohol beverages remains a function of the Department of the Treasury and is the responsibility of TTB. References to ATF in this notice reflect the time period prior to January 24, 2003, while references to TTB are after that date.

I. Background Information for This Notice

A. Distilled Spirits Plant Operations Under Current Law

Distilled spirits taxation is a specialized area of Federal law. The following background material provides basic information about how distilled spirits plants operate and are regulated under Federal law.

Basis Definitions

Distilled Spirits. The term ''distilled spirits'' refers to those products that contain ethyl alcohol and are generally the result of distillation. This term does not apply to wine and beer, which are products of fermentation. Examples of distilled spirits products include vodka, whiskey, gin, brandy, cordials, liqueurs, flavored brandies, and other similar products.

Distilled Spirits Plants. The term ''Distilled Spirits Plant'' (DSP) refers to a plant at which distilled spirits are manufactured or produced, aged or stored, or packaged or bottled, either for beverage or industrial use.

Federal Laws and Regulatory Authority

Federal law prohibits the manufacture or production of distilled spirits in the United States at other than a registered DSP that has received a permit from

TTB. While Federal law allows for the limited home production of wine and beer, no such exemption exists for distilled spirits.

DSPs are regulated under the provisions of two laws, the Internal Revenue Code of 1986 (IRC) (Title 26 of the United States Code) and the Federal Alcohol Administration Act (FAA Act) (Title 27 of the United States Code). The IRC imposes an excise tax on distilled spirits, requires plants to register, requires plants to obtain permits not otherwise required by the FAA Act, and imposes strict controls over the operation of DSPs. The FAA Act imposes a requirement to obtain a basic permit and contains various consumer-protection provisions, including provisions related to the formulation, labeling, and advertising of alcohol beverages. The FAA Act also controls various trade practices within the alcohol industry.

Under these two laws, TTB regulates the distilled spirits industry in the United States. Each law authorizes the Secretary of the Treasury to prescribe regulations to carry out and enforce its provisions, and the Secretary has delegated this authority to TTB. The TTB regulations concerning DSPs are contained in title 27 of the Code of Federal Regulations, Part 19, Distilled Spirits Plants (27 CFR part 19).

Major Regulatory Provisions

A DSP consists of one or more of the following: production, storage, processing, denaturation, and bottling facilities. A DSP may be a large and complex plant, having all facilities, a simple storage facility consisting of only one building, or a small bottling facility with storage facilities. Production facilities are usually accompanied by some storage facilities. Bottling facilities are often accompanied by storage facilities, and must by law be accompanied by either a production or a storage facility. However, large storage facilities are often not accompanied by either of the other two types.

Registration. Before commencing operations, the DSP proprietor must obtain an approved notice of registration. This application for registration includes: documents to set up distilling apparatus, environmental impact forms, personnel questionnaires, signature authorities, and a statement of security.

Permits. Under the FAA Act, all persons who intend to engage in the business of: (a) Distilling spirits; (b) rectifying, blending, or bottling (processing) distilled spirits; or (c) warehousing and bottling distilled spirits, must file for a basic permit.

To maintain control over the industrial use of distilled spirits, the IRC requires that an operating permit be obtained before commencing the production, warehousing, or bottling of alcohol for industrial use. Specifically, a permit is required for:

- Distilling for industrial use.
- Bonded warehousing of spirits for industrial use.
- Denaturation of spirits.
- Bonded warehousing of spirits (without bottling) for non-industrial use.
- Bottling or packaging of spirits for industrial use.
- Any other distilling, warehousing, or bottling operations not required to be covered by a basic permit under the FAA Act.

DSP Bonded Premises. The physical premises of a DSP are divided into two technical categories: ''bonded premises,'' and unbonded or ''general premises.'' All activities relating to the distilling, storage, and processing (blending and mixing) of distilled spirits must be conducted on bonded premises. All activities relating to taxpaid alcohol beverages conducted at the distilled spirits plant must be conducted on general premises.

Operations as a distiller, warehouseman, or processor may be conducted only on the bonded premises of a DSP by a person qualified to carry on such operations under 27 CFR part 19 and who has obtained the basic permits required by 27 CFR part 1, or, as appropriate, the operating permit required by part 19. However, certain other activities, such as those of apothecaries, customs bonded warehousemen, manufacturers of nonbeverage products, and users of specially denatured alcohol, may be carried on outside of DSPs.

The continuity of a DSP must be unbroken except for separations that may include public waterways, thoroughfares, or carrier rights-of-way. In most instances, DSPs are also prohibited from being located in a dwelling house, in a shed, yard, or enclosure connected with a dwelling house, on board a vessel or boat, on premises where beer or wine is produced, in a retail liquor establishment, or where any other business is conducted.

Bonds. Normally, the distilled spirits tax is not collected while spirits are held on the ''bonded'' premises of a distilled spirits plant. The potential tax liability of the spirits held on bonded premises is guaranteed by an operations bond, and taxable removals are covered by a withdrawal bond.

The bond is a legally binding, written agreement involving three parties: the taxpayer, the surety (insurance or bonding company), and the U.S. Government. The purpose of the bond is to protect the financial interest of the Government. If for any reason, the taxpayer fails to pay the tax, then the surety (insurance or bonding company) is obliged to pay, up to the limit of the bond.

Other Requirements. In addition to registering, obtaining a permit, and providing a bond, plants are required to comply with a number of regulations relating to plant security; the production, storage, and processing of spirits; recordkeeping; inspection and audit; and filing of reports. These requirements are outlined in 27 CFR part 19.

Recordkeeping Accounts. All operations at a DSP are accounted for within three recordkeeping accounts: Production, Storage, and Processing. Since the facilities (tanks and rooms) of a DSP may be used for multiple purposes, the accountability of spirits must be maintained by appropriate records within the three accounts instead of physical separation.

Payment of Taxes. The Federal excise tax on distilled spirits attaches to the spirits as soon as they are produced, and the distilled spirits plant is held liable for the tax on all distilled spirits held in the bond premises. The amount of Federal excise tax that a distilled spirits plant must pay is based upon the taxable removal of the spirits from the bonded premises. There are two basic methods of paying the tax on distilled spirits withdrawn from bonded premises–deferred payment and prepayment. Under the deferred payment system, the proprietor may withdraw spirits from bond after tax determination but before payment of tax. The excise tax paid is based on the amount of spirits removed from bond during each return period. Under the prepayment system, the proprietor must pay the distilled spirits tax after tax determination but before withdrawal of the spirits from bonded premises. Most DSP proprietors use the deferred payment system.

Currently, the Federal excise tax rate on distilled spirits is $13.50 per proof gallon. The term ''proof gallon'' is unique to this particular commodity and means: a liquid gallon that contains 50 percent ethyl alcohol.

Although the tax rate for distilled spirits is $13.50 per proof gallon, many distilled spirits products are actually taxed at a lower rate. Many products contain wine and/or flavors, and the IRC at 26 U.S.C. 5010 provides a credit for the wine and flavors content of the product. These credits effectively

reduce the rate of excise tax paid on distilled spirits products that contain wine and flavors.

Nontaxable Transactions. Certain types of shipments to and from a distilled spirits plant are permitted without payment of tax. Examples are:

- Shipments of bulk (unbottled) spirits from one registered distilled spirits plant to another. (Bottled spirits are not eligible for untaxed transfer in bond between plants.)
- Shipments of bulk imported spirits from U.S. Customs and Border Protection custody to a distilled spirits plant. (Only bulk imported spirits are eligible for this type of transfer.)
- Direct exports of products from the United States.
- Shipments to users of industrial alcohol (certain permit holders who use alcohol for medical, research, or industrial purposes).

B. Notice No. 870 and the Petition To Amend 27 CFR Part 19

On November 30, 1998, ATF issued a notice of proposed rulemaking, Notice No. 870 (63 FR 65720), that solicited comments on proposed changes to several sections of the regulations in 27 CFR part 19. The proposed changes included: (1) Delegations of authority, (2) removing a special tax provision, (3) liberalizing the requirement for approval of certain changes in plant personnel or procedures, (4) reducing the paperwork when plant premises are alternated with other premises, (5) providing for alternation of distilled spirits plant and brewery premises, (6) allowing denaturation and manufacture of articles to be done in a single, unified process, (7) specifying marks for packages of industrial spirits withdrawn taxpaid, (8) clarifying regulations that refer to a transfer record, and (9) incorporating a provision of an ATF Industry Circular regarding alcohol fuel into the regulations.

In addition to these proposed changes, ATF asked for comments regarding the general recordkeeping system for distilled spirits plants prescribed in part 19.

In response to Notice No. 870, ATF received extensive comments from the Distilled Spirits Council of the United States (DISCUS), a trade association representing distilled spirits industry members with interests in the U.S. market. While DISCUS provided comments on the specific issues raised in Notice No. 870, it also asked that ATF consider a broad range of regulatory changes to part 19. Essentially, in its comments on part 19, DISCUS asked ATF to initiate a complete revision of part 19. In support of its petition, DISCUS provided ATF with sample regulations that consisted of a ''markup'' version of 27 CFR part 19, along with numerous copies of variances (alternate methods or procedures) that ATF granted to members of the distilled spirits industry over the years. Suggested amendments included a broad range of issues, including, but not limited to, reduced recordkeeping requirements for distilled spirits plants, greater use of commercial records, reduced reporting requirements, reduced requirements for reporting changes affecting the DSP's registration, liberalized use of DSP premises, storage of distilled spirits on bonded premises through ''constructive segregation'' based on commercial records, and adoption of alternative methods in the regulations for universal applicability.

In response to Notice No. 870, ATF also received comments from Equistar Chemicals, LP. Equistar is a producer of industrial ethyl alcohol, and its comments addressed issues in Notice No. 870 related to industrial alcohol. Equistar also commented on other issues affecting distilled spirits plants such as the amendment of plant registrations, recordkeeping, denaturation, and gauging.

After reviewing the comments received in response to the Notice No. 870, ATF concluded that the amendments proposed in the 1998 NPRM were not extensive enough to address the changes that have taken place in the industry since the last major revision to the distilled spirits plant regulations took place over 20 years ago when ATF implemented the Distilled Spirits Tax Revision Act of 1979, commonly referred to as ''All in Bond.''

As the successor agency to ATF, TTB undertook a comprehensive review of the distilled spirits plant regulations in 27 CFR part 19 and the comments received in response to Notice No. 870. This notice of proposed rulemaking is the result of that review, and this notice supersedes Notice No. 870. We believe the proposed amendments will modernize the requirements for operating distilled spirits plants and make the regulations easier to understand, thereby allowing proprietors of such plants to operate in a more efficient manner. A discussion of our new proposal to amend part 19 in a more comprehensive way follows.

C. General Changes Proposed in This Notice

The following summarizes the general changes we propose to make to 27 CFR part 19.

Plain Language

On June 1, 1998, the President issued a memorandum that requires Federal agencies to write regulations in ''plain language.'' We fully support this initiative, and we have written these proposed regulations in the plain language style. In an effort to make these regulations easier to understand, we made several plain language changes to the part 19 regulations:

- We use the active voice in the regulations, whenever possible;
- We use shorter sentences, paragraphs, and sections; and
- We minimize the use of jargon and unnecessary technical terms.

Structure of Part 19

In its comments on part 19, DISCUS points out that part 19 is ''excessively long, overcomplicated and very difficult to read.'' Further, it stated that the regulations are ''divided into 25 subparts, with many related and overlapping provisions included in two or more subparts.'' DISCUS recommends ''consolidating and re-grouping a number of regulatory provisions which are closely related, eliminating regulations which merely are redundant of each other or the statute, adding cross-references to related regulations, and clarifying regulatory language.''

We reviewed the various sections and subparts in the current part 19 and determined that much of the basic structure for part 19 needs to be amended. Under the current structure, information is not always located where a reader would logically expect to find it.

For example, under the current regulations, information regarding distilled spirits taxes is found in two separate subparts, Subpart C, Taxes, and Subpart P, Transfers and Withdrawals. Subpart C contains much of the basic information about distilled spirits taxes, including the methods for calculating tax credits under the IRC at 26 U.S.C. 5010. However, information regarding determination of taxes and the filing of tax returns is located in subpart P. Logically, all information associated with distilled spirits taxes should appear within the same subpart. The proposed regulations consolidate all of the information concerning distilled spirits taxes into a new Subpart I, Distilled Spirits Taxes. Similarly, we reviewed all of the major topics covered in part 19 and attempted to group them together in a more logical order. Accordingly, this proposed, amended version of part 19 has been restructured with new subparts and related

information has been consolidated, where appropriate, into a single subpart. In addition, duplicative sections have been eliminated. The intent of this restructuring is to assist the reader and make it easier to locate related topics within part 19.

The proposed subparts are as follows:

- Subpart A—General Provisions
- Subpart B—Administrative and Miscellaneous Provisions
- Subpart C—Restrictions on Production, Location, and Use of Plants
- Subpart D—Registration of a Distilled Spirits Plant and Obtaining a Permit
- Subpart E—Changes to Registrations and Permits
- Subpart F—Bonds and Consents of Surety
- Subpart G—Construction, Equipment, and Security Requirements
- Subpart H—Special (Occupational) Tax
- Subpart I—Distilled Spirits Taxes
- Subpart J—Claims
- Subpart K—Gauging
- Subpart L—Production of Distilled Spirits
- Subpart M—Storage of Distilled Spirits
- Subpart N—Processing of Distilled Spirits
- Subpart O—Denaturing Operations and Manufacture of Articles
- Subpart P—Transfers, Receipts, and Withdrawals
- Subpart Q—Return of Spirits to Bonded Premises and Voluntary Destruction
- Subpart R—Losses and Shortages
- Subpart S—Containers and Marks
- Subpart T—Liquor Bottle, Label, and Closure Requirements
- Subpart U—Reserved
- Subpart V—Records and Reports
- Subpart W—Production of Vinegar by the Vaporizing Process
- Subpart X—Distilled Spirits for Fuel Use
- Subpart Y—Paperwork Reduction Act

Redundancy With the Law

In its comments on part 19, DISCUS recommends that several sections of the regulations be deleted because those sections are ''redundant with the law.'' DISCUS notes that many of the sections simply repeat provisions of law contained in title 26 of the IRC. DISCUS recommends we delete these redundant sections of part 19 or revise the regulations to simply reference the appropriate section of the IRC.

TTB recognizes that some sections of the part 19 regulations repeat provisions of the IRC. However, we intend that the part 19 regulations provide users with a comprehensive and complete body of the requirements for operating a distilled spirits plant. By making part 19 a complete reference tool, persons researching a particular issue will not need access to both the IRC and the regulations. Therefore, when a provision of law affects operations at a distilled spirits plant, we included that provision in part 19. However, in some instances, we deleted sections of the regulations that simply repeated information found in other regulations within part 19.

Alternate Methods or Procedures.

Periodically, TTB allows industry members to use an alternate method or procedure in lieu of a specific regulatory requirement in part 19. The current regulation at 27 CFR 19.62 describes how DSP proprietors may apply for an alternate method or procedure. Section 19.62 also describes the criteria that TTB uses when evaluating such requests. Generally, TTB may approve the use of an alternate method or procedure when:

- Good cause has been shown for use of the alternate method or procedure,
- The alternate method or procedure is consistent with the intent of the regulation, and
- The alternate method or procedure is not contrary to the law.

Over the years, DSP proprietors have applied for a wide range of alternate methods or procedures in lieu of the requirements stated in part 19. We have evaluated these requests on a case-by-case basis using the criteria established in 27 CFR 19.62, and we have approved many of these requests. Industry members commonly refer to these alternate methods or procedures as ''variances.''

As part of its comments on part 19, DISCUS submitted numerous copies of variances that have been granted to members of the distilled spirits industry. The variances submitted by DISCUS were divided into three general categories, recordkeeping, separation of premises, and ''other.'' In its comments, DISCUS asserts that ATF granted variances from many of the regulatory requirements and that it is not aware of any variance that has caused any problems with Federal excise tax compliance. DISCUS recommends that variances granted to individual plant proprietors be extended to all plants in the revised regulations.

In response to this suggestion, TTB reviewed the individual variances submitted by DISCUS for possible applicability to all distilled spirits plants. We found that many variances did, in fact, have general applicability to all plants. As a result, we have incorporated many of those methods or procedures into the proposed regulations, where appropriate. For example:

- Several variances were issued that allowed for the use of computer-generated records. This proposal has been adopted into the revised regulations at § 19.572 and is discussed later in this preamble under our discussion of Records in subpart V.
- Several variances were issued that allowed for computer-generated reports and computer-generated transaction forms. These proposals were adopted into the revised regulations at § 19.634, and are discussed later in this preamble under our discussion of records in subpart V.
- A variance was issued that allows for the filing of letterhead notices to report certain changes at a plant. This procedure providing for the use of letterhead notices has been incorporated into the new subpart E and is explained more fully under our discussion of subpart E.
- Several variances were issued that allow for the use of ''commercial records'' to record transactions and/or operations. The use of documents created in the ordinary course of business, rather than documents created expressly to meet the requirements of part 19 is now provided for in the proposed regulations at § 19.572 in subpart V.
- A variance was issued that allows modified ''abbreviations'' to be used. The proposed regulations will not prescribe any official abbreviations for use on forms and records to identify spirits, and the provisions of current § 19.726, which prescribe official abbreviations have been deleted from the proposed regulations. However, we will continue to list authorized abbreviations for marking containers found in the current regulations at § 19.612.
- A variance was issued that allows filled, capped, and labeled bottles to remain on the bottling line at the end of each work day if the same brand and size will be produced on the next bottling shift. This variance was incorporated into the proposed regulations at § 19.358 and is discussed under subpart N.
- A variance that allows the bottling of liqueurs from a tank truck or tote was incorporated into the proposed regulations at § 19.352 and is discussed under subpart N.
- A variance whereby certain small tanks are not required to be mounted on scales was incorporated into the proposed regulations at § 19.183 and is discussed under subpart G.

• Several variances have been approved that allow for the use of meters in gauging spirits for purposes other than tax determination. We are proposing significant changes in the new regulations that will allow for the use of accurate mass flow meters, without prior approval by TTB, for bulk tax determination gauges and other required gauges at a distilled spirits plant if the meters meet certain criteria for accuracy.

During our review of the variances submitted by DISCUS, we also found several that were not appropriate for incorporation into the new, revised regulations. In some instances, we did not wish to apply the provisions of a particular alternate method or procedure to all DSP proprietors without regard to their compliance history and other factors. As such, proprietors may continue to apply for these types of alternate methods or procedures, and we will evaluate them on a case-by-case basis.

For example, we have issued several variances to DSP proprietors regarding the timing and frequency of required inventories for bulk and cased spirits. In evaluating this type of variance, we frequently consider the compliance history of the particular plant, shortages and gains disclosed by past inventories, along with other factors. Accordingly, this type of authorization does not have general applicability and is not appropriate for inclusion in the new proposed regulations. However, we will continue to approve this type of request, when appropriate, on a case-by-case basis.

In other instances, the subject matter of a particular variance only applied to a very specific situation at a single plant and was, therefore, not applicable to all plants. Accordingly, we did not incorporate this type of variance into the new proposed regulations. For example:

• We approved several variances in regard to case markings that did not have general application to the case markings used by other plants.

• We approved a ''business day'' for a plant that runs from 2 a.m. through 1:59 a.m. This type of variance does not have general applicability to other plants.

In summary, we have incorporated a number of existing variances into the proposed regulations where appropriate, and when the variance would have general applicability to the industry.

D. Specific Changes Proposed in This Notice

The following is a discussion of the new, revised subparts in 27 CFR part 19 and the specific changes that we propose to make in the part 19 regulations.

Subpart A—General Provisions

Proposed subpart A includes several sections that have general applicability to part 19, including a revised definitions section, a section that defines the territorial extent of the regulations, and a section that identifies other regulations that relate to part 19.

In the proposed definitions section at § 19.1, we propose some minor amendments to the language used within this section to clarify the meaning of some terms. We also propose to add some new terms and delete an outdated term found in the current definitions section. We propose to add the terms ''accurate mass flow meter,'' ''general premises,'' ''letterhead application,'' ''letterhead notice,'' ''National Revenue Center,'' ''TTB officer,'' and ''we.'' We propose to delete the term ''region director.''

We also propose to move two sections currently located in subpart D, under the heading ''Activities Not Subject To This Part,'' to subpart A. The relocated sections are § 19.4, Recovery and reuse of denatured spirits in manufacturing processes, and § 19.5, Manufacturing products unfit for beverage use, which are currently found at §§ 19.57 and 19.58, respectively.

Subpart B—Administrative and Miscellaneous Provisions

Proposed subpart B contains the administrative and miscellaneous provisions for part 19 that are currently found in subpart D. However, some sections of regulations that are located in the current subpart D have been relocated to other revised subparts, where appropriate. For example, we propose to move sections relating to gauging to the new proposed Subpart K, Gauging. Similarly, we propose to relocate sections relating to the conveyance of spirits or wines on plant premises to the new proposed Subpart C, Restrictions, Location, and Use of Plants.

Proposed subpart B includes a ''penalty of perjury'' section that is currently located at § 19.100. In its comments on part 19, DISCUS proposes the deletion of the requirement that documents be executed under penalties of perjury from several sections of regulations. DISCUS states that ''these penalties are unnecessary and excessive in light of the fact that a proprietor's permit is subject to revocation under the Federal Alcohol Administration Act for failure to comply with the Bureau's requirements.'' TTB did not adopt this proposal. The penalty of perjury statement is an important safeguard that places legal responsibility for the truthfulness of significant documents filed with TTB on the documents' signatories. Generally, we do not require the ''penalty of perjury'' statement on most documents and records. Its use is generally restricted to claims, tax returns, applications, and similar documents. The IRC at 26 U.S.C. 6065 states, ''Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provisions of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under penalties of perjury.'' Consistent with the IRC at 26 U.S.C. 6065 and along with the other tax collection agencies within the Department of the Treasury, TTB requires that such documents be signed under penalties of perjury. The penalty of perjury provision in the proposed regulations is located at § 19.45.

Subpart C—Restrictions on Production, Location, and Use of Plants

Proposed subpart C covers restrictions associated with the operation of a distilled spirits plant, along with the location and use of DSP premises. In its comments on part 19, DISCUS makes several recommendations affecting those sections of the current regulations that govern restrictions, locations, and use of DSP premises. We discuss these recommendations and our responses below.

Restrictions regarding location. Currently, 27 CFR 19.131 provides that a distilled spirits plant may not be located on premises where beer or wine is produced, or liquors of any description are retailed, or (except as provided in § 19.133) on premises where any other business is conducted. DISCUS contends that physical separation of commodities is meaningless and recommends that this restriction be amended to allow a distilled spirits plant to be located on such premises if the proprietor's records show the separate operations. We did not adopt this proposal because Federal law does not provide for ''constructive'' separation of premises by records only. The language of this regulation is derived directly from the language of the IRC at 26 U.S.C. 5178(a)(1)(B), which states that a distilled spirits plant shall not be located ''on premises where beer or wine is made or produced, or liquors of any description are retailed, or on premises where any other business is carried on (except when authorized under subsection (b)).'' This

provision appears in the proposed regulations at § 19.52.

Continuity of premises. Currently, the regulation at § 19.132 provides that the physical continuity of a distilled spirits plant must be unbroken except for separation by public waterways, thoroughfares, or carrier rights-of-way. However, TTB may approve other separations of the plant premises when all parts of the plant are in the ''same general location.'' DISCUS recommends that the term ''same general location'' mean within 200 miles of the distilled spirits plant.

We did not adopt this recommendation in the proposed regulations. Although DISCUS states that a ''200 mile rule'' would provide increased operational flexibility for proprietors, they do not explain how this would occur under their proposal and why that distance is more appropriate than any other.

Over the years TTB has received a number of requests to establish non-contiguous distilled spirits plant premises. We have evaluated each of these requests on a case-by-case basis. In our evaluation of each request, we consider a number of factors, such as:

- Security and protection of the revenue,
- Distance between the main plant premises and the proposed non-contiguous premises,
- Whether the non-contiguous premises would cross State lines,
- Whether the non-contiguous premises will facilitate inspections and audits, and
- Whether establishment of non-contiguous premises would provide the proprietor with a means for delaying payment of taxes.

We propose to retain the case-by-case analysis based on multiple factors, instead of adopting a 200 mile rule as proposed by DISCUS. As a general rule, we believe that the ''same general location'' must not be too large an area so that the revenue is placed at risk. Also, because a distance of 200 miles could extend over a multi-state area and would cross over into different field offices within TTB, such a distance would create administrative difficulties for TTB. This provision appears in the proposed regulations at § 19.53.

Other businesses. Currently, the regulation at § 19.68 provides that TTB may authorize the carrying on of other businesses (not otherwise prohibited) on DSP premises under certain conditions. The other businesses should not pose a jeopardy to the revenue, hinder the effective administration of part 19, or be contrary to law. There is a similar section of regulations at § 19.72. DISCUS recommends the removal of § 19.68 since it is redundant with § 19.72.

We agree that §§ 19.68 and 19.72 are very similar, and we have merged the two sections into a single section within the proposed regulations at § 19.55.

Bonded warehouses not on premises qualified for production of spirits. The current regulation at § 19.134 allows for the establishment of a bonded warehouse on premises that are not qualified for the production of spirits, if the need for such is clearly established. DISCUS recommends the amendment of this section by adding language stating that the warehouse may be within 200 miles of the main plant. We did not adopt this recommendation for the same reasons discussed above under the heading, ''Continuity of Premises.'' This provision is found in the proposed regulations at § 19.56.

Taxpaid spirits or wines on bonded premises. The current regulation at § 19.97 provides that spirits or wines on which the tax has been paid or determined may be conveyed across bonded premises but cannot be stored or remain on bonded premises, and must be kept separate and apart from spirits or wines on which the tax has not been paid or determined. DISCUS recommends the addition of new language to this section whereby the area where taxpaid spirits or wines are stored will not be considered bonded premises if the proprietor's records show that the tax has been paid or determined. They state that their proposal would ''shift the focus from the outdated requirement of physical segregation to a modernized, efficient approach based upon 'constructive segregation.' ''

We did not adopt this recommendation because the IRC does not allow for the separation of premises solely by records. The IRC at 26 U.S.C. 5612 clearly states that taxpaid or tax determined spirits cannot be stored on bonded premises. Further, the bonded area of a DSP is a clearly defined physical area of the plant with clearly defined boundaries. It is not an area defined only by records of the type of spirits stored on the premises. In our proposed regulations, this section is now found at § 19.58.

Conveyance of untaxed spirits or wines within a distilled spirits plant. Currently, the regulation at § 19.98 provides that untaxed spirits or wines can be conveyed between different bonded areas of a plant and across areas of a plant that are not bonded. DISCUS recommends the amendment of this section by adding language whereby if the proprietor's records show the tax has not been paid or determined, then the untaxed spirits will be considered to be on bonded premises (constructive segregation).

We did not adopt this recommendation because the regulation already allows for the transfer of untaxed spirits across areas of a plant that are not bonded. The amendment proposed by DISCUS would only incorporate the idea of ''constructive segregation'' into this section of the regulations. However, since the regulation already allows for transfers across areas of the plant that are not bonded, the amendment proposed by DISCUS is not necessary. This section of the regulations is now found at § 19.59 in the proposed regulations.

Spirits in customs custody. Currently, the regulation at § 19.99 provides that spirits in customs custody may be conveyed across DSP premises under certain conditions. Those conditions include:

- The spirits may not be stored or allowed to remain on DSP premises.
- The spirits must be kept separate from other spirits on DSP premises.
- The means and route of conveyance must be approved.
- The proprietor must file a consent of surety.

DISCUS recommends the addition of language to this section whereby if the proprietor's records show that spirits are in customs custody, then the area where the spirits are stored will not be considered part of the DSP premises.

We did not adopt this DISCUS recommendation for several reasons. First, this section of regulations deals with conveyance of spirits in customs custody across DSP premises. It does not deal with the storage of such spirits on DSP premises.

In addition, TTB bonded premises and customs bonded premises are two distinct types of bonded premises. TTB bonded premises are established under the laws and regulations administered by the Alcohol and Tobacco Tax and Trade Bureau, while customs bonded premises are established under a separate set of laws and regulations administered by U.S. Customs and Border Protection. As such, the premises cannot be co-located, and there is no basis in the law for constructive segregation of these bonded premises by records only. The bonded area of a DSP is a clearly defined physical area of the plant with clearly defined boundaries. It is not an area defined only by records. In our proposed regulations, this section is now found at § 19.60.

Production of distilled spirits for personal use. Frequently, TTB receives

questions from the general public asking whether the law allows for the production of distilled spirits in the home for personal use. Under Federal law (26 U.S.C. 5171), distilled spirits may only be produced at a registered distilled spirits plant. Therefore, we propose to add a new section to subpart C, which will explain that a person may not distill spirits at home for personal use. This new section is found in the proposed regulation at § 19.51.

Subpart D—Registration of a Distilled Spirits Plant and Obtaining a Permit

The current regulations governing the qualification of a distilled spirits plant are found in subpart G. These regulations cover a number of issues, including the requirements for plant registration, operating permits, alternation of premises, and amending registrations and operating permits.

Proposed subpart D covers the initial registration of a distilled spirits plant and procedures for obtaining an operating permit. We propose to assign regulations concerning changes after the original qualification of the plant to the new subpart E.

In the proposed subpart D, we also propose to rearrange the information related to the qualification of a distilled spirits plant in a more logical order. For example, we propose to group all registration information together under a heading titled ''Requirements for Registering a Plant,'' while information relating to operating permits is grouped together under a separate heading titled ''Requirements for an Operating Permit Under the I.R.C.'' In the current regulations, much of the information regarding registration and operating permits is intermingled. We believe that separating these subjects will make it easier for readers to understand which requirements apply to plant registration and which requirements apply to operating permits.

Other businesses. In its comments on part 19, DISCUS proposes the inclusion of a cross-reference at § 19.152 of the current regulations, indicating that ''other businesses'' may be allowed under a separate section of the regulations. We adopted this proposal in the proposed regulations at § 19.73(b).

Major equipment. DISCUS also recommends in its comments that the requirement to list major equipment on the application for registration, currently found at § 19.166, be amended. First, it states that the regulation should be clarified to provide that ''major equipment'' must be identified in the registration only if it is ''set up'' and ''used for distillation, redistillation, or recovery of spirits.''

We adopted this suggestion in part. We do not see any need to list major equipment in the application that is not ''set up'' and used for the production, storage, or processing of spirits. Therefore, we have inserted language in the proposed regulations at § 19.75, which requires that equipment be listed if it is ''set up'' and used for the production, storage, or processing of spirits.

DISCUS also recommends that a paragraph be added to § 19.166 stating that ''bulk containers of less than 101 wine gallon capacity and not meeting the criteria of a tank under § 19.273 (such as perks and small totes) are not items of major equipment and are not required to be listed in the application for registration.'' This recommendation is reasonable because such containers are not items of major equipment, and we include it in the proposed regulation at § 19.75.

In addition, DISCUS recommends that the requirement to provide a ''statement of certification of accurate calibration'' for tanks found in the current regulations at §§ 19.166 and 19.273(a)(6) be eliminated. This recommendation is reasonable and has been adopted in the proposed regulations because it only involves eliminating a requirement to include a ''statement of certification of accurate calibration'' in the notice of registration. The proposed regulation at § 19.182 will continue to require that tanks be accurately calibrated.

Registration file. The IRC at 26 U.S.C. 5171(c) requires that persons must apply for and receive a notice of registration before commencing business as a distilled spirits plant. In regard to the maintenance of the registration file, currently at § 19.155, DISCUS recommends the addition of language to allow the registration file to be kept in computerized records. We did not adopt this proposal because registration documents are normally submitted to TTB in a hard-copy format and returned to the proprietor by TTB in hard-copy format. DISCUS also recommended the elimination of the requirement that the registration file be kept ''at the plant.'' We did not adopt this proposal because the file must be readily available for inspection by appropriate TTB officers.

LLCs and LLPs. The current regulations governing qualification of a distilled spirits plant in subpart G only acknowledge three types of business organizations, sole proprietorships, partnerships, and corporations. In view of the increasing use of limited liability companies (LLCs) and limited liability partnerships (LLPs), we have included instructions for these types of business organizations in the proposed regulations at § 19.93.

Subpart E—Changes to Registrations and Permits

Proposed subpart E includes the regulations governing changes to the distilled spirits plant registration, changes to operating permits, and alternation of plant premises. Similar to the changes that we propose in new subpart D, much of the information in the new subpart E is arranged in a more logical order. For example, matters affecting changes to registration are grouped together under the heading titled ''Rules for Amending a Registration,'' and matters affecting changes to operating permits are grouped together under the heading titled ''Rules for Amending an Operating Permit.''

In the current regulations, much of the information regarding changes to the registration and changes to the operating permit is intermingled. As with new subpart D, we believe that separating these subjects will make it easier for readers to understand the specific requirements that apply to amending either the plant registration or the operating permit.

Letterhead notices and letterhead applications. In its comments on part 19, DISCUS makes several recommendations regarding how proprietors should apply for changes to a plant's registration or operating permit. Generally, DISCUS recommends that, in most instances, the regulations allow proprietors to request changes by filing a letterhead notice. In its petition, DISCUS states that:

> Subpart G provisions regarding changes in the information shown in the original registration should be revised to eliminate unnecessary prior submissions and prior approval requirements. Similar to our alternation proposals, 27 CFR 19.180, 19.82 and 19.183 (application for amended registration, change in name of proprietor and change of trade name, respectively) should be amended to provide that a proprietor file a letterhead notice reporting any change within 30 days after the change. Further, 27 CFR 19.184 and 19.185 (changes to largest stockholders and changes in officers and directors, respectively) should be revised to provide identical treatment (i.e., reported in the next amended registration) because there is no reason to treat these changes differently.

TTB agrees that we should simplify the amendment of registrations and permits wherever possible. Accordingly, we are proposing to expand the use of both letterhead notices and letterhead applications for reporting changes to the registration and permit. We will allow the use of letterhead notices to report

minor changes affecting the registration or permit. We will allow for the use of letterhead applications for more substantive changes but these must be approved by TTB prior to the change. The use of amended applications, letterhead applications, and letterhead notices are discussed in the proposed regulations at §§ 19.112 and 19.126.

Changes in the statement of plant security. In the current regulation at § 19.153(b), an application for amended plant registration (form TTB F 5110.41) must be filed each time there is a change in plant personnel or procedures contained in the statement of security. In Notice No. 870, ATF proposed to liberalize this requirement. Therefore, we propose that § 19.153(b) be amended to require that a letterhead application be filed for changes in the security procedures listed in § 19.153(a)(1)–(4), and that a letterhead notice be filed for changes in the personnel listed in § 19.153(a)(5). Thus, the letterhead application or letterhead notice would replace the amended registration that was required each time that the information in § 19.153(a)(1)–(5) changed. The plant registration would be updated on an annual basis to incorporate changes made during the preceding year.

In its comments on Notice No. 870, Equistar Chemicals states that it endorses the proposed changes and would encourage any additional efforts to facilitate compliance through reducing nonessential paperwork. However, Equistar asks for some clarification of this proposal. It pointed out that the proposal allows companies to submit a ''letterhead application'' and ''letterhead notice'' for changes. Equistar states that it presumes that we intended companies to simply send an informal letter notifying the agency of procedure or personnel changes. The company asks for a clarification of these terms.

In response to this request for clarification, TTB advises that the terms ''letterhead application'' and ''letterhead notice'' refer to a letter from a company representative, with signature authority, on company letterhead (see definitions). The ''letterhead application'' is subject to TTB approval prior to the change; however, the ''letterhead notice'' is not subject to prior approval. These terms are now fully explained in the proposed regulations at §§ 19.112 and 19.126.

Equistar also points out that ''the proposal requires a letterhead application for 'changes in any of the information' listed in the sections of the Statement of Physical Security that address procedural changes.'' The company states that a requirement to advise us of ''any changes'' is overly broad and could encompass non-substantive as well as substantive changes. Equistar recommends that we maintain the rule's original language that covers changes in ''procedure'' rather than ''any changes.''

The current regulation governing changes in plant security, which appears at § 19.153, has been rewritten to clarify the type of changes that may be reported to TTB by letterhead application or letterhead notice. In our proposed regulations, this section is now located at § 19.123.

In its response to Notice No. 870, DISCUS states that it supports the proposal whereby a distilled spirits plant would file a letterhead notice instead of an amended registration for changes in the information provided under 27 CFR 19.153(a)(5). However, DISCUS recommends the deletion of the word ''security'' from the proposed term ''security personnel listed in paragraph (a)(5).'' DISCUS states that the term ''security personnel'' is not used in paragraph (a)(5) and is not synonymous with the persons covered by paragraph (a)(5).

We agree that the term ''security personnel'' is not an accurate term. Therefore, we propose deleting the word ''security'' from the proposed regulation at § 19.76.

DISCUS also recommends that the regulations conform their treatment of changes in § 19.153(a)(1)–(4) to the proposed changes in paragraph (a)(5). DISCUS asks that the regulations allow these changes to be reported by a letterhead notice within 30 days after the changes. DISCUS states that the information required by paragraphs (a)(1)–(4) and (a)(5) concern the same issues, and ''no reason exists to subject subsection (a)(5) to different treatment than subsections (a)(1)–(a)(4).''

In response to this recommendation, TTB advises that the information at § 19.153 is part of the data for an ''application'' for registration (27 CFR 19.152(k)). As such, the items of information provided under § 19.153 are subject to pre-approval for initial qualification of a distilled spirits plant and continued qualification of each plant. Further, the items listed under § 19.153(a)(1) through (4) represent crucial physical security features of a plant and must, therefore, be subject to prior approval by TTB. In contrast, the information required by § 19.153(a)(5) is a listing of persons having responsibility for custody and access to keys for approved locks at the distilled spirits plant. Since plants are free to designate the persons responsible for such custody, this particular item of information is not something that needs to be pre-approved. Therefore, this item will be treated as a ''notification'' rather than an ''application.'' These changes now appear in the new, proposed regulations §§ 19.76 and 19.123.

Change in name of proprietor. The current regulation at § 19.182 requires that the proprietor file an application to amend the registration and the operating permit whenever there is a change in the name of the proprietor. DISCUS recommends the amendment of that regulation to allow the filing of a letterhead notice within 30 days of the name change, and that the new information be included in the next application to amend the registration and the next application to amend the operating and/or basic permit filed by the proprietor. DISCUS also recommends deleting from the current regulations the phrase, ''Operations may not be conducted under the new name prior to approval of the amended registration and issuance of the amended permit.''

The provisions of the current regulation at § 19.182 will be covered in the proposed regulations at §§ 19.113 and 19.128, and the proposed regulations will no longer require the filing of amended applications. Instead, the proposed regulations will allow for the filing of a letterhead application. However, since a change in the proprietor's name is a substantive change, the proposed regulation will still prohibit operations conducted under the new name before TTB approves the letterhead application.

Change of trade name. The current regulation at § 19.183 requires that the proprietor file an application to amend the operating permit when there is a change in the trade name of the proprietor. Operations may not be conducted under the new trade name until the amended permit is approved. DISCUS recommends the amendment of the regulation to allow for the filing of a letterhead notice within 30 days of the change and no longer require an application to amend the operating permit.

In the proposed regulation at § 19.129, TTB will no longer require the filing of an amended application. Instead, the proposed regulation will allow for the filing of a letterhead application. However, since any change in the trade names used by the proprietor is a substantive change, the proposed regulations will still prohibit operations conducted under the new trade name prior to TTB's approval of the letterhead application.

Change of stockholders. The current regulation at § 19.184 allows for the filing of an annual report of changes in

major stockholders except where the sale or transfer of capital stock results in a change in control or management. In its comments on part 19, DISCUS recommends that the language of the regulation be amended to read, ''Changes in the list of stockholders furnished under the provision of Sec. 19.167(c)(1) shall be reported in the next application for amended registration on Form 5110.41 filed by the proprietor.''

In the proposed regulations at §§ 19.114 and 19.130 we will allow a proprietor to submit an annual letterhead notice regarding changes in major stockholders. Under the proposed regulations, the changes must be incorporated in the next application filed, unless a change of control occurs. If a change in control takes place, § 19.114 requires that the proprietor must file TTB F 5110.41, Registration of Distilled Spirits Plant, within 30 days of the change, and § 19.130 requires that the proprietor must file TTB F 5110.25, Application for Operating Permit Under 5171(d), within 30 days of the change.

Changes in officers and directors. The current regulation at § 19.185 requires that a proprietor file an application for amended registration on Form 5110.41 when there is a change in the list of officers or directors. DISCUS recommends that the regulation be amended to state that the proprietor will report the change on the next application on TTB F 5110.41 for amended registration filed by the proprietor.

In the proposed regulations at §§ 19.115 and 19.131, we propose to allow a proprietor to submit a letterhead notice at the time of the changes and incorporate the changes in the next application for amended registration filed on form TTB F 5110.41 and the next form TTB F 5110.25 filed.

Permit transfers. In its comment on Notice No. 870, Equistar Chemicals asked that ATF (BATF in its comment) examine ways to minimize the paperwork and notice requirements associated with ATF permits when a change of ownership occurs. Equistar states:

> BATF should examine ways to minimize the paperwork and notice requirements necessary to transfer BATF permit ownership in order to facilitate a smoother and less burdensome transition to the acquiring entity. Because the Securities and Exchange Commission (SEC) obtains copious records on publicly traded companies, perhaps BATF could coordinate efforts with SEC in cases where the acquiring entity is a publicly traded company and obtain company information through existing government databases. Alternatively, BATF could also prevent duplication by allowing companies to submit their annual reports in lieu of filling out numerous forms and applications. Such solutions would simultaneously facilitate BATF's access to companies' business information and alleviate the burden on companies who must currently submit new documentation of standard business information to each governmental branch who requests it.

In general, TTB agrees that we should simplify the amendment of registrations and permits wherever possible. For this reason, we propose to expand the use of both letterhead notices and letterhead applications for reporting changes to the registration and the operating permit.

However, in regard to utilizing SEC filings in cases where there is a change in ownership or control, there are several problems. First, much of the information that a proprietor submits in support of a plant registration or an operating permit is specific to distilled spirits operations. As such, this type of information, except for some similar items of information, is not required by agencies such as the SEC and so copies of such submissions would be inadequate for TTB purposes.

Adoption of formulas. The current regulation at § 19.187 provides for the adoption of formulas by a successor. DISCUS recommends in its comments on part 19 that the regulation refer to 27 CFR 5.28 and that the language in § 19.187 which is redundant with § 5.28 be removed.

In the proposed regulations we eliminated § 19.187 as a separate section of regulations and we have incorporated references to the adoption of formulas and §§ 5.28 and 20.63 into the proposed regulations at §§ 19.116 and 19.132.

Changes in premises. The current regulation at § 19.190 refers to several sections of regulations relating to alternation of premises. DISCUS recommends the amendment of these references to ensure the accuracy of cross-references to other appropriate sections in part 19. The accuracy of cross-references is important so we propose to amend the references at proposed § 19.119 to reflect the new section numbers for alternation of premises.

Change in operations. The current regulation at § 19.191 requires that a DSP proprietor file an application to amend the registration and operating permit if the proprietor wishes to engage in a new business involving distilled spirits. This section also applies to conducting other businesses on DSP premises. DISCUS recommends the addition of language to the end of this section stating, ''Applications may be approved as provided in Sec. 19.72.''

In the proposed regulation at § 19.120, we now include a reference to § 19.55, which is the section of regulations relating to other businesses.

Changes in construction or use of buildings and equipment. The current regulation at § 19.193 requires a DSP proprietor to submit a letterhead notice prior to a material change in construction or use of buildings or equipment and then incorporate the change into the next amendment of the notice of registration. DISCUS recommends the elimination of most of this section because it is redundant with the general instructions relating to applications for amended registration found at § 19.180.

We did not eliminate this section because we do not believe that it is redundant. Similar to the other sections in this subpart, it provides specific instructions for amending the registration. The provisions of current § 19.193 appear in the proposed regulations at § 19.122.

Procedures for alternation of proprietors. The current regulation at § 19.201 covers the procedures that proprietors must follow when DSP premises, or part of the premises, are alternated between different proprietors. Alternation of premises refers to the formal, legal transfer of operations from one proprietor to another proprietor. DISCUS proposes to amend this regulation by eliminating the requirement to provide a diagram of the area of the plant to be alternated. Further, DISCUS proposes that language be inserted into the regulation that would allow the proprietor's production, storage, and processing records to be used to document the alternation of proprietors.

We did not adopt this DISCUS proposal. Records of production, storage, and processing are used to record the details of production, storage, and processing activities at a plant. These records are not designed to officially document the alternation of plant premises from one proprietor to another proprietor. Further, such records would not identify the actual bonded areas of the plant that are alternated; only a diagram can provide this information. However, we did substantially rewrite this section of the regulations to clarify the procedure for alternating proprietors. In addition, the requirement to file Form 5110.34 has been replaced with the requirement to file a letterhead notice with TTB when such alternations occur. The proposed amended section appears at § 19.141.

Alternate operations. The current regulation at § 19.202 provides for the alternate use of plant premises and equipment for customs purposes whereby the premises of the plant are

converted from TTB bonded premises to Customs bonded premises. The current regulation also requires that the proprietor file a notice on Form 5110.34 whenever the plant premises are curtailed or extended for customs purposes. In Notice No. 870 ATF proposed to substitute a letterhead notice for the filing of Form 5110.34 each time that distilled spirits plant premises are alternated for customs purposes.

The current regulations at §§ 19.203 through 19.206 provide for the alternation of distilled spirits plant premises with bonded wine cellar premises, taxpaid wine bottling house premises, general premises, and premises for the manufacture of eligible flavors. The current regulations also require that the proprietor file a notice on Form 5110.34 whenever the premises are curtailed or extended for these purposes. In Notice No. 870, ATF proposed to simplify this requirement by amending §§ 19.203 through 19.206 to provide that after a proprietor has received approval for the alternation plan that defines the boundary of the premises to be alternated, the alternation may take place pursuant to records kept in a logbook. In Notice No. 870, ATF listed the requirements for the proposed logbook record in a new section of regulations at § 19.781. In Notice No. 870, ATF also proposed to allow for the alternation of distilled spirits plant and brewery premises under the same conditions. Alternation of distilled spirits plant premises and brewery premises is not provided for in the current regulations.

In its comments on Notice No. 870, DISCUS expresses support for the proposal to eliminate the requirement to file Form 5110.34 each time that the premises are alternated. However, DISCUS does not support the proposal to require a proprietor to prepare a logbook containing the information required by proposed § 19.781 each time that the proprietor alternates premises. DISCUS states that ''this proposal runs contrary to the objective of effective regulatory reform; [sic] to replace formal recordkeeping requirements with reliance upon commercial business records maintained in the ordinary course of business.'' Further, DISCUS contends that the proposal does not eliminate the requirements for prior submission and prior approval or the requirement to physically segregate products by type (wine, beer, spirits, or flavors). It asserts that the requirement in the regulations to segregate products is burdensome and that companies can track, distinguish, and identify products and operations by computer. DISCUS also asserts that '' 'constructive segregation' of product by computerized records protects BATF's regulatory objectives, without the inefficient use of space and time and effort inherent in requiring physical separation.''

DISCUS recommends that the regulations allow alternation under §§ 19.202 through 19.206 if the distilled spirits plant proprietor files a letterhead notice reporting the alternation within 30 days after the alternation takes place. It also proposes that the proprietor's ordinary business records be used to substantiate the alternation and that we eliminate the requirement to physically separate products as currently required.

For the reasons discussed earlier in this notice, TTB is not adopting these recommendations regarding dependence upon company records for segregation of goods and reliance upon ''constructive segregation.'' As stated earlier, the IRC does not provide for the separation of premises solely by records. Further, the bonded area of a DSP is a clearly defined physical area of the plant with clearly defined boundaries. It is not an area defined only by commercial records.

Therefore, in this current notice we propose a new section of regulations at § 19.142 to provide for the alternation of premises for customs purposes whereby proprietors will file a letterhead notice with TTB prior to any alternation of premises. We have also eliminated the requirement to file Form 5110.34. We do not agree with the DISCUS proposal that would allow notices to be filed up to 30 days after the fact. Thus, the proposed regulation at § 19.142 will require that the letterhead notice must be filed prior to alternation of premises for customs purposes.

In addition, we propose a new, single section of regulations at § 19.143 that will provide for extension and curtailment of distilled spirits plant bonded premises with either general premises, an adjacent bonded wine cellar, an adjacent taxpaid wine bottling house, an adjacent brewery, or facilities for the manufacture of eligible flavors. Under our proposed regulations, proprietors will document such alternations in the record prescribed in proposed § 19.627 at the time the alternation occurs, and we will not require the filing of a letterhead notice with TTB or the filing of form TTB F 5110.34. The record prescribed in proposed § 19.627 will allow for the use of commercial records, when the commercial records provide the same information required by § 19.627 and are retrievable and available for inspection by TTB officers. Because of the variability of commercial records, we believe that there is a need to provide minimum standards for the commercial records that document alternation of premises. Further, the proposed regulation at § 19.143 will still require the segregation of products. We disagree with the DISCUS recommendation that would allow for the ''constructive segregation'' of products based on computerized records. This is not an actual segregation of product as required by law at 26 U.S.C. 5178(a)(1)(B) and 5612 and could result in the commingling of taxpaid and non-taxpaid product.

Subpart F—Bonds and Consents of Surety

Proposed subpart F covers the bonding of distilled spirits plants. For the most part, this subpart contains the same information found in current regulations at subpart H, except that the proposed regulations are written in plain language.

However, the proposed regulation at § 19.163 will allow persons who operate more than one distilled spirits plant serviced by TTB's National Revenue Center to give TTB a single area operations bond that covers the operations of two or more distilled spirits plants and adjacent bonded wine cellars located within the same geographic area. For practical purposes this means that, since TTB's National Revenue Center services the entire United States, a proprietor's operations bond may cover all of the proprietor's plants in the United States.

DISCUS did not recommend any substantive changes to these regulations in its comments on part 19. However, it did recommend that the requirement to execute a bond under penalties of perjury be deleted. This recommendation is not being considered in this proposed rule for the reasons discussed earlier in this notice.

Subpart G—Construction, Equipment, and Security Requirements

Under the current regulations in part 19, construction, equipment, and security issues are covered at subpart I. In the regulations proposed by this notice, those issues will be covered in the new proposed subpart G. The following is a discussion of the changes we that propose in the new subpart G.

Construction of buildings. The current regulation at § 19.271, Construction of buildings, will not be included in the proposed regulations. We found that it simply repeats requirements already found in §§ 19.281(a) and 19.281(b).

Equipment. The current regulation at § 19.272, Equipment, will also be deleted. We found that it simply repeats

requirements found in several other sections of the current regulations including: §§ 19.152(h), 19.152(k), 19.153, 19.166, and 19.281(a), (c), and (d).

Tanks. DISCUS recommends that the requirement to permanently mount scale tanks on scales should not apply to tanks that do not exceed a 55-gallon capacity. This proposal is reasonable because such small tanks are intended to be portable and there is no need to mount them permanently on scales. Therefore, we adopted this recommendation in the proposed regulation at § 19.183(b).

Continuous distilling system. We propose to eliminate the current regulation at § 19.275, Continuous distilling system, from the regulations in the new proposed subpart G. The requirement for a continuous distilling system is already covered in the proposed regulations at Subpart L, Production of Distilled Spirits, and we found § 19.275 of the current regulations to be redundant.

Meters. During the course of certain operations at distilled spirits plants, proprietors are required to measure the volume of distilled spirits. When measuring spirits for purposes other than tax determination, the regulations require that the spirits be measured in a tank or a conveyance using calibration charts. The current regulation at § 19.277 also allows for the use of meters when measuring spirits for purposes other than tax determination. However, in order to use a meter, the proprietor must first submit an application to TTB, along with technical data regarding the meter they intend to use. TTB must approve the meter prior to its use at a plant.

In its petition and markup of part 19, DISCUS proposes the elimination of the prior approval requirement for meters. DISCUS states that this requirement imposes unnecessary and time-consuming burdens on TTB resources and the industry and serves only to delay operations at a DSP. DISCUS states that the proprietor should be responsible for using and maintaining accurate equipment.

After careful consideration of this proposal, TTB has decided to propose significant changes in the new proposed regulations whereby a proprietor may use mass flow meters for all required bulk gauges at a distilled spirits plant, including bulk tax determination gauges, if the meters meet certain criteria for accuracy. This will reduce the burden on industry members and TTB while ensuring the accuracy of bulk measurements.

Accordingly, the proposed regulation at § 19.188(c) provides that a proprietor may use a mass flow meter for tax determination of bulk spirits if the meter is certified by the manufacturer or other qualified person as accurate within a tolerance of +/−0.1%. For all other required gauges of bulk spirits at a distilled spirits plant, a proprietor may use a mass flow meter if it is certified by the manufacturer or other qualified person as accurate within a tolerance of +/−0.5%. For both tax determination gauges and all other required gauges, the proprietor must make corrections for the temperature of the spirits being measured in conjunction with the volumetric measurement of spirits by mass flow meter. The proprietor must also test mass flow meters at least every 6 months to ensure that they are accurate within the required tolerances.

Miscellaneous changes. In addition to the changes proposed above, TTB also proposes to make several editorial changes in subpart G that will make the regulations easier to understand. For example, the current regulation at § 19.273, Tanks, has been divided into several shorter sections covering: (a) The general requirements for tanks, (b) scale tanks, (c) graduation of scale tanks, and (d) testing for accuracy. The proposed, shorter sections are found at §§ 19.182, 19.183, 19.184, and 19.185.

Subpart H—Special (Occupational) Tax

On October 22, 2004, the President signed into law the American Jobs Creation Act of 2004 (the Act), Public Law 108–357, 118 Stat. 1418. Section 246 of the Act amended the IRC by providing that, during the 3-year period from July 1, 2005 through June 30, 2008, the rate of special (occupational) tax imposed under IRC sections 5081, 5091, 5111, 5121, and 5131 is zero. The effect of this provision is that proprietors of distilled spirits plants, including alcohol fuel plants and certain other proprietors, are not subject to special (occupational) tax during the suspension period. However, although the tax rate for the occupations affected by the suspension is zero during the suspension period, the IRC still requires that persons engaging in those occupations must register annually and comply with all applicable recordkeeping requirements. On October 31, 2005, TTB issued Treasury decision T.D.TTB–36 (70 FR 62238) which implemented this provision of the Act by amending the special (occupational) tax regulations in part 19 and other affected parts.

On August 10, 2005, the President signed into law the Safe, Accountable, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, 119 Stat. 1144. Section 11125 of this act repeals the special (occupational) tax applicable to proprietors of distilled spirits plants. This provision will become effective on July 1, 2008.

The special (occupational) tax regulations proposed in this notice are located in proposed subpart H and are based upon the American Jobs Creation Act of 2004. Thus, they provide for a suspension of the special (occupational) tax through June 30, 2008. However, prior to the effective date of section 11125 of the Safe, Accountable, Efficient Transportation Equity Act, TTB intends to develop and issue regulations for all parts in title 27 of the Code of Federal Regulations that are affected by the special tax repeal provisions of that act. Therefore, the regulatory text in the final rule associated with this notice of proposed rulemaking will reflect the statutory provisions that are in effect when that final rule is published.

Subpart I—Distilled Spirits Taxes

Under the current regulations, information regarding payment of the distilled spirits taxes is found in two separate subparts, Subpart C, Taxes, and Subpart P, Transfers and Withdrawals. Subpart C contains much of the basic information about distilled spirits taxes, plus the methods for calculating tax credits under the IRC at 26 U.S.C. 5010. Information regarding determination of taxes and the filing of tax returns is located in subpart P.

Logically, all information associated with distilled spirits taxes should appear in the same subpart. Therefore, the proposed regulations consolidate all of the information relating to distilled spirits taxes currently found in subparts C and P plus several other miscellaneous tax provisions currently located in other subparts into a new proposed Subpart I, Distilled Spirits Taxes.

General sections. In addition to consolidating the tax information currently found in subpart C and P, we have created several new general sections within the proposed subpart I. These new sections discuss issues such as deferred payment and prepayment of taxes, and the tax credits provided under 26 U.S.C. 5010. These general sections are intended to give the reader a brief introduction to some of the more complex subject matter within proposed subpart I.

Gallonage taxes. In its comments on part 19, DISCUS recommends the elimination of several sections of the current Subpart C regulations that appear under the heading ''gallonage taxes.'' This includes §§ 19.21, 19.22,

19.23, 19.24, 19.25, and 19.26. DISCUS states that these sections are redundant with the IRC.

TTB agrees that many of these sections of regulations repeat provisions of the IRC. However, as stated earlier in this notice, we intend that the regulations in part 19 provide users with a comprehensive and complete guide to the requirements for operating a distilled spirits plant, and where appropriate, we will repeat certain statutory requirements in the regulations. We do not wish to unnecessarily require readers of these regulations to reference both the IRC and the regulations when researching an issue. Therefore, we propose to retain most of the information provided in current §§ 19.21, 19.22, 19.23, 19.24, 19.25, and 19.26 in proposed Subpart I.

Inventory reserve account. In its markup of part 19, DISCUS also proposes the deletion of § 19.38, which provides for an inventory reserve account. The inventory reserve account is one of the optional methods that a proprietor may use for applying effective tax rates under the IRC at 26 U.S.C. 5010. DISCUS offers no explanation for deleting this section. In the proposed regulations, we retained this section in order to provide industry members with another option in determining the method for applying effective tax rates.

Subpart J—Claims

Under the current regulations in part 19, the subject of ''Claims'' is covered as a subcategory of subpart C, Taxes. In these proposed regulations, we have relocated the regulations related to claims into a new, separate subpart J. Most of the changes to the regulations in proposed subpart J are relatively minor and are intended to improve the language and thereby make the regulations easier to comprehend.

Under the current regulations governing claims, only distilled spirits that were withdrawn from a domestic distilled spirits plant may be returned to a distilled spirits plant and a claim filed. We propose to amend the language of the regulations in proposed Subpart J, Claims, and in Subpart Q, Return of Spirits to Bonded Premises and Voluntary Destruction, to reflect the fact that imported bottled spirits that were taxpaid or tax determined when imported into the United States may be returned to a distilled spirits plant and a claim filed. This change reflects an amendment to the law at 26 U.S.C. 5008(c), which became effective on April 1, 1998.

Subpart K—Gauging

We propose to establish a new subpart K that will amend and consolidate gauging instructions that are currently located in several different subparts within part 19 at §§ 19.84, 19.91, 19.92, 19.93, 19.319, and 19.503.

We believe that placing gauging issues within a single subpart will assist the reader in locating gauging information that was formerly located within administrative and miscellaneous subparts. We have also restructured several of the sections relating to gauging to make them easier to understand. We also propose to amend several of the regulations relating to gauging.

Meters. Under the current regulations at § 19.277(c), TTB may authorize proprietors to use a meter for measuring quantities of spirits for purposes other than tax determination. In order to receive authorization to use a meter for this purpose, § 19.277 requires that the proprietor make an application to the appropriate TTB officer that includes technical data about the meter such as make, model, and the accuracy tolerance. TTB must then evaluate the data to determine whether the meter is suitable for the intended use before approving its use. The current regulations do not provide for the use of meters for bulk tax determination gauges.

Under the proposed regulations at § 19.284, TTB would allow for the use of mass flow meters for both bulk tax determination gauges and all other bulk gauges that must be performed at a distilled spirits plant. Further, the proprietor's use of mass flow meters would not be subject to prior approval by TTB. Instead, the proposed regulations establish standards of accuracy that a mass flow meter must meet for use in bulk tax determination gauges and a separate standard of accuracy for all other bulk gauges. As proposed, a mass flow meter used for tax determination gauges must be certified by the manufacturer or other qualified person as accurate within a tolerance of ±0.1%. A mass flow meter used for all other required gauges must be certified by the manufacturer or other qualified person as accurate within a tolerance of ±0.5%.

In its comments on part 19, DISCUS recommends amending the current regulation at § 19.319(a) by deleting the requirement to use an ''approved meter'' for volume determinations in the production gauge. We propose to change this requirement by substituting the term ''accurate mass flow meter'' for the term ''approved meter.'' Thus, the volume determination on the production gauge can be made using an ''accurate mass flow meter.'' This change appears in the proposed regulations at § 19.289.

For several years, TTB has seen an increased interest in the use of meters by proprietors of distilled spirits plants. Further, manufacturers of meters have improved the accuracy of their mass flow meters. The proposed regulations will give proprietors the opportunity to take advantage of the improved performance of mass flow meters and modernize operations at their plants without the need to seek prior approval from TTB.

Spirits in receiving tanks. DISCUS recommends the deletion of a sentence from the current regulation at § 19.319(a) that states, ''Spirits in each receiving tank shall be gauged before reduction in proof and both before and after each removal of spirits therefrom.'' We did not adopt this recommendation because we need accurate measurements of spirits removed from production, including a measurement of the spirits before and after removal from the receiving tank. This provision is found in the proposed regulations at § 19.289(a).

Gauge record for packages filled. DISCUS also recommends the deletion of the requirement for a gauge record for each lot of packages filled, found in the current regulation at § 19.319(d). We did not adopt this recommendation. We continue to need this type of information and we will continue to require a gauge record for each lot of packages filled. This provision is now found in the proposed regulations at § 19.289(d).

Other industry proposals. DISCUS also recommends that gauges no longer be required when spirits are filled into packages from storage tanks and when spirits are transferred between operational accounts. We did not adopt these changes in the proposed regulations. We believe that these gauges are still an important means of accounting for spirits within the plant.

The current regulation at § 19.91(b) covers the gauging of alcoholic flavoring materials when dumped. The regulation states that when proof of the flavoring materials is determined from a label or the manufacturer's statement, the proprietor must periodically test a sufficient number of samples and record the results in the gauge record. DISCUS recommends the elimination of the requirement to record those results in a gauge record. TTB has adopted this recommendation in the proposed regulations at § 19.287. This is a relatively minor gauging requirement,

and we see no reason to require a record for such gauges.

In its comment on Notice No. 870, Equistar Chemicals asks that the requirement in the current regulations at § 19.503 and § 30.43 be clarified. The company states that the existing regulations appear to require the establishment of a separate tare for each package individually gauged. The term ''tare'' refers to the weight of an empty package. They propose that TTB allow for an average tare in order to facilitate packaging by reducing the time involved in recording a gauge and tare for each package. We did not adopt this recommendation. TTB requires an accurate gauge of spirits that are withdrawn from bonded premises. A package (drum, barrel, or similar container; see § 19.1 definition) is so large that the variance in tare can be significant. This means that the proprietor must establish the actual tare of each package to be withdrawn from bond. This requirement appears in the proposed regulations at § 19.288.

Subpart L—Production of Distilled Spirits

Under the current regulations in part 19, production of distilled spirits is covered at subpart J. In the regulations proposed by this notice, production issues will be covered in proposed subpart L. In its comments on part 19, DISCUS recommends several changes affecting the regulations that govern production of distilled spirits. Below is a summary of the recommended changes and TTB's evaluation of those recommendations. Also discussed is a proposed change to a regulation based on an amendment to the IRC at section 5222(b)(2).

Notices. The current regulation at § 19.311 requires a proprietor to file a notice on Form 5110.34 with the appropriate TTB officer prior to commencing, resuming, or suspending production operations. DISCUS recommends that the proprietor simply file a letterhead notice for such actions. This recommendation is reasonable because the filing of a letterhead notice accomplishes the same objective as the filing of a form. We adopted this recommendation in the proposed regulations at § 19.292.

Suspension of reports. DISCUS recommends that during periods when production operations are suspended, the regulations should not require proprietors to file reports of production under current subpart W. This recommendation is reasonable because TTB does not need to receive reports of no activity, and we adopted this recommendation in the proposed regulations at §§ 19.292(c) and 19.632.

Record of fermenting material. DISCUS recommends amendment of the current regulation at § 19.314 by the deletion of the requirement to maintain a record of fermenting material removed from or used on bonded premises for other purposes. We did not adopt this recommendation. The IRC at 26 U.S.C. 5207(a)(1)(A) specifically requires that the proprietor maintain records of the receipt of materials intended for use in the production of distilled spirits, and the use thereof.

Unfinished spirits. The current regulation at § 19.316 discusses the requirements for a continuous distillation system and redistillation of unfinished spirits. DISCUS recommends amendment of this section of regulation by the deletion of the requirement to determine the quantity and proof of unfinished spirits produced from distilling materials. We did not adopt this recommendation because this type of record is required by the IRC at 26 U.S.C. 5207(a)(1)(C).

Entry gauge. DISCUS recommends amendment of the current regulation at § 19.321 by the insertion of language that would allow the production gauge to be used as the entry gauge when spirits are deposited for storage or processing at the same plant and entered for redistillation at the same plant. This is a reasonable recommendation because a single gauge will be sufficient as the production gauge and the entry gauge and we adopted this recommendation in the proposed regulation at § 19.306.

Record of tests. DISCUS also recommends that the current regulation at § 19.326 be amended by deleting a requirement to maintain a record of tests for the spirits content of chemicals produced by the production process. We did not adopt this recommendation. The proprietor is required by this section of regulations to test chemicals for spirits content. We believe that it is reasonable that the proprietor keep a record of such tests in order to document that the spirits content of chemicals removed from the premises does not exceed the 10 percent by volume limit imposed by the proposed regulation at § 19.308.

Production inventories. DISCUS recommends amendment of the current regulation at § 19.329 by changing the requirement to conduct an inventory from a quarterly to an annual basis. We did not adopt this recommendation. For inventories that involve bulk liquids in tanks, one inventory per year is not adequate to accurately keep track of quantities on hand and detect losses in a timely manner. The shorter time period between inventories makes it easier for both TTB and a proprietor to reconcile any discrepancies and thereby protect the revenue. This requirement has been retained in the proposed regulations at § 19.312.

Receipts of beer. The current regulation at § 19.312 provides that fermented material to be used in the production of spirits may include beer if it is produced at a brewery contiguous to the distilled spirits plant. Thus, under current regulations beer may only be received at a distilled spirits plant from a brewery that is contiguous to the plant. However, in 1997, Public Law 105–34 amended the IRC at 26 U.S.C. 5222(b)(2) by removing the requirement that beer may only be received from contiguous brewery premises. Instead, 26 U.S.C. 5222(b)(2) now provides that fermented material to be used in the production of distilled spirits may include beer conveyed without payment of tax from brewery premises and beer which has been lawfully removed from brewery premises upon determination of tax. This provision has been incorporated into the proposed regulations at § 19.296.

Subpart M—Storage of Distilled Spirits

Under the current regulations in part 19, the storage of distilled spirits is covered at subpart L. In these proposed regulations, issues related to the storage of distilled spirits will be covered under subpart M.

In its comments on part 19, DISCUS recommends several changes to the regulations that govern the storage of distilled spirits. Below is a summary of the recommended changes and TTB's evaluation of those recommendations.

Tanks. The current regulation at § 19.342(b) states that if ''spirits or wines are being deposited in a partially filled tank in storage on bonded premises, simultaneous withdrawals may not be made therefrom unless the flow of spirits or wines into and out of the tank is being measured by meters or other devices approved by the appropriate TTB officer which permit a determination of the quantity being deposited and the quantity being removed.'' DISCUS recommends that this subparagraph be deleted. We agree, and we have deleted this subparagraph from the proposed regulations because we consider this to be a common-sense issue rather than an issue that needs to be spelled out in the regulations. In addition, we believe that the requirement to conduct proper gauging is sufficiently covered in the proposed Subpart K, Gauging.

Filling packages from tanks. The current regulation at § 19.344 states that

spirits or wines in a tank must be gauged before and after filling packages from the tank on bonded premises. DISCUS recommends that this section of regulations be deleted. We disagree with this recommendation. This type of gauge is needed in order to properly account for spirits in the storage account and thereby protect the revenue.

Packages dumped for mingling. The current regulation at § 19.347 states that when packages are dumped for mingling, the proprietor must record such mingling on a tank record or tank summary record. DISCUS recommends that this section be eliminated. We disagree because the mingling of spirits needs to be documented on a record in order to properly account for spirits in the storage account and thereby protect the revenue.

Mingling spirits or wines held in tanks. The current regulation at § 19.349 states that when spirits of less than 190° of proof or wines are mingled in a tank, the proprietor must perform a gauge and record the gauge on the tank record. DISCUS recommends that this section be deleted. We disagree because the result of such mingling needs to be gauged and documented on a record in order to account for spirits in the storage account.

Storage inventories. The current regulation at § 19.353 requires each warehouseman to take a physical inventory of all spirits and wines in tanks at the close of each calendar quarter. DISCUS recommends that this requirement be changed to an annual inventory. We did not adopt this recommendation. One inventory per year is not adequate to accurately keep track of the quantity of spirits and wines on hand and detect losses in a timely manner. The shorter time period between inventories makes it easier for both TTB and a proprietor to reconcile any discrepancies and thereby protect the revenue.

Subpart N—Processing of Distilled Spirits

Under the current regulations, processing operations other than denaturation and manufacture of articles is covered at subpart M. In these proposed regulations, the processing of distilled spirits will be covered under proposed subpart N. Denaturation of spirits and manufacture of articles will be covered under proposed subpart O.

In its comments on part 19, DISCUS recommends several changes to the regulations that govern the processing of distilled spirits. Below is a summary of its recommended changes and TTB's evaluation of those recommendations.

Receipt of spirits. DISCUS recommends amendment of the current regulation at § 19.372(b) by adding a sentence allowing the shipper's gauge for bulk spirits to be used as the receiving gauge. We did not adopt this proposal. This suggested change would eliminate the receiving gauge for transfers in bond of bulk spirits and there would be no basis for determining whether a loss of spirits occurred during the shipment, thereby posing a jeopardy to the revenue.

Bottling tanks. The current regulation at § 19.382 requires that spirits be bottled from bottling tanks. However, TTB can authorize bottling from original packages or special containers if the proprietor files a notice with TTB explaining such need. DISCUS recommends that language be inserted into this section that would allow liqueurs to be bottled from a tank truck or tote without our prior approval. TTB has previously approved several requests for the bottling of liqueurs directly from tank trucks or totes because this is a reasonable method for handling products such as liqueurs and we adopted this recommendation in the proposed regulation at § 19.352.

Alcohol content and fill. The current regulation at § 19.386 requires that proprietors conduct proof and fill checks of bottled spirits at regular intervals and record the results of those tests. These tests are conducted to ensure that the actual proof and fill of bottled spirits agree with the alcohol content and quantity stated on the label. DISCUS recommends that proprietors no longer be required to record the results of those tests as required by § 19.386(c). We did not adopt this recommendation in the proposed regulations. We believe that the recording of the proof and fill checks is important because it documents whether the proprietor is properly conducting the tests as required by the regulation.

Completion of bottling. The current regulation at § 19.387 requires that when the contents of a bottling tank are not completely bottled at the end of the day, the proprietor must make entries on the bottling and packaging record covering the total quantity bottled that day. DISCUS recommends that this requirement be deleted from the regulations. We did not adopt this recommendation. The bottling and packaging record represents a record of bottling and packaging activity at the plant and the record should reflect the bottling and packaging activity that takes place on a daily basis.

Bottles on the bottling line at the end of the work day. In its comments on part 19, DISCUS states that when the bottling of a particular product run is not completed by the end of the day and is to be resumed on the following work day, § 19.388(a)(1) requires removal of all bottles on the line and packing them in cases that must be sealed. DISCUS recommends that TTB allow proprietors to keep filled bottles on the line at the end of the work day, if the same sized product will be produced on the next bottling shift. DISCUS states that proprietors can save substantial amounts of money if this proposal is adopted in the regulations. After careful consideration, we believe that this proposal is reasonable because it will save both time and expense for proprietors without jeopardizing the revenue. Therefore, we are proposing this change in the proposed regulation at § 19.358(b).

Remnants. The current regulation at § 19.389 covers remnant bottles that remain after the completion of bottling. Remnants are the few bottles that may remain after completion of bottling. This regulation requires that notations be made on the bottling record regarding remnant bottles. In their proposal, DISCUS recommends that we delete some of the recordkeeping provisions that relate to remnant bottles. Their suggestion is reasonable because it will eliminate paperwork for the proprietor without jeopardizing the revenue. We are proposing this change in the proposed regulation at § 19.359.

Filling packages. The current regulation at § 19.390 requires that spirits filled into packages on processing premises be gauged and the results recorded on a package gauge record. DISCUS recommends that this requirement be eliminated. We did not adopt this recommendation because without such a gauge, there would be no record of the amount of spirits filled into packages.

Daily summary record. The current regulation at § 19.400 requires that a daily summary record of bottling and packaging be prepared as required by § 19.751. DISCUS recommends that this section be deleted. While no specific reason was given, this recommendation to delete § 19.400 appears to be part of the general proposal by DISCUS to eliminate all daily records. We did not adopt this recommendation. Our reasons for maintaining daily records are explained in our discussion of Subpart V, Records and Reports.

While we did not retain § 19.400 as a separate section in the proposed regulations, it has been combined with the current regulation at § 19.384, Preparation of bottling or packaging

record. The new combined section will now appear at § 19.354.

Bulk inventories. The current regulation at § 19.401 requires that the proprietor conduct a physical inventory of bulk wine and spirits in the processing account at the close of each calendar quarter. DISCUS recommends that this requirement be changed to an annual inventory. We did not adopt this recommendation. One inventory per year is not adequate to accurately keep track of the quantity of spirits and wines on hand and detect losses in a timely manner. The shorter time period between inventories makes it easier for both TTB and a proprietor to reconcile any discrepancies and thereby protect the revenue.

Inventory of bottled and packaged spirits. The current regulation at § 19.402 requires that the proprietor conduct a physical inventory of bottled and packaged spirits twice each year. DISCUS recommends that this requirement be changed to once a year. We did not adopt this recommendation. There is already an allowance in the current regulation at § 19.402 whereby the proprietor may request permission to conduct a single inventory each year. TTB believes that a single inventory may be adequate for some plants, but it is not adequate for others. Approval to take a single inventory may be obtained provided the proprietor maintains accurate records and an annual inventory will not make protecting the revenue more difficult. To require only one inventory per year in all cases in the regulations would weaken TTB's control and protection of the revenue in those plants where more than one inventory per year is desirable.

Variations in fill. The current regulation at § 19.386 provides criteria for slight variations in the alcohol content and the fill of bottled distilled spirits that may occur during bottling operations. Acceptable variations in alcohol content (proof) are well defined and very specific in the regulation at § 19.386(b). However, this is not the case for variations in fill. As stated in § 19.386(b), the proprietor must rebottle, recondition, or relabel spirits if the bottle contents do not agree with the label, ''except for such variation as may occur in filling conducted in compliance with good commercial practice with an overall objective of maintaining 100 percent fill for spirits bottled.'' We believe that this criteria could be improved and we propose to establish a standard whereby there must be approximately the same number of overfills and underfills for each lot bottled and in no case may the quantity in a bottle vary by more than plus or minus two percent from the quantity stated on the label. This new clarification appears in the proposed regulation at § 19.356(b).

Subpart O—Denaturing Operations and Manufacture of Articles

Under the current regulations in part 19, denaturing operations are covered under subpart N. In these proposed regulations, denaturing operations will be covered under proposed subpart O. In their individual responses to Notice No. 870, DISCUS and Equistar Chemicals proposed changes to the regulations governing denaturation. Below is a discussion of the recommended changes and TTB's evaluation of those recommendations.

Gauge for denaturation. The current regulation at § 19.454 states that the measurement of spirits and denaturants shall be made by volume, weight, approved meter, or, when approved by the Director, by other devices or methods. In its markup of part 19, submitted in response to Notice No. 870, DISCUS recommends that the term ''approved'' meter be deleted. We believe it is important to still require that distilled spirits plants use measurement devices that are accurate, and although we propose deleting the word ''approved'' as recommended by DISCUS, we are proposing to change the regulation to allow for the use of an ''accurate mass flow meter'' in the proposed regulation at § 19.383. As discussed earlier in this notice, TTB proposes to allow for the use of ''accurate mass flow meters,'' without prior approval by TTB, if they meet certain criteria for accuracy.

Denatured spirits inventory. DISCUS recommends the amendment of the regulation at § 19.464 by changing the requirement to conduct an inventory from quarterly to annually. We did not adopt this recommendation in the proposed rule. The shorter time period between inventories makes it easier for both TTB and a proprietor to reconcile discrepancies and thereby protect the revenue.

Denaturation and article manufacture. In Notice No. 870, ATF advised that under § 19.454 gauging is required before and after denaturation. This prevents a distilled spirits plant from conducting denaturation and article manufacture in a single, unified process because the proprietor must gauge the spirits after denaturation and before making an article. In Notice No. 870, ATF proposed to amend the current regulation at § 19.454 to provide proprietors with greater flexibility to conduct denaturation and article manufacture in a single, unified process. ATF also proposed to provide a prescribed method of computation to accurately determine the quantity of denatured spirits used and produced.

Equistar Chemicals wrote in support of the proposal to allow for a unified process for denaturation and article manufacture. However, the company suggested that the regulations continue to allow for measurements by volume, meter, or other approved methods, and it suggested alternative language for § 19.454. Equistar's suggestion is included in these proposed regulations with some modification; i.e., we will not prescribe a weight calculation as the sole means for determining the quantity of specially denatured alcohol produced when denaturation and article manufacture occur in a single process. These changes appear in the proposed regulations at § 19.383.

Filling containers from tanks. In its comments on Notice No. 870, Equistar recommends amendment of the current regulation at § 19.462, Filling of containers from tanks. This regulation requires companies to record a gauge measurement both before and after withdrawing spirits from a tank. Equistar suggests that the regulations eliminate the requirement for the first gauge measurement and simply allow the second, after-withdrawal gauge measurement to serve as the starting measurement for the second withdrawal. This proposal is reasonable because a single gauge may serve both purposes, and we are proposing to amend the regulations at § 19.389 to reflect that change.

Subpart P—Transfers, Receipts, and Withdrawals

Proposed subpart P will cover several issues, including transfers in bond, receipts from customs custody, withdrawals without payment of tax, withdrawal free of tax, samples of spirits, and securing of conveyances. Sections of the current regulations related to withdrawal on determination and payment of tax have been moved to proposed Subpart I, Distilled Spirits Taxes. Below is a discussion of several changes to the regulations that we are proposing in the new subpart P.

General. We propose to add a new ''General'' section to the regulations that will identify the subject matter covered in the new subpart P. This new section appears in the proposed regulations at § 19.401.

Consignee premises. The current regulation at § 19.510, Consignee premises, contains several references to Form 703. The Form 703 was formerly used for the transfer in bond of wine, but it is now obsolete. References to the

Form 703 have been removed from the proposed regulations at § 19.407, Consignee premises.

Receipt of Transfers in Bond by Consignees. The current regulation at § 19.510 requires that when spirits, denatured spirits, or wines are received by transfer in bond, the consignee is required, among other things, to examine the conveyance, check the seals for tampering, gauge, and record the receipt of the shipment. TTB has always interpreted this section to mean that when the shipment arrives at the consignee premises or the carrier has completed its transportation of the shipment, such as when a rail carrier delivers a tank car to a rail siding on or adjacent to the plant premises, the transfer in bond is complete and the consignee must gauge and record the shipment as received.

However, during the course of some recent on-site field audits, TTB has discovered a number of instances in which distilled spirits plant proprietors failed to timely gauge and record the receipt of bulk distilled spirits transferred in bond. Some proprietors have chosen to apply an alternate interpretation to the term, ''received,'' as used in the regulation, and they believe that they can delay required gauges and recordkeeping until after testing and formally accepting title to the spirits, which may take several weeks or longer after the date of actual delivery. In other words, some industry members have decided that the physical arrival of a shipment does not constitute receipt of the shipment, and they believe that they may decide when the shipment is ''received.''

TTB believes that the meaning of the current regulation is clear and that the term ''received'' means that the shipment has physically arrived at its destination. In fact, the language of the current regulation also uses the phrase ''upon arrival at his premises''.

However, in order to further clarify the meaning of the regulation, the proposed regulation at § 19.407, which governs actions to be taken by a consignee upon receipt of a shipment, has been amended to emphasize the ''arrival'' of a shipment at the consignee's plant or at a location which represents the final destination for the carrier. Thus, it should be clear that shipments that physically arrive at the consignee's plant or rail sidings at or near the consignee's plant have been received and must be recorded as such. As proposed, the amended regulation at § 19.407 will use the following phrase to describe the time when the shipment is received, ''[U]pon arrival of an in bond shipment at the consignee's premises or at the destination point specified in the carrier's transportation documents, the consignee must * * *.'' TTB believes that this amended language will clarify the current meaning of the regulation.

Determination of tare. The current regulation at § 19.503 discusses determination of tare when packages are to be individually gauged for withdrawal from bonded premises. In the proposed regulations, this section has been moved to Subpart K, Gauging, and now appears at § 19.288.

Disposition of excess spirits. In the current regulation at § 19.539, there are instructions for Government agencies regarding the disposition of excess spirits that were withdrawn from a distilled spirits plant free of tax. This section has been deleted from the proposed regulations because these instructions are properly covered in 27 CFR 20.246 and 22.176.

Securing of Conveyances. The current regulation at § 19.96 requires that securing devices used on conveyances in which spirits are transferred in bond, or withdrawn free of tax or withdrawn without payment of tax, require approval by the appropriate TTB officer before use. However, securing devices that meet the criteria described in § 19.96 do not require prior approval by TTB. Currently, the securing devices that do not require prior approval by TTB include cap seals and ball-strap-type (railroad) seals. The proposed regulation at § 19.441 has been amended to also allow for the use of locking security cables without prior approval by TTB.

Subpart Q—Return of Spirits to Bonded Premises and Voluntary Destruction

Under the current regulations in part 19, issues relating to the return of spirits to bonded premises and voluntary destruction are covered under subpart U. In these proposed regulations, these subjects will be covered in a new subpart Q. Below is a discussion of several changes to the regulations that we are proposing in the new subpart Q.

Imported spirits. The Taxpayer Relief Act of 1997 amended the IRC at 26 U.S.C. 5008(c)(1) by allowing a credit or refund of tax to be granted for imported bottled spirits that are returned to a distilled spirits plant. The proposed regulation at § 19.452 provides that a proprietor may return tax paid or tax determined spirits to bonded premises that were tax paid upon importation through U.S. Customs and Border Protection. As discussed earlier in this notice, conforming changes were also made in Subpart J, Claims.

Returns to bond. The new subpart Q has been substantially revised to make clearer the types of spirits, denatured spirits, and articles that may be returned to bonded premises. In addition, we propose to replace several sections of regulations with a chart for easier reference and use. We have incorporated §§ 19.683 through 19.686 of the current regulations into the proposed chart at § 19.454.

Voluntary destructions. In its suggested changes to part 19, DISCUS recommends that the section of regulations dealing with voluntary destructions at § 19.691 include a subparagraph that references the filing of claims. We did not include this recommendation in the proposed regulations because the filing of claims is already covered in the new subpart J of the proposed regulations.

Subpart R—Losses and Shortages

Under the current regulations in part 19, losses and shortages are covered in subpart Q. In the proposed regulations, these subjects will be covered in a new subpart R. In its comments on part 19, DISCUS recommends several changes affecting the regulations governing losses and shortages. Below is a summary of the suggested DISCUS changes and TTB's evaluation of those recommendations.

Losses in general. DISCUS recommends the elimination § 19.561 of the current regulations because it is redundant with the statute. TTB agrees that this section of the regulations repeats provisions covered in the IRC. However, the regulations in part 19 are intended to provide users with a comprehensive and complete guide to the requirements for operating a distilled spirits plant. TTB does not consider it appropriate to require readers of these regulations to reference both the IRC and the regulations when seeking guidance on an issue. Therefore, the information provided in the current regulations at § 19.561 will appear in the proposed regulations at § 19.461.

Determination of losses in bond, loss of spirits from packages. DISCUS recommends that the current regulations at §§ 19.562 and 19.563 be moved to the claims subpart within part 19. We disagree with this suggestion. These sections deal with the determination of losses in bond and are appropriately located in the subpart for losses and shortages.

Loss of spirits from packages. DISCUS recommends amendment of the current regulation at § 19.563 by replacing a reference to the regulation at § 19.561(b) with a reference to the IRC at 26 U.S.C. 5008(a)(1)(A). Apparently, they recommended this change because they had earlier proposed to eliminate

§ 19.561 from the regulations altogether. Since we did not eliminate § 19.561, (now proposed § 19.461), there is no need to replace the reference to it with a reference to the statute.

Losses after tax determination. DISCUS recommends elimination of § 19.564, Losses after tax determination, because it is redundant with the statute and other rules, and it recommends the transfer of part of the text to § 19.43, Claims relating to spirits lost after tax determination. In the proposed regulations, we have retained this section at § 19.464; however, we have substantially shortened it, and it now refers to subpart J where claims for losses after tax determination are covered. TTB proposes to continue this provision because it is inappropriate to require readers of these regulations to reference both the IRC and the regulations when seeking guidance on an issue.

Subpart S—Containers and Marks

Proposed subpart S covers requirements for containers and marks that are covered in the current regulations at subpart R. In the new subpart S, much of the information regarding containers and marks has been rearranged and put into a more logical order. In addition, we propose several amendments to the regulations governing containers and marks.

Industrial versus nonindustrial. The current regulations in subpart R list requirements that apply to spirits for ''industrial'' use and separate requirements that apply to spirits for ''nonindustrial'' use. However, the terms ''industrial'' use and ''nonindustrial'' use are not explained within subpart R. The proposed regulations in subpart S define those terms in a new section which appears at § 19.472.

Tanks, pipelines. In its comments on part 19, DISCUS proposes that the current regulations at § 19.586, Tanks, and § 19.587, Pipelines, be deleted because they are redundant with other sections of the regulations. We agree that they are redundant, and propose such deletion in the proposed regulations.

Filling containers. In the current regulation at § 19.582, there is a limitation on filling containers during processing operations. This regulation limits filling to containers of not more than 10 gallons. We deleted this limitation in the proposed regulation at § 19.474 because we foresee instances where a processor may have a need to fill containers in excess of 10 gallons. In addition, the current regulation at § 19.583, imposes a 10-gallon limitation for the filling of containers with Specially Denatured Alcohol (SDA). We are not aware of any reason for this limitation, and in the proposed regulation at § 19.475 we propose deleting the size reference because SDA may be filled into containers with a larger capacity.

Marks on packages of tax-paid industrial spirits. In Notice No. 870, ATF proposed to amend the regulation in § 19.605 by requiring that proof, tare, and proof gallons be marked on packages of spirits withdrawn on determination of tax. In its response to Notice No. 870, DISCUS opposes this proposal because it would be burdensome on proprietors that ship to manufacturers of nonbeverage products. DISCUS also states that the information required in ATF's proposed § 19.605 is already required under § 19.749, Bottling and packaging record, and § 19.769, Package gauge record. After consideration of the DISCUS comments, we did not include this proposal from Notice No. 870 in this new proposed rule.

Subpart T—Liquor Bottle, Label, and Closure Requirements

Under the current regulations in part 19, issues relating to liquor bottles and label requirements are found in subpart S and issues relating to closure requirements are found in subpart T. In the proposed regulations, these subjects will be covered in the new subpart T. Below is a summary of the changes that we propose to make in the new regulations.

Scope. The current regulation at § 19.631, Scope, states that the regulations in §§ 19.632 through 19.639 only apply to bottles with a capacity of 200 ml or more unless it is specifically stated that the section applies to bottles of less than 200 ml. In our revision of the subpart, we deleted several sections of regulations, and the only sections that remain apply to all bottle sizes. Therefore, the ''scope'' section of the proposed regulations at § 19.631 is no longer needed and has been deleted.

Bottles authorized. The current regulation at § 19.632 states that liquor bottles, including bottles of less than 200 ml, must conform to the standards of fill in 27 CFR part 5. This section was rewritten and deletes the reference to 200 ml because there are no special rules that apply to bottles of less than 200 ml. As proposed, the new regulation at § 19.511 simply states that all liquor bottles for domestic purposes must conform to the standards of fill at 27 CFR part 5.

Distinctive liquor bottles. We have rewritten the current regulation at § 19.633 to remove the reference to bottle sizes less than 200 ml. The requirements of this section apply to all bottle sizes and now appears in the proposed regulations at § 19.513.

Receipt and storage of liquor bottles. The current regulation at § 19.634 provides rules for the receipt and storage of liquor bottles. We could find no consumer or revenue protection reason to retain this section, and we deleted it from the proposed regulations.

Bottles to be used for display purposes. The current regulation at § 19.635 provides recordkeeping rules for those instances in which liquor bottles are provided for display purposes. We could find no reason to treat these bottles differently than others so we are proposing to delete this provision from the proposed subpart. Records of receipt and use of all liquor bottles are covered in the proposed regulation at § 19.603.

Bottles for testing purposes. We propose to delete the current regulation at § 19.636. As stated above, we could find no reason to retain this as a separate section of regulations. Records of receipt and use of liquor bottles are covered in the proposed regulation at § 19.603.

Bottles not constituting approved containers. We rewrote the current regulation at § 19.637 to remove the reference to bottle sizes less than 200 ml because there are no special rules that apply to bottles of less than 200 ml. This section applies to all bottle sizes and now appears at proposed § 19.512.

Disposition of stocks of liquor bottles. We deleted the current regulation at § 19.638 in the proposed regulations. We could find no consumer or revenue protection reason to retain this as a separate section. Records of receipt, use, and disposition of liquor bottles are covered in the proposed regulation § 19.603.

Use and resale of liquor bottles. We deleted the current regulation at § 19.639 in the proposed regulations. We could find no consumer or revenue protection reason to retain this as a separate section. Records of receipt, use, and disposition of liquor bottles are covered in the proposed regulation § 19.603.

Statements required on labels under an exemption from label approval. The current regulation at § 19.642 contains a general requirement whereby labels that are exempt from label approval must contain certain items of information. The regulations at §§ 19.643 through 19.650 discuss those specific items of information. Further, most of the text in

§§ 19.643 through 19.650 mirrors text found in 27 CFR part 5.

In our proposed regulation at § 19.517, we have merged most of the information in the current regulations at §§ 19.642 through 19.650 and created a section which lists the specific information that must appear on a label exempt from label approval. Further, we propose to no longer publish in one part of the regulations identical provisions from other parts of the regulations. Thus, we propose stating that the mandatory information under § 19.517 must conform to specific, cited sections of 27 CFR part 5 and § 19.518 of part 19 without duplicating the actual text of those regulations in § 19.517.

Closures. The current regulations at §§ 19.661 and 19.662 contain the closure requirements that apply to each bottle or container of spirits having a capacity of one gallon or less. Under the current regulations, distilled spirits containers must have a closure that leaves a portion of the closure on the container when opened. In addition, the closure must be constructed in such a manner that it must be broken to gain access to the contents. These regulations implement the IRC at 26 U.S.C. 5301(d). DISCUS proposes that the closure requirement at § 19.662 be amended to allow for closures that are removed completely if the closure shows when it has been subject to tampering.

In our proposed regulation at § 19.523, we require that the container have a closure that must be broken to gain access to the contents. However, we have deleted the requirement that a portion of the closure remain on the container when opened. This particular feature of the current regulation is not a requirement of the IRC at 26 U.S.C. 5301(d). Further, we have received several requests for an alternate method or procedure from this particular requirement, and we see no continued need for this feature on the closure.

Labels for export and Puerto Rico. In the current regulations at §§ 19.395 and 19.396, we discuss the label requirements that apply to spirits for export and spirits for shipment to Puerto Rico. These requirements have been incorporated into our proposed regulations at §§ 19.519 and 19.520.

Subpart U—Reserved

We propose to reserve subpart U for possible future use.

Subpart V—Records and Reports

The current regulations in part 19 require that the proprietor of a distilled spirits plant maintain a comprehensive system of records relating to operations at the plant. The primary aim of this records system is to account for all taxable spirits and products that are produced, received, stored, processed, and removed from the plant. Further, the regulations require that the proprietor account for taxable products by maintaining a system of records arranged into separate accounts within each plant. Depending on the scope of operations conducted at the plant, this records system may include a production account, a storage account, a processing account, and a denaturation account. In addition, there are a number of daily records and summary records prescribed for activities occurring within each account. These recordkeeping requirements are based on the IRC at 26 U.S.C. 5146, 5201, 5207, 5211, 5291, 5555, 5603, 6001, 6011, and 6061.

Under the current regulations, recordkeeping and report requirements are covered in subpart W. In the proposed regulations, these subjects will be covered in a new subpart V.

We are proposing several amendments to the regulations covering recordkeeping and reporting requirements for distilled spirits plants. Some of the proposed amendments are based on recommendations made by DISCUS. Other proposed amendments are the result of TTB's internal review of the current recordkeeping and report requirements for distilled spirits plants.

DISCUS Recommendations. The following is a summary of the recordkeeping changes proposed in the petition submitted by DISCUS.

• *Commercial records.* DISCUS recommends an increased reliance on the commercial records that are maintained by distilled spirits plants as opposed to the detailed government records that are currently required in subpart W. In its petition for the revision of part 19, DISCUS asserts:

> The Bureau's responsibility to protect the revenue can be fulfilled by reliance on commercial records maintained by DSPs in the ordinary course of business or summaries of such records, typically computerized, which show ''what goes in'' and ''what goes out'' of the plant.

Further, in its markup of part 19, DISCUS proposes the deletion of a substantial number of the records currently required by subpart W.

• *Elimination of separate accounts.* Closely related to its proposal to increase the use of commercial records, DISCUS also proposes the elimination of the three separate accounts currently required in subpart W. DISCUS asserts:

> Records of activities not impacting upon ''what goes in'' and ''what goes out'' are unnecessary and thus would not be required. These include, *inter alia,* records of gauges, measurements of product, and movements at each interim step of the plant's operations.

In support of this proposal, DISCUS submitted numerous proposed amendments to the recordkeeping requirements in subpart W involving the elimination of many of the current recordkeeping requirements and replacing those requirements with a recordkeeping system based on a single DSP account for all spirits.

• *Daily versus monthly records.* Under the current recordkeeping regulations, a distilled spirits plant proprietor is required to record each activity or transaction as it occurs, summarize those activities on a daily basis, and then report those activities in a monthly summary report. DISCUS proposes that DSPs no longer be required to record information on a daily basis. Instead, they propose that information be recorded on a monthly basis. In its petition, DISCUS states:

> Other unnecessary and burdensome recordkeeping regulations also would be modified. For example, ordinary business records and summaries used for Part 19 compliance would not be required to show information on a daily basis, but instead generally on a monthly basis.

DISCUS asserts that these changes would not have an adverse effect on TTB's ability to audit operations at DSPs.

• *Format, storage, and reproduction.* In regard to the format, storage, and reproduction of records, DISCUS states:

> Under this modernized regulatory scheme, proprietors no longer would be required to maintain information in any prescribed format, would be able to store records at any of the proprietor's facilities, and would not need prior approval from the Bureau to reproduce records.

DISCUS recommends that the regulations governing format, storage, and reproduction of records at 27 CFR 19.721 and 19.723 be amended.

TTB's Proposed Changes to the Regulations. In response to the recommendations made by DISCUS and based on TTB's analysis of the current recordkeeping requirements, we propose several amendments to the regulations in the new proposed subpart V.

• *Restructuring and plain language changes.* One of the first changes that we propose is to restructure and reorder much of the information in subpart V. For example, recordkeeping information that was contained within some of the longer sections within the subpart has been divided-up into shorter, individual sections within the subpart. We believe this change will make for easier reader

access. We have also incorporated plain language principles into our rewriting of the subpart to make the revised regulations easier to read and understand.

• *Commercial records.* As a general principle, TTB agrees with increased reliance on the commercial records maintained by a DSP, as opposed to records that are specifically created to satisfy government recordkeeping requirements. We also agree that the proprietor's commercial records should contain most of the information necessary to track the receipt and disposition of spirits as well as certain key transactions within the plant. With this principle in mind, we state in the proposed regulation at § 19.572 that required records may consist of documents created in the ordinary course of business rather than records created to expressly to meet the requirements of this part, if those documents:

(1) Contain all of the details that this part requires;

(2) Are consistent with the general standards of clarity and accuracy; and

(3) Can be readily understood by TTB personnel.

Separate accounts. The current regulations require that a proprietor maintain a system of records arranged into separate accounts. This may include a production account, a storage account, a processing account, and a denaturation account, as applicable. DISCUS recommends that the recordkeeping regulations be substantially abbreviated and provide for a single account at the DSP.

In our review of the IRC requirements regarding the ''records'' that must be maintained by a DSP under 26 U.S.C. 5207, we find that a DSP must keep records of ''production activities,'' ''storage activities,'' ''denaturation activities,'' and ''processing activities.'' Also, 26 U.S.C. 5207 provides a list of required records that must be maintained for each of these activities. Thus, we modeled the current DSP recordkeeping regulations after 26 U.S.C. 5207, and we propose to continue to require that records be maintained with a separate account for each activity.

Further, the requirement to maintain separate accounts within a DSP is specifically addressed in the legislative history of the Trade Agreements Act of 1979 (Pub. L. 96–39), which implemented the current system for operating distilled spirits plants. The legislative history of the Trade Agreements Act of 1979 states in part:

> The new all-in-bond system will substantially simplify the qualification and use of distilled spirits plant premises, by eliminating the requirement that separate facilities, for the various distilling operations be established and maintained within a plant. Since the tax under the all-in-bond system will be determined at the conclusion of the distilled spirits operations, there is no longer any need for these physical delineation and separation requirements. Under the all-in-bond system, these separate activities will be accounted for only by recordkeeping accounts such as for production, storage, processing and finished goods. Tanks, vats, rooms or buildings may be used for multiple purposes, with the type and identification of the spirits being maintained by the appropriate records.

Thus, the legislative history of the Trade Agreements Act of 1979 clearly shows that while Congress established the all-in-bond system with its efficiencies, Congress intended to maintain a system of separate recordkeeping accounts for the different operations within a distilled spirits plants.

Based on the language of the IRC and the legislative history of the Trade Agreements Act of 1979, we propose to continue the requirement to establish separate accounts within the DSP. However, we also propose to eliminate any current recordkeeping requirements and items of information that are not necessary for the protection of the revenue or that do not aid in the tracking of spirits for consumer protection purposes.

• *Daily versus monthly records.* As discussed earlier, DISCUS recommends that proprietors no longer be required to show information in their records on a daily basis. Instead, DISCUS proposes that information be shown on a monthly basis. After careful consideration, we decided against making this proposal. TTB would be unable to audit activities at a plant if only monthly summaries of activities are available. To continue to audit activities at the plants, TTB needs access to the daily transaction records. Thus, daily records must continue to be maintained.

• *Format, storage, and reproduction.* The proposed regulations do not require that records be maintained in any particular format or media. Required records may be kept on paper, on microfilm or microfiche, or on a computer or other electronic media. The only requirement is that records must be readily retrievable in hard-copy format for review by TTB officers as necessary. Further, we have eliminated the requirement at § 19.725 to obtain TTB approval to reproduce required records.

• *Computer-generated reports and forms.* Over the past several years, TTB has approved several alternate methods or procedures that allow companies to submit computer-generated paper reports and forms. DISCUS recommends that this option be extended to all DSPs. TTB has no objection to receiving computer-generated reports and transaction forms. Accordingly, the proposed regulation at § 19.634 states that TTB will accept both computer-generated reports of operations and transaction forms that are made using a computer printer on plain white paper and that match the TTB report or form. Further, use of these reports and forms will not have to be pre-approved by TTB if they conform to the following standards:

(1) The computer-generated report or form must approximate the physical layout of the corresponding TTB report or form, although the typeface may vary;

(2) The text on the computer-generated report or form and each line entry must exactly match the official TTB report or form; and

(3) Each penalty of perjury statement specified for the TTB report or form must be produced in its entirety.

• *Electronic submission of forms.* Closely related to the subject of computer-generated reports is the matter of electronic submission of forms and electronic signatures. We addressed this issue in a separate rulemaking action. On October 10, 2003, TTB issued Treasury decision T.D. TTB–5 (68 FR 58600, October 10, 2003) in which we allow for the submission of certain forms to TTB electronically through a TTB-approved electronic document receiving system. We believe that by providing this option to submit certain forms electronically, we can substantially reduce the costs associated with submitting and maintaining paper documents.

• *Location of records.* Formerly, the IRC at 26 U.S.C. 5207 required that records be kept on the premises of the distilled spirits plant where the operations covered by the records are conducted. This section of law was amended in 1997 by Public Law 105–34 and IRC section 5207 no longer requires that records be maintained at the plant. Accordingly, the proposed regulation at § 19.573 allows required records to be maintained at either the distilled spirits plant where operations or transactions occur or a central recordkeeping location. However, when records are to be kept at a central recordkeeping location, the proposed regulations at § 19.574 will require that they be made available at the plant premises during inspections and audits.

• *Transfer record for shipments from customs custody.* Notice No. 870 advised that the transfer record for spirits being received from customs

custody is mentioned in § 19.770 in a way that implies that the transfer record would be prepared under § 19.770. However, 27 CFR 27.138 prescribes the information for the transfer record covering such transfers, and that information is different in several ways from the information required for domestic transfers by § 19.770. Notice No. 870 proposed to amend § 19.770 to clarify that the record required for transfer of spirits from customs custody must be prepared in accordance with § 27.138.

DISCUS does not comment on this proposal, and we incorporated this proposed change into the new, proposed regulation at § 19.621(c).

• *Miscellaneous changes.* In its part 19 mark-up, DISCUS proposes the elimination of § 19.775, Record of securing devices, and § 19.776, Record of scale tests. We agree with this recommendation, and these sections have been deleted from the proposed regulations. In addition, we propose to eliminate § 19.726, Authorized abbreviations to identify spirits. We see no need to prescribe the abbreviations used by proprietors on forms or records.

• *Reports.* Currently, distilled spirits plant proprietors submit monthly reports of operations. These reports include: Monthly Report of Production Operations, TTB F 5110.40; Monthly Report of Storage Operations, TTB F 5110.11; Monthly Report of Processing Operation, TTB F 5110.28; and Monthly Report of Processing (Denaturing) Operations, TTB F 5110.43. DISCUS recommends that the monthly reports be changed to quarterly reports and also suggested that three of the reports be merged into a single report.

We disagree with this recommendation. Our Office of Field Operations (FO) relies on monthly submission of detailed information for its pre-audit analysis and monitoring of plant operations. FO finds that having separate reports, rather than a merged report, is in the best interests of protecting the revenue because its staff is better able to assess specific operations within the distilled spirits plant and identify specific operations for particular attention during an audit. In addition, TTB recently simplified the submission of monthly report data with the implementation of TTB Pay.gov, and this simplification should address some of the concerns raised by DISCUS.

Subpart W—Production of Vinegar by the Vaporizing Process

Under the current regulations, production of vinegar by the vaporizing process is covered at subpart X. In these proposed regulations, we cover the production of vinegar under proposed subpart W. DISCUS does not recommend any changes to the regulations in this subpart, and we did not make any substantive changes to these regulations.

Subpart X—Distilled Spirits for Fuel Use

Under the current regulations, distilled spirits for fuel use is covered in subpart Y. In these proposed regulations, this subject will be covered under a new subpart X. Proposed subpart X will cover the requirements for establishing and operating a distilled spirits plant that will produce, process, store, use, or distribute distilled spirits exclusively for fuel use.

DISCUS does not propose any changes to this subpart. However, TTB proposes to make several changes to the regulations in subpart X. Similar to the changes made in other subparts, we have rearranged the information in subpart X into a more logical order. Also, we combined some sections to provide more clarity, added new sections, and renumbered the regulations within this subpart.

Definitions. We amended the definitions that appear in the current regulations at § 19.911, Meaning of terms, by deleting or replacing terms that no longer apply. We also deleted several terms that are defined in the proposed regulations at § 19.1, Definitions. The definitions for this subpart appear in the proposed regulations at § 19.662.

Letterhead applications. In the proposed regulations, we now include an allowance for letterhead applications and letterhead notices for changes affecting permits.

Bonds. In the proposed regulations at §§ 19.699 and 19.700, we provide information that explains bonds and sureties in more detail. We also provide an improved explanation of how the amount of the bond must be computed.

Bonds for some small plants. The IRC, at 26 U.S.C. 5181(c)(3), provides that no bond is required for an ''eligible distilled spirits plant'' and that such plants may nonetheless receive shipments of spirits ''in bond'' under 26 U.S.C. 5212. An ''eligible distilled spirits plant'' is defined in 26 U.S.C. 5181(c)(4) as ''a plant which is used to produce distilled spirits exclusively for fuel use and the production from which does not exceed 10,000 proof gallons per year.'' This definition requires a plant to produce distilled spirits in order to be an ''eligible distilled spirits plant.''

Although the Bureau formerly interpreted 26 U.S.C. 5181(a)(1) to require that all alcohol fuel plants must produce distilled spirits, this interpretation has been amended, and the Bureau now holds that a person may establish an alcohol fuel plant solely for the receipt and processing of distilled spirits for fuel use. Nevertheless, such a plant does not meet the definition of ''eligible distilled spirits plant'' quoted above. Therefore, a plant that would only receive and process distilled spirits and has no production capability must have a bond, regardless of size in order to be eligible to receive spirits ''in bond'' under 26 U.S.C. 5212. The proposed regulations at §§ 19.673, 19.699, and 19.700 will now provide for the bonding of small alcohol fuel plants that do not produce distilled spirits for fuel use.

Importing spirits. TTB allows persons qualified as an alcohol fuel producer under the 26 U.S.C. 5181 to receive imported alcohol from customs custody. However, such importations are not covered in the current regulations in subpart Y. In the proposed regulations, we added a new section at § 19.742 that covers the transfer of spirits from customs custody to an alcohol fuel plant. This new section incorporates the procedures for importation of spirits that were discussed in Notice No. 870 and Industry Circular 80–6, ''Distilled Spirits for Fuel Use''.

Application for transfer of spirits in bond. 26 U.S.C. 5212 provides for the transfer in bond of bulk distilled spirits between bonded premises without payment of tax. In addition, 26 U.S.C. 5005(c)(1) provides that the consignee proprietor of a distilled spirits plant is liable for the tax on all distilled spirits that are in transit to the consignee's premises from the time of removal from the consignor's premises pursuant to an application made by the consignee of the shipment.

Based upon the provision within IRC section 5005(c)(1), which assigns liability for the shipment to the consignee based upon an application made by the consignee, distilled spirits plant proprietors qualified under 26 U.S.C 5171 are required to file an Application for Transfer of Spirits and/or Denatured Spirits in Bond on TTB F 5110.16 and receive authorization from TTB prior to the transfer of spirits in bond. This requirement appears in the current regulations at § 19.506.

The application by the consignee proprietor on TTB F 5100.16 is filed in triplicate with TTB's Director, National Revenue Center. If the application is approved, the Director of our National Revenue Center will complete Part II on all copies of the form, retain one copy of the form, and return the remaining

copies to the applicant. The applicant will deliver one of the approved copies to the consignor and retain one copy for his files. The approved application remains in effect until the bond terminates or where there is less than a maximum bond, the approved application will terminate when the penal sum of the bond is changed.

TTB's current regulations governing alcohol fuel plants do not require that the consignee proprietor submit an application to receive spirits in bond on form TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond. This appears to be an oversight in the current regulations and represents a jeopardy to the revenue because the law at 26 U.S.C. 5005(c)(1) assigns tax liability for the shipment to the consignee only when the spirits are shipped ''pursuant to an application made by him.''

Therefore, we propose to amend the regulations governing transfers in bond involving alcohol fuel plants and require that the proprietor of an alcohol fuel plant who wishes to receive spirits by transfer in bond must file an application with TTB on form TTB F 5100.16 and receive approval from TTB prior to the transfer. This requirement appears in the proposed regulations at §§ 19.403, 19.405, 19.406, 19.733, 19.734, and 19.735.

Authorized materials. The listing of materials authorized for rendering spirits unfit for beverage use is found in the current regulations at § 19.1005. This listing has been updated to include several additional denaturants and is located in the proposed regulations at § 19.746, Authorized materials.

Subpart Y—Paperwork Reduction Act

The Office of Management and Budget (OMB) assigns control numbers to our information collection requirements. Subpart Y is a listing of those sections of the proposed 27 CFR part 19 regulations that impose an information collection requirement along with the assigned OMB control number.

II. Derivation Table for Proposed Part 19

The following table shows the derivation of the new sections of regulations. It is cross-referenced between the new section numbers in the proposed 27 CFR part 19 regulations contained in this notice and the old section numbers in the current part 19 regulations.

Requirements of proposed section:	Are derived from current section:
19.0	19.1
Subpart A	
19.1	19.11
19.2	19.2
19.3	19.3
19.4	19.57
19.5	19.58
Subpart B	
19.11	19.81
19.12	19.86
19.13	19.75
19.14	19.4
19.15	19.61
19.16	19.724
19.17	19.82
19.18	19.83
19.19	19.79
19.20	19.77
19.26	19.62
19.27	19.62
19.28	19.73
19.29	19.70, 19.74
19.31	19.63
19.32	19.65
19.33	19.66
19.34	19.71
19.35	19.71
19.36	19.67
19.37	19.67
19.38	19.78
19.45	19.100
Subpart C	
19.51	New
19.52	19.131
19.53	19.132
19.54	19.133
19.55	19.68, 19.72
19.56	19.134
19.58	19.97
19.59	19.98
19.60	19.99
Subpart D	
19.71	19.151
19.72	19.151
19.73	19.152
19.74	19.168
19.75	19.166
19.76	19.153
19.77	19.170, 19.324
19.78	19.156
19.79	19.169
19.80	19.154
19.81	19.155
19.91	19.157
19.92	19.158
19.93	19.167
19.94	19.165
19.95	19.159
19.96	19.161
19.97	19.162
19.98	19.160
19.99	19.163
Subpart E	
19.111	New
19.112	19.180
19.113	19.182
19.114	19.184
19.115	19.185
19.116	19.186, 19.187
19.117	19.188
19.118	19.189
19.119	19.190
19.120	19.191
19.121	19.192
19.122	19.193
19.123	19.153(b)
19.126	19.180
19.127	19.181
19.128	19.182
19.129	19.183
19.130	19.184
19.131	19.185
19.132	19.186, 19.187
19.133	19.188
19.134	19.189
19.135	19.191
19.141	19.201
19.142	19.202
19.143	19.203 through 19.206
19.144	19.207
19.147	19.211
Subpart F	
19.151	19.231, 19.232
19.152	19.231
19.153	19.233
19.154	19.234
19.155	19.235
19.156	19.236
19.157	19.237
19.161	19.231, 19.232
19.162	19.241
19.163	19.242
19.164	19.243
19.165	19.244
19.166	19.245
19.167	19.246
19.168	19.247, 19.248
19.169	19.248
19.170	19.249
19.171	19.250
19.172	19.251
19.173	19.252
Subpart G	
19.181	New
19.182	19.273
19.183	19.273
19.184	19.273
19.185	19.273
19.186	19.276
19.187	19.274
19.188	19.277
19.189	19.278
19.190	19.279
19.191	19.280
19.192	19.281
19.193	19.282
Subpart H	
19.201	19.49(a)
19.202	19.50
19.203	19.50
19.204	19.49
19.205	19.49(c) and (d)

Requirements of proposed section:	Are derived from current section:
19.206	19.49(b)(2)
19.207	19.51
19.208	19.51
19.209	19.51
19.210	19.52
19.211	19.53
19.212	19.54
19.214	19.54
Subpart I	
19.221	New
19.222	19.21 through 19.23
19.223	19.24
19.225	19.25, 19.515, 19.526
19.226	19.517
19.227	19.515
19.229	New
19.230	19.515(b), 19.522(b)
19.231	19.516
19.233	19.522(c), 19.523(b)
19.234	19.522(a), 19.523(a)
19.235	19.522, 19.523
19.236	19.523
19.237	19.523
19.238	19.525
19.239	19.519
19.240	19.524
19.242	19.520
19.243	19.521
19.245	New
19.246	19.34
19.247	19.35
19.248	19.36
19.249	19.37
19.250	19.38
19.253	19.31
19.254	19.32
19.256	19.26
19.257	19.518
19.258	19.486
Subpart J	
19.261	New
19.262	19.44
19.263	19.41
19.264	19.42
19.265	19.43
19.266	19.45
19.267	19.46
19.268	19.76
19.269	19.487
Subpart K	
19.281	New
19.282	19.84
19.283	19.92
19.284	19.91, 19.92(a), 19.93
19.285	19.92(a)
19.286	19.91(a)
19.287	19.91(b)
19.288	19.503
19.289	19.319
Subpart L	
19.291	New
19.292	19.311
19.293	19.312
19.294	19.314
19.295	19.315
19.296	19.312
19.297	19.313
19.301	19.316
19.302	19.317
19.303	19.318
19.304	19.319
19.305	19.320
19.306	19.321
19.307	19.322
19.308	19.326
19.309	19.327
19.310	19.328
19.312	19.329
19.314	19.331
19.315	19.332
19.316	19.333
Subpart M	
19.321	19.341
19.322	19.342
19.324	19.344
19.325	19.345
19.326	19.346
19.327	19.347
19.328	19.348
19.329	19.349
19.331	19.343
19.333	19.353
Subpart N	
19.341	19.371
19.342	19.372
19.343	19.373
19.344	19.374
19.346	19.376
19.348	19.378
19.351	19.381
19.352	19.382
19.353	19.383
19.354	19.384, 19.400
19.355	19.385
19.356	19.386
19.357	19.387
19.358	19.388
19.359	19.389
19.360	19.390
19.361	19.391
19.362	19.392
19.363	19.393
19.364	19.394
19.365	19.397
19.366	19.398
19.371	19.401
19.372	19.402
Subpart O	
19.381	19.451
19.382	19.452
19.383	19.454
19.384	19.451, 19.456
19.385	19.455
19.386	19.457
19.387	19.453
19.388	19.461
19.389	19.462
19.390	19.463
19.391	19.459
19.392	19.460
19.393	19.458
19.394	19.464
19.395	19.471
19.396	19.451
Subpart P	
19.401	New
19.402	19.505
19.403	19.506
19.404	19.507
19.405	19.508
19.406	19.509
19.407	19.510
19.409	19.481
19.410	19.482
19.411	19.483
19.414	19.484
19.415	19.485
19.418	19.531
19.419	19.532
19.420	19.533
19.421	19.534
19.424	19.536
19.425	19.537
19.426	19.538
19.427	19.540
19.428	19.541
19.431	19.502
19.434	19.701
19.435	19.702
19.436	19.703
19.437	19.704
19.441	19.96
Subpart Q	
19.451	New
19.452	19.681, 19.682
19.453	New
19.454	19.683 through 19.686
19,455	19.687
19.457	19.688
19.459	19.691
Subpart R	
19.461	19.561
19.462	19.562
19.463	19.563
19.464	19.564
19.465	19.565
Subpart S	
19.471	New and 19.581
19.472	New
19.473	19.581
19.474	19.582
19.475	19.583
19.476	19.584
19.477	19.585
19.478	19.588
19.479	19.589
19.482	19.592
19.483	19.595
19.484	19.596(a) and (c)
19.485	19.593
19.486	19.599
19.487	19.597
19.488	19.596(b) and (c)
19.489	19.607
19.490	19.594
19.491	19.601
19.492	19.602
19.493	19.604

Requirements of proposed section:	Are derived from current section:
19.494	19.605
19.495	19.606
19.496	19.608
19.497	19.610
19.498	19.611
19.499	19.612
Subpart T	
19.511	19.632
19.512	19.637
19.513	19.633
19.516	19.641
19.517	19.642 through 19.650
19.518	19.645
19.519	19.395
19.520	19.396
19.523	19.661, 19.662
19.525	19.663
Subpart U—Reserved	
Subpart V	
19.571	19.721
19.572	19.721, 19.731
19.573	19.723(a)
19.574	19.723(a) and (b)
19.575	19.723(c)
19.576	19.723(b)
19.577	19.721(c), 19.723(c)
19.578	19.721(d)
19.580	19.731
19.581	19.731(b), 19.732
19.582	19.722
19.584	19.736
19.585	19.736
19.586	19.736
19.590	19.740
19.591	19.741
19.592	19.742
19.593	19.743
19.596	19.746
19.597	19.747
19.598	19.748
19.599	19.749
19.600	19.750
19.601	19.751
19.602	19.748(b)
19.603	19.747
19.604	19.747
19.606	19.752
19.607	19.753
19.611	19.761
19.612	19.762
19.613	19.763
19.614	19.764
19.615	19.765
19.616	19.766
19.617	19.767
19.618	19.768
19.619	19.769
19.620	19.770
19.621	19.770
19.622	19.773
19.623	19.774
19.624	19.778
19.625	19.779
19.626	19.780
19.627	New
19.631	19.791
19.632	19.792
19.634	New
Subpart W	
19.641	19.821
19.643	19.822
19.644	19.823
19.645	19.824
19.646	19.825
19.647	19.826
19.648	19.827
19.649	19.828
19.650	19.829
19.651	19.830
Subpart X	
19.661	New and 19.901
19.662	19.907
19.663	19.901, 19.902
19.665	19.903
19.666	19.903
19.667	19.904
19.669	19.905
19.670	19.906
19.672	New
19.673	19.910, 19.912, 19.913, 19.918
19.674	19.913
19.675	19.910, 19.914, 19.918
19.676	19.910, 19.915 through 19.918
19.677	19.916
19.678	19.911
19.679	19.910
19.680	19.910
19.683	19.919
19.684	19.920
19.685	19.921
19.686	19.922
19.687	19.923
19.688	19.924
19.689	19.925
19.690	19.926
19.692	19.930
19.693	19.930
19.695	19.945
19.697	19.950
19.699	19.955, 19.958, 19.959
19.700	19.956, 19.957
19.703	19.965
19.704	19.966, 19.967
19.706	19.970
19.709	19.980
19.710	19.981
19.714	19.982
19.715	19.982
19.716	19.987
19.717	19.982
19.718	19.982, 19.984, 19.985, 19.986
19.719	19.983
19.720	19.988
19.722	19.990
19.723	19.990
19.724	19.990
19.726	19.1002
19.727	19.995
19.728	19.996
19.729	19.997
19.733	19.998
19.734	19.999
19.735	19.1000
19.736	19.1001
19.739	19.998
19.742	New
19.746	19.1005
19.747	19.1006
19.749	19.1007
19.752	19.1008
Subpart Y	
19.761	19.1010

III. Public Participation

Comments Invited

TTB requests comments on the proposed amendments to our regulations discussed in this notice from anyone interested. Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number (Notice No. 83) and your name and mailing address. Your comments must be legible and written in English in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

Submitting Comments

You may submit comments on this notice by one of the following methods:

• *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2008–0004 on ''Regulations.gov,'' the Federal e-rulemaking portal, at *http://www.regulations.gov.* A direct link to that docket is available under Notice No. 83 on the TTB Web site at *http://www.ttb.gov/spirits/spirits_rulemaking.shtml.* Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on ''User Guide'' under ''How to Use this Site.''

• *Postal Mail:* You may send written comments to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

• *Hand Delivery/Courier in lieu of Mail:* You may hand deliver comments to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position

title. If you comment via *http://www.regulations.gov,* please enter the entity's name in the ''Organization'' blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

We will post, and you may view, copies of this notice and any comments we receive about this proposal within Docket No. TTB–2008–0004 on the Federal e-rulemaking portal, Regulations.gov, at *http://www.regulations.gov.* A direct link to that docket is available on the TTB Web site at *http://www.ttb.gov/spirits/spirits_rulemaking.shtml* under Notice No. 83. You may also reach the relevant docket through the Regulations.gov search page at *http://www.regulations.gov.* For instructions on how to use Regulations.gov, visit the site and click on ''User Guide'' under ''How to Use this Site.''

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5 x 11-inch page. Contact our information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments or other materials.

IV. Regulatory Analyses and Notices

Paperwork Reduction Act

The collections of information contained in the regulations proposed by this notice have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control numbers: 1513–0013, 1513–0014, 1513–0020, 1513–0030, 1513–0038, 1513–0039, 1513–0040, 1513–0041, 1513–0044, 1513–0045, 1513–0046, 1513–0047, 1513–0048, 1513–0049, 1513–0051, 1513–0052, 1513–0056, 1513–0080, 1513–0081, 1513–0083, 1513–0088, and 1513–0113. 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 OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* provides that whenever a Federal agency proposes regulations that may have a significant economic impact on a substantial number of small entities, the agency must prepare a regulatory flexibility analysis.

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable to notices of proposed rulemaking when a final rule would not have a significant economic impact on a substantial number of small entities. This proposed rulemaking proposes to restate existing regulations in plain language, to make certain variations currently granted to individual plants available to all plants, and to adopt certain suggestions made by industry associations to reduce the burdens of regulatory compliance. This proposed rulemaking proposes to reduce the burden on members of the distilled spirits industry, including small businesses. Accordingly, it is hereby certified that a final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

We have submitted a copy of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f).

Executive Order 12866

We have determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires Federal agencies to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' We certify that this proposed rule does not have federalism implications. This proposed rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government.

V. Drafting Information

This notice was written by Daniel J. Hiland of the Regulations and Rulings Division, along with several other employees of the Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Caribbean Basin initiative, Chemicals, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

VII. Authority and Issuance

For the reasons explained in the preamble, TTB proposes to amend chapter I of title 27 of the Code of Federal Regulations as follows:

PART 19—DISTILLED SPIRITS PLANTS

Par. 1. Title 27 Code of Federal Regulations part 19 is revised to read as follows:

PART 19—DISTILLED SPIRITS PLANTS

Sec.

19.0 Scope.

Subpart A—General Provisions

19.1 Definitions.
19.2 Territorial extent of these regulations.
19.3 Related regulations.
19.4 Recovery and reuse of denatured spirits in manufacturing processes.
19.5 Manufacturing products unfit for beverage use.

Subpart B—Administrative and Miscellaneous Provisions

19.11 Right of entry and examination.
19.12 Furnishing facilities and assistance.
19.13 Assignment of officers and supervision of operations.
19.14 Delegation of the Administrator's authorities to the appropriate TTB officer.
19.15 Forms prescribed.

19.16 Modified forms.
19.17 Detention of containers.
19.18 Samples for the United States.
19.19 Discontinuance of storage facilities.
19.20 Installation of meters, tanks, and other apparatus.

Alternate Methods or Procedures and Experimental Operations

19.26 Alternate methods or procedures.
19.27 Application for and use of alternative method or procedure.
19.28 Emergency alternate methods or procedures.
19.29 Exemptions for national defense and disasters.
19.31 Pilot operations.
19.32 Experimental distilled spirits plants.
19.33 Application to establish experimental plants.
19.34 Experimental or research operations by scientific institutions and colleges of learning.
19.35 Application by scientific institutions and colleges of learning for experimental or research operations.
19.36 Spirits produced in industrial processes.
19.37 Application for industrial processes waiver.
19.38 Approval of required documents.

"Penalty of Perjury" Declaration

19.45 Execution under penalty of perjury.

Subpart C—Restrictions on Production, Location, and Use of Plants

19.51 Home production of distilled spirits prohibited.

Rules for Location and Use of a DSP

19.52 Restrictions on location of plants.
19.53 Continuity of plant premises.
19.54 Use of distilled spirits plant premises.
19.55 Other businesses.
19.56 Bonded warehouses not on premises qualified for production of spirits.

Conveyance of Spirits or Wines on Plant Premises

19.58 Taxpaid spirits or wines on bonded premises.
19.59 Conveyance of untaxpaid spirits or wines within a distilled spirits plant.
19.60 Spirits in customs custody.

Subpart D—Registration of a Distilled Spirits Plant and Obtaining a Permit

19.71 Registration and permits in general.

Requirements for Registering a Plant

19.72 General requirements for registration.
19.73 Information required in application for registration.
19.74 Description of the plant.
19.75 Major equipment.
19.76 Statement of plant security.
19.77 Statement of production procedure.
19.78 Power of attorney.
19.79 Registry of stills.
19.80 Approved notice of registration.
19.81 Maintenance of registration file.

Requirements for an Operating Permit Under the IRC

19.91 Operating permit.
19.92 Information required in application for operating permit.
19.93 Applicant organization documents.
19.94 Trade names.
19.95 Issuance of operating permits.
19.96 Denial of permit.
19.97 Correction of permit.
19.98 Duration of permit.
19.99 Suspension or revocation of permit.

Subpart E—Changes to Registrations and Permits

19.111 Scope.

Rules for Amending a Registration

19.112 General rules for amending a registration.
19.113 Change in name of proprietor.
19.114 Changes in stockholders or persons with interest.
19.115 Change in officers, directors, members or managers.
19.116 Change in proprietorship.
19.117 Partnerships.
19.118 Change in location.
19.119 Change in premises.
19.120 Change in operations.
19.121 Change in production procedure.
19.122 Change in construction or use of buildings and equipment.
19.123 Statement of plant security.

Rules for Amending an Operating Permit

19.126 General rules for amending an operating permit.
19.127 Automatic termination of permits.
19.128 Change in name of proprietor.
19.129 Change in trade name.
19.130 Changes in stockholders or persons with interest.
19.131 Changes in officers, directors, members or managers.
19.132 Change in proprietorship.
19.133 Partnerships.
19.134 Change in location.
19.135 Change in operations.

Alternation of Plant Proprietors

19.141 Procedures for alternation of proprietors.

Conduct of Alternate Operations at a Plant

19.142 Alternate use of premises and equipment for customs purposes.
19.143 Alternation for other purposes.
19.144 Alternation of distilled spirits plant and volatile fruit-flavor concentrate plant premises.

Discontinuance of Operations

19.147 Notice of discontinuance of operations.

Subpart F—Bonds and Consents of Surety

Bonding Requirements for a DSP

19.151 General.
19.152 Types of bonds.
19.153 Bond guaranteed by a corporate surety.
19.154 Bond guaranteed by deposit of securities.
19.155 Consent of surety bond terms—consent of surety.
19.156 Power of attorney for surety.
19.157 Disapproval of bonds and consents of surety.

Requirements for Operations and Withdrawal Bonds

19.161 Operations bond.
19.162 Operations bond for distilled spirits plant and adjacent bonded wine cellar.
19.163 Area operations bond.
19.164 Withdrawal bond.
19.165 Unit bonds.
19.166 Required penal sums.
19.167 Increase of bond coverage.
19.168 Superseding bonds.
19.169 Effect of failure to furnish a superseding bond.
19.170 Termination of bonds.
19.171 Surety notice of relief from bond liability.
19.172 Relief of surety from bond liability.
19.173 Release of pledged securities.

Subpart G—Construction, Equipment, and Security Requirements

19.181 General.

Tank Requirements

19.182 Tanks—general requirements.
19.183 Scale tanks.
19.184 Scale tank minimum graduations.
19.185 Testing scale tanks for accuracy.

Package Scale and Pipeline Requirements

19.186 Package scales.
19.187 Pipelines.

Measuring and Proofing Equipment Requirements

19.188 Measuring devices and proofing instruments.

Other Plant Requirements

19.189 Identification of structures, areas, apparatus, and equipment.
19.190 Office facilities for TTB use.
19.191 Signs.
19.192 Security.
19.193 Breaking Government locks.

Subpart H—Special (Occupational) Tax

19.201 Liability for special (occupational) tax.
19.202 Special (occupational) tax rates.
19.203 Eligibility for the reduced rate.
19.204 Exemption for alcohol fuel producers.
19.205 Locations subject to tax.
19.206 Liability as a wholesale or retail dealer.
19.207 Special tax returns.
19.208 Multiple locations and multiple tax classes.
19.209 Signing special tax returns.
19.210 Employer identification number.
19.211 Issuance, distribution, and examination of special tax stamps.
19.212 Change in name.
19.213 Change in proprietorship.
19.214 Change in location.

Subpart I—Distilled Spirits Taxes

19.221 Scope.

Basic Provisions of Tax Law Affecting Spirits

19.222 Basic tax law provisions.
19.223 Persons liable for tax.

Requirements for Gauging and Tax Determination

19.225 Requirement to gauge and tax determine spirits.
19.226 Gauges for tax determination.
19.227 Determination of the tax.

Rules for Deferred Payment and Prepayment of Taxes

19.229 Deferred payment and prepayment of taxes.
19.230 Conditions requiring prepayment of taxes.
19.231 Accounting for bond coverage.

Requirements for Filing Tax Returns

19.233 Filing prepayment returns.
19.234 Filing deferred payment returns.
19.235 Deferred payment return periods—quarterly and semimonthly.
19.236 Due dates for returns.
19.237 Special rule for semimonthly filers for the month of September.
19.238 Payment by mail.
19.239 Form of payment.
19.240 Payment of tax by electronic fund transfer.

Requirements for Employer Identification Numbers

19.242 Employer identification number.
19.243 Application for employer identification number.

Effective Tax Rates

19.245 Tax credits under 26 U.S.C. 5010.
19.246 Computing the effective tax rate for a product.
19.247 Use of effective (actual) tax rates.
19.248 Standard effective tax rate.
19.249 Average effective tax rate.
19.250 Inventory reserve account.

Assessment of Taxes by TTB

19.253 Assessment of tax on spirits not accounted for or reported.
19.254 Assessment of tax for losses or unauthorized removals.

Additional Tax Provisions

19.256 Tax on wine.
19.257 Imported spirits.
19.258 Additional tax on nonbeverage spirits.

Subpart J—Claims

19.261 Scope.

Requirements for Filing Claims

19.262 General requirements for filing claims.
19.263 Claims on spirits, denatured spirits, articles, or wines lost or destroyed in bond—specific requirements.
19.264 Claims on spirits returned to bonded premises—specific requirements.
19.265 Claims relating to spirits lost after tax determination.

Rules Regarding Credits, Abatement, Remission, or Refund

19.266 Claims for credit of tax.
19.267 Adjustments for credited tax.
19.268 Allowance of remission, abatement, credit, or refund of tax.

Rules for Puerto Rican and Virgin Islands Spirits

19.269 Puerto Rican and Virgin Islands spirits.

Subpart K—Gauging

19.281 Scope.
19.282 General requirements for gauging and measuring equipment.

Required Gauges

19.283 When gauges are required.
19.284 Quantity determination of bulk spirits.
19.285 Proof determination of distilled spirits.
19.286 Gauging of spirits in bottles.
19.287 Gauging of alcoholic flavoring materials.
19.288 Determination of tare.
19.289 Production gauge.

Subpart L—Production of Distilled Spirits

19.291 General.

Notification of TTB When Beginning or Suspending Production Operations

19.292 Notice of operations.

Rules for Receipt, Use, and Disposal of Materials

19.293 Receipt of materials.
19.294 Removal of fermenting material.
19.295 Removal or destruction of distilling material.
19.296 Fermented materials.
19.297 Use of materials in production of spirits.

Rules for Production of Spirits

19.301 Distillation.
19.302 Treatment during production.
19.303 Addition of caramel to rum or brandy and addition of oak chips to spirits.
19.304 Production gauge.
19.305 Identification of spirits.
19.306 Entry.
19.307 Distillates containing extraneous substances.

Rules for Chemical By-Products

19.308 Spirits content of chemicals produced.
19.309 Disposition of chemicals.
19.310 Wash water.

Production Inventories

19.312 Physical inventories.

Rules for Redistillation

19.314 General.
19.315 Receipts for redistillation.
19.316 Redistillation.

Subpart M—Storage of Distilled Spirits

19.321 General.

Receipt and Storage of Spirits and Wines

19.322 Receipt and storage of bulk spirits and wines.

Rules for Filling and Changing Packages

19.324 Filling of packages from tanks.
19.325 Change of packages.

Rules for Mingling or Blending Spirits

19.326 Mingling or blending of spirits for further storage.
19.327 Packages dumped for mingling.
19.328 Determining age of mingled spirits.
19.329 Mingled spirits or wines held in tanks.

Use of Oak Chips and Caramel

19.331 Use of oak chips in spirits and caramel in brandy and rum.

Storage Inventories

19.333 Physical inventories.

Subpart N—Processing of Distilled Spirits

19.341 General.

Rules for Receipt and Use of Spirits, Wines, and Alcoholic Flavoring Materials

19.342 Receipt of spirits, wines, and alcoholic flavoring materials for processing.
19.343 Use of spirits, wines, and alcoholic flavoring materials.
19.344 Manufacture of nonbeverage products, intermediate products, or eligible flavors.

Obscuration Determination

19.346 Determining obscuration.

Filing Formulas With TTB

19.348 Formula requirements.

Rules for Bottling, Packaging, and Removal of Products

19.351 Removals from processing.
19.352 Bottling tanks.
19.353 Bottling tank gauge.
19.354 Bottling or packaging records.
19.355 Labels describing the spirits.
19.356 Alcohol content and fill.
19.357 Completion of bottling.
19.358 Cases.
19.359 Remnants.
19.360 Filling packages.
19.361 Removals by bulk conveyances or pipelines.
19.362 Rebottling.
19.363 Reclosing and relabeling.
19.364 Bottled-in-bond spirits.
19.365 Spirits not originally intended for export.
19.366 Alcohol.

Requirements for Processing Inventories

19.371 Inventories of wines and bulk spirits in processing.
19.372 Physical inventories of bottled and packaged spirits.

Subpart O—Denaturing Operations and Manufacture of Articles

19.381 General.
19.382 Formulas.

Rules for Denaturing Spirits and Testing Denaturants

19.383 Gauge for denaturation.
19.384 Adding denaturants to spirits.
19.385 Making alcohol or water solutions of denaturants.
19.386 Adjusting pH of denatured spirits.
19.387 Ensuring the quality of denaturants.

Rules for Storing Denatured Spirits and Filling Containers

19.388 Storing denatured spirits.
19.389 Filling containers from tanks.
19.390 Container marking requirements.

Rules for Mixing and Converting Denatured Spirits

19.391 Mixing denatured spirits.
19.392 Converting denatured alcohol to a different formula.

Rules for Restoration and Redenaturation, Inventories, and Manufacture of Articles; Records Required

19.393 Restoration and redenaturation of recovered denatured spirits and recovered articles.
19.394 Inventory of denatured spirits.
19.395 Manufacture of articles.
19.396 Required records.

Subpart P—Transfers, Receipts, and Withdrawals

19.401 Authorized transactions.

Transfers Between Bonded Premises

19.402 Authorized transfers in bond.
19.403 Application to receive spirits in bond.
19.404 Termination of application.
19.405 Consignor for in-bond shipments.
19.406 Reconsignment of in-bond shipments.
19.407 Consignee premises.

Receipt of Spirits From Customs Custody

19.409 General.
19.410 Age and fill date.
19.411 Recording gauge.

Marking Requirements for Imported Spirits

19.414 Marks on containers of imported spirits.
19.415 Marks on containers of Puerto Rican and Virgin Islands spirits.

Spirits Withdrawn Without Payment of Tax

19.418 Authorized withdrawals without payment of tax.
19.419 Withdrawals of wine spirits for use in wine production.
19.420 Withdrawals of spirits without payment of tax for experimental or research use.
19.421 Withdrawals of spirits for use in production of nonbeverage wine and nonbeverage wine products.

Spirits Withdrawn Free of Tax

19.424 Authorized withdrawals free of tax.
19.425 Withdrawal of spirits free of tax.
19.426 Withdrawal of spirits by the United States.
19.427 Removal of denatured spirits and articles.
19.428 Reconsignment.

Spirits Withdrawn on Production Gauge

19.431 Withdrawal of spirits on production gauge.

Rules for Taking Sample of Spirits

19.434 Spirits withdrawn from bonded premises.
19.435 Samples used on bonded premises.
19.436 Taxpayment of samples.
19.437 Labels.

Securing Conveyances

19.441 Securing of conveyances.

Subpart Q—Return of Spirits to Bonded Premises and Voluntary Destruction

19.451 Scope.

Conditions for Return of Spirits to Bond

19.452 Return of taxpaid spirits to bonded premises for destruction, denaturation, redistillation, reconditioning, or rebottling.
19.453 Return of bottled spirits for relabeling or reclosing.
19.454 Other authorized returns to bonded premises.
19.455 Return of spirits withdrawn for export with benefit of drawback.
19.457 Receipt of spirits abandoned to the United States.

Rules for Voluntary Destructions

19.459 Voluntary destruction.

Subpart R—Losses and Shortages

19.461 Losses and shortages in general.
19.462 Determination of losses in bond.
19.463 Loss of spirits from packages.
19.464 Losses after tax determination.
19.465 Shortages of bottled spirits.

Subpart S—Containers and Marks

19.471 General.
19.472 Need to determine use of spirits: industrial or nonindustrial.

Requirements for Containers

19.473 Authorized containers.
19.474 Spirits for nonindustrial use.
19.475 Spirits for industrial use.
19.476 Packages.
19.477 Use of bulk conveyances.
19.478 Construction requirements for bulk conveyances.
19.479 Restrictions on dispositions of bulk spirits.

Marking Requirements for Spirits

19.482 General.
19.483 Specifications for marks.
19.484 Marks on packages filled in production or storage.
19.485 Package identification numbers in production and storage.
19.486 Change of packages in storage.
19.487 Kind of spirits.
19.488 Marks on packages filled in processing.
19.489 Marks on cases filled in processing.
19.490 Numbering of packages and cases filled in processing.
19.491 Marks on containers of specially denatured spirits.
19.492 Marks on containers of completely denatured alcohol.
19.493 Caution label for completely denatured alcohol.
19.494 Additional marks on portable containers.
19.495 Marks on bulk conveyances.
19.496 Cases of industrial alcohol.
19.497 Obliteration of marks.
19.498 Relabeling and reclosing off bonded premises.
19.499 Authorized abbreviations to identify marks.

Subpart T—Liquor Bottle, Label, and Closure Requirements

Authorized Liquor Bottles

19.511 Bottles authorized.
19.512 Bottles not constituting approved containers.
19.513 Distinctive liquor bottles.

Labeling Requirements

19.516 Certificate of label approval or exemption.
19.517 Statements required on labels under an exemption from label approval.
19.518 Name and address of bottler.
19.519 Labels for export spirits.
19.520 Spirits for shipment to Puerto Rico.

Closure Requirements

19.523 Affixing closures.
19.525 Reclosing.

Subpart U—[Reserved]

Subpart V—Records and Reports

General Rules for Records

19.571 Records in general.
19.572 Format of records.
19.573 Location of required records.
19.574 Availability of records.
19.575 Retention of records.
19.576 Preservation of records.
19.577 Documents that are not records.
19.578 Financial records and books of account.
19.580 Time for making entries in records.
19.581 Details of daily records.
19.582 Conversion from metric to U.S. units.

Production Records

19.584 Materials for the production of distilled spirits.
19.585 Production and withdrawal records.
19.586 Byproduct spirits production record.

Storage Records

19.590 Storage operations.
19.591 Package summary records.
19.592 Tank record of wine and spirits of less than 190 degrees of proof.
19.593 Tank summary record for spirits of 190 degrees or more of proof.

Processing Records

19.596 Processing records in general.
19.597 Manufacturing records.
19.598 Dump/batch records.
19.599 Bottling and packaging record.
19.600 Alcohol content and fill test record.
19.601 Finished products records.
19.602 Redistillation record.
19.603 Liquor bottle record.
19.604 Rebottling, relabeling, and reclosing records.

Denaturation and Article Manufacture Records

19.606 Denaturation records.
19.607 Article manufacture records.

Tax Records

19.611 Records of tax determination in general.
19.612 Summary record of tax determinations.
19.613 Average effective tax rate records.

19.614 Inventory reserve records.
19.615 Standard effective tax rate records.

Other Required Records

19.616 Record of samples.
19.617 Destruction record.
19.618 Gauge record.
19.619 Package gauge record.
19.620 Transfer record—consignor's responsibility.
19.621 Transfer record—consignee's responsibility.
19.622 Daily record of wholesale liquor dealer and taxpaid storeroom operations.
19.623 Record of inventories.
19.624 Removal of Puerto Rican and Virgin Islands spirits and rum imported from all other areas.
19.625 Shipping record for spirits and specially denatured spirits withdrawn free of tax.
19.626 Record of distilled spirits shipped to manufacturers of nonbeverage products.
19.627 Alternating premises record.

Filing Forms and Reports

19.631 Submission of transaction forms.
19.632 Submission of monthly reports.
19.634 Computer-generated reports and transaction forms.

Subpart W—Production of Vinegar by the Vaporizing Process

Vinegar Plants in General

19.641 Application.

Qualification, Construction, and Equipment Requirements for Vinegar Plants

19.643 Qualification requirements.
19.644 Changes after original qualification.
19.645 Notice of permanent discontinuance of business.
19.646 Construction and equipment requirements.

Rules for Operating Vinegar Plants

19.647 Authorized operations.
19.648 Conduct of operations.
19.649 Restrictions on alcohol content.

Required Records for Vinegar Plants

19.650 Daily records.

Liability for Distilled Spirits Tax

19.651 Liability for distilled spirits tax.

Subpart X—Distilled Spirits for Fuel Use

19.661 Scope.

General

19.662 Definitions.
19.663 Application of other provisions.
19.665 Alternate methods or procedures.
19.666 Application for and use of an alternate method or procedure.
19.667 Emergency variations from requirements.

Liability for Taxes

19.669 Distilled spirits taxes.
19.670 Special (occupational) tax.

Obtaining a Permit

19.672 Types of plants.
19.673 Small plant permit applications.
19.674 TTB action on small plant applications.
19.675 Medium plant permit applications.
19.676 Large plant permit applications.
19.677 Large plant applications—organizational documents.
19.678 Criteria for issuance of permit.
19.679 Duration of permit.
19.680 Registration of stills.

Changes to Permit Information

19.683 Changes affecting permit applications.
19.684 Automatic termination of permits.
19.685 Change in type of alcohol fuel plant.
19.686 Change in name of proprietor.
19.687 Changes in officers, directors, members, managers, or principal persons.
19.688 Change in proprietorship.
19.689 Continuing partnerships.
19.690 Change in location.

Alternating Proprietorship

19.692 Qualifying for alternating proprietorship.
19.693 Operating requirements for alternating proprietorships.

Discontinuance of Business and Permit Suspension or Revocation

19.695 Notice of permanent discontinuance.
19.697 Permit suspension or revocation.

Bonds

19.699 General bond requirements.
19.700 Amount of bond.

Requirements for Construction, Equipment, and Security

19.703 Construction and equipment.
19.704 Security.

TTB Rights and Authorities

19.706 Supervision of operations.

Accounting for Spirits

19.709 Gauging.
19.710 Inventory of spirits.

Recordkeeping

19.714 General requirements for records.
19.715 Format of records.
19.716 Maintenance and retention of records.
19.717 Time for making entries in records.
19.718 Required records.
19.719 Spirits made unfit for beverage use in the production process.

Reports

19.720 Reports.

Redistillation

19.722 General rules for redistillation of spirits or fuel alcohol.
19.723 Effect of redistillation on plant size and bond amount.
19.724 Records of redistillation.

Rules for Use, Withdrawal, and Transfer of Spirits

19.726 Prohibited uses, transfers, and withdrawals.
19.727 Use on premises.
19.728 Withdrawal of spirits.
19.729 Withdrawal of fuel alcohol.

Transfer of Spirits Between Alcohol Fuel Plants

19.733 Authorized transfers between alcohol fuel plants.
19.734 Consignor for in-bond shipments.
19.735 Reconsignment while in transit.
19.736 Consignee for in-bond shipments.

Transfer of Spirits to and From Distilled Spirits Plants

19.739 Authorized transfers to or from distilled spirits plants.

Receipt of Spirits From Customs Custody

19.742 Authorized transfers from customs custody.

Materials for Making Spirits Unfit for Beverage Use

19.746 Authorized materials.
19.747 Other materials.

Rules for Taking Samples

19.749 Samples.

Marking Requirements

19.752 Marks.

Subpart Y—Paperwork Reduction Act

19.761 OMB control numbers assigned under the Paperwork Reduction Act.

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5148, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.0 Scope.

This part concerns the operation of distilled spirits plants in the United States. Topics covered in this part include: Permits and registration procedures; bond requirements; payment of taxes; filing of claims; production, storage, and processing operations; and maintenance of records.

Subpart A—General Provisions

§ 19.1 Definitions.

As used in this part, the following terms shall have the meanings indicated unless either the context in which they are used requires a different meaning, or a different definition is prescribed for a particular subpart, section, or portion of this part:

Accurate mass flow meter. A mass flow meter for making volume determinations of bulk distilled spirits. A mass flow meter used for tax determination of bulk spirits must be certified by the manufacturer or other qualified person as accurate within a tolerance of +/−0.1%. A mass flow meter used for all other required volume

determinations of bulk spirits must be certified by the manufacturer or other qualified person as accurate within a tolerance of +/−0.5%.

Administrator. The Administrator of the Alcohol and Tobacco Tax and Trade Bureau, the Department of the Treasury, Washington, DC., or a delegate or designee of the Administrator.

Alcoholic flavoring materials. Any nonbeverage product on which drawback has been or will be claimed under 26 U.S.C. 5131–5134, and any flavor imported free of tax which is unfit for beverage purposes. This term includes eligible flavors but does not include flavorings or flavoring extracts manufactured on the bonded premises of a distilled spirits plant as an intermediate product.

Application for registration. The application for registration of a distilled spirits plant that is required by 26 U.S.C. 5171(c).

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.19, Delegation of the Administrator's Authorities in 27 CFR part 19, Distilled Spirits Plants.

Article. A product containing denatured spirits, which was manufactured under this part or part 20 of this chapter.

Bank. Any commercial bank.

Banking day. Any day that a bank is open to the public to carry on substantially all of its banking functions.

Basic permit. The document that authorizes a person to engage in a designated business or activity under the Federal Alcohol Administration Act.

Bond. A bond is a formal guarantee for payment of monies due to TTB, including taxes imposed by 26 U.S.C. Chapter 51, and any related fines, penalties or interest that the proprietor of a distilled spirits plant may incur, up to an amount specified by the bond (the bond ''penal sum'').

Bonded premises. The premises of a distilled spirits plant, or part thereof, as described in the application for registration, on which the conduct of distilled spirits operations defined in 26 U.S.C. 5002 is authorized.

Bottler. A proprietor of a distilled spirits plant qualified under this part as a processor who bottles distilled spirits.

Bulk container. Any container approved by TTB having a capacity in excess of one wine gallon.

Bulk conveyance. A tank car, tank truck, tank ship, tank barge, or a compartment of any such conveyance, or any other container approved by the Administrator for the conveyance of comparable quantities of spirits, including denatured spirits and wines.

Bulk distilled spirits. Distilled spirits in a container having a capacity in excess of one wine gallon.

Business day. Any day, other than a Saturday, a Sunday, or a legal holiday (which includes any holiday in the District of Columbia and any statewide holiday in the particular State in which the claim, report, or return, as the case may be, is required to be filed, or the act is required to be performed).

Calendar quarter and quarterly. These terms refer to the three-month periods ending on March 31, June 30, September 30, or December 31.

Carrier. Any person, company, corporation, or organization, including a proprietor, owner, consignor, consignee, or bailee, who transports distilled spirits, denatured spirits, or wine in any manner for himself or others.

CFR. The Code of Federal Regulations.

Commercial bank. A bank, whether or not a member of the Federal Reserve system, which has access to the Federal Reserve Communications System or Fedwire (a communications network that allows Federal Reserve system member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York).

Container. A receptacle, vessel, or form of bottle, can, package, tank or pipeline (where specifically included) used or capable of being used to contain, store, transfer, convey, remove, or withdraw spirits and denatured spirits.

Denaturant or denaturing material. Any material authorized by part 21 of this chapter for addition to spirits in the production of denatured spirits.

Denatured spirits. Spirits to which denaturants have been added as provided in part 21 of this chapter.

Director of the service center. A director of an internal revenue service center.

Distilled spirits operations. Any authorized distilling, warehousing, or processing operation conducted on the bonded premises of a plant qualified under this part.

Distilled spirits plant. An establishment which is qualified under this part to conduct distilled spirits operations.

Distiller. Any person who:

(1) Produces distilled spirits from any source or substance;

(2) Brews or makes mash, wort, or wash fit for distillation or for the production of distilled spirits (other than making or using of mash, wort, or wash in the authorized production of wine or beer, or in the production of vinegar by fermentation);

(3) By any process separates alcoholic spirits from any fermented substance; or

(4) Making or keeping mash, wort, or wash, has a still in his possession or use.

Distilling material. Any fermented or other alcoholic substance capable of, or intended for use in, the original distillation or other original processing of spirits.

District director. A district director of the Internal Revenue Service.

Effective tax rate. The net tax rate, after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content, at which the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 is paid or determined.

Electronic fund transfer or EFT. Any transfer of funds effected by the proprietor's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Eligible flavor. A flavor which:

(1) Is of a type that is eligible for drawback of tax under 26 U.S.C. 5134;

(2) Was not manufactured on the premises of a distilled spirits plant; and

(3) Was not subjected to distillation on distilled spirits plant premises such that the flavor does not remain in the finished product.

Eligible wine. Wine on which tax would be imposed by paragraph (1), (2), or (3) of 26 U.S.C. 5041(b) but for its removal to distilled spirits plant premises and which has not been subject to distillation at a distilled spirits plant after receipt in bond.

Export or exportation. A separation of goods from the mass of goods belonging to the United States with the intention of uniting them with the goods belonging to a foreign country or any possession of the United States, including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, and Guam.

Fermenting material. Any material that will be subject to a process of fermentation in order to produce distilling material.

Fiduciary. A guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

Fiscal year. The period October 1st of one calendar year through September 30th of the following calendar year.

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

General premises. Any business office, service facility, or other part of the premises described in the notice of registration other than bonded premises.

In bond. When used to describe spirits, denatured spirits, articles, or wine, this term refers to spirits, denatured spirits, articles, or wine held under bond to secure the payment of the taxes imposed by 26 U.S.C. Chapter 51, and on which those taxes have not been determined. The term also refers to such spirits, denatured spirits, articles, or wine on the bonded premises of a distilled spirits plant, and such spirits, denatured spirits, or wines that are in transit between bonded premises (including, in the case of wine, bonded wine cellar premises). In addition, the term refers to spirits in transit from customs custody to bonded premises, and spirits withdrawn without payment of tax under 26 U.S.C. 5214, and with respect to which relief from liability has not occurred under 26 U.S.C. 5005(e)(2).

Industrial use. When used with reference to spirits, the meaning given to the term in § 19.472.

Intermediate product. Any product manufactured according to an approved formula under part 5 of this chapter, intended not for sale as such but for use in the manufacture of a distilled spirits product.

IRC. The Internal Revenue Code of 1986, as amended.

Kind. Except as provided in § 19.597, when used with reference to spirits, this term means class and type as prescribed in part 5 of this chapter. When used with reference to wines, this term means the class and type of wine as prescribed in part 4 of this chapter.

Letterhead application. A letter on a company's letterhead or other piece of paper that clearly shows the company name from a company representative with signature authority. A letterhead application is subject to TTB approval prior to any change requested in the letter.

Letterhead notice. A letter on a company's letterhead or other piece of paper that clearly shows the company name from a company representative with signature authority. A letterhead notice does not require approval by TTB prior to the change.

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Administrator to adequately protect the revenue.

Liter. A metric unit of capacity equal to 1,000 cubic centimeters or 1,000 milliliters (ml) of alcoholic beverage, and equivalent to 33.814 fluid ounces.

Lot identification number. The package identification number described in 27 CFR 19.485.

Mash, wort, wash. Any fermented material capable of, or intended for, use as a distilling material.

National Revenue Center: TTB's National Revenue Center, in Cincinnati, Ohio.

Nonindustrial use. When used with reference to spirits, the meaning given to the term in § 19.472.

Operating permit. The document issued pursuant to 26 U.S.C. 5171(d), that authorizes a person to engage in the business or operation described in the document.

Package. A cask or barrel or similar wooden container, or a drum or similar metal container.

Package identification number. The lot identification number described in 27 CFR 19.595.

Person. An individual, trust, estate, partnership, association, company, corporation, limited liability company, limited liability partnership, or other entity recognized by law as a person.

Plant or distilled spirits plant. An establishment qualified under this part for distilling, warehousing, processing, or any combination thereof.

Plant number. The number assigned to a distilled spirits plant by TTB.

Processor. Except as otherwise provided in 26 U.S.C. 5002(a)(6), any person qualified under this part who manufactures, mixes, bottles, or otherwise processes distilled spirits or denatured spirits or who manufactures any article.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percentage of ethyl alcohol by volume.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

Proof of distillation. The composite proof of the spirits when the production gauge is made, or, if the spirits are reduced in proof prior to the production gauge, the proof of the spirits prior to that reduction, unless the spirits are subsequently redistilled at a higher proof than the proof prior to reduction.

Proprietor. The person qualified under this part to operate a distilled spirits plant.

Reconditioning. The dumping of distilled spirits products in bond after their bottling or packaging, for filtration, clarification, stabilization, reformulation, or other purposes, other than destruction, denaturation, redistillation, or rebottling.

Recovered article. An article containing specially denatured spirits salvaged without all of its original ingredients, or an article containing completely denatured alcohol salvaged without all of the denaturants for completely denatured alcohol, as provided in part 20 of this chapter.

Season. The period from January 1st through June 30th (spring season) or the period from July 1st through December 31st (fall season).

Secretary. The Secretary of the Treasury or his delegate or designee.

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

Spirits or distilled spirits. The substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced) but not denatured spirits unless specifically stated. The term does not include mixtures of distilled spirits and wine, bottled at 48° proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

Spirits residues. Residues, containing distilled spirits, of a manufacturing process related to the production of an article under part 20 of this chapter.

Tax-determined or determined. When used with reference to any distilled spirits to be withdrawn from bond on determination of tax, that the taxable quantity of spirits has been established.

Taxpaid. When used with reference to distilled spirits, all applicable taxes imposed by law on those spirits have been determined or paid as provided by law.

This chapter. Chapter I, Title 27, Code of Federal Regulations (27 CFR chapter I).

Transfer in bond. The removal of spirits, denatured spirits and wines from one bonded premises to another bonded premises.

Treasury Account. The General Account of the Department of the Treasury at the Federal Reserve Bank of New York.

TTB. The Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

TTB bond. The internal revenue bond as prescribed in 26 U.S.C. Chapter 51.

TTB officer. An officer or employee of TTB authorized to perform any function relating to the administration or enforcement of the provisions of this part.

Unfinished spirits. Spirits in the production system prior to production gauge.

U.S.C. The United States Code.

Warehouseman. A proprietor of a distilled spirits plant qualified under this part to store bulk distilled spirits.

We. TTB and TTB officers.

Wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Wine spirits. Spirits authorized for use in wine production by 26 U.S.C. 5373.

§ 19.2 Territorial extent of these regulations.

This part applies to all States of the United States and the District of Columbia.

§ 19.3 Related regulations.

Other regulations relating to distilled spirits and distilled spirits plants are listed below:

27 CFR part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits.
27 CFR part 4—Labeling and Advertising of Wine.
27 CFR part 5—Labeling and Advertising of Distilled Spirits.
27 CFR part 16—Alcoholic Beverage Health Warning Statement.
27 CFR part 17—Drawback on Taxpaid Distilled Spirits Used in Manufacturing Nonbeverage Products.
27 CFR part 20—Distribution and Use of Denatured Alcohol and Rum.
27 CFR part 21—Formulas for Denatured Alcohol and Rum.
27 CFR part 22—Distribution and Use of Tax-Free Alcohol.
27 CFR part 24—Wine.
27 CFR part 25—Beer.
27 CFR part 26—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR part 27—Importation of Distilled Spirits, Wines, and Beer.
27 CFR part 28—Exportation of Alcohol.
27 CFR part 29—Stills and Miscellaneous Regulations.
27 CFR part 30—Gauging Manual.
27 CFR part 31—Alcohol Beverage Dealers.
27 CFR part 71—Rules of Practice in Permit Proceedings.
31 CFR part 225—Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties.

§ 19.4 Recovery and reuse of denatured spirits in manufacturing processes.

Certain activities involving distilled spirits are not covered by this part. Instead, manufacturers who engage in any of the activities listed below are required to comply with the regulations in part 20 of this chapter relating to the use and recovery of spirits or denatured spirits. Those activities are:

(a) Use of denatured spirits, or articles or substances containing denatured spirits, in a process wherein any part or all of the spirits, including denatured spirits, are recovered;

(b) Use of denatured spirits in the production of chemicals which do not contain spirits but which are used on the permit premises in the manufacture of other chemicals resulting in spirits as a by-product; or

(c) Use of chemicals or substances which do not contain spirits or denatured spirits (but which were manufactured with specially denatured spirits) in a process resulting in spirits as a by-product.

(26 U.S.C. 5273)

§ 19.5 Manufacturing products unfit for beverage use.

(a) *General.* Except as provided in paragraph (b) of this section, apothecaries, pharmacists, or manufacturers who manufacture or compound any of the following products using tax paid or tax determined distilled spirits are not required to register and qualify as a distilled spirits plant (processor):

(1) Medicines, medicinal preparations, food products, flavors, flavoring extracts, and perfume, conforming to the standards for approval of nonbeverage drawback products found in §§ 17.131–17.137 of this chapter, whether or not drawback is actually claimed on those products. Except as provided in paragraph (c) of this section, a formula does not need to be submitted if drawback is not desired;

(2) Patented and proprietary medicines that are unfit for use for beverage purposes;

(3) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes;

(4) Laboratory reagents, stains, and dyes that are unfit for use for beverage purposes; and

(5) Flavoring extracts, syrups, and concentrates that are unfit for use for beverage purposes.

(b) *Exception for beverage products.* Products identified in part 17 of this chapter as being fit for beverage use are alcoholic beverages. Bitters, patent medicines, and similar alcoholic preparations that are fit for beverage purposes, although held out as having certain medicinal properties, are also alcoholic beverages. These products are subject to the provisions of this part and must be manufactured on the bonded premises of a distilled spirits plant.

(c) *Submission of formulas and samples.* When requested by the appropriate TTB officer or when the manufacturer wishes to ascertain whether a product is unfit for beverage use, the manufacturer will submit the formula and a sample of the product to the appropriate TTB officer for examination. TTB will determine whether the product is unfit for beverage use and whether manufacture of the product is exempt from qualification requirements.

(d) *Change of formula.* If TTB finds that a product manufactured under paragraph (a) of this section is being used for beverage purposes, or for mixing with beverage spirits other than by a processor, TTB will notify the manufacturer to stop manufacturing the product until the formula is changed to make the product unfit for beverage use and the change is approved by the appropriate TTB officer. However, the provisions of this paragraph will not prohibit products which are unfit for beverage use from use in small quantities for flavoring drinks at the time of serving for immediate consumption.

(26 U.S.C. 5002, 5171)

Subpart B—Administrative and Miscellaneous Provisions

§ 19.11 Right of entry and examination.

A TTB officer may enter any distilled spirits plant, any other premises where distilled spirits operations are carried on, or any structure or place used in connection with distilled spirits operations, at any time of day or night. A TTB officer may examine materials, equipment, and facilities, and make any gauges and inventories. Whenever a TTB officer states his or her name and office and demands admittance but is not admitted into the premises or place, the TTB officer is authorized to use all necessary force to gain entry.

(26 U.S.C. 5203)

§ 19.12 Furnishing facilities and assistance.

The proprietor is required to provide TTB officers with the necessary facilities and assistance in order to gauge spirits in any container, or to examine any apparatus, equipment, containers, or materials, at the distilled spirits plant. Also, when requested by a TTB officer, the proprietor must:

(a) Open any doors and open for examination any containers on the plant premises; and

(b) Provide the exact locations (including the number of containers at each location) of all packages and similar portable approved containers within a given lot and the locations (that is, buildings, rooms, or areas) where spirits in cases are stored.

(26 U.S.C. 5202, 5203)

§ 19.13 Assignment of officers and supervision of operations.

(a) *General.* TTB may assign TTB officers to a distilled spirits plant and utilize controls, such as Government locks and seals, if TTB decides that those measures are necessary to effectively supervise the operations. If TTB decides that such supervision is necessary:

(1) The proprietor must obtain approval of the plant's hours of operations from the appropriate TTB officer;

(2) TTB may require the proprietor to submit a schedule of operations to a TTB officer; and

(3) TTB may require the proprietor to delay any distilled spirits operation until the proprietor can conduct it in the presence of a TTB officer.

(b) *Notification of supervision.* If TTB determines that supervision of plant operations is necessary, TTB will notify the proprietor of the extent to which TTB intends to supervise those operations. If TTB determines later that TTB supervision is no longer necessary, the appropriate TTB officer will notify the proprietor of that fact.

(26 U.S.C. 5201, 5202, 5553)

§ 19.14 Delegation of the Administrator's authorities to the appropriate TTB officer.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.19, Delegation of the Administrator's Authorities in 27 CFR Part 19, Distilled Spirits. Interested persons may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§ 19.15 Forms prescribed.

(a) TTB prescribes and makes available all forms required by this part. Persons completing forms must furnish all of the information required by each form, as indicated by the headings and instructions on the form or as required by these regulations. Each form must be filed in accordance with this part and the instructions for the form.

(b) Persons may request forms from the TTB National Revenue Center, 550 Main Street, Suite 8002, Cincinnati, Ohio 45202, or by accessing them on the TTB Web site (*http://www.ttb.gov*).

(26 U.S.C. 5207)

§ 19.16 Modified forms.

If a proprietor wishes to modify a form prescribed by these regulations, the proprietor must submit an application for approval of an alternate method or procedure (see §§ 19.26 and 19.27) to the appropriate TTB officer. The proprietor may not use a modified form until TTB approves the application. The application to modify a form must be accompanied by:

(a) A copy of each proposed form with typical entries; and

(b) A statement explaining the need to use a modified form.

(26 U.S.C. 5207)

§ 19.17 Detention of containers.

(a) *General.* A TTB officer may detain any container containing, or supposed to contain, spirits when the appropriate TTB officer believes that the required tax on those spirits has not been paid or determined that the removal of the container is in violation of law or the provisions of this part. The appropriate TTB officer will hold the container at a safe place until it is determined whether the detained property is subject to forfeiture.

(b) *Limitation.* A detention under paragraph (a) of this section may not exceed 72 hours without process of law or intervention of the appropriate TTB officer. However, the detained container may be kept on the premises beyond the 72-hour period without process of law or intervention if the person possessing the container immediately before its detention executes a waiver of this 72-hour limitation on detention of the container.

(26 U.S.C. 5311)

§ 19.18 Samples for the United States.

TTB officers are authorized to take samples of spirits, denatured spirits, articles, wines, or other materials from a distilled spirits plant for analysis, testing, or to determine whether the product complies with the law and regulations. When TTB removes a sample from a plant, TTB will give the proprietor a receipt for the sample.

(26 U.S.C. 5201, 5203, 5214, 5362)

§ 19.19 Discontinuance of storage facilities.

If TTB determines that a proprietor's bonded storage facility for spirits is unsafe or unfit for use, or causes excessive waste or loss of spirits, TTB can require that the proprietor discontinue using the facility. Further, TTB can require the transfer of the spirits stored in the facility to another storage facility. The transfer will take place at such time and under such supervision as TTB may require, and will be at the expense of the owner or warehouseman of the spirits. If the owner or warehouseman fails to transfer the spirits within the prescribed time or to pay the expense of the transfer, as ascertained and determined by the appropriate TTB officer, the spirits may be seized and sold. TTB will first apply the proceeds of such sale to the payment of the taxes due on the spirits and then to the cost and expense of the sale and removal, and the remaining balance, if any, will be paid over to the owner or warehouseman.

(26 U.S.C. 5236)

§ 19.20 Installation of meters, tanks, and other apparatus.

The appropriate TTB officer may require the proprietor to install meters, tanks, pipes, or any other apparatus at the proprietor's plant if that officer decides that the equipment is necessary for the protection of the revenue. If the proprietor refuses or fails to install any such apparatus when instructed to do so, the proprietor will not be permitted to conduct business as a distilled spirits plant.

(26 U.S.C. 5552)

Alternate Methods or Procedures and Experimental Operations

§ 19.26 Alternate methods or procedures.

(a) *General.* The appropriate TTB officer may approve the use of an alternate method or procedure that varies from the regulatory requirements in this part if the proprietor shows good cause for its use and the alternate method or procedure:

(1) Is not contrary to law;

(2) Will not have the effect of waiving an existing regulatory requirement;

(3) Is consistent with the purpose and effect of the method or procedure prescribed in this part;

(4) Provides equal security to the revenue; and

(5) Will not cause an increase in cost to the Government and will not hinder TTB's administration of this part.

(b) *Exceptions.* TTB will not authorize the use of an alternate method or procedure relating to the giving of any bond, or to the assessment, payment, or collection of tax.

(26 U.S.C. 5552, 5556)

§ 19.27 Application for and use of alternate method or procedure.

(a) *Application.* If a proprietor wishes to use an alternate method or procedure as described in § 19.26, the proprietor must submit a written letterhead application to the appropriate TTB officer for approval. The application

must identify the method or procedure specified in the regulation, must describe the proposed alternate method or procedure in detail, and must explain why the alternate method or procedure is needed.

(b) *Approval and use.* The proprietor may not use an alternate method or procedure until the appropriate TTB officer has in writing approved the proprietor's application. During the period that the proprietor is authorized to use the alternate method or procedure, the proprietor must comply with any conditions imposed on its use by TTB. TTB may withdraw the approval to use the alternate method or procedure if TTB finds that the revenue is jeopardized, that the alternate method or procedure hinders effective administration of the laws or regulations, that the proprietor has violated any of the conditions imposed by TTB, or that the circumstances that gave rise to the need for the alternate method or procedure no longer exist.

(c) *Retention.* The proprietor must retain each alternate method or procedure approval as part of the proprietor's records and must make the approval available for examination by TTB officers upon request.

(26 U.S.C. 5552, 5556)

§ 19.28 Emergency variations from requirements.

(a) *Application.* A proprietor may request emergency approval of the use of a method or procedure relating to construction, equipment, and methods of operation that represents a variance from the requirements of this part. When a proprietor wishes to use an emergency method or procedure, the proprietor must submit a written letterhead application to the appropriate TTB officer for approval; the proprietor may send the application via regular mail, e-mail, or facsimile transmission. The application must describe the proposed emergency method or procedure and the emergency situation it will address. For purposes of this section, an emergency is considered to exist only if it results from a weather or other natural event or from an accident or other event not involving an intentional act on the part of the proprietor.

(b) *Approval.* The appropriate TTB officer may approve in writing the use of an emergency method or procedure if the proprietor demonstrates that an emergency exists and the proposed method or procedure:

(1) Is not contrary to law;

(2) Is necessary to address the emergency situation;

(3) Will afford the same security and protection to the revenue as intended by the regulations; and

(4) Will not hinder the effective administration of this subpart.

(c) *Terms of emergency method or procedure approval and use.*

(1) The proprietor may not use an emergency method or procedure until the application has been approved by TTB except when the emergency method or procedure requires immediate implementation to correct a situation that threatens life or property. In a situation involving a threat to life or property, the proprietor may implement the corrective action while concurrently notifying the appropriate TTB officer by telephone of the action and filing the required written application. Use of the emergency method or procedure must conform to any conditions specified in the approval.

(2) The proprietor must retain the emergency method or procedure approval as part of the proprietor's records and must make the approval available for examination by TTB officers upon request.

(3) The emergency method or procedure will automatically terminate when the situation that created the emergency no longer exists. TTB may withdraw the approval to use the emergency method or procedure if TTB finds that the revenue is jeopardized, that the emergency method or procedure hinders effective administration of the laws or regulations, or that the proprietor has failed to follow any of the conditions specified in the approval. When use of the emergency method or procedure terminates, the proprietor must revert to full compliance with all applicable regulations.

(26 U.S.C. 5178, 5556)

§ 19.29 Exemptions for national defense and disasters.

Whenever TTB finds it is necessary to meet the requirements of national defense or necessary or desirable by reason of disaster, TTB may temporarily exempt the proprietor from any provisions of the internal revenue laws and the provisions of this part relating to distilled spirits, except those requiring the payment of tax.

(26 U.S.C. 5561, 5562)

§ 19.31 Pilot operations.

Except for the filing of any bond or the payment of any tax provided for in 26 U.S.C. Chapter 51, TTB may waive any regulatory provision in this part for temporary pilot or experimental operations for the purpose of facilitating the development and testing of improved methods of governmental supervision (necessary for the protection of the revenue) over plants. For this purpose, the appropriate TTB officer may, with the approval of the proprietor thereof, designate any plant for such operations. Any waiver granted under this section must be in writing and signed by the appropriate TTB officer. The waiver will identify the provisions of law and/or regulations waived and the period of time during which the waiver will be effective. The appropriate TTB officer may terminate the waiver if he or she determines that the waiver jeopardizes the revenue.

(26 U.S.C. 5554)

§ 19.32 Experimental distilled spirits plants.

(a) *General.* The appropriate TTB officer may authorize the establishment and operation of experimental plants for specific and limited periods of time solely for experimentation in, or development of:

(1) Sources of materials from which spirits may be produced;

(2) Processes by which spirits may be produced or refined; or

(3) Industrial uses of spirits.

(b) *Waiver.* The appropriate TTB officer may waive any provision of 26 U.S.C. Chapter 51 (other than 26 U.S.C. 5312) and of this part (other than § 19.33) to the extent necessary to effectuate the purposes of 26 U.S.C. 5312(b) as outlined in paragraph (a) of this section. However, TTB will not waive the payment of any tax on spirits removed from an experimental plant.

(c) *Applicability of special tax.* An experimental distilled spirits plant established under this section is subject to the registration requirement for special (occupational) tax prescribed under subpart H of this part.

(26 U.S.C. 5312)

§ 19.33 Application to establish experimental plants.

(a) *Application requirements.* Any person who wishes to establish an experimental plant for the purposes specified in § 19.32 must submit a written application to the appropriate TTB officer and obtain approval of the proposed experimental plant. The application must:

(1) State the nature, extent, and purpose of the operations to be conducted;

(2) Describe the operations and equipment;

(3) Describe the location of the plant (including the proximity to other premises or operations subject to the provisions of 26 U.S.C. Chapter 51); and

(4) Describe the security measures to be provided.

(b) *Bond.* The applicant must file a bond with the application in such form and penal sum as required by the appropriate TTB officer.

(c) *Approval of application.* Before approving the application, the appropriate TTB officer may require that the applicant submit additional information if necessary. TTB will not approve the application and permit operations until the plant conforms to the specifications stated in the application and the applicant complies with provisions of 26 U.S.C. Chapter 51 and with any provisions in this part that are not specifically waived.

(26 U.S.C. 5312)

§ 19.34 Experimental or research operations by scientific institutions and colleges of learning.

(a) *General.* The appropriate TTB officer may authorize any scientific university, college of learning, or institution of scientific research to produce, receive, blend, treat, test, and store spirits, without payment of tax, for experimental or research use but not for consumption (other than in organoleptic tests) or sale, in quantities as may be reasonably necessary for those purposes.

(b) *Waiver.* For purposes of this section, the appropriate TTB officer may waive any provision of 26 U.S.C. Chapter 51 (other than 26 U.S.C. 5312) or this part (other than this section and § 19.35) to the extent necessary to effect the purposes of 26 U.S.C. 5312(a). However, TTB will not waive the payment of any tax on distilled spirits removed from any university, college, or institution.

(c) *Applicability of special tax.* A person conducting experimental or research operations authorized under this section is subject to the registration requirement for special (occupational) tax prescribed under subpart H of this part.

(26 U.S.C. 5312)

§ 19.35 Application by scientific institutions and colleges of learning for experimental or research operations.

(a) *Application requirements.* A university, college, or institution that wants to conduct any of the experimental or research operations mentioned in § 19.34, must submit a written application to the appropriate TTB officer and obtain approval for the proposed operations. The application may be submitted on letterhead. The application must:

(1) State the nature, extent, and purpose of the operations to be conducted;

(2) Describe the operations and equipment;

(3) Describe the location where the operations will be conducted (including identification of the building or buildings, or the portions thereof to be used); and

(4) Describe the security measures to be provided.

(b) *Bond.* The applicant must file a bond with the application in such form and amount as required by the appropriate TTB officer.

(c) *Approval of application.* Before approving the application, the appropriate TTB officer may require that the applicant submit additional information. The applicant may not commence operations until authorized by the appropriate TTB officer.

(d) *Records and reports.* Any university, college, or institution authorized to conduct experimental or research operations must maintain records of the quantities of spirits produced, received, and used each day and must make these records available for inspection by TTB officers. Universities, colleges, or institutions authorized to conduct experimental or research operations are not required to submit reports of operations to TTB unless specifically required by the appropriate TTB officer.

(e) *Discontinuance of operations.* When operations authorized under this section are discontinued, the university, college, or institution must destroy all remaining spirits and notify the appropriate TTB officer that operations are discontinued.

(26 U.S.C. 5312)

§ 19.36 Spirits produced in industrial processes.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, any person who produces distilled spirits in an industrial process, including spirits produced as a byproduct in connection with chemical or other processes, is considered to be a distiller and therefore is required to qualify as a distilled spirits plant and is subject to the registration requirement for special (occupational) tax under the provisions of 26 U.S.C. Chapter 51 and this part.

(b) *Waiver.* TTB may waive application of any provision of 26 U.S.C. Chapter 51, or of this part, involving the production of nonpotable chemical mixtures containing spirits, including any provision relating to qualification (except the registration requirement for special [occupational] tax) if the mixture is produced:

(1) For transfer to the bonded premises of a distilled spirits plant for completion of distilling; or

(2) As a by-product which would require expensive and complex equipment for the recovery of spirits, and the mixture:

(i) Would be destroyed on the premises where produced; or

(ii) Would contain a minimum quantity of spirits, taking into account the procedure employed, would not be subjected to further operations solely for the purification or recovery of spirits, and would be found by TTB to be as nonpotable and as difficult to recover as completely denatured alcohol.

(26 U.S.C. 5201)

§ 19.37 Application for industrial processes waiver.

(a) *Application for waiver.* If the producer of a nonpotable chemical mixture containing spirits, as described in § 19.36, wishes to obtain a waiver from the provisions of 26 U.S.C. Chapter 51, or of this part, the producer must submit a written waiver application to the appropriate TTB officer. The application must include the following information, as applicable:

(1) The name and address of the producer;

(2) Chemical composition and source of the nonpotable mixture;

(3) Approximate percentages of chemicals and spirits in the mixture;

(4) Method of operation proposed;

(5) Bonded premises where the mixture will be distilled; and

(6) Any other pertinent information required by the appropriate TTB officer.

(b) *Approval of waiver.* The appropriate TTB officer may approve the waiver if it will not jeopardize the revenue and will not hinder supervision of the operations. Approval of the application may be subject to such terms and conditions, and to the furnishing of any bond, that the appropriate TTB officer determines is necessary.

(26 U.S.C. 5201)

§ 19.38 Approval of required documents.

Except as otherwise provided in this part, the appropriate TTB officer is authorized to approve all documents, bonds, and consents of surety required by this part.

(26 U.S.C. 5171, 5172, 5173, and 5551)

''Penalty of Perjury'' Declaration

§ 19.45 Execution under penalty of perjury.

(a) *Declaration.* When TTB requires under this part that a document be executed under penalty of perjury, the document must contain the following declaration:

I declare under the penalties of perjury that this [insert type of document, such as report, or claim], including supporting documents, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

(b) *Signing.* The declaration in paragraph (a) of this section must bear the signature and title of the proprietor or a duly authorized representative.

(26 U.S.C. 6065)

Subpart C—Restrictions on Production, Location, and Use of Plants

§ 19.51 Home production of distilled spirits prohibited.

A person may not produce distilled spirits at home for personal use. Except as otherwise provided by law, distilled spirits may only be produced by a distilled spirits plant registered with TTB under the provisions of 26 U.S.C. 5171. All distilled spirits produced in the United States are subject to the tax imposed by 26 U.S.C. 5001.

(26 U.S.C. 5001, 5601, and 5602)

Rules for Location and Use of a DSP

§ 19.52 Restrictions on location of plants.

A person who intends to establish a distilled spirits plant may not locate it in any of the following places:

(a) In any residence, shed, yard, or enclosure connected to a residence;

(b) On any vessel or boat;

(c) Where beer or wine is produced;

(d) Where liquors are sold at retail; or

(e) Where any other business is conducted except as provided in § 19.54.

(26 U.S.C. 5178)

§ 19.53 Continuity of plant premises.

As a general rule, the premises of a distilled spirits plant must be continuous except for separations by public waterways, roads, or carrier rights-of-way. However, the appropriate TTB officer may approve the registration of the plant where there are separations of the plant premises and all parts of the plant are in the same general location if:

(a) There is no jeopardy to revenue caused by the separation of premises; and

(b) The separation of premises does not create administrative problems for TTB.

(26 U.S.C. 5178)

§ 19.54 Use of distilled spirits plant premises.

(a) *General.* A person may not conduct any business or operation on the premises of a distilled spirits plant unless the business or operation is authorized by the notice of registration on file with TTB or authorized under § 19.55.

(b) *Bonded premises.* The proprietor must use the bonded premises of a distilled spirits plant exclusively for distilled spirits operations. The proprietor must store packaged spirits, cases of spirits, or portable containers of spirits in a room or building on bonded premises. TTB may approve another method of storage as an alternate method or procedure. However, the proprietor must apply for, and receive approval for another method of storage from the appropriate TTB officer in accordance with § 19.27 before using that method.

(c) *General premises.* General premises are any portion of the distilled spirits plant described in the notice of registration other than bonded premises. A person may not use the general premises of a distilled spirits plant for any operation required under the provisions of this part to be conducted on bonded premises.

(26 U.S.C. 5178)

§ 19.55 Other businesses.

(a) The appropriate TTB officer may authorize the conduct of a business other than that of a distiller, warehouseman, or processor on the premises of a distilled spirits plant if:

(1) The business is not prohibited by 26 U.S.C 5601(a)(6);

(2) The business will not jeopardize the revenue;

(3) The business will not hinder TTB's effective administration of this part; and

(4) The business will not be contrary to law.

(b) A person who wishes to conduct another business at a distilled spirits plant must apply for such authorization in accordance with §§ 19.73(b) or 19.120(b) and receive approval from the appropriate TTB officer before operating the other business. The approval will specify whether the other business may be conducted on the bonded premises or on the general premises.

(26 U.S.C. 5178)

§ 19.56 Bonded warehouses not on premises qualified for production of spirits.

(a) *Criteria for establishment.* As a general rule, if a person intends to establish a bonded warehouse, other than one established on the bonded premises of a distilled spirits plant qualified for the production of spirits or contiguous to such premises, the proposed warehouse must have a minimum capacity of 250,000 wine gallons of bulk spirits and the need for such a warehouse must be clearly shown. TTB may consider an application to establish a bonded warehouse with less capacity provided a need is clearly shown.

(b) *Application.* The applicant must submit a separate written request along with the application for registration explaining the need for the bonded warehouse. TTB may approve the application for registration if:

(1) The proposed location for the warehouse will not jeopardize the revenue; and

(2) The applicant provides evidence showing sufficient need for establishing such a warehouse.

(c) *Special conditions.* Based on the application and request, TTB may limit the type of operations that may be conducted at the bonded warehouse. The proprietor of a warehouse approved for a limited type of operation may not expand or change the operation to include any other type of operation without application to and approval of the appropriate TTB officer.

(26 U.S.C. 5171 and 5178)

Conveyance of Spirits or Wines on Plant Premises

§ 19.58 Taxpaid spirits or wines on bonded premises.

The proprietor may move tax paid or tax determined spirits or wines across bonded premises. However, tax paid or tax determined spirits or wines may not be stored or allowed to remain on the bonded premises. The proprietor must keep tax paid or tax determined spirits or wines separate from spirits or wines on which tax has not been paid or determined. Spirits returned to bonded premises under the provisions of 26 U.S.C. 5215 may remain on bonded premises.

(26 U.S.C. 5201 and 5612)

§ 19.59 Conveyance of untaxpaid spirits or wines within a distilled spirits plant.

(a) The proprietor may move untaxpaid spirits or wines:

(1) Between different portions of the bonded premises at the same distilled spirits plant or across any other premises of that plant;

(2) Over any public thoroughfare by uninterrupted transportation; or

(3) Over a private roadway by uninterrupted transportation. The owner or lessee of the private roadway must agree in writing to allow TTB officers access to the roadway to perform their duties.

(b) The conveyance of untaxpaid spirits or wines under paragraph (a) of this section is subject to the following conditions. The proprietor:

(1) May not store or allow the untaxpaid spirits or wines to remain on

any premises other than the bonded premises;

(2) Must keep the untaxpaid spirits or wines separate from spirits on which the tax has been paid or determined;

(3) Must submit to the appropriate TTB officer a description of the means, route of the conveyance, and the areas of the distilled spirits plant, public thoroughfare or roadways across which spirits or wines will be conveyed, and a copy of any agreement with the owner or lessee of a private roadway. The appropriate TTB officer must approve the proposed means and route of conveyance and any agreement; and

(4) Must provide a consent of surety on the operations or unit bond (TTB F 5000.18) extending the terms of the bond to cover the conveyance of the spirits or wines.

(26 U.S.C. 5201 and 5601)

§ 19.60 Spirits in customs custody.

A proprietor may move distilled spirits that are in customs custody across distilled spirits plant premises if the proprietor:

(a) Submits to the appropriate TTB officer a description of the means and route of the conveyance and the areas of the distilled spirits plant across which spirits will be conveyed and receives approval from the appropriate TTB officer for the method of movement;

(b) Does not store or allow the spirits to remain on the premises of the distilled spirits plant;

(c) Moves the spirits expeditiously, and keeps the spirits separate and apart from other spirits on the premises; and

(d) Provides a consent of surety on the operations or unit bond (TTB F 5000.18) extending the terms of the bond to cover the conveyance of the spirits.

(26 U.S.C. 5201)

Subpart D—Registration of a Distilled Spirits Plant and Obtaining a Permit

§ 19.71 Registration and permits in general.

Except as otherwise provided in this part, a person may only conduct operations as a distiller, warehouseman, or processor of distilled spirits on the bonded premises of a distilled spirits plant. In order to establish a distilled spirits plant, a person must register the plant with TTB and obtain an operating permit and/or a basic permit. This subpart covers the requirements for registering a plant and obtaining an operating permit under the IRC. Part 1 of this chapter covers the requirements for obtaining a basic permit under the Federal Alcohol Administration Act.

(26 U.S.C. 5171)

Requirements for Registering a Plant

§ 19.72 General requirements for registration.

(a) *Establishment.* A person who wishes to establish a distilled spirits plant must intend to conduct operations as a distiller, as a warehouseman, or both. A person cannot establish a distilled spirits plant solely for the processing of spirits.

(b) *Registration.* Before beginning operations as a distilled spirits plant, a person must submit an application for registration and receive approval from TTB. The following rules apply to an application for registration:

(1) The applicant must apply for registration on form TTB F 5110.41, Registration of Distilled Spirits Plant, and submit the application to the appropriate TTB officer;

(2) TTB will consider all written statements, affidavits, and other documents supporting the application as part of the application;

(3) If the appropriate TTB officer determines that the original application for registration cannot be approved because it contains incomplete or incorrect information, TTB may require that the applicant file an additional form TTB F 5110.41, or submit other documentation to complete or correct the original application; and

(4) The applicant must file any additional forms or submit any other documentation within 60 days of the appropriate TTB officer's request.

(26 U.S.C. 5171, 5172)

§ 19.73 Information required in application for registration.

(a) *General.* The application for registration on form TTB F 5110.41, Registration of Distilled Spirits Plant, must include the following information:

(1) The serial number;

(2) The name, principal business address, and location of the distilled spirits plant if different from the applicant's business address;

(3) The operations that will be conducted;

(4) The purpose for filing the application;

(5) A statement describing the type of business organization and the persons involved in the business in accordance with § 19.93. However, if any of this information is already on file with the appropriate TTB officer, the applicant may advise TTB that the information on file is part of the application for registration;

(6) A list of any operating permits, basic permits, operations bonds, withdrawal bonds, and/or unit bonds, including the amount of any bond(s) and the name of the surety on the bond;

(7) In the case of a corporation, a list of the offices and officers authorized by the articles of incorporation or the board of directors to sign or act on behalf of the corporation;

(8) A description of the plant in accordance with § 19.74;

(9) A list of major equipment in accordance with § 19.75;

(10) A statement of the maximum number of proof gallons that will be produced in the distillery during a period of 15 days, stored on the bonded premises, and in transit to the bonded premises. This statement is not required if the operations or unit bond is in the maximum amount;

(11) A statement that accounting records will be maintained in accordance with generally accepted accounting principles;

(12) A statement of plant security measures in accordance with § 19.76;

(13) The following information if the applicant intends to operate as a distiller:

(i) Total proof gallons of spirits that can be produced daily;

(ii) A statement of production procedures in accordance with § 19.77; and

(iii) A statement as to whether spirits will be redistilled;

(14) The following information if the applicant intends to operate as a warehouseman:

(i) A description of the storage system; and

(ii) Total amount of bulk wine gallons that can be stored; and

(15) The following information if the applicant intends to operate as a processor:

(i) A statement whether spirits will or will not be bottled, denatured, redistilled, and whether articles will be manufactured; and

(ii) A description of the storage system for spirits bottled and cased or otherwise packaged and placed in approved containers for removal from bonded premises.

(b) *Other business.* If the applicant intends to conduct any other business on the distilled spirits plant premises as authorized under § 19.55, the following information must be submitted with the application:

(1) A description of the business;

(2) A list of buildings and equipment that will be used; and

(3) A statement of the relationship of the business to the distilled spirits operations at the plant.

(c) *Additional information.* The applicant must furnish any additional information needed by TTB to determine if the application for registration should be approved.

(26 U.S.C. 5171, 5172, 6001)

§ 19.74 Description of the plant.

As required by § 19.73(a)(8), the application for registration must include a description of the distilled spirits plant. This information must:

(a) Describe each tract of land covering the distilled spirits plant;

(b) Clearly distinguish between the bonded premises and any general premises;

(c) Provide directions and distances in enough detail to enable the appropriate TTB officer to readily determine the boundaries of the plant;

(d) Describe each building and outside tank that will be used for production, storage, and processing of spirits and for denaturing spirits, articles, or wines. The description must include the location, size, construction, and arrangement with reference to each by a designated number or letter; and

(e) Specify when only a room or floor of a building will be used for plant operations and provide the location and description of the building, floor, and room.

(26 U.S.C. 5172)

§ 19.75 Major equipment.

As required by § 19.73(a)(9), the application for registration must include a list of the major plant equipment. If the equipment is set up and used for the production, storage, or processing of distilled spirits, wine, denatured spirits, or articles, the list must provide the following information:

(a) The serial number and capacity of each tank in the plant. The list does not need to include any bulk containers having a capacity of less than 101 wine gallons on the plant premises if those containers do not meet the criteria of a tank under § 19.182 (perks, small totes, etc.);

(b) The serial number, kind, capacity, and intended use of each still in the plant. The capacity is the estimated maximum proof gallons of spirits capable of being produced every 24 hours, or for column stills a statement of the diameter of the base and number of plates; and

(c) The serial number of each condenser.

(26 U.S.C. 5172, 5179)

§ 19.76 Statement of plant security.

As required by § 19.73(a)(12), the application for registration must include a statement of plant security. This statement must include the following information:

(a) A general description of plant security, including methods used to secure buildings or plant operations located within a portion of a building and outdoor tanks;

(b) A statement regarding the use of guard personnel;

(c) A statement regarding the use of any electronic or mechanical alarm system;

(d) A statement certifying that locks used will meet the requirements of § 19.192(f); and

(e) A list of persons, by their position and title, who have the responsibility for the custody and access to keys for the locks.

(26 U.S.C. 5171, 5172)

§ 19.77 Statement of production procedure.

(a) As required by § 19.73(a)(13)(ii), the application for registration must include a statement of the step-by-step production procedure used to produce spirits from an original source. The statement must begin with the treating, mashing, or fermenting of the raw materials or substances and continue through each step of the distilling, purifying, and refining procedure to the production gauge. The statement must include the kind and approximate quantity of each material or substance used in producing, purifying, or refining each type of spirits that will be produced.

(b) If the applicant intends to redistill spirits in the production account, the applicant must submit and receive approval for such redistillation on form TTB F 5110.38, Formula for Distilled Spirits under the Federal Alcohol Administration Act.

(26 U.S.C. 5172, 5201, 5222, 5223, 5555)

§ 19.78 Power of attorney.

An applicant or proprietor of a distilled spirits plant must execute and submit to the appropriate TTB officer form TTB F 1534 (5000.8), Power of Attorney, for each person authorized to sign or to act on behalf of the applicant or proprietor unless the authority has been granted in the application for registration.

(26 U.S.C. 5172)

§ 19.79 Registry of stills.

Section 29.55 of this chapter requires that every person having possession, custody, or control of a still or distilling apparatus must register the still or distilling apparatus. When a person lists a still or distilling apparatus with the application for registration as required by § 19.75(b) and receives approval of the registration, that person has fulfilled the requirement to register the still or distilling apparatus. See § 29.55 of this chapter for additional provisions regarding stills and distilling apparatus.

(26 U.S.C. 5172, 5179)

§ 19.80 Approved notice of registration.

A person may not operate a distilled spirits plant unless a valid notice of registration has been approved by TTB authorizing the businesses and operations to be conducted at such plant. When approved by the appropriate TTB officer, the application for registration constitutes the notice of registration of the distilled spirits plant. A distilled spirits plant will not be registered or reregistered under this subpart until the applicant has complied with all requirements of law and regulations relating to the qualification of the business or operations in which the applicant intends to engage. In any instance where a person is required to have a bond or permit and the bond or permit becomes invalid, then the notice of registration also becomes invalid. Another application for registration must be filed and a new notice of registration approved by TTB before the business or operation at such plant may be resumed. Reregistration of a plant is not required when a new bond or a strengthening bond is filed in accordance with §§ 19.167 or 19.168.

(26 U.S.C. 5171, 5172)

§ 19.81 Maintenance of registration file.

The proprietor must maintain the registration documents on the plant premises in a loose-leaf file that is current, complete, and readily available for inspection by the appropriate TTB officer.

(26 U.S.C. 5172)

Requirements for an Operating Permit Under the IRC

§ 19.91 Operating permit.

(a) Except as provided in paragraph (b) of this section, a person must obtain an operating permit under the IRC in order to:

(1) Distill for industrial use;

(2) Warehouse spirits for industrial use;

(3) Denature spirits;

(4) Warehouse spirits (without bottling) for non-industrial use;

(5) Bottle or package spirits for industrial use;

(6) Manufacture articles; or

(7) Engage in any other distilling, warehousing, or processing operation not required to be covered by a basic permit under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203, 204).

(b) *Exception.* The requirement to obtain an operating permit does not apply to an agency of a State, or

political subdivision of a State, or an officer or employee of, and acting for, such an agency.

(26 U.S.C. 5171, 5271)

§ 19.92 Information required in application for operating permit.

(a) In order to obtain an operating permit, a person must complete an application on form TTB F 5110.25, Application for Operating Permit Under 26 U.S.C. 5171(d). TTB will consider all written statements, affidavits and other documents submitted in support of the application as part of the application.

(b) The application on form TTB F 5110.25 must include the following information:

(1) The name and principal address of the business;

(2) The address of the plant if different from the business address;

(3) A description of the operation(s) to be conducted;

(4) A statement of the business organization and the persons involved in the business as required under § 19.93; and

(5) A list of trade names as required under § 19.94.

(c) A TTB officer may request that any person listed under § 19.93(a)(1)(ii), § 19.93(a)(3)(iii), § 19.93(b)(1) and § 19.93(b)(2) submit to TTB a statement as to whether that person has ever:

(1) Been convicted of a felony or misdemeanor under Federal or State law, other than a misdemeanor conviction for a traffic violation;

(2) Been arrested or charged with any violation of State or Federal law, other than an arrest or charge for a misdemeanor traffic violation; or

(3) Applied for, held, or been connected with a permit issued under Federal law to manufacture, distribute, sell or use spirits or products containing spirits, or held any financial interest in any business covered by any such permit, and if so, give the permit number, classification, period of operation and details regarding any denial, suspension, revocation or other termination.

(d) If any of the information required in paragraphs (b)(4) or (c)(3) of this section is on file with the appropriate TTB officer, the applicant may, by incorporation by reference, state that the information is made a part of the application for an operating permit.

(e) The applicant must provide any additional information that the appropriate TTB officer may request in order to determine whether the application should be approved.

(26 U.S.C. 5171, 5271)

§ 19.93 Applicant organization documents.

(a) *Supporting information.* Sections 19.73(a)(5) and 19.92(a)(4) require that the application for registration and the application for an operating permit include information about the business organization of the applicant. The applicant must provide the following information as applicable:

(1) If the applicant is a corporation—

(i) The corporate charter or other documentation that provides proof of corporate existence or incorporation;

(ii) Names and addresses of directors and officers;

(iii) Certified minutes, or extracts of board of directors meetings, that authorize specific individuals to sign for the corporation; and

(iv) A statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, and the voting rights of the respective owners or holders.

(2) If the applicant is a partnership, a copy of the articles of partnership or association, or certificate of partnership or association if required to be filed by any State, county, or municipality.

(3) If the applicant is a limited liability company or limited liability partnership—

(i) A copy of the articles of organization;

(ii) A copy of the operating agreement; and

(iii) The names and addresses of all members and managers.

(b) *Statement of interest.*

(1) *Sole proprietorships and general partnerships.* In the case of an individual owner or a general partnership, the applicant must provide the name and address of each person having an interest in the business and a statement indicating whether the interest appears in the name of the interested person or in the name of another person.

(2) *Limited liability entities.* In the case of a corporation, limited liability partnership, limited liability company, or other legal entity in which some or all of the owners have limited personal liability for the activities of the entity, the applicant must provide the following information about persons having an interest in the business:

(i) The names and addresses of the 10 persons that have the largest ownership or other interest in each of the classes of ownership of the applicant and the nature and amount of ownership or other interest of each person.

(ii) The name of the person in whose name the interest appears. If the corporation is wholly owned or controlled by another corporation, the appropriate TTB officer may request the same information regarding ownership for the parent corporation.

(26 U.S.C. 5172, 5271)

§ 19.94 Trade names.

(a) *Operating permits.* The applicant must include a list of any trade names used in the operation of the plant with form TTB F 5110.25, Application for Operating Permit Under 26 U.S.C. 5171(d). The applicant must show the operations for which the trade name will be used and identify the offices where the trade name is registered. The applicant must also submit copies of any certificate or other document filed or issued for each trade name.

(b) *Basic permits.* If the applicant is required to have a basic permit under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203, 204) for distilling, warehousing, or processing operations, then the applicant must follow the regulations under that Act for the approval and use of trade names.

(26 U.S.C. 5271)

§ 19.95 Issuance of operating permits.

TTB will issue only one operating permit for a distilled spirits plant. The permit will designate the operations that are authorized at the plant. The proprietor must post the permit at the distilled spirits plant and have it available for inspection by appropriate TTB officers.

(26 U.S.C. 5171, 5271)

§ 19.96 Denial of permit.

TTB will conduct proceedings for the denial of an application for an operating permit in accordance with the procedures set forth in part 71 of this chapter if the appropriate TTB officer has reason to believe that:

(a) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder, and, in the case of a partnership, a partner) is, by reason of business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. Chapter 51, or the regulations issued thereunder;

(b) The applicant failed to disclose any material information required, or has made a false statement as to any material fact in connection with the application; or

(c) The premises where the applicant proposes to conduct the operations are not adequate to protect the revenue.

(26 U.S.C. 5271)

§ 19.97 Correction of permit.

If requested by the appropriate TTB officer, a proprietor must immediately return for correction any operating

permit that contains an error.

(26 U.S.C. 5271)

§ 19.98 Duration of permit.

The proprietor may conduct the operations authorized by the operating permit on a continuing basis unless:

(a) The proprietor voluntarily surrenders the permit;

(b) TTB suspends or revokes the permit pursuant to § 19.99; or

(c) The permit is automatically terminated under its own terms or in accordance with § 19.127.

(26 U.S.C. 5271)

§ 19.99 Suspension or revocation of permit.

TTB will conduct proceedings for the revocation or suspension of an operating permit in accordance with the procedures set forth in part 71 of this chapter if the appropriate TTB officer has a reason to believe that the proprietor or any person associated with the operating permit:

(a) Has not complied in good faith with the provisions of 26 U.S.C. Chapter 51, or the regulations issued thereunder;

(b) Has violated the conditions of the permit;

(c) Has made a false statement as to any material fact in the application for the permit;

(d) Has failed to disclose any required material information;

(e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor;

(f) Has been convicted either of any offense under Title 26, U.S.C., punishable as a felony, or of any conspiracy to commit such an offense; or

(g) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years.

(26 U.S.C. 5271)

Subpart E—Changes to Registrations and Permits

§ 19.111 Scope.

This subpart explains the requirements for amending a distilled spirits plant registration and, if applicable, an operating permit. For information regarding amendments to a basic permit issued under the Federal Alcohol Administration Act, see part 1 of this chapter.

(26 U.S.C. 5171)

Rules for Amending a Registration

§ 19.112 General rules for amending a registration.

If there is a change in any of the information in the proprietor's current, approved notice of registration, the proprietor must amend the registration within 30 days of the change unless another time period is specified in this subpart. To amend a registration the proprietor must submit in writing to the appropriate TTB officer any information necessary to make the registration file current and accurate.

(a) *TTB F 5110.41.* Except when a letterhead application or letterhead notice procedure is allowed under this subpart, the proprietor must submit an amended form TTB F 5110.41, Registration of Distilled Spirits Plant, for changes that affect the registration. If the changes affect only parts or pages of the registration the proprietor only needs to submit the necessary pages or information that will make the registration file current.

(b) *Letterhead Applications.* For certain changes specified in this subpart the proprietor may submit a letterhead application for a change instead of an amended form TTB F 5110.41. The letterhead application must identify the distilled spirits plant to which the change applies and clearly identify the change. Any change is subject to TTB approval. The appropriate TTB officer may, at any time, require that the proprietor submit an amended application on form TTB F 5110.41 if administrative difficulties occur as a result of the letterhead application.

(c) *Letterhead Notices.* For certain changes specified in this subpart only a letterhead notice is required. The letterhead notice must identify the distilled spirits plant to which the change applies and clearly identify the change. A letterhead notice does not require approval by TTB. The appropriate TTB officer may, at any time, require that the proprietor submit an amended application on form TTB F 5110.41 if administrative difficulties occur as a result of the letterhead notice.

(26 U.S.C. 5171, 5172)

§ 19.113 Change in name of proprietor.

If the name of the of the proprietor changes, the proprietor may not conduct operations under the new name before TTB approves the amended registration. The proprietor must file either an amended form TTB F 5110.41, Registration of Distilled Spirits Plant, or a letterhead application to reflect the change. However, the proprietor does not have to file a new bond or consent of surety.

(26 U.S.C. 5172, 5271)

§ 19.114 Changes in stockholders or persons with interest.

The proprietor must notify TTB of any changes in the list of stockholders or persons with interest that was filed with TTB as required by § 19.93. If the change results in a change of control, the proprietor must file form TTB F 5110.41, Registration of Distilled Spirits Plant, within 30 days of the change. If the change does not cause a change of control the proprietor:

(a) May file a letterhead notice to amend the registration;

(b) May file the amended notice on May 1 of each year rather than within 30 days of the change, or on any other date that the appropriate TTB Officer may approve; and

(c) Must incorporate all changes submitted by letterhead notice in the next form TTB F 5110.41 filed.

(26 U.S.C. 5172, 5271)

§ 19.115 Change in officers, directors, members or managers.

(a) *General.* If there is a change in the list of officers, directors, members or managers that the proprietor filed as required by § 19.93 the following rules apply:

(1) The proprietor must file an amended form TTB F 5110.41, Registration of Distilled Spirits Plant, or a letterhead notice to reflect the change;

(2) The proprietor must provide the name and address of each new officer, director, member or manager; and

(3) The proprietor must incorporate all changes submitted by letterhead notice in the next form TTB F 5110.41 filed.

(b) *Waiver.* The appropriate TTB officer may waive the requirement to amend the registration if the change only relates to corporate officers listed on the original or current registration who are no longer connected with the operations covered by the registration.

(26 U.S.C. 5171, 5172)

§ 19.116 Change in proprietorship.

(a) *General.* If there is a change in proprietorship at a distilled spirits plant, the following requirements apply to the outgoing proprietor and to the incoming (successor) proprietor.

(1) *Outgoing proprietor.* An outgoing proprietor must comply with the requirements of § 19.147. An outgoing proprietor may transfer spirits to its successor in accordance with § 19.141.

(2) *Incoming proprietor.* A successor to the proprietorship of a plant that holds a registration:

(i) Must file form TTB F 5110.41, Registration of Distilled Spirits Plant, and receive from TTB an approved notice of registration of the plant;

(ii) Must file the required bonds; and

(iii) May adopt the approved formulas of its predecessor in accordance with § 5.28 and § 20.63 of this chapter.

(b) *Fiduciary.* If the successor to the proprietorship of a plant is an administrator, executor, receiver, trustee, assignee or other fiduciary, the successor must comply with the provisions of paragraph (a)(2) of this section. The following rules also apply in this case:

(1) The fiduciary may furnish a consent of surety to extend the terms of the predecessor's bond instead of filing a new bond;

(2) The fiduciary may incorporate by reference in the application for registration on form TTB F 5110.41 any information contained in the predecessor's application for registration that is still current;

(3) The successor must furnish a certified copy of the order of the court or other pertinent document showing the successor's qualification as fiduciary; and

(4) The effective date of the qualifying documents that the fiduciary files will be the date of the court order, the date specified in the order whereby the fiduciary assumes control, or if there is no court order, the date that the fiduciary assumed control.

(26 U.S.C. 5172)

§ 19.117 Partnerships.

(a) If there is a death or insolvency of a partner in the business registered under this part, the surviving partner or partners may continue to operate under the notice of registration if:

(1) The partnership is not terminated under the laws of the particular state but continues until the winding up of the partnership affairs is complete;

(2) The surviving partner or partners have exclusive right to the control and possession of the partnership assets for purposes of liquidation and settlement; and

(3) A consent of surety is filed where the surety and the surviving partner or partners agree to remain liable on the operations or unit bond.

(b) If the surviving partner or partners acquire the business upon settlement of the partnership, the surviving partner or partners must file as an incoming proprietor and receive an approved notice of registration of the plant in accordance with § 19.116(a).

(26 U.S.C. 5172)

§ 19.118 Change in location.

If the location of the plant changes, the proprietor must:

(a) File form TTB F 5110.41, Registration of Distilled Spirits Plant, to amend the registration;

(b) File a new bond or a consent of surety on form TTB F 5000.18; and

(c) Not begin operations at the new location prior to approval of the amended registration.

(26 U.S.C. 5172, 5271, 5173)

§ 19.119 Change in premises.

If the proprietor intends to extend or curtail any part of the plant premises, except under alternate operations that are covered by § 19.142 and § 19.143, the proprietor must file form TTB F 5110.41, Registration of Distilled Spirits Plant, to amend the registration. The proprietor must not extend or curtail any premises or equipment before the amended registration is approved.

(26 U.S.C. 5172)

§ 19.120 Change in operations.

(a) If the proprietor wishes to conduct additional operations involving spirits, other than those approved on the current registration, the proprietor must:

(1) File form TTB F 5110.41, Registration of Distilled Spirits Plant, to amend the registration; and

(2) Not engage in the additional operations prior to approval of the amended registration.

(b) If the proprietor wishes to engage in another business that is authorized under § 19.55 the proprietor must:

(1) File form TTB 5110.41 to amend the registration;

(2) Include the information required under § 19.73(b); and

(3) Not engage in the other business until approval of the amended registration is received.

(26 U.S.C. 5171, 5172, 5271)

§ 19.121 Change in production procedure.

If the proprietor plans to produce a new product or make a change to the production procedure that will affect the designation of the product or substantially affect the character of the product, the proprietor must:

(a) File form TTB F 5110.41, Registration of Distilled Spirits Plant, to amend the registration;

(b) Provide a new statement of production procedure as described in § 19.77; and

(c) Receive approval of the amended registration before implementing the change in the production procedure.

(26 U.S.C. 5172)

§ 19.122 Change in construction or use of buildings and equipment.

(a) The proprietor must submit a letterhead notice before making any material change in the construction or use of buildings or equipment at the plant other than changes covered by § 19.119, § 19.142 and § 19.143. The proprietor must:

(1) Describe the proposed change in detail;

(2) Keep a copy of the letterhead notice on file with the current notice of registration; and

(3) Incorporate the change in the next amendment to the registration submitted on form TTB F 5110.41, Registration of Distilled Spirits Plant, unless the appropriate TTB officer requires immediate submission of an amended form TTB F 5110.41.

(b) The proprietor may make emergency changes in construction or use of buildings and equipment without prior letterhead notice. However, the proprietor must promptly report any emergency change to the appropriate TTB officer.

(26 U.S.C. 5172)

§ 19.123 Statement of plant security.

If the proprietor makes changes to the personnel listed, or procedures contained in, the statement of plant security filed under § 19.76, the proprietor must:

(a) File a form TTB F 5110.41, Registration of Distilled Spirits Plant, or a letterhead application to amend the registration, in the case of any change in the description of plant security, employment of guard personnel, use of electronic or mechanical alarm system, or certification of required locks required under § 19.76 (a) through (d);

(b) File a letterhead notice for any change in personnel who have custody and access to keys for the required locks as provided under § 19.76(e); and

(c) Incorporate any changes filed by letterhead notice in the next amendment to the registration on form TTB F 5110.41 submitted, unless the appropriate TTB officer requires an immediate submission of form TTB F 5110.41.

(26 U.S.C. 5171, 5172)

Rules for Amending an Operating Permit

§ 19.126 General rules for amending an operating permit.

(a) *When and how to amend.* If there is a change in any of the information that the proprietor provided as part of the current approved application for an operating permit, the proprietor must amend the operating permit by submitting written documentation in accordance with this section to the appropriate TTB officer in writing within 30 days of the change unless another time period is specified in this subpart.

(1) *TTB F 5110.25.* Except when a letterhead application or letterhead notice procedure is allowed under this

subpart, the proprietor must amend the operating permit by submitting an amended form TTB F 5110.25, Application for Operating Permit Under 5171(d). If the changes only affect parts or pages of the application for an operating permit the proprietor only needs to submit the necessary pages or information that will make the permit file current.

(2) *Letterhead applications.* For certain changes specified in this subpart, the proprietor may submit a letterhead application instead of an amended form TTB F 5110.25. The letterhead application must identify the distilled spirits plant for which the application applies. The letterhead application change is subject to TTB approval. The appropriate TTB officer may, at any time, require that the proprietor submit an amended application on form TTB F 5110.25 if administrative difficulties occur as a result of the letterhead application.

(3) *Letterhead notices.* For certain changes noted in this subpart only a letterhead notice is required. A letterhead notice does not require approval by TTB. The appropriate TTB officer may, at any time, require that the proprietor submit amended application on form TTB F 5110.25 if administrative difficulties occur as a result of the letterhead notice.

(b) *FAA permits.* If there are changes that affect a basic permit issued under the Federal Alcohol Administration Act, the proprietor must amend the basic permit in accordance with the procedures set forth in part 1 of this chapter.

(26 U.S.C. 5171, 5172)

§ 19.127 Automatic termination of permits.

(a) *Operating Permits.* An operating permit is not transferable. The proprietor's operating permit will automatically terminate in the following circumstances:

(1) If the operations that are authorized by the permit are leased, sold or transferred;

(2) If the company is dissolved on a certain date by an event specified in the laws of the State where the company operates; or

(3) In the case of a corporation, if actual or legal control of the corporation changes, directly or indirectly, whether by reason of change in stock ownership or control, by operation of law, or in any other manner, the permit will terminate 30 days after the change in control. However, if an application for a new permit covering the operations is made within this 30 day period, then the operating permit may remain in effect until TTB takes final action upon the new application. TTB's final action on the new application will automatically terminate the outstanding permit.

(b) *Basic Permits.* For provisions related to the automatic termination of an FAA Act basic permit, see part 1 of this chapter.

(26 U.S.C. 5271)

§ 19.128 Change in name of proprietor.

If the name of the proprietor changes, the proprietor must file a letterhead application to amend the operating permit. The proprietor may not conduct operations under the new name before TTB approves the amended operating permit. However, the proprietor does not have to file a new bond or consent of surety.

(26 U.S.C. 5172, 5271)

§ 19.129 Change in trade name.

If the proprietor intends to change or add a trade name that will be used in the operation of the plant, the proprietor must file a letterhead application to amend the operating permit. The proprietor may not conduct operations under the new trade name before TTB approves the amended operating permit. However, the proprietor will not be required to file a new bond or consent of surety.

(26 U.S.C. 5271)

§ 19.130 Changes in stockholders or persons with interest.

The proprietor must notify TTB of any changes in the list of stockholders or persons with interest that was filed with TTB as required by § 19.93(b). If the change results in a change of control, the proprietor must file form TTB F 5110.25, Application for Operating Permit Under 5171(d), within 30 days of the change. If the change does not cause a change in control the proprietor:

(a) May file a letterhead notice to amend the operating permit;

(b) May file the amended notice the May 1st following the change in control year rather than within 30 days of the change, or on any other date that the appropriate TTB Officer may approve; and

(c) Must incorporate all changes submitted by letterhead notice in the next form TTB F 5110.25 filed.

(26 U.S.C. 5172, 5271)

§ 19.131 Changes in officers, directors, members or managers.

(a) *General.* If there is a change in the list of officers, directors, members or managers that the proprietor filed as required by § 19.93, the proprietor must:

(1) File form TTB F 5110.25 Application for Operating Permit Under 5171(d) or a letterhead notice to amend the operating permit;

(2) Provide the name and address for each new officer, director, member or manager; and

(3) Incorporate all changes submitted by letterhead notice in the next TTB F 5110.25 filed.

(b) *Waiver.* The appropriate TTB officer may waive the requirement to amend the operating permit if the changes relate to corporate officers listed on the original or current permit who are no longer connected with the operations covered by the permit.

(26 U.S.C. 5172, 26 U.S.C. 5171)

§ 19.132 Change in proprietorship.

(a) *General.* If there is a change in proprietorship at a distilled spirits plant that holds an operating permit, the following requirements apply to the outgoing proprietor and to the incoming (successor) proprietor.

(1) *Outgoing proprietor.* An outgoing proprietor must comply with the requirements of § 19.147. An outgoing proprietor may transfer spirits to its successor an accordance with § 19.141.

(2) *Successor proprietor.* A successor to the proprietorship of a plant that holds an operating permit:

(i) Must file form TTB 5110.25 Application for Operating Permit Under 5171(d) and obtain an operating permit;

(ii) Must file the required bonds; and

(iii) May adopt the approved formulas of its predecessor in accordance with § 5.28 and § 20.63 of this chapter.

(b) *Fiduciary.* If the successor to the proprietorship of a plant is an administrator, executor, receiver, trustee, assignee or other fiduciary, the successor must comply with the provisions of paragraph (a)(2) of this section. The following rules also apply in this case:

(1) The fiduciary may furnish a consent of surety to extend the terms of the predecessor's bond instead of filing a new bond;

(2) The fiduciary may incorporate by reference in the Application for Operating Permit Under 5171(d) on form TTB F 5110.25 any information contained in the predecessor's application that is still current;

(3) The successor must furnish a certified copy of the order of the court or other pertinent document showing the successor's qualification as fiduciary; and

(4) The effective date of the qualifying documents that the fiduciary files will be the date of the court order, the date specified in the order whereby the fiduciary assumes control, or if there is no court order, the date that the fiduciary assumed control.

(26 U.S.C. 5172)

§ 19.133 Partnerships.

(a) If there is a death or insolvency of a partner in a company that holds an operating permit under this part, the surviving partner or partners may continue to operate under the operating permit if:

(1) The partnership is not terminated under the laws of the particular state but continues until the winding up of the partnership affairs is complete;

(2) The surviving partner or partners have exclusive right to the control and possession of the partnership assets for purposes of liquidation and settlement; and

(3) A consent of surety is filed where the surety and the surviving partner or partners agree to remain liable on the operations or unit bond.

(b) If the surviving partner or partners acquire the business upon settlement of the partnership, the surviving partner or partners must file as an incoming proprietor and receive approval of the operating permit as required under § 19.132(a)(2).

(26 U.S.C. 5172)

§ 19.134 Change in location.

If the location of the plant changes, the proprietor must:

(a) File form TTB F 5110.25, Application for Operating Permit Under 5171(d), to amend the operating permit;

(b) File a new bond or a consent of surety on form TTB F 5000.18; and

(c) Not begin operations at the new location prior to approval of the amended operating permit.

(26 U.S.C. 5172, 5271, 5173)

§ 19.135 Change in operations.

If the proprietor wishes to conduct additional operations involving spirits, other than those already approved on the current operating permit, the proprietor must:

(a) File form TTB F 5110.25 Application for Operating Permit Under 5171(d) to amend the permit; and

(b) Not engage in the additional operation prior to approval of the amended permit.

(26 U.S.C. 5171, 5172, 5271)

Alternation of Plant Proprietors

§ 19.141 Procedures for alternation of proprietors.

(a) *General.* A proprietor may alternate use of a distilled spirits plant or part of the plant with one or more other proprietors. In order to do so, each proprietor must separately file and receive approval of the necessary registration, applications and bonds that are required by subparts D and E of this part. Each proprietor must also conduct operations and keep records in accordance with the regulations in this part. Where operations by alternating proprietors will be limited to parts of the plant, each proprietor must include the following in the notice of registration:

(1) A description of the areas, rooms or buildings, or combination of rooms or buildings that will alternate between proprietors;

(2) The method that the proprietor will use to separate the alternated premises from any premises that will not be alternated; and

(3) Diagrams of the parts of the plant that will be alternated.

(b) *Letterhead notice.* After a proprietor receives approval to alternate use of the premises with another proprietor, the alternating proprietors must separately file letterhead notices each time they intend to alternate use of the premises. The proprietors may file a single notice if the notice is signed by each proprietor or an authorized representative of each proprietor. The proprietors must submit the letterhead notice to the appropriate TTB officer prior to the first day that alternation is to take place. Proprietors must include the following with the notice:

(1) The plant number and the name of the proprietor filing the notice;

(2) Identification of the outgoing proprietor and incoming proprietor (by name and plant number);

(3) The effective date and hour of the alternation;

(4) Identification of any applicable diagrams provided with the registration of each proprietor filed under paragraph (a) of this section, showing the portions of the premises involved in the alternation;

(5) The purpose of the alternation;

(6) If distilling materials, unfinished or finished spirits, denatured spirits, or wine will be transferred to the incoming proprietor, a statement to that effect; and

(7) If denatured spirits or articles will be retained in the processing account in locked tanks during the period of alternate proprietorship, a statement to that effect.

(c) *Alternation of production operations.* In the case of an outgoing proprietor who intends to alternate production operations with another proprietor, the outgoing proprietor must:

(1) Completely process all distilling materials and unfinished spirits in any bonded areas, rooms, or buildings that will alternate unless the outgoing proprietor transfers them to the incoming proprietor; and

(2) Mark and remove all finished spirits in the name in which they were produced before a production gauge is made by the incoming proprietor.

(d) *Alternation of storage operations.* In the case of an outgoing proprietor who intends to alternate storage operations with another proprietor, the outgoing proprietor must:

(1) Transfer in bond any spirits or wines in any bonded areas, rooms, or buildings that will be alternated; and

(2) Execute a form TTB F 5000.18, Change of Bond (Consent of Surety), to continue in effect the operations or unit bond whenever operations of the areas, rooms, or buildings will be resumed by the outgoing proprietor following suspension of operations by the other proprietor.

(e) *Alternation of processing operations.* In the case of an outgoing proprietor who intends to alternate processing operations with another proprietor, the outgoing proprietor:

(1) Before the effective date and time of the alternation, must process to completion and remove from the affected area all spirits, denatured spirits, wines or articles located in any rooms, areas, or buildings that will alternate, or must transfer these spirits, wines and articles in bond to the incoming proprietor;

(2) Must execute a form TTB F 5000.18, Change of Bond (Consent of Surety), to continue in effect the operations or unit bond whenever operations of the areas, rooms, or buildings will be resumed by the outgoing proprietor following suspension of operations by the other proprietor; and

(3) May retain denatured spirits and articles in tanks locked with approved locks if the outgoing proprietor maintains custody and control of the locks and keys for the tanks. In this case, the outgoing proprietor must obtain a consent of surety on form TTB F 5000.18 to continue liability on the operations or unit bond for the tax on the denatured spirits or articles that retained in the locked tanks.

(f) *Records.* Each alternating proprietor must maintain its own records and submit its own reports. Records kept by an outgoing proprietor for spirits, wines, and alcoholic flavoring materials may be used by the incoming proprietor. All transfers of distilling materials, unfinished spirits, spirits, denatured spirits, and wines must be reflected in the records of each proprietor.

(26 U.S.C. 5172, 5271)

Conduct of Alternate Operations at a Plant

§ 19.142 Alternate use of premises and equipment for customs purposes.

(a) *General.* The proprietor may extend or curtail the distilled spirits plant premises or a part of those premises for temporary use by Customs and Border Protection officers for customs purposes. If the proprietor wishes to alternate the use of the premises for customs purposes, that use must be approved by the port director of customs and must be conducted in accordance with applicable customs laws and regulations.

(b) *Qualification.* Before alternating the plant premises for customs purposes, the proprietor must file and receive approval of the necessary registration, application and bonds as required by this part. The proprietor's application for registration must include the following:

(1) A description of the areas, rooms or buildings, or combination of rooms or buildings that will be alternated;

(2) A diagram of the parts of the plant that the proprietor will use for the alternation; and

(3) The method that that the proprietor will use to separate the alternated premises from any premises not subject to alternation.

(c) *Letterhead notice.* After the proprietor receives approval to alternate premises for customs purposes, the proprietor must file a letterhead notice with the appropriate TTB officer each time the premises will be alternated. The notice must include the following information:

(1) The name and plant number of the proprietor filing the notice;

(2) The date and hour the alternation will take place;

(3) Identification of any applicable diagrams provided with the registration filed under paragraph (b) of this section, showing the portions of the premises involved in the alternation;

(4) The purpose of the alternation;

(5) If the alternation is for gauging or processing distilled spirits, a statement to that effect; and

(6) An indication of the class of temporary customs warehouse, if applicable.

(d) *Proprietor responsibilities.* Prior to the start of alternation for customs purposes, the proprietor must remove all spirits from the premises or equipment that will be involved in the alternation. However, upon release by customs, spirits in the process of being transferred to bonded premises under 26 U.S.C. 5232, may remain on the premises.

(e) *Exceptions.* The qualification requirements in paragraph (b) of this section and the notice requirements in paragraph (c) of this section will not apply where the proprietor solely intends to gauge bulk distilled spirits for transfer from customs custody to TTB bond.

(f) *Conveyance of spirits in customs custody.* If the proprietor intends to convey spirits in customs custody across the distilled spirits plant premises the proprietor must comply with § 19.60.

(26 U.S.C. 5172, 5178)

§ 19.143 Alternation for other purposes.

(a) *General.* The proprietor may temporarily extend or curtail the distilled spirits plant premises to allow for several other types of alternate uses. Premises may be alternately curtailed or extended to allow bonded premises to be used temporarily as general premises, or to allow general premises to be used as bonded premises. A curtailment or extension of distilled spirits plant premises may also allow for the use of the premises as:

(1) An adjacent bonded wine cellar;

(2) An adjacent taxpaid wine bottling house;

(3) An adjacent brewery; or

(4) Facilities for the manufacturer of eligible flavors.

(b) *Qualifying documents.* Before alternating the premises for a purpose listed in paragraph (a) of this section, the proprietor must file and receive approval of the necessary registration, application forms and attachments that relate to the proposed alternate use. Depending on the type of alternation involved, the proprietor must file one or more of the following qualification documents:

(1) *Registration.* For all alternate uses of the distilled spirits plant described in paragraph (a) of this section the proprietor must file a form TTB F 5110.41, Registration of a Distilled Spirits Plant, to cover the proposed alternation of premises.

(2) *Diagram.* For all alternate uses, the proprietor must provide a special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment and clearly depicting all buildings, floors, rooms, areas, equipment that are to be subject to alternation, in their relative operating sequence.

(3) *Bond.* For all alternate uses, the proprietor must provide evidence of an existing bond, consent of surety, or a new bond to cover the proposed alternation of premises.

(4) *Bonded wine cellar or taxpaid wine bottling house.* If the proprietor intends to alternate the premises or part of the premises as a bonded wine cellar or taxpaid wine bottling house the proprietor must also file form TTB F 5120.25, Application to Establish and Operate Wine Premises.

(5) *Brewery.* If the proprietor intends to alternate the premises or part of the premises for a brewery operation the proprietor must file form TTB F 5130.10, Brewer's Notice.

(c) *Separation of premises.* The proprietor must separate the distilled spirits plant premises from the alternate use premises in accordance with the approved plan of alternation described in the qualifying documents.

(d) *Segregation of products.* When the proprietor alternates premises, the proprietor must segregate products as follows:

(1) *Wine operations.*

(i) Prior to alternation from distilled spirits plant premises to wine premises, the proprietor must remove all distilled spirits, denatured spirits, articles, and wine from the distilled spirits plant premises that will be alternated. However, the proprietor may keep spirits on the premises if they are being withdrawn for use in wine production under § 19.419, or for use in the production of nonbeverage wine or wine products under § 19.421. Further, the proprietor may keep wine on the premises if it is to be transferred in bond under § 19.402(b)(2).

(ii) Prior to alternation from wine premises to distilled spirits plant premises, the proprietor must remove all wine and spirits from the wine premises that will be alternated. However, the proprietor may keep wine on the premises if it is being transferred in bond under § 19.402(b)(1). Further, the proprietor may keep spirits on the premises if they are being returned from bonded wine cellar premises to distilled spirits plant bonded premises under § 19.454.

(2) *Brewery.* Prior to alternation from distilled spirits plant premises to operation of a brewery the proprietor must remove all spirits, denatured spirits, articles and wine from the premises to be alternated to brewery premises. Prior to alternation of brewery premises to distilled spirits plant premises, the proprietor must remove all beer from the premises except beer that is being received for production of distilled spirits as provided in § 19.296.

(3) *General premises.* Prior to alternation between bonded and general premises, the proprietor must remove all spirits, denatured spirits, articles and wine from the premises to be alternated. However, the proprietor may keep bonded spirits on portions of bonded

premises to be alternated to general premises if the spirits are taxpaid concurrently with the alternation. Also, the proprietor may keep taxpaid spirits on general premises that will be alternated to bonded premises if the spirits are to be immediately dumped and returned to bond under the provisions of subpart Q of this part.

(4) *Manufacture of nonbeverage products.* Prior to alternation of the distilled spirits plant premises for use in the manufacture of eligible flavors, the proprietor must remove all spirits, denatured spirits, articles and wine from the premises to be alternated. However, the proprietor may keep spirits on portions of the premises to be curtailed if the proprietor pays the tax concurrent with the alternation. Further, the proprietor may keep taxpaid spirits that have not been used in the manufacture of a nonbeverage product on parts of the premises to be included in the extension of the bonded premises if the spirits are to be immediately dumped and returned to bond under the provisions of subpart Q of this part.

(e) *Records.* The proprietor must prepare the record of alternating premises prescribed by § 19.627 each time that the proprietor alternates premises.

(26 U.S.C. 5172, 5178)

§ 19.144 Alternation of distilled spirits plant and volatile fruit-flavor concentrate plant premises.

The proprietor may temporarily extend or curtail the distilled spirits plant premises for alternate use with the premises of a contiguous volatile fruit-flavor concentrate plant. If a proprietor wishes to use all or a portion of the premises alternately as a volatile fruit-flavor concentrate plant or vice-a-versa, the proprietor must comply with the requirements of §§ 18.39 and 18.41 through 18.43 of this title.

(26 U.S.C. 5172, 5178)

Discontinuance of Operations

§ 19.147 Notice of discontinuance of operations.

If the proprietor plans to permanently discontinue one or more of the operations listed on the notice of registration filed under subpart D of this part, the proprietor must notify the appropriate TTB officer by filing form TTB F 5110.41, Registration of Distilled Spirits Plant, to show discontinuance of operations. The proprietor must submit the following with form TTB F 5110.41:

(a) The permit covering each discontinued operation;

(b) A written request for cancellation of the permit(s);

(c) A written statement indicating whether or not—

(1) The proprietor has lawfully disposed of all spirits, denatured spirits, articles, wines, liquor bottles, and other pertinent items;

(2) There are any spirits, denatured spirits, wines, or liquor bottles in transit to the premises; and

(3) The proprietor has secured and returned to the appropriate TTB officer for cancellation all approved applications for transfer of spirits and denatured spirits to the premises; and

(d) A monthly operations report, as provided for under § 19.632, for each discontinued operation, with each report marked ''Final Report''.

(26 U.S.C. 5172, 5271)

Subpart F—Bonds and Consents of Surety

Bonding Requirements for a DSP

§ 19.151 General.

(a) *Bond required.* Any person who plans to establish and operate a distilled spirits plant must provide TTB with one or more bonds on form TTB F 5110.56, Distilled Spirits Bond. TTB will not approve a registration or allow a person to operate a distilled spirits plant until the applicant has provided the necessary bonds. If a proprietor fails to pay any liability covered by the bond, TTB may seek payment from the proprietor, from the surety (see § 19.153) or from both the proprietor and the surety. The types and penal sums of bonds required will depend upon the type and size of the operations that the proprietor will conduct.

(b) *Bond terms and conditions.* The terms and conditions of a distilled spirits bond require that the proprietor comply with all provisions of law and regulations relating to activities covered by the bond, and to pay all taxes imposed by 26 U.S.C. Chapter 51, including taxes on unexplained shortages of bottled distilled spirits. The bond will further specify that the proprietor will pay all penalties incurred, or fines imposed, for violations of law and regulations relating to activities covered by the bond. The specific terms of the required bond(s) are stated on form TTB F 5110.56.

(c) *Corporations and controlled subsidiaries.* For purposes of this subpart, the term ''corporation'' includes a Limited Liability Company (LLC) in any jurisdiction where the law authorizes such a business organization to operate. Whenever used in this subpart, the term ''controlled subsidiary'' means a corporation (or LLC) in which more than 50 percent of the voting power is controlled by a parent corporation.

(26 U.S.C. 5173, 5551)

§ 19.152 Types of bonds.

(a) *Basic Bonds.* There are two basic types of bonds: the operations bond, and the withdrawal bond.

(1) *Operations bond.* An operations bond covers the tax liability for a variety of operations at a distilled spirits plant, along with any penalties incurred and fines imposed for violation of the law and regulations relating to activities covered by the bond.

(2) *Withdrawal bond.* A withdrawal bond covers the tax liability for tax determined distilled spirits withdrawn from the bonded premises on a tax deferred basis.

(b) *Other bonds.* In addition to the basic operations and withdrawal bonds, several variations of these bonds are available:

(1) An adjacent wine cellar bond covers operations at a distilled spirits plant and an adjacent bonded wine cellar;

(2) An area bond covers operations at two or more distilled spirits plant and any adjacent bonded wine cellars; and

(3) A unit bond covers both operations and withdrawals at one or more distilled spirits plants and operations at any adjacent bonded wine cellars.

(26 U.S.C. 5173)

§ 19.153 Bond guaranteed by a corporate surety.

(a) *Corporate surety.* A company that issues bonds is called a ''corporate surety.'' Proprietors must obtain the surety bonds required by this subpart from a corporate surety approved by the Secretary of the Treasury.

(b) *How to find an approved surety.* The Department of the Treasury publishes a list of approved corporate surety companies in Treasury Department Circular No. 570, ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies''. Circular 570 is published annually in the **Federal Register**. The most current edition of the circular is posted at the website of the Financial Management Service, Department of the Treasury at *http://www.fms.treas.gov/c570.* Printed copies of Circular 570 are available for purchase from the Government Printing Office.

(31 U.S.C. 9304, 9306)

§ 19.154 Bond guaranteed by deposit of securities.

(a) *General.* As an alternative to the corporate surety bond under § 19.153, a person can file a bond that guarantees payment of the liability by pledging one or more acceptable negotiable securities. These securities must have a par value (face amount) equal to or greater than the penal sums of the required bonds. The pledged securities are held in the Federal Reserve Bank in a safekeeping account with TTB as the pledgee. Should the proprietor fail to pay one or more of the guaranteed liabilities, TTB can take action to sell the deposited securities to satisfy the debt. Pledged securities will be released if there are no outstanding liabilities when the bond is terminated. (See § 19.170.)

(b) *Acceptable securities.* Only public debt obligations of the United States, the principal and interest of which are unconditionally guaranteed by the United States Government, are acceptable for the purpose described in paragraph (a) of this section. The Department of the Treasury and certain other United States Government agencies issue debt instruments that are acceptable as collateral, such as Treasury notes and Treasury bills. Savings bonds, certificates of deposit and letters of credit are not acceptable. A list of securities acceptable as collateral in lieu of surety bonds is available from the Bureau of the Public Debt, Office of the Commissioner, Government Securities Regulations Staff. Current information and guidance from the Bureau of the Public Debt may be found at *http://www.publicdebt.treas.gov.*

(31 U.S.C. 9301, 9303)
(31 CFR Part 380)

§ 19.155 Change of surety bond terms-consent of surety.

In order to change the terms of an approved bond, both the principal and the surety company that guaranteed bond must agree to the change. TTB must also approve the change. All changes to the terms of a bond must be executed on form TTB F 5000.18, Change of Bond (Consent of Surety) by both the principal and the surety with the same formality and proof of authority as required for the original bond. The completed, executed form TTB F 5000.18 must be submitted to the National Revenue Center.

(26 U.S.C. 5173)

§ 19.156 Power of attorney for surety.

(a) *Requirement for power of attorney.* Every bond and every consent of surety filed with TTB in which an agent or officer executed the bond or consent on behalf of the surety must be supported by a power of attorney authorizing the agent or officer to execute the bond or consent of surety. The power of attorney assures TTB that the person who signed the bond on behalf of the surety has the legal authority to obligate the surety.

(b) *Form of power of attorney and endorsement.* A power of attorney will be prepared on the surety's own form, and must be executed under the surety's corporate seal. If the power of attorney submitted is other than a manually signed original, it must be accompanied by a certification from the surety that the power of attorney is valid.

(c) *Additional documentation.* The appropriate TTB officer authorized to approve and accept the bond may require additional evidence of the authenticity of signatures and the authority of persons signing on behalf of the surety to execute the bond or consent.

(31 U.S.C. 9304, 9306)

§ 19.157 Disapproval of bonds and consents of surety.

(a) *Grounds for disapproval.* The appropriate TTB officer may disapprove any bond or consent of surety required by this part if the principal or any person having ownership, control or responsibility for actively managing the business has been previously convicted, in a court of competent jurisdiction of:

(1) Any fraudulent noncompliance with any provision of any law of the United States relating to internal revenue or customs taxation of spirits, wines, or beer, or if the offense was compromised by payment of penalties or otherwise, or

(2) Any felony under a law of any State or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of spirits, wine, beer, or other intoxicating liquor.

(b) *Appeal.* If the appropriate TTB officer disapproves a bond or consent of surety, the person giving the bond may appeal the disapproval to the Administrator, who will hear the appeal. The decision of the Administrator will be final.

(26 U.S.C. 5551)

Requirements for Operations and Withdrawal Bonds

§ 19.161 Operations bond.

(a) *General.* Any person who intends to establish a distilled spirits plant must furnish an operations bond (or a unit bond, see § 19.165) covering distilled spirits operations at such plant on TTB Form 5110.56 with the original application to register the distilled spirits plant.

(b) *Approval of bond.* The appropriate TTB officer may require a statement, executed under the penalty of perjury, as to whether the principal, or any person owning, controlling, or managing the business has been convicted of, or has compromised any offense listed in § 19.157(a)(1), or has been convicted of any offense listed in § 19.157(a)(2). If the above statement contains an affirmative answer, the applicant must provide an additional detailed statement describing the circumstances surrounding each conviction or compromise. The appropriate TTB officer will decide whether to approve or disapprove the bond.

(26 U.S.C. 5173, 5551)

§ 19.162 Operations bond for distilled spirits plant and adjacent bonded wine cellar.

(a) *One bond satisfying two requirements.* A proprietor who operates a bonded wine cellar that is adjacent to the proprietor's distilled spirits plant, may file a single operations bond to cover the operations of the distilled spirits plant and the bonded wine cellar. A proprietor who files this type of bond satisfies the requirement in 26 U.S.C. 5173 for an operations bond covering the distilled spirits plant and the requirement in 26 U.S.C. 5354 for a bond covering wine and spirits possessed at, and in transit to, the bonded wine cellar. (The proprietor may still have to obtain a supplemental bond for the wine cellar to cover liabilities resulting from deferred payment of tax. See the second sentence of 26 U.S.C. 5354.)

(b) *One bond combining terms and coverage of separate bonds.* An operations bond filed under paragraph (a) of this section must contain the same terms and conditions that would be in separate bonds for the distilled spirits plant and for the bonded wine cellar. The proprietor may not allocate or divide the penal sum between the distilled spirits plant and the bonded wine cellar. The total amount of the bond must be available to satisfy any liability incurred under the terms of the bond at either facility.

(c) *Persons qualified for a single bond.* A proprietor may choose to file a single operations bond for a distilled spirits plant and adjacent bonded wine cellar only if:

(1) Such distilled spirits plant is qualified under subpart D of this part for the production of distilled spirits; and

(2) Such wine cellar and distilled spirits plant are operated by the same person (or in the case of a corporation,

by such corporation and its controlled subsidiaries).

(26 U.S.C. 5173, 5351, 5354)

§ 19.163 Area operations bond.

(a) *Area operations bond covering multiple locations.* A person who operates more than one distilled spirits plant within the geographical area serviced by the National Revenue Center, may submit to TTB an area operations bond covering the operations of any two or more such plants and any bonded wine cellars that are adjacent to such plants and which otherwise could be covered by an operations bond. Area operations bonds filed under this section will be in lieu of the operations bond requirements for single distilled spirits plants under §§ 19.161 and 19.166 and must contain the same terms and conditions as those contained in separate bonds filed for single distilled spirits plants. Any person who files an area operations bond may not allocate or divide the penal sum of the area operations bond between the separate locations and the total penal sum of the bond must be available to satisfy liability incurred at any of the covered locations.

(b) *Area operations bonds filed by corporations.* An area operations bond may only cover distilled spirits plants and adjacent bonded wine cellars that are operated by the same person. For purposes of this section, a corporation and its controlled subsidiaries are considered to be one person. Further, a controlled subsidiary is a corporation in which more than 50 percent of the voting power is controlled by the parent corporation. Consequently, an area operations bond may cover distilled spirits plants and adjacent bonded wine cellars operated by a parent corporation and one or more of its controlled subsidiaries. The name of each corporation that operates a covered facility must appear on the bond as a principal, whether the operating corporation is the parent or a subsidiary. The bond must bear an authorized signature for each operating corporation appearing on the bond.

(26 U.S.C. 5173)

§ 19.164 Withdrawal bond.

(a) *Requirement for a withdrawal bond.* If a person intends to withdraw spirits from a distilled spirits plant upon determination of the taxes due on the spirits but before payment of the tax, the person must provide TTB with a withdrawal bond for the distilled spirits plant. The withdrawal bond must guarantee payment of any taxes due on distilled spirits withdrawn from bonded premises up to the amount of the bond. Such bond will be in addition to the operations bond, and if the distilled spirits are withdrawn under the withdrawal bond, the operations bond will no longer cover liability for payment of the tax on the spirits withdrawn. For purposes of this section, a person includes a corporation, together with all of its controlled subsidiaries, and a controlled subsidiary has the same meaning as in § 19.163(b).

(b) *One bond covering multiple plants.* A person who operates more than one distilled spirits plant within the geographical area serviced by the National Revenue Center, may submit to TTB a single withdrawal bond that covers withdrawals from all such distilled spirits plants within that geographic area.

(c) *Penal sum of bonds*—(1) *Penal sum of a bond covering a single plant.* A person who files a withdrawal bond for a single plant must compute the penal sum of such bond in accordance with § 19.166. If the penal sum of such bond is less than the maximum amount, withdrawals from the plant may not exceed the penal sum.

(2) *Penal sum of bond covering multiple plants.* A person who files one withdrawal bond to cover two or more distilled spirits plants must compute the required penal sum for each plant individually in accordance with § 19.166. The penal sum of the withdrawal bond must be equal to, or greater than, the total of the minimum amounts required for the individual plants. The bond must show the amount of coverage allocated to each individual plant as well as the total penal sum for all plants. If the portion of the penal sum allocated to a particular plant is less than the maximum amount prescribed in § 19.166 for a single plant, withdrawals from that plant must not exceed the amount of the penal sum allocated to that plant. The allocation of the penal sum notwithstanding, the entire penal sum of the bond must be available to satisfy all liability for tax on withdrawals from any and all of the covered plants.

(26 U.S.C. 5173)

§ 19.165 Unit bonds.

(a) *Unit bond covering operations and withdrawals.* If a person is otherwise required to file bonds for both operations at one or more distilled spirits plants and withdrawals from one or more distilled spirits plants, the person may instead submit a single unit bond that provides all of the guarantees that would otherwise be provided by separate operations and withdrawal bonds. The unit bond may also provide coverage for operations at adjacent bonded wine cellars.

For purposes of this section, a person includes a corporation, together with all of its controlled subsidiaries, and a controlled subsidiary has the same meaning as in § 19.163(b).

(b) *Required penal sum*—(1) *General.* A person must determine the penal sum for the unit bond by separately calculating in accordance with § 19.166, and then totaling, the amounts needed to cover operations and withdrawals at each individual plant covered by the bond. The penal sum for the unit bond must not be less than the sum of the minimum penal sums that would be required if each of the plants had its own bond.

(2) *Allocation between operations and withdrawals.* A unit bond must show separately the amount of coverage provided for operations (including operations at each adjacent bonded wine cellar if applicable) and for withdrawals at each distilled spirits plant covered by the bond.

(3) *Tax liability must not exceed allocated penal sum.* If the amount of the penal sum allocated to operations at, or withdrawals from, a particular plant is less than the maximum amount prescribed in § 19.166 for a single plant, the tax liability for operations at, or withdrawals from, that plant must not exceed that allocated amount.

(4) *Total penal sum available for each plant.* Even when the penal sum of a unit bond is allocated among multiple plants, the bond must provide that the total penal amount of the bond will be available to satisfy any liability incurred under the terms and conditions of the bond at any plant covered by the bond.

(26 U.S.C. 5173)

§ 19.166 Required penal sums.

A person must determine the penal sums for the various bonds required by this subpart according to the following table:

(a) Operations bond for a single plant operating as a:	Required penal sum represents:	The penal sum must be:	
		not less than—	and need not be more than—
(1) Distiller	The amount of tax on spirits produced during a 15-day period.	$5,000	$100,000
(2) Warehouseman, in general.	The amount of tax on spirits and wines deposited in, stored on, and in transit to, the bonded premises.	5,000	200,000
(3) Warehouseman limited to storage of spirits in packages to a total of not over 50,000 proof gallons.	The amount of tax on spirits and wines deposited in, stored on, and in transit to, the bonded premises.	5,000	50,000
(4) Distiller and warehouseman.	The amount of tax on spirits produced during a period of 15 days, plus the tax on spirits and wines deposited in, stored on, and in transit to the bonded premises.	10,000	200,000
(5) Distiller and processor	The amount of tax on spirits produced during a 15-day period, plus the amount of tax on spirits, denatured spirits, articles and wines deposited in, or stored on, and in transit to the bonded premises.	10,000	200,000
(6) Warehouseman and processor in general.	The amount of tax on spirits, denatured spirits, articles, and wines deposited in, stored on, and in transit to, the bonded premises.	10,000	250,000
(7) Warehouseman and processor, limited to storage of spirits or denatured spirits in packages to a total of not over 50,000 proof gallons, and processing of spirits or denatured spirits so stored.	The amount of tax on spirits, denatured spirits, articles, and wines deposited in, stored on, and in transit to, the bonded premises.	10,000	50,000
(8) Distiller, warehouseman and processor.	The amount of tax on spirits produced during a 15-day period, plus the amount of tax on spirits, denatured spirits, articles and wines deposited in, stored on, and in transit to, the bonded premises.	15,000	250,000
(9) Distiller with adjacent bonded wine cellar.	The amount required for a distiller (see (a) 1. above) plus the amount of tax on wines and wine spirits possessed on, and in transit to, the adjacent wine cellar.	6,000	150,000
(10) Distiller and warehouseman with adjacent bonded wine cellar.	The amount required for a distiller & warehouseman (see (a) 4. above) plus the amount of tax on wines and wine spirits possessed on, and in transit to, the adjacent wine cellar.	11,000	250,000
(11) Distiller and processor with adjacent bonded wine cellar.	The amount required for a distiller & processor (see (a) 5. above) plus the amount of tax on wines and wine spirits possessed on, and in transit to, the adjacent wine cellar.	11,000	250,000
(12) Distiller, warehouseman and processor with adjacent bonded wine cellar.	The amount required for a distiller-warehouseman-processor (see (a) 8. above) plus the amount of tax on wines and wine spirits possessed on, and in transit to, the adjacent wine cellar.	16,000	300,000

(b) Area operations bond for two or more plants whose combined required penal sums under paragraph (a) of this section:	Required penal sum is:	But need not be more than:
(1) Do not exceed $300,000	100%	$300,000
(2) Exceed $300,000 but do not exceed $600,000	$300,000 plus 70% of the amount over $300,000.	$510,000
(3) Exceed $600,000 but do not exceed $1,000,000	$510,000 plus 50% of the amount over $600,000.	$710,000
(4) Exceed $1,000,000 but do not exceed $2,000,000	$710,000 plus 35% of the amount over $1,000,000.	$1,060,000
(5) Exceeds $2,000,000.	$1,060,000 plus 25% of the amount over $2,000,000.	

(c) Withdrawal bond for:	Required penal sum represents:	The penal sum must be	
		not less than—	and need not be more than—
(1) One distilled spirits plant	The amount of tax which, at any one time, is chargeable against such bond, but has not yet been paid..	$1,000	$1,000,000

(c) Withdrawal bond for:	Required penal sum represents:	The penal sum must be	
		not less than—	and need not be more than—
(2) Two or more distilled spirits plants.	Sum of the penal sums for each plant calculated in (c)1 of this section.	($1,000) x (number of plants)	(Number of plants) x $1,000,000

(d) Unit bond for:	Required penal sum represents:	The penal sum must be:	
		not less than—	and need not be more than—
(1) Operations at one distilled spirits plant (including any adjacent bonded wine cellar), and withdrawals from the bonded premises of the same plant.	An amount equal to the sum of the required penal sums of an operations bond and a withdrawal bond for the plant, if such bonds were obtained separately. (See (a) and (c)1 in this table.)	$6,000	$1,300,000
(2) Operations at two or more distilled spirits plants (including any adjacent bonded wine cellars), and withdrawals from the bonded premises of the same plants.	An amount equal to the sum of the penal sums of an area operations bond and withdrawal bonds needed for all of the covered plants, if such bonds were obtained separately. [Total penal sums of (b) and (c)(2) in this table.]	Sum of the minimum penal sums for operations and withdrawal bonds required for each plant covered by the bond.	Sum of the maximum penal sums for area operations bonds and withdrawal bonds required for the plants covered by the unit bond.

(26 U.S.C. 5173)

§ 19.167 Increase of bond coverage.

(a) *When required.* If the penal sum of a bond is less than the maximum amount specified by § 19.166, and liabilities increase to the point where they exceed the bond coverage, the proprietor must increase the amount of the bond to cover the increased liability. The proprietor must increase the bond coverage either by replacing the existing bond with a new, larger bond that covers the entire liability, or by supplementing the existing bond with a separate strengthening bond in accordance with paragraph (b) of this section.

(b) Strengthening bonds. A strengthening bond is a second bond with the same surety as on the original bond which covers the increased liability. A strengthening bond must show both its execution date and its effective date. TTB will not accept a strengthening bond if it contains any term or condition that is a release, or could be interpreted as a release, from liability under any former bond, or that limits the liability of any bond to less than its full penal sum.

(26 U.S.C. 5173)

§ 19.168 Superseding bonds.

(a) *General.* In any of the circumstances outlined in paragraphs (b) through (d) of this section, the proprietor must replace an existing bond with a new bond. A new bond that replaces another bond is called a superseding bond.

(b) *Surety company no longer acceptable.* The proprietor must file a superseding bond if the surety on the proprietor's current bond becomes insolvent or if the surety is removed from the list of approved sureties in Treasury Circular 570. TTB may also require the filing of a superseding bond if any other contingency affecting the validity or efficiency of the bond arises.

(c) *Change of control.* An executor, administrator, assignee, receiver, trustee, or other person acting in a fiduciary capacity, continuing or liquidating the business of the principal on a bond, must either provide TTB with a superseding bond, or obtain consent from the surety on each existing bond when assuming control of the business.

(d) *Termination of bond by surety.* If the surety applies to terminate a bond under § 19.171, and the proprietor wishes to continue the activity covered by the bond, the proprietor must file a superseding bond that becomes effective on or before the termination date of the existing bond. The superseding bond must show both its execution date and its effective date.

(26 U.S.C. 5173, 5175, 5176, 5551)

§ 19.169 Effect of failure to furnish a superseding bond.

(a) *Operations bond.* A person may not operate a distilled spirits plant without an operations bond. If a person does not submit an acceptable superseding operations bond when required to do so under § 19.168, the person must immediately discontinue the activities to which the lapsed bond coverage relates upon lapse of the existing bond coverage.

(b) *Withdrawal bond.* A person who does not submit an acceptable superseding withdrawal bond when required to do so under § 19.168 may not withdraw distilled spirits from the bonded premises on a deferred basis. Upon lapse of the existing bond coverage the person must pay the tax at the time of withdrawal, except in the case of distilled spirits withdrawn free of tax or withdrawn without payment of tax under 26 U.S.C. 5214 or withdrawn exempt from tax under 26 U.S.C. 7510.

(c) *Unit bond.* A person who does not provide an acceptable superseding unit bond when required to do so under § 19.168 must immediately discontinue the business or distilled spirits operations to which the lapsed bond coverage relates. Upon lapse of the existing bond coverage the person must also pay the tax at the time of withdrawal, except in the case of distilled spirits withdrawn free of tax or withdrawn without payment of tax under 26 U.S.C. 5214 or withdrawn exempt from tax under 26 U.S.C. 7510.

(26 U.S.C. 5173, 5175, 5176)

§ 19.170 Termination of bonds.

Liability under operations bonds, withdrawal bonds, and unit bonds may be terminated for future withdrawals, future production, or future deposits as set forth below:

(a) *On application by the surety.* A surety may terminate a bond by filing a notice as provided in § 19.171;

(b) *By replacement of the bond.* A principal may terminate an existing bond by replacing it with a superseding bond approved by TTB;

(c) *By discontinuing withdrawals.* A principal may terminate a withdrawal bond by notifying TTB that the principal has stopped making withdrawals covered by the bond, if the bond was filed solely as a withdrawal bond; or

(d) *By discontinuing the business.* A principal may terminate a bond by notifying TTB that the principal has discontinued business.

(26 U.S.C. 5173)

§ 19.171 Surety notice of relief from bond liability.

(a) *Notice to principal.* A surety on a bond may, at any time, notify the principal in writing that the surety desires to be relieved of liability under the bond.

(b) *Notice to TTB.* A surety on a bond may, at any time, notify the appropriate TTB officer in writing that the surety desires to be relieved of liability under the bond. The notice must specify the date after which the surety desires to be relieved of liability. In the case of a withdrawal bond, the date specified in the notice must be at least ten days after the notice is received by the appropriate TTB officer. In the case of an operations bond or unit bond, the date specified in the notice must be at least 90 days after the notice is received by the appropriate TTB officer. When a surety files a termination notice with TTB, the surety must include either an acknowledgement from the principal that the principal is aware that the surety is terminating the bond or proof that the surety has served the principal with notice of its intent to terminate the bond.

(c) *Effect of notice.* The bond coverage will end as of close of business on the date specified in the notice, provided the surety timely filed a proper and complete termination notice, and the surety does not withdraw its termination notice in writing prior to the termination date. The surety will be released from future liability under the bond to the extent set forth in § 19.172.

(26 U.S.C. 5173, 5175, 5176)

§ 19.172 Relief of surety from bond liability.

A surety who has provided proper notice under § 19.171 will be relieved from liability under the bond in question as set forth below:

(a) *Operations or unit bond.* When a superseding bond is submitted, the surety will be relieved of future liability related to production and deposits that take place after the effective date of the superseding bond. However, the surety remains liable for the tax on all distilled spirits or wines produced, or for other liabilities incurred, during the term of the bond. Further, if a superseding bond is not submitted, the surety will remain liable under the bond for all spirits or wines that are on hand or in transit to the bonded premises or bonded wine cellar on the date specified in the notice. The liability of the surety will continue until all such spirits or wines have been lawfully disposed of, or until a new bond has been submitted by the principal covering the spirits or wine.

(b) *Withdrawal or unit bonds.* The surety will be relieved from liability for withdrawals made after the date specified in the notice, or upon the effective date of a new bond if one is given.

(26 U.S.C. 5173, 5176)

§ 19.173 Release of pledged securities.

Securities that are pledged and deposited with TTB under § 19.154 will only be released by TTB in accordance with the provisions of 31 CFR Part 225. The appropriate TTB officer will not release pledged securities prior to termination of the liability under the bond for which they were pledged. When the appropriate TTB officer is satisfied that the pledged securities may be released, the official will set a date or dates on which a part or all of the securities may be released. At any time prior to the release of the securities, the appropriate TTB officer may extend the date of release for any additional length of time deemed necessary.

(31 U.S.C. 9301, 9303)

Subpart G—Construction, Equipment, and Security Requirements

§ 19.181 General.

The proprietor of a distilled spirits plant must apply certain construction, equipment, and security standards at the plant. These standards are intended to ensure the protection of untaxed spirits at the plant and to ensure proper measurement and accountability for products on bonded premises. This subpart prescribes those standards.

(26 U.S.C. 5178)

Tank Requirements

§ 19.182 Tanks—general requirements.

The proprietor of a distilled spirits plant must ensure that all tanks on the premises used to hold spirits, denatured spirits, or wines are:

(a) Used for the purpose listed on the application and plant registration;

(b) Equipped with accurate means for measuring their contents. If the means for measurement is not a permanent fixture on the tank, the proprietor must equip the tank with a fixed device for measuring the contents. However, tanks having a capacity of less than 101 gallons are not required to have permanent gauge devices;

(c) Accurately calibrated if used for any of the gauges described in this part. Further, if tanks or their gauging devices are moved in any manner subsequent to original calibration, the tanks shall not be used until recalibrated;

(d) Accessible through walkways, landings, and stairs that permit access to all parts of the tank;

(e) Equipped or situated so that they may be locked or secured; and

(f) Constructed to prevent access to the spirits or wines through vents, flame arresters or other safety devices.

(26 U.S.C. 5006, 5204, 5505)

§ 19.183 Scale tanks.

(a) Except as otherwise provided in paragraph (b) of this section, if the proprietor uses a tank to determine the distilled spirits tax imposed by 26 U.S.C. 5001, the tank must be mounted on scales and the contents of the tank must be determined by weight. The scale tank also must be equipped with a suitable device so that the volume of the contents can be quickly and accurately determined.

(b) The requirement to mount tanks on scales does not apply to tanks having a capacity of 55 gallons or less. Such tanks may be moved onto an accurately calibrated scale when a tax determination gauge needs to be made.

(26 U.S.C. 5006, 5204, 5505)

§ 19.184 Scale tank minimum graduations.

(a) The beams or dials on scale tanks used for tax determination must have minimum graduations not greater than the following:

Quantity to be weighed (pounds)	Minimum graduation (pounds)
Not exceeding 2,000	½
Between 2,000 and 6,000	1
Between 6,000 and 20,000	2
Between 20,000 and 50,000	5
Over 50,000	10

(b) For scales having a capacity greater than 2,000 pounds, the minimum quantity which may be entered onto the weighing tank scale for gauging for tax determination will be the greater of:

(1) 1,000 times the minimum graduation of the scale, or

(2) 5 percent of the total capacity of the weighing tank scale.

(c) The weighing of lesser quantities for determination of tax may be authorized by the appropriate TTB officer where the beam of the scale is calibrated in ½ pound or 1 pound graduations and it is found by actual test that the scales are accurate at each graduation.

(d) Lots of spirits weighing 1,000 pounds or less shall be weighed on scales having ½ pound graduations.

(26 U.S.C. 5006, 5204, 5505)

§ 19.185 Testing scale tanks for accuracy.

(a) A proprietor who uses a scale tank for tax determination must ensure the accuracy of the scale through periodic testing. Testing of the scale must be conducted at least every 6 months and whenever the scale is adjusted or repaired.

(b) A proprietor also must test, at least once a month, the gallonage represented to be in a scale tank against the gallonage indicated by volumetric determination of the contents of the tank. However, if the scale is not used during a month, it is only necessary to verify against the volumetric determination when the scale is next used. The proprietor must make the volumetric determination in accordance part 30 of this chapter. If the variation exceeds .5 percent of the quantity shown in the tank, the proprietor must take appropriate action to verify the accuracy of the scale.

(c) If the appropriate TTB officer determines that a scale may be inaccurate, the proprietor must test the accuracy of the scale.

(26 U.S.C. 5006, 5204, 5505)

Package Scale and Pipeline Requirements

§ 19.186 Package scales.

Proprietors must ensure that scales used to weigh packages are tested at least every 6 months and whenever they are adjusted or repaired. However, if a scale is not used during a 6-month period, it is only necessary to test the scale prior to its next use. Scales used to weigh packages that hold 10 wine gallons or less must indicate weight in ounces or hundredths of a pound.

(26 U.S.C. 5204)

§ 19.187 Pipelines.

All pipelines, including flexible hoses, that are used to transfer spirits, denatured spirits, articles, and wines must be constructed, arranged, and secured so as to ensure protection of the revenue and permit ready examination. The appropriate TTB officer may approve pipelines that cannot be readily examined if they pose no jeopardy to the revenue.

(26 U.S.C. 5178)

Measuring and Proofing Equipment Requirements

§ 19.188 Measuring devices and proofing instruments.

(a) *General.* A proprietor of a distilled spirits plant must have accurate instruments and equipment at the plant for determining the proof and volume of spirits.

(b) *Instruments.* The hydrometers and thermometers that a proprietor uses to gauge spirits must show subdivisions or graduations of proof and temperature as specified in part 30 of this chapter. Proprietors must frequently test their hydrometers and thermometers to ensure their accuracy. If an instrument appears to be in error, the proprietor may not use the instrument until it is tested and certified as accurate by the manufacturer or another qualified person.

(c) *Meters.* A proprietor may use an accurate mass flow meter to measure the volume of bulk spirits. A mass flow meter used for tax determination of bulk spirits must be certified by the manufacturer or other qualified person as accurate within a tolerance of $+-0.1\%$. A mass flow meter used for all other required gauges of bulk spirits must be certified by the manufacturer or other qualified person as accurate within a tolerance of $+-0.5\%$. The proprietor must make corrections for the temperature of the spirits being measured in conjunction with the volumetric measurement of spirits by mass flow meter. The proprietor must also test mass flow meters at least every 6 months to ensure that they are accurate within the required tolerances.

(26 U.S.C. 5204)

Other Plant Requirements

§ 19.189 Identification of structures, areas, apparatus, and equipment.

(a) *Buildings.* The proprietor must mark each building at a distilled spirits plant where spirits, denatured spirits, articles, wine, or distilling or fermenting materials are kept with a distinguishing number or letter.

(b) *Tanks.* The proprietor must mark each tank or receptacle for spirits, denatured spirits, or wine to show a unique serial number and capacity.

(c) *Stills.* The proprietor must number and mark to show the use of each still, fermenter, cooker, and yeast tank.

(d) *Other major equipment.* The proprietor must identify the use of all other major equipment used for processing or containing spirits, denatured spirits, wine, distilling or fermenting material, and all other tanks, unless the intended purpose is readily apparent.

(26 U.S.C. 5178)

§ 19.190 Office facilities for TTB use.

(a) When required by the appropriate TTB officer, the proprietor must provide a secure cabinet equipped for locking for use by TTB.

(b) If one or more TTB officers are assigned to a distilled spirits plant to supervise operations on a continuing basis, the proprietor must provide a suitable office at the plant for the exclusive use of the TTB officers in performing their duties. The appropriate TTB officer will determine if the office facilities are suitable.

(26 U.S.C. 5178)

§ 19.191 Signs.

The proprietor must place and keep a conspicuous sign on the outside of the place of business showing the name of the proprietor and the business, or businesses, in which engaged.

(26 U.S.C. 5180)

§ 19.192 Security.

(a) *General.* The proprietor of a distilled spirits plant must provide adequate security measures at the plant in order to protect the revenue.

(b) *Buildings.* The buildings, rooms, and partitions must be constructed of substantial materials. Doors, windows, or any other openings to the building must be secured or fastened during times when distilled spirits plant operations are not being conducted.

(c) *Outdoor tanks.* Outdoor tanks containing spirits, denatured spirits, or wine must be individually locked or locked within an enclosure when they are not in use.

(d) *Indoor tanks.* Indoor tanks containing spirits, denatured spirits, or wines, or the rooms or buildings in which such tanks are housed, must be equipped so that they may be secured.

(e) *Approved locks.* Locks meeting the specifications prescribed in paragraph (f) of this section must be used to secure:

(1) Outdoor tanks used to store spirits, or an enclosure around such tanks;

(2) Indoor tanks used to store spirits, or the door from which access may be gained from the outside to the rooms or buildings in which such tanks are housed; and

(3) Any doors from which access may be gained from the outside to rooms or buildings containing spirits stored in portable bulk containers.

(f) *Specifications for locks.* Locks meeting the specifications in this section or other locks that have been approved for use by the appropriate TTB officer are approved locks for the purpose of 26 U.S.C. 5682.

(1) *General.* The following are the specifications for approved locks:

(i) A corresponding serial number on the lock and on the key, except for master key locking systems;

(ii) A case hardened shackle at least one-fourth inch in diameter, with heel and toe locking;

(iii) A body width of at least 2 inches;

(iv) A captured key feature (the key may not be removed while the shackle is unlocked);

(v) A tumbler with at least 5 pins; and

(vi) A lock and key containing no bitting data.

(2) *Other approved locks.* If the proprietor wishes to use locks of an unusual design, which do not meet the specifications in paragraph (f)(1) of this section, the proprietor must submit an example or prototype of the lock to the appropriate TTB officer, with a request that the lock be approved for use. The appropriate TTB officer will evaluate the lock and determine whether the lock should be approved for use.

(3) *Master key systems.* Master key locking systems using approved locks may be used at the option of the proprietor.

(g) *Additional security.* Whenever the appropriate TTB officer finds that the construction, arrangement, equipment, or protection is inadequate, additional security (such as fences, flood lights, alarm systems, and guard services) must be provided or changes in construction, arrangement, or equipment must be made to the extent necessary to protect the revenue.

(26 U.S.C. 5178, 5202, 5682)

§ 19.193 Breaking Government locks.

TTB may assign TTB officers to a distilled spirits plant and utilize controls, such as Government locks, if TTB determines that such measures are necessary to effectively supervise operations at the plant. The proprietor may not remove such Government locks without the authorization of the appropriate TTB officer, except when a person or property is in imminent danger from a disaster or other emergency. If the proprietor must remove Government locks under such circumstances, the proprietor must ensure that security measures are taken to prevent illegal removal of spirits. In addition, the proprietor must notify the appropriate TTB officer as soon as possible of the action taken and within 5 days of removing the locks submit a written report describing the emergency and the action taken.

(26 U.S.C. 5202)

Subpart H—Special (Occupational) Tax

§ 19.201 Liability for special (occupational) tax.

(a) *General liability for tax.* Special tax is an occupational tax imposed by the IRC, and TTB is responsible for collecting this tax. A proprietor of a distilled spirits plant must file a special tax return and pay a special (occupational) tax at the rate specified in § 19.202. The proprietor must pay this tax on or before the date of commencing business as a distilled spirits plant, and thereafter every year on or before July 1. When a proprietor first commences business, the tax liability will be computed from the first day of the month in which the business starts through the following June 30. Thereafter, the tax must be computed for the entire year (July 1 through June 30).

(b) *Suspension of tax.* During the period from July 1, 2005, through June 30, 2008, the rate of the tax referred to in paragraph (a) of this section is zero. However, the proprietor must still register by filing the special tax return on form TTB F 5630.5 during this suspension period even though the amount of tax due is zero. During the suspension period, as at other times, the special tax return is due on or before the proprietor commences business and on or before July 1 of each year thereafter.

(26 U.S.C. 5081, 5142, 5143)

§ 19.202 Special (occupational) tax rates.

During the period from July 1, 2005, through June 30, 2008, the rate of the tax is zero. At all other times, there are two rates of special tax for distilled spirits plants. The rate depends upon the gross receipts of the business. The annual rates are:

If—	Then the annual tax rate is—
the taxable-year gross receipts are less than $500,000, ...	$500
the taxable-year gross receipts are $500,000 or more, ...	$1,000

(26 U.S.C. 5081)

§ 19.203 Eligibility for the reduced rate.

(a) *General.* Except during the suspension period described in § 19.201(b) when the tax rate is zero, 26 U.S.C. 5081(b) provides for a reduced tax rate of $500 per year for small proprietors. A proprietor is eligible to pay the reduced rate as a small proprietor if the proprietor's total gross receipts for the income tax year that most recently ended are less than $500,000. All gross receipts must be included, not just the gross receipts of the activity subject to special tax. Further, proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, may qualify for the reduced rate in the initial tax year if gross receipts for the business (or the entire controlled group, if the proprietor is a member of a controlled group) were under $500,000 during the income tax year that most recently ended. If the proprietor is a member of a controlled group, the rules under paragraph (b) of this section will apply.

(b) *Controlled Group.* If the proprietor is a member of a controlled group, the controlled group will be treated as a single taxpayer for the purpose of determining gross receipts under paragraph (a) of this section. A controlled group is defined in subpart D of part 70 of this chapter.

(c) *Special rules for gross receipts.* For any taxable year shorter than 12 months, the proprietor must project annual gross receipts for a 12 month period. To make this projection, the proprietor must multiply gross receipts for the short period by 12 and divide the result by the number of months in the short period. Gross receipts for any taxable year will be reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5081)

§ 19.204 Exemption for alcohol fuel producers.

Some alcohol fuel producers are exempt from special tax. For further information, see subpart X of this part.

(26 U.S.C. 5081, 5181)

§ 19.205 Locations subject to tax.

(a) A proprietor must pay special (occupational) tax, or must register during the suspension period described in § 19.201(b), for each place of business at which an occupation subject to special tax is conducted. A ''place of business'' means the entire office, plant, or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the premises are otherwise contiguous.

(b) A proprietor does not incur additional special tax liability, and is not required to register during the

suspension period described in § 19.201(b), for the sale of liquor made at a location other than the distilled spirits plant premises described on the notice of registration, Form 5110.41, if the location where such sales are made is the same place of business as described in paragraph (a) of this section.

(26 U.S.C. 5081, 5113, 5142, 5143)

§ 19.206 Liability as a wholesale or retail dealer.

(a) *General.* A proprietor of a distilled spirits plant shall be subject to or exempt from a liquor dealer's special (occupational) tax as provided in part 31 of this chapter.

(b) *Exemption for sales by a proprietor of a distilled spirits plant.* A proprietor of a distilled spirits plant is not required to pay special tax, or to register during the suspension period described in § 19.201(b), as a wholesale or retail dealer in liquor because of sales at the principal place of business, or at the distilled spirits plant, of liquor that at the time of sale is stored at the distilled spirits plant or which had been removed and stored in a taxpaid storeroom operated in connection with the distilled spirits plant. Each proprietor of a distilled spirits plant may have only one exemption from a dealer's special tax payment or dealer's registration for each distilled spirits plant. The proprietor may designate, in writing to the appropriate TTB officer, that the principal place of business is exempt from dealer's special (occupational) tax or registration; otherwise, the exemption will apply to the distilled spirits plant.

(26 U.S.C. 5113)

§ 19.207 Special tax returns.

(a) *Form.* A proprietor must file TTB F 5630.5, Special Tax Registration and Return, in order to:

(1) Pay special (occupational) tax when the tax is due, or

(2) Register during the period July 1, 2005, through June 30, 2008, when the tax is suspended.

(b) *Information for the return or registration.* A proprietor must follow the instructions on the Special Tax Registration and Return, TTB F 5630.5 providing all the required information including:

(1) The name as the taxpayer;

(2) The trade name(s) (if any) of the business(es) subject to special tax;

(3) The employer identification number (see § 19.210);

(4) The exact location of the place of business, by name and number of building or street or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address shown will be the principal place of business (or principal office, in the case of a corporate taxpayer);

(5) The class(es) of special (occupational) tax to which the proprietor is subject, or to which the registration relates during the suspension period referred to in paragraph (a)(2) of this section; and

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every other person having power to control the management and policies with respect to the activity subject to special tax. For purposes of this section, an owner includes every partner of a partnership and every person owning 10% or more of the stock of a limited liability company or corporation. However, the ownership and control information required by this paragraph does not need to be stated if the same information has been previously provided to TTB in connection with a permit application, and if the information previously provided is still current.

(26 U.S.C. 6151, 7011)

§ 19.208 Multiple locations and multiple tax classes.

A proprietor subject to special (occupational) tax, or required to register during the suspension period referred to in § 19.201(b), for the same period at more than one location or for more than one tax class, must:

(a) Prepare, sign and file one special tax registration and return on TTB F 5630.5;

(b) Include any applicable tax payment, to cover all locations and classes of tax;

(c) Prepare, in duplicate, a list identified with the proprietor's name, address (as shown on Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid, or for which registration is being made during the suspension period described in § 19.201(b). The original of the list will be filed in accordance with instructions on the return, and the copy shall be retained at the proprietor's principal place of business (or principal office, in the case of a corporate taxpayer) for the period of three years from the last day of the return period.

(26 U.S.C. 6151, 7011)

§ 19.209 Signing special tax returns.

(a) *Ordinary returns.* The proprietor must sign all tax returns. The individual must sign the return of an individual proprietor. A general partner must sign the return for a partnership. An officer of a corporation will sign the return for a corporation. In each case, the person signing the return will designate his or her capacity as ''individual owner,'' ''general partner,'' or, in the case of a corporation, the title of the officer.

(b) *Fiduciaries.* A receiver, trustee, assignee, executor, administrator, or other legal representative who continues the business of a bankrupt, insolvent, deceased, or other person, must indicate the fiduciary capacity in which the person is acting.

(c) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature must be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless a power of attorney authorizing the agent to perform the act is filed with the TTB office with which the return is filed.

(d) *Perjury statement.* Form TTB F 5630.5 must contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 6061, 6062, 6063, 6064, 6065)

§ 19.210 Employer identification number.

(a) *Requirement.* A proprietor must enter the employer identification number (EIN) assigned to the proprietor by the Internal Revenue Service on the special tax return, including any amended return, filed under this subpart. Failure to enter the assigned EIN on the return may result in a $50.00 penalty for each occurrence as specified in § 70.113 of this chapter.

(b) *Application for employer identification number.* Each proprietor who files a special tax return, who has not already been assigned an employer identification number, must file IRS Form SS–4 to apply for one. The proprietor will apply for and be assigned only one employer identification number, regardless of the number of places of business for which the proprietor is required to file a special tax return. The proprietor must apply for an employer identification number no later than 7 days after the filing of the taxpayer's first special tax return.

(26 U.S.C. 6109)

§ 19.211 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps*—(1) *General.* Except as provided in paragraph (a)(2) of this section, TTB will issue to the proprietor a special tax

stamp upon filing a properly executed TTB F 5630.5, Special Tax Registration and Return, along with any applicable tax. If the return covers multiple locations, TTB will issue one appropriately designated stamp for each location listed on the attachment that § 19.208 requires, but showing, as to name and address, only the name of the proprietor and the address of the proprietor's principal place of business (or principal office in the case of a corporate taxpayer).

(2) *Exception for suspension period.* During the suspension period described in § 19.201(b), when registration is required but no tax is due, TTB will not issue a special tax stamp.

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the proprietor will verify that there is one stamp for each location listed on the attachment to form TTB F 5630.5. The proprietor will designate one stamp for each location and will type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer will then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* The proprietor will keep all stamps denoting payment of special tax available at the location for which designated for inspection by appropriate TTB officers during business hours.

(26 U.S.C. 5146, 6806)

§ 19.212 Change in name.

If there is a change in the corporate or firm name, or in the trade name, as shown on Form 5630.5, the proprietor will file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade name. No new special tax is required to be paid. The proprietor will attach the special tax stamp for endorsement of the change in name except if the change occurs during the suspension period described in § 19.201(b).

(26 U.S.C. 5143, 7011)

§ 19.213 Change in proprietorship.

(a) *General.* Except as provided in paragraph (b) of this section, if there is a change in the proprietorship of a distilled spirits plant, the successor must file a new special tax return, pay a new special tax, and obtain the required special tax stamps. However, if the change in proprietorship occurs during the suspension period described in § 19.201(b) when no tax is due and no stamp is issued, the successor is only required to file a new special tax return.

(b) *Exception.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid (or for which registration was made during the suspension period described in § 19.201(b)), without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on form TTB F 5630.5, which shows the basis of succession.

(c) *Right of succession.* Under the conditions listed in paragraph (b) of this section, the right of succession will pass to certain persons as follows:

In the case of:	The following person may succeed to the tax stamp:
Death of the taxpayer.	The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer.
Succession of spouse.	A husband or wife succeeding to the business of a living spouse.
Insolvency	A receiver or trustee in bankruptcy, or an assignee for benefit of creditors.
Withdrawal from partnership.	The partner or partners remaining after death or withdrawal of a member.

(d) *Failure to register.* Except during the suspension period described in § 19.201(b), a person who is a successor to a business for which the special tax has been paid and who fails to register the succession is liable for the special tax computed from the first day of the calendar month in which the successor began to carry on the business. During the suspension period, a failure to register the succession may result in a penalty under 26 U.S.C. 5603(b).

(26 U.S.C. 5143, 7011)

§ 19.214 Change in location.

(a) Except as provided in paragraph (b) of this section, if there is a change in location of a taxable place of business, the proprietor will, within 30 days after the change, file an amended special tax return covering the new location. The proprietor will attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax must be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor must file a new special tax return, pay a new special tax, and obtain a new special tax stamp.

(b) If the change in location occurs during the suspension period described in § 19.201(b) when no tax is due and no special tax stamp is issued, the requirements of paragraph (a) of this section still apply, except with regard to attachment of a special tax stamp and payment of a new special tax. During the suspension period, a failure to comply with paragraph (a) of this section may result in a penalty under 26 U.S.C. 5603(b).

(26 U.S.C. 5143, 7011)

Subpart I—Distilled Spirits Taxes

§ 19.221 Scope.

This subpart covers the taxation of distilled spirits and the procedures for payment of taxes by proprietors of distilled spirits plants. Issues covered in this subpart include: tax rates, liability for tax, tax determination, return periods, filing of tax returns, forms of payment, electronic fund transfers, and credits under 26 U.S.C. 5010.

(26 U.S.C. 5001)

Basic Provisions of Tax Law Affecting Spirits

§ 19.222 Basic tax law provisions.

(a) *Distilled spirits tax.* 26 U.S.C. 5001 and 7652 impose a tax on all distilled spirits produced in, or imported into or brought into, the United States at the rate prescribed in section 5001 on each proof gallon and a proportionate tax at a like rate on all fractional parts of a proof gallon. For the current rate of tax see 26 U.S.C. 5001.

(b) *Products containing distilled spirits.* All products of distillation, by whatever name known, which contain distilled spirits, on which the tax imposed by law has not been paid, and any alcoholic ingredient added to such products, are considered and taxed as distilled spirits.

(c) *Wines with high alcohol content.* Wines containing more than 24 percent of alcohol by volume are taxed as distilled spirits.

(d) *Attachment of the tax.* Under 26 U.S.C. 5001(b), the tax attaches to distilled spirits as soon as the substance comes into existence as such, whether it be subsequently separated as pure or impure spirits, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production, or by any subsequent process.

(e) *Alcohol tax is a lien on spirits.* Under 26 U.S.C. 5004, the tax becomes a first lien on the distilled spirits from the time the spirits come into existence as such. The conditions under which the first lien terminates are described in 26 U.S.C. 5004.

(f) *Tax credit for eligible wines and eligible flavors.* Under 26 U.S.C. 5010, a

credit against the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 on each proof gallon of alcohol derived from eligible wine, or from eligible flavors which do not exceed 2½% of the finished product on a proof gallon basis is allowed at the time the tax is payable as if it constituted a reduction in the rate of tax.

(g) *Effective tax rates.* Where credit against the tax is desired, the proprietor liable for the tax must establish an effective tax rate in accordance with § 19.246. The effective tax rate established will be applied to each withdrawal or other taxable disposition of the distilled spirits.

(26 U.S.C. 5001, 5004, 5010, 7652)

§ 19.223 Persons liable for tax.

(a) *Distilling.* Under 26 U.S.C. 5005, the distiller of spirits is liable for the tax and each proprietor or possessor of, and person in any manner interested in the use of, any still, distilling apparatus, or distillery, shall be jointly and severally liable for the tax on distilled spirits produced. However, a person, not an officer or director of a corporate proprietor, owning or having the right of control of not more than 10 percent of any class of stock of that proprietor, is not liable by reason of the stock ownership or control. Persons transferring spirits in bond are relieved of tax liability if:

(1) The proprietors of transferring and receiving distilled spirits plant premises are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and

(2) No person liable for the tax on transferred spirits retains any interest in the spirits.

(b) *Storage on bonded premises.* Under 26 U.S.C. 5005(c) each person operating bonded premises will be liable for the tax on all spirits while the spirits are stored on the premises, and on all spirits which are in transit to the premises from the time of removal from the transferor's bonded premises, pursuant to an approved application. Liability for the tax continues until the spirits are transferred or withdrawn from bonded premises as authorized by law, or until the liability for tax is relieved under the provisions of 26 U.S.C. 5008(a). Claims for relief from liability for spirits lost are covered in subpart J of this part. Voluntary destruction of spirits in bond is covered in subpart Q of this part.

(c) *Withdrawals without payment of tax.* Under 26 U.S.C. 5005(e), any person who withdraws spirits from the bonded premises of a plant without payment of tax, as provided in 26 U.S.C. 5214, will be liable for the tax on the spirits from the time of withdrawal. The person will be relieved of any liability at the time the spirits are exported, deposited in a foreign-trade zone, used in production of wine, deposited in a customs bonded warehouse, laden as supplies upon or used in the maintenance or repair of certain vessels or aircraft, or used for certain research, development or testing, as provided by law.

(d) *Withdrawals free of tax.* Persons liable for tax under paragraph (a) of this section, are relieved of the liability on spirits withdrawn from bonded premises free of tax under this part, at the time the spirits are withdrawn.

(e) *Withdrawn from customs custody without payment of tax.* Under 26 U.S.C. 5232(a) when imported distilled spirits in bulk containers are withdrawn from customs custody and transferred to the bonded premises of a distilled spirits plant without payment of the tax imposed on imported distilled spirits by 26 U.S.C. 5001, the person operating the bonded premises of the distilled spirits plant to which spirits are transferred will become liable for the tax on the spirits upon their release from customs custody, and the importer will thereupon be relieved of liability for the tax.

(26 U.S.C. 5005, 5066, 5232)

Requirements for Gauging and Tax Determination

§ 19.225 Requirement to gauge and tax determine spirits.

Before withdrawing distilled spirits from bond, the proprietor must gauge the spirits and determine the tax that is due on the spirits. This requirement applies to all spirits on which the tax will be either prepaid or deferred.

(26 U.S.C. 5006, 5204, 5213)

§ 19.226 Gauges for tax determination.

There are several acceptable methods that a proprietor may use when gauging spirits for tax determination.

(a) *Cases.* If spirits are withdrawn from the bonded premises in cases, the proprietor must gauge the spirits based on the contents of the cases. The proprietor will determine the number of proof gallons of spirits in cases as provided in part 30 of this chapter. The proprietor must convert metric units of measure to U.S. units according to § 19.579.

(b) *Packages.* If spirits are withdrawn from the bonded premises in packages on the basis of an individual package gauge, each package must be gauged unless the tax is to be determined on the production or filling gauge. When gauging the packages, the proprietor must prepare a package gauge record as specified in § 19.619 and attach it to the record of tax determination that is required by § 19.611.

(c) *Tanks.* The proprietor must use weight, or an accurate mass flow meter and proof as prescribed in §§ 19.284 and 19.285, to gauge bulk spirits in tanks that are to be withdrawn on determination of tax. The proprietor must record the elements of the gauge on the record of tax determination. As an alternative, the proprietor may record gauge elements on a separate gauge record, and attach the gauge record to the record of tax determination.

(26 U.S.C. 5204, 5213)

§ 19.227 Determination of the tax.

After gauging, the proprietor must determine the tax on the spirits to be removed from the bonded premises. The proprietor must use the tax rate prescribed in 26 U.S.C. 5001 to calculate the tax, unless the product is eligible for a reduced effective tax rate as provided in 26 U.S.C. 5010. If the product is eligible for a reduced effective tax rate, the proprietor may use that rate to determine the tax. The proprietor must record the results of each tax determination in a record of tax determination as required by § 19.611.

(26 U.S.C. 5213)

Rules for Deferred Payment and Prepayment of Taxes

§ 19.229 Deferred payment and prepayment of taxes.

There are two basic methods of paying the tax on distilled spirits withdrawn from bonded premises: deferred payment and prepayment.

(a) *Deferred payment.* Under the deferred payment system, the proprietor may withdraw spirits from bond after tax determination but before payment of tax. The excise tax paid is based on the amount of spirits removed from bond during each return period. In order to pay taxes under the deferral system, the proprietor must file a withdrawal bond or unit bond. For detailed information regarding return periods and filing requirements under the deferred system see §§ 19.234, 19.235 and 19.236.

(b) *Prepayment.* Under the prepayment system, the proprietor must pay the distilled spirits tax after tax determination but before withdrawal of the spirits from bonded premises. See § 19.230 for conditions that require prepayment of taxes.

(26 U.S.C. 5061)

§ 19.230 Conditions requiring prepayment of taxes.

Under certain conditions, the proprietor must prepay the distilled spirits tax on form TTB F 5000.24, Excise Tax Return, before removing spirits from the bonded premises. Those conditions are:

(a) When the proprietor has not given TTB a withdrawal bond or a unit bond;

(b) When the proprietor has posted a withdrawal or a unit bond, but defaults on any payment of tax under this section, and the tax payment remains in default. The proprietor must continue to prepay the tax until the appropriate TTB officer decides that allowing them to make deferred tax payments again will not jeopardize the revenue;

(c) When the proprietor receives a notice from the appropriate TTB officer that the tax must be prepaid. Such notice may be issued to the proprietor if—

(1) The proprietor fails to maintain records required by this part to substantiate the correctness of his tax returns; or

(2) The proprietor fails to comply with any other provision of this part; or

(d) When the proprietor's withdrawal bond, or the withdrawal coverage under their unit bond, is for less than the maximum penal sum. The proprietor must prepay the tax to the extent that a withdrawal would cause the outstanding tax liability to exceed the limits of coverage under the bond. See § 19.231 if the bond is for less than the maximum penal sum.

(26 U.S.C. 5213, 5555)

§ 19.231 Accounting for bond coverage.

When a proprietor furnishes a withdrawal bond or a unit bond to cover the tax on spirits withdrawn on determination of tax, and such bond is in less than the maximum penal sum, the proprietor must maintain an account for the bond to ensure that outstanding tax liabilities do not exceed the penal sum of the bond. The account must charge the bond for the amount of liability incurred on each withdrawal on determination of tax and, credit the bond for each payment of tax made with a return and for authorized credits taken on a return. If the balance of the bond account reaches zero, the proprietor may no longer defer tax payments for taxable withdrawals. Where the bond is for less than the maximum penal sum and has been allocated among two or more plants, the proprietor must maintain an account at each plant for that part of the penal sum allocated to each plant.

(26 U.S.C. 5173, 5201)

Requirements for Filing Tax Returns

§ 19.233 Filing prepayment returns.

When the proprietor is required to prepay the tax prior to withdrawal of spirits from the bonded premises, he must prepay the tax with a return on form TTB F 5000.24, Excise Tax Return, and include the remittance with the return. The proprietor may prepay tax for one or more withdrawals with a single prepayment return on form TTB F 5000.24. The proprietor will note the serial number of the form TTB F 5000.24, and the date and time of the prepayment on the individual record of tax determination. The proprietor may not remove spirits from the bonded premises until the tax has been paid.

(26 U.S.C. 5061)

§ 19.234 Filing deferred payment returns.

A proprietor must pay the tax on spirits withdrawn from bond for deferred payment of tax by filing a return on form TTB F 5000.24, Excise Tax Return. The proprietor must execute and file form TTB F 5000.24, for each return period, even when no tax is due for a particular return period. The proprietor of each bonded premises must pay the full amount of distilled spirits tax determined for all spirits released for withdrawal from the bonded premises on determination of tax during the period covered by the return (except spirits on which tax has been prepaid).

(26 U.S.C. 5061)

§ 19.235 Deferred payment return periods—quarterly and semimonthly.

(a) *Two types of return periods.* The IRC provides for two different return periods for those taxpayers who pay their taxes on a deferred basis: quarterly and semimonthly. Small taxpayers who meet certain criteria are eligible to use quarterly return periods and pay their taxes on a quarterly basis. Larger taxpayers must use semimonthly return periods and pay their taxes on a semimonthly basis.

(b) *Quarterly return period.* Effective January 1, 2006, a taxpayer who reasonably expects to be liable for not more than $50,000 in taxes with respect to distilled spirits imposed by 26 U.S.C. 5001 and 7652 for the current calendar year, and who was liable for not more than $50,000 in such taxes in the preceding calendar year, may choose to use a quarterly return period. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $50,000, and any tax which has not been paid on that date will be due on the 14th day after the last day of the semimonthly period in which that date occurs.

(c) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (b) of this section, all other taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods will run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in § 19.277.

(d) *Definitions.* For purposes of this section, the following terms have the meanings indicated:

Reasonably expects. When used with reference to a taxpayer, *reasonably expects* means the taxpayer was not liable for more than $50,000 in taxes the previous year and there is no other existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's liability to increase beyond that limit.

Taxpayer. A *taxpayer* is a person who is liable for excise tax imposed with respect to distilled spirits by 26 U.S.C. 5001 and 7652 under the same Employer Identification Number as defined in 26 CFR 301.7701–12.

(26 U.S.C. 5061)

§ 19.236 Due dates for returns.

(a) *Semimonthly returns.* Except when payment is pursuant to a quarterly return as provided in paragraph (b) of this section, where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, the proprietor must file a semi-monthly tax return covering such spirits on form TTB F 5000.24, Excise Tax Return, and remittance, as required by §§ 19.238, 19.239 or § 19.240, not later than the 14th day after the last day of the return period, except for returns filed for September as provided in § 19.237. If the due date falls on a Saturday, Sunday or legal holiday, the return and payment are due on the immediately preceding day that is not a Saturday, Sunday or legal holiday, except as provided in § 19.237(c).

(b) *Quarterly returns.* Where the proprietor of bonded promises has withdrawn spirits from such premises on determination and before payment of tax, and the proprietor uses quarterly return periods as provided in § 19.235(b), the proprietor must file a quarterly return covering such spirits on form TTB F 5000.24, and remittance, as

required by §§ 19.238, 19.239 or § 19.240, not later than the 14th day after the last day of the quarterly return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance will be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday.

(26 U.S.C. 5061)

§ 19.237 Special rule for semimonthly filers for the month of September.

(a) *Returns required for September.* If the proprietor is required to file semimonthly returns as provided in § 19.235(c), there are three return periods during the month of September. The first semimonthly return period is from the first day through the fifteenth day of the month and the return with remittance is due by the 29th of September. The second semimonthly return period for the month of September is divided into two payment periods. The exact dates of these periods depends upon whether the proprietor remits tax payments by electronic fund transfer (EFT).

(1) *Taxpayments by EFT.* If the proprietor remits tax payments by EFT, the two payment periods for the second half of September are from the 16th through the 26th, and from the 27th through the 30th. The return on form TTB F 5000.24 and remittance for the period September 16–26 is due on or before September 29. The return on form TTB F 5000.24 and remittance for the period September 27–30 is due no later than October 14.

(2) *Taxpayment other than by EFT.* If the proprietor is not required to pay the distilled spirits tax by EFT, the two payment periods for the second half of September are from the 16th through the 25th and from the 26th through the 30th. The return on form TTB F 5000.24 and remittance for the period September 16–25 is due on or before September 28. The return on Form 5000.24 and remittance for the period September 26–30 is due no later than October 14.

(b) *Amount of payment: Safe harbor rule*—(1) *EFT Taxpayers.* The proprietor satisfies the requirements of paragraph (a)(1) of this section if by September 29 the amount paid is at least 11/15ths (73.3 percent) of the tax liability incurred in the semimonthly return period for September 1–15, and the proprietor also pays any underpayment of tax resulting from the use of the safe harbor rule on or before October 14.

(2) *Other than EFT taxpayers.* The proprietor satisfies the requirements of paragraph (a)(2) of this section if the amount paid by September 28 is at least 2/3rds (66.7 percent) of the tax liability incurred in the semimonthly return period for September 1–15, and the proprietor also pays any underpayment of tax resulting from the use of the safe harbor rule on or before October 14.

(c) *Last day for payment.* If the required tax payment due date for the return period September 16–25 (non-EFT taxpayers) or September 16–26 (EFT taxpayers), falls on a Saturday or legal holiday, the proprietor's return and remittance are due on the immediately preceding day. If the required tax payment due date falls on a Sunday, the proprietor's return and payment are due on the immediately following day.

(d) *Example.* Payment of tax for the month of September.

(1) *Facts.* X, a proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(2) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29. X's payment of tax for the period September 16–26 is also due no later than September 29. X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26. Under the safe harbor rule, X's payment of tax must equal $22,000.00, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of $2,000 for the period September 27–30 must be paid no later than October 14. X must also pay the underpayment of tax, $23,000.00, for the period September 16–26, no later than October 14.

(26 U.S.C. 5061)

§ 19.238 Payment by mail.

The proprietor must file each return on form TTB F 5000.24 in accordance with the instructions printed on the form. If the proprietor submits the return by U.S. mail, the official postmark of the U.S. Postal Service stamped on the cover in which the return is mailed will be considered to be the date of delivery of the remittance. If the postmark on the cover is illegible, the proprietor will bear the burden of proving when the postmark was made. If the proprietor sends the return with or without remittance by registered mail or certified mail, the date of registry, or the date of the postmark on the sender's postal receipt for certified mail, will be treated as the date of delivery of the return and also of the remittance, if included.

(26 U.S.C. 6302)

§ 19.239 Form of payment.

(a) *General.* The proprietor must pay the tax due on spirits when filing a return on form TTB F 5000.24, Excise Tax Return. The remittance for the tax must accompany the return and may be in any form that is authorized by § 70.61 of this chapter and acceptable to the appropriate TTB officer. *Exception:* This does not apply to payments that must be made by electronic fund transfer (EFT). For EFT payments see § 19.240.

(b) *Consequences of default.* If a check or money order tendered in payment of taxes is not paid on presentment, or where the taxpayer is otherwise in default in payment, then any remittance made during the period of default must be either in cash or by an acceptable certified instrument. The proprietor must continue to pay in cash or by certified instrument as long as the proprietor remains in default, and until the appropriate TTB officer finds that accepting a check will not jeopardize the revenue.

(c) *Certified instruments.* Acceptable certified instruments include certified checks, cashier's checks or treasurer's checks drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory or possession of the United States, or a money order, as provided in § 70.61 of this chapter.

(d) *Payment of taxes.* The proprietor must make checks or money orders payable to ''Alcohol and Tobacco Tax and Trade Bureau''.

(26 U.S.C. 5061, 6311)

§ 19.240 Payment of tax by electronic fund transfer.

(a) *General*—(1) *Criteria requiring ETF payment.* Under certain conditions, a proprietor may not make payments by cash, check, or money order. Instead, the proprietor must use the services of a commercial bank to pay tax on distilled spirits tax by electronic fund transfer (EFT). Payments must be made by EFT in the current calendar year if the proprietor, as a taxpayer, was liable for five million dollars or more in taxes on distilled spirits during the prior calendar year. For the purpose of determining whether the proprietor is subject to this requirement, the proprietor must use the total amount of tax liability on distilled spirits incurred under this part and parts 26 and 27 of this chapter (gross tax liability). Gross tax liability includes the distilled spirits tax on all taxable withdrawals of spirits, taxable importations of spirits, as well

as tax on spirits brought into the United States from Puerto Rico and the Virgin Islands during the calendar year. This figure includes taxes incurred at any and all premises at which the proprietor conducts regulated activities. The proprietor may not net out or adjust for any drawback, credits or refunds of tax that are allowed. Overpayments made in excess of actual tax liability will not be included in the gross tax liability figure.

(2) *Controlled group.* If the taxpayer is a member of a controlled group, the controlled group is treated as a single taxpayer when calculating liability of five million dollars or more in distilled spirits taxes during the prior calendar year. A controlled group is a related group of taxpayers and is defined in subpart D of part 70 of this chapter.

(3) *Separate return and payment for each DSP.* When the proprietor makes payments by EFT, the proprietor must file a separate return, form TTB F 5000.24 and make a separate EFT payment for each DSP from which spirits are withdrawn upon determination of tax.

(b) *Requirements*—(1) *Notice to TTB.* If the proprietor's gross tax liability is five million dollars or more in one calendar year, the proprietor must notify the appropriate TTB officer of this fact not later than January 10 of the following year. The proprietor must use the total amount of tax liability incurred under this part and parts 26 and 27 of this chapter to determine whether he must make this notification. *Exception:* this notice requirement does not apply if the proprietor already pays tax on distilled spirits by EFT. The notice shall be an agreement to make payments by EFT.

(2) *Separate EFT for each return.* For each return filed in accordance with this part, the proprietor will direct the bank to make an EFT to the Treasury Account for the amount of the tax reported due on the return. The proprietor must give instructions to the bank early enough for the EFT to be made to the Treasury Account by no later than close of business on the last day for filing the return as prescribed in § 19.236 or § 19.237, as appropriate.

(3) *Discontinuing EFT payments.* If the proprietor pays tax by EFT and has a gross tax liability of less than five million dollars in distilled spirits taxes during a calendar year, combining tax liabilities incurred under this part and parts 26 and 27 of this chapter, payment by EFT will be optional in the following year. The proprietor may continue to remit tax payment by EFT as provided in this section, or the proprietor may remit taxpayment using any acceptable method as set forth in § 19.239. If the proprietor decides to stop paying tax by EFT, the proprietor must give the appropriate TTB officer written notice of that decision. The proprietor must attach a written notice to the first return on form TTB F 5000.24 filed using a method of payment other than EFT. Such notice must state that tax is not due by EFT because the proprietor's tax liability during the preceding calendar year was less than five million dollars. The proprietor must further state that future tax payments will be filed with the returns on form TTB F 5000.24.

(c) *Remittance*—(1) *Identifying EFT payments.* When the proprietor completes the return on form TTB F 5000.24, the proprietor must indicate on the form that the tax was paid by EFT. The proprietor must file the completed form TTB F 5000.24 with TTB as directed by the instructions on the form.

(2) *Credit for payment.* TTB will credit the proprietor as having made a tax payment when the Treasury Account receives the EFT. TTB considers the EFT to be received by the Treasury Account when the EFT is paid to a Federal Reserve Bank.

(3) *Record of payment.* When a proprietor directs a bank to make an EFT as required by paragraph (b)(2) of this section, any transfer data record furnished to the proprietor as part of normal banking procedures will serve as the record of payment. The proprietor will retain this document as part of the required records.

(d) *Failure to make a taxpayment by EFT.* The proprietor will be subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656 for failure to make a required EFT tax payment before close of business on the last day for filing.

(e) *Procedure.* Upon receipt of a notice filed pursuant to paragraph (b)(1) of this section, the appropriate TTB officer will provide the proprietor with a copy of the TTB Procedure entitled ''Payment of Tax by Electronic Fund Transfer''. This publication outlines the procedure that the proprietor must follow when preparing returns and payments by EFT as required by this part. Customs and Border Protection (CBP) will provide instructions for submitting the EFT payments that must be made to CBP.

(26 U.S.C. 5061, 6302)

Requirements for Employer Identification Numbers

§ 19.242 Employer identification number.

The proprietor must enter the employer identification number (EIN) assigned to him by the Internal Revenue Service on each form TTB F 5000.24, Excise Tax Return, filed with TTB. Failure to enter the assigned EIN on form TTB F 5000.24, may result in a $50.00 penalty for each occurrence as specified in § 70.113 of this chapter.

(26 U.S.C. 6109, 6723)

§ 19.243 Application for employer identification number.

(a) *Use Form SS–4.* The proprietor must obtain an employer identification number (EIN) by filing an application with the Internal Revenue Service (IRS) on Form SS–4. Form SS–4 is available from the local IRS Center, from the IRS District Director, the IRS Web site at *http://www.irs.gov* or from TTB's National Revenue Center. The proprietor may file this form with IRS by mail, telephone, or fax by following the instructions on the form.

(b) *Time limit.* If the proprietor has not already received, or applied for, an EIN at the time that the first return on form TTB F 5000.24, Excise Tax Return, is filed, the proprietor must file such application for an EIN not later than seven days from the date of filing the form TTB F 5000.24.

(c) *One EIN only.* Each proprietor must obtain and use only one EIN, regardless of the number of places of business for which the proprietor is required to file a tax return under this subpart.

(26 U.S.C. 6109)

Effective Tax Rates

§ 19.245 Tax credits under 26 U.S.C. 5010.

(a) *The distilled spirits tax.* Sections 5001 and 7652 of the IRC impose a tax on all distilled spirits produced in, or imported into, or brought into the United States at the rate prescribed in section 5001 of the IRC.

(b) *Tax credits.* Section 5010 of the IRC provides a credit for the wine and flavors content in distilled spirits products. These credits effectively reduce the rate of excise tax paid on distilled spirits products that contain eligible wines and eligible flavors. As a result, the alcohol derived from eligible wine is taxed at the rates specified for wine in 26 U.S.C. 5041, and the alcohol derived from eligible flavors is not taxed to the extent that it does not exceed 2½ percent of the alcohol in the product. This results in an effective tax rate on the distilled spirits product that is lower than the rate prescribed in 26 U.S.C. 5001.

(c) *Eligible wine and eligible flavor.* The credit for the wine and flavor content of a distilled spirits product is allowable only if the wine or flavor contained in the product is an ''eligible wine'' or an ''eligible flavor''. To determine whether a wine or flavor is

eligible, refer to the definitions in § 19.1, and 26 U.S.C. 5010.

(d) *Application of effective tax rates.* Section 19.246 describes how the proprietor should compute the effective tax rate for each distilled spirits product containing eligible wine or eligible flavor. Sections 19.247 through 19.250 set forth several different methods that the proprietor may use in applying the effective tax rates to taxable removals of products from the proprietor's bonded premises.

(26 U.S.C. 5010)

§ 19.246 Computing the effective tax rate for a product.

(a) *How to compute effective tax rates.* In order to determine the effective tax rate for a distilled spirits product containing eligible wine or eligible flavor, the proprietor must first determine the total excise taxes due on the product from all sources including distilled spirits, eligible wine, and alcohol from eligible flavors in excess of 2 ½ percent of the total proof gallons in the product. Then, the proprietor must determine the total number of proof gallons of alcohol in the product regardless of the source. By dividing the total tax (numerator) by the total number of proof gallons (denominator) the proprietor will arrive at the effective tax rate for the product in dollars per proof gallon. The proprietor will compute the effective tax rate according to the following formula:

(1) *Numerator.* The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b)(1), (2), or (3), that would be imposed on the wine but for its removal to bonded premises. Three different tax classes of wine are eligible for the tax credit. The proprietor will have to repeat this step for each different tax class of eligible wine used; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½ percent of the denominator prescribed in paragraph (a)(2) of this section.

(2) *Denominator.* The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) *Rounding numbers*—(1) *Proof gallons.* When determining the effective tax rate, the proprietor must express quantities of distilled spirits, eligible wine, and eligible flavors to the nearest tenth of a proof gallon.

(2) *Tax rates.* The proprietor may round the effective tax rate to as many decimal places as the proprietor deems appropriate, provided that the rate is expressed no less exactly than the rate rounded to the nearest whole cent. The proprietor must be consistent and round the effective tax rates for all products to the same number of decimal places. When rounding, if the number to the right of the last decimal place to be kept is less than five, it will be dropped, if it is five or over, a unit will be added.

(c) *Example.* The following is an example of the use of the formula.

BATCH RECORD

Distilled spirits	2249.1 proof gallons.
Eligible wine (14% alcohol by volume).	2265.0 wine gallons.
Eligible wine (19% alcohol by volume).	1020.0 wine gallons.
Eligible flavors	100.9 proof gallons.

$$\frac{2249.1\ (\$13.50)+2265.0\ (\$1.07)+1020\ (\$1.57)+16.6^{1}\ (\$13.50)}{2249.1+100.9+(2265.0\times.28)+(1020\times.38)}=$$

$$\frac{\$30,362.85+\$2,423.55+\$1,601.40+\$224.10}{2,350.0+634.2+387.6}=$$

$$\frac{\$34,611.90}{3,371.8}=\$10.27,\text{ the effective tax rate.}$$

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2 ½% of the total proof gallons in the batch (100.9 − (2 ½% × 3,371.8) = 16.6).

(26 U.S.C. 5010)

§ 19.247 Use of effective (actual) tax rates.

(a) *Select method of applying tax rate.* The proprietor may choose to apply an effective tax rate to taxable removals of distilled spirits products in accordance with §§ 19.248, 19.249, or 19.250. Any proprietor who does not elect one of these options must establish an effective tax rate for each batch of distilled spirits product on which a claim for tax credit for alcohol derived from eligible wine or eligible flavor will be made. The proprietor must compute the effective tax rates for these products in accordance with the instructions in § 19.246.

(b) *Record tax rates used.* The proprietor must record the effective tax rate used on the dump or batch records for the products as required by § 19.598. The proprietor must record the serial numbers of cases of product removed at each rate on the record of tax determination or other related record. The proprietor must keep these records available for inspection by TTB officers.

(26 U.S.C. 5010, 5207)

§ 19.248 Standard effective tax rate.

(a) *Establishing a standard effective tax rate for a product.* The proprietor may establish a permanent standard effective tax rate for any eligible distilled spirits product, rather than calculate a separate effective tax rate for each batch of product made. If the proprietor elects to use this option, the

proprietor must determine the permanent standard effective tax rate based on the least quantity and the lowest alcohol content of eligible wine or eligible flavors used to manufacture the product. Thus, the permanent standard effective tax rate is the highest tax rate that would apply to the product because it is based on a batch with the least amount of alcohol from eligible wine and flavors that qualify for the credit under 26 U.S.C. 5010. By using this method the proprietor forgoes the possible use of a lower tax rate in exchange for the convenience of using a permanent standard effective tax rate that does not have to be recomputed for each batch of product made. The proprietor must keep a permanent record of the standard effective tax rates established for each product, in accordance with § 19.615.

(b) *Batches subject to a higher tax rate.* Whenever the proprietor manufactures a batch of the product with a lesser quantity or lower alcohol content of eligible wine or eligible flavor, this will result in a higher tax rate on the product since the product will have less alcohol qualifying for the credit under 26 U.S.C. 5010 and a higher percentage of alcohol taxable at the rate published in 26 U.S.C. 5001. In such instances, the proprietor must keep the cased goods segregated from other completed cases of the same product subject to the permanent standard effective tax rate for that product. The proprietor must determine the tax rate for the non-standard batch in accordance with § 19.247.

(c) *TTB review of standard tax rates.* If the appropriate TTB officer finds that the use of this procedure jeopardizes the revenue, or causes administrative difficulty, the proprietor upon notification from TTB must discontinue use of this procedure.

(26 U.S.C. 5010, 5207)

§ 19.249 Average effective tax rate.

(a) *Establishing an average tax rate.* The proprietor may establish an average effective tax rate for any eligible distilled spirits product based on the total proof gallons in all batches of the same composition which have been produced during the preceding 6-month period and which have been or will be bottled or packaged, in whole or in part, for domestic consumption. At the beginning of each month, the proprietor must recompute the average effective tax rate so as to include only the immediately preceding 6-month period. The proprietor must show the average tax rate established for a product in the record of average effective tax rates as prescribed in § 19.613.

(b) *TTB review of average effective tax rates.* If the appropriate TTB officer finds that the use of this procedure jeopardizes the revenue, or causes administrative difficulty, the proprietor upon notification from TTB must discontinue use of this procedure.

(26 U.S.C. 5010, 5207)

§ 19.250 Inventory reserve account.

(a) The proprietor may establish an inventory reserve account for any eligible distilled spirits product by maintaining an inventory reserve record as prescribed by § 19.614. The effective tax rate applied to each removal or other disposition will be the effective tax rate recorded on the inventory reserve record from which the removal or other disposition is depleted. With an inventory reserve account, the proprietor will tax pay removals on a first-in first-out basis regardless of which lot of product is actually removed.

(b) If the appropriate TTB officer finds that the use of this procedure jeopardizes the revenue, or causes administrative difficulty, the proprietor upon notification from TTB must discontinue use of this procedure.

(26 U.S.C. 5010, 5207)

Assessment of Taxes by TTB

§ 19.253 Assessment of tax on spirits not accounted for or reported.

The proprietor is required by law to properly account for and report all spirits that he produces. TTB will assess the proprietor for the tax on the difference between the quantity reported and the quantity actually produced.

(26 U.S.C. 5006)

§ 19.254 Assessment of tax for losses or unauthorized removals.

(a) *Lost or destroyed in bond.* TTB will assess the proprietor for the tax on spirits, denatured spirits or wines in bond that are lost or destroyed if:

(1) The proprietor is liable for the tax on spirits, denatured spirits or wines in bond, and the proprietor fails to file a claim for remission of the tax on spirits, denatured spirits, or wines that are lost or destroyed in bond as provided in § 19.263(a), or

(2) The proprietor files a claim for such loss or destruction but the claim is denied. Exception: The provisions of this section do not apply to spirits, denatured spirits or wines on which the tax is not collectable due to the provisions of 26 U.S.C. 5008(a) or (d), or 26 U.S.C. 5370, as applicable.

(b) *Unauthorized removal from bond.*

(1) TTB will assess the proprietor for the tax on any spirits, denatured spirits or wines in bond that are removed from bonded premises other than as authorized by law.

(2) TTB will assess the proprietor for tax on spirits or denatured spirits lost from casks or other packages as described in 26 U.S.C. 5006(b) if the proprietor does not pay the tax upon demand by the appropriate TTB officer.

(26 U.S.C. 5006, 5008, 5370)

Additional Tax Provisions

§ 19.256 Tax on wine.

(a) *Imposition of tax.* All wine (including imitation, substandard, or artificial wine, and compounds sold as wine) produced in or imported into or brought into the United States is subject to tax pursuant to 26 U.S.C. 5041 or 7652. The proprietor may be liable for wine taxes under 26 U.S.C. 5362(b)(3) for wine that is transferred in bond to the proprietor's distilled spirits plant. The proprietor may not remove wine from the bonded premises of a distilled spirits plant for consumption or sale as wine. (See 26 U.S.C. 5362.)

(b) *Liability for tax.* Except as otherwise provided by law, the proprietor is liable for the tax on wine transferred in bond to the proprietor's distilled spirits plant from a bonded wine cellar or from another distilled spirits plant until the proprietor uses the wine in the manufacture of a distilled spirits product or properly disposes of the wine as provided elsewhere in this part.

(26 U.S.C. 5041, 5362, 7652)

§ 19.257 Imported spirits.

The proprietor will incur a tax liability greater than the internal revenue tax imposed by 26 U.S.C. 5001(a)(1), if spirits originally imported for nonbeverage purposes are transferred from customs custody to TTB bonded premises pursuant to 26 U.S.C. 5232, and the proprietor subsequently decides to withdraw the spirits for beverage purposes. If the spirits would have been subject to a higher duty had they been imported for beverage purpose, the proprietor must pay a tax equal to the difference between the higher duty and the duty actually paid. Proprietors will refer to this additional tax as ''additional tax—less duty'' and pay it at the same time and in the same manner as the distilled spirits excise tax. Proprietors must compute the amount of ''additional tax—less duty'' owed by applying this rate to the total quantity of proof gallons withdrawn. The proprietor must make a separate entry on the tax return labeled

''additional tax—less duty'' and show the amount of tax due.

(26 U.S.C. 5001)

§ 19.258 Additional tax on nonbeverage spirits.

The additional tax imposed by 26 U.S.C. 5001(a)(8), on imported spirits withdrawn from customs custody without payment of tax and later withdrawn from bonded premises for beverage purposes, and the related provisions of § 19.257, are not applicable to Puerto Rican or Virgin Islands spirits brought into the United States and transferred to bonded premises under the provisions of this part.

(26 U.S.C. 5201)

Subpart J—Claims

§ 19.261 Scope.

This subpart covers the various types of claims that a proprietor may file and includes provisions regarding the following:

(a) General requirements for filing claims;

(b) Specific requirements for filing certain types of claims; and

(c) Remission, abatement, credit and refund of tax.

(26 U.S.C. 5008, 5215, 6065)

Requirements for Filing Claims

§ 19.262 General requirements for filing claims.

(a) A proprietor must file all claims for abatement, remission, credit, or refund under this part on form TTB F 5620.8, Claim—Alcohol and Tobacco Tax and Trade Bureau Taxes. The claim must:

(1) Be filed with TTB's National Revenue Center;

(2) Show the name, address, and capacity of the claimant;

(3) Be signed by the claimant or by the claimant's duly authorized agent under penalties of perjury as provided in § 19.45; and

(4) Include any supporting documents required by this part. The supporting documents will be considered a part of the claim.

(b) The appropriate TTB officer may require that the claimant submit additional evidence or documentation to further support the legitimacy or accuracy of the claim.

(26 U.S.C. 5008, 5215, 6065)

§ 19.263 Claims on spirits, denatured spirits, articles, or wines lost or destroyed in bond—specific requirements.

(a) *Claims for remission.* A claim for remission of tax liability relating to the destruction or loss of spirits, denatured spirits, articles, or wines in bond must include the following information:

(1) *Identity of containers.* Identification of the containers, by serial number if they were numbered, and location of the containers from which the spirits, denatured spirits, articles or wines were lost, or in which they were removed for destruction;

(2) *Quantity of spirits.* The quantity of spirits, denatured spirits, articles, or wines lost or destroyed from each container, and the total quantity of spirits or wines covered by the claim;

(3) *Amount of claim.* The total amount of tax for which the claim is filed;

(4) *Identity of distilled spirits plant.* The name, number, and address of the distilled spirits plant from which withdrawn without payment of tax or removed for transfer in bond, if the claim involves spirits so withdrawn or removed or if the claim involves wines transferred in bond, and the date and purpose of such withdrawal or removal. In the case of imported spirits lost or destroyed while being transferred from customs custody to TTB bond as provided in § 19.409 of this part, the name of the customs bonded warehouse, if any, and port of entry will be included instead of the plant name, number, and address;

(5) *Date and cause.* The date of the loss or destruction. If the date is not known, enter the date the loss or destruction was discovered. Include the cause of the loss together with relevant facts and details;

(6) *Carrier.* The name of the carrier if the loss occurred while the spirits were in transit;

(7) *Consignee.* The name and address of the consignee, in the case of spirits withdrawn without payment of tax which are lost before being used for research, development or testing;

(8) *Theft.* If lost by theft, the facts establishing that the loss did not occur as the result of any negligence, connivance, collusion or fraud on the part of the proprietor of the plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them; and

(9) *Insurance.* In the case of a loss by theft, whether the claimant is indemnified or recompensed for the spirits or wines lost and if so, the amount and nature of indemnity or recompense and the actual value of the spirits or wines, less the tax.

(b) *Claims for abatement, credit or refund.* If a proprietor files a claim for abatement of an assessment, or for credit or refund of tax that has been paid or determined, for spirits, denatured spirits, articles, or wines lost or destroyed in bond, the claim must include all of the applicable information described in paragraph (a) of this section as well as the following:

(1) The date of assessment or payment of the tax for which abatement, credit or refund is claimed. If the tax has not been assessed or paid, give the date of the tax determination; and

(2) The name, plant number and address of the plant where the tax was determined, assessed or paid. If the tax was assessed against, or paid by, someone other than the proprietor, then give the name, address and capacity of the person who was assessed or paid the tax.

(c) *Supporting documents*—(1) *General.* If possible, the proprietor should support the information and details on all claims filed under this section with affidavits by persons having personal knowledge of the circumstances of the loss or destruction.

(2) *Losses in transit.* For claims on spirits, denatured spirits, articles, or wines lost while being transferred by a carrier, the claim must be supported by a copy of the bill of lading.

(3) *Spirits withdrawn without payment of tax.* If the lost spirits were withdrawn without payment of tax for research, development or testing, the claim must be supported by a copy of the proprietor's sample record prescribed in subpart V of this part.

(26 U.S.C. 5008, 5370)

§ 19.264 Claims on spirits returned to bonded premises—specific requirements.

(a) *General.* Section 5215(a) of the IRC allows for the return of tax paid or tax determined spirits to the bonded premises of a distilled spirits plant under certain conditions. In addition, section 5008(c) of the IRC allows a proprietor to file a claim for credit or refund of tax on the spirits returned to bonded premises under section 5215(a). For information on allowable returns see subpart Q of this part.

(b) *Claims for credit or refund.* A claim for credit or refund of tax on spirits returned to bonded premises under section 5215(a), must include the following information:

(1) Quantity of spirits so returned;

(2) Amount of tax for which the claim is filed;

(3) Name, address, and plant number of the plant to which the spirits were returned and the date of the return;

(4) The purpose for which the spirits were returned; and

(5) The serial number of the gauge record on which the spirits were returned.

(c) *Puerto Rican and Virgin Islands spirits and imported rum.* If the alcoholic content of the spirits contain at least 92 percent Puerto Rican or Virgin Islands rum, or if the spirits contain rum imported from any area other than Puerto Rico and the Virgin Islands, the claim must show:

(1) Proof gallons of the finished product derived from Puerto Rican or Virgin Islands spirits, or derived from rum imported from any other area; and

(2) The amount of tax imposed by 26 U.S.C. 7652 or 26 U.S.C. 5001, determined at the time of withdrawal from bond, on the Puerto Rican or Virgin Islands spirits, or on the rum imported from any other area, contained in the product.

(d) *Products subject to 26 U.S.C. 5010 tax credits.* A claim for credit or refund of tax on spirits containing eligible wine or eligible flavors must include the date and serial number of the record of tax determination and the effective tax rate at which the tax was paid or determined. If this information is not provided, the amount of tax claimed will be based on the lowest effective tax rate applied to the product.

(e) *Limits on claims.* Claims for credit or refund of tax must be filed by the proprietor of the plant to which the spirits were returned. The claim must be filed within six months of the date of the return. No interest is allowed on any claims for refund or credit.

(26 U.S.C. 5008, 5215)

§ 19.265 Claims relating to spirits lost after tax determination.

Claims for abatement, credit, or refund of tax under this part, relating to losses of spirits occurring on bonded premises after tax determination but prior to physical removal from such premises, will be prepared and filed in accordance with the regulations in § 19.263(b) and (c).

(26 U.S.C. 5008)

Rules Regarding Credits, Abatement, Remission or Refund

§ 19.266 Claims for credit of tax.

A proprietor may file a claim for credit of tax, as provided in this part, after the tax has been determined, whether or not the tax has been paid. However, a proprietor may not anticipate allowance of a credit or make an adjusting entry in a tax return pending action on the claim.

(26 U.S.C. 5008, 5215)

§ 19.267 Adjustments for credited tax.

When a proprietor receives a notice of allowance of credit from TTB, including notification of credit for tax on spirits exported with benefit of drawback as provided in part 28 of this chapter, the proprietor will make an adjusting entry and an explanatory statement on his next excise tax return. The proprietor will identify the notification of allowance of credit that authorizes the adjusting entry in the explanatory statement. If the allowable tax credit is greater than the tax due on the excise tax return, the proprietor will apply the balance of the tax credit to one or more following tax returns until the tax credit is exhausted.

(26 U.S.C. 5008, 5062)

§ 19.268 Allowance of remission, abatement, credit or refund of tax.

The appropriate TTB officer is authorized to allow claims for remission, abatement, credit, and refund of tax, filed under the provisions of this part.

(26 U.S.C. 5008)

Rules for Puerto Rican and Virgin Islands Spirits

§ 19.269 Puerto Rican and Virgin Islands spirits.

(a) The provisions of 26 U.S.C. 5008, authorizing abatement, remission, credit, or refund for loss or destruction of distilled spirits, also apply to spirits brought into the United States from Puerto Rico or the Virgin Islands with respect to the following:

(1) Spirits lost while in TTB bond;

(2) Voluntary destruction of spirits in bond;

(3) Spirits returned to bonded premises after withdrawal without payment of tax; and

(4) Spirits returned to bonded premises after withdrawal upon tax determination.

(b) In addition to the information required by § 19.263, claims relating to spirits lost in bond must show the name of the producer and the serial number and date of the formula under which produced, if any.

(26 U.S.C. 5008, 5215)

Subpart K—Gauging

§ 19.281 Scope.

This subpart covers gauging, which is the determination of the quantity and the proof of distilled spirits. Topics covered in this subpart include: the general requirements for gauging; when gauges are required at distilled spirits plants; and special rules that apply to the gauges performed at distilled spirits plants. For additional requirements and procedures governing gauging, see part 30 of this chapter, Gauging Manual.

§ 19.282 General requirements for gauging and measuring equipment.

A proprietor is required to perform periodic gauges of the spirits, wines, and alcoholic flavorings at the plant. A proprietor must have accurate and readily usable gauging and measuring equipment as required by this part and part 30 of this chapter. At any time, TTB may require that the proprietor's gauges be performed in the presence of, and be verified by, a TTB officer. In addition, TTB may disapprove the use of any equipment, or the proprietor's means of gauging, if TTB finds that it is not sufficiently accurate or suitable for the gauges and measurements to be made.

(26 U.S.C. 5006, 5204)

Required Gauges

§ 19.283 When gauges are required.

The proprietor must gauge spirits, wine, and alcoholic flavoring materials when they are:

(a) Produced and entered for deposit;

(b) Filled into packages from storage tanks;

(c) Transferred or received in bond;

(d) Transferred between operational accounts;

(e) Mixed in the manufacture of a distilled spirits product;

(f) Mingled under § 19.329;

(g) Reduced in proof before bottling;

(h) Voluntarily destroyed;

(i) Removed or withdrawn from bond;

(j) Tax determined;

(k) Returned to bond;

(l) Denatured; or

(m) When required by a TTB officer.

(26 U.S.C. 5204, 5559)

Rules for Gauging

§ 19.284 Quantity determination of bulk spirits.

(a) *Gauge of spirits in packages.* When determining the quantity of bulk spirits in packages, the proprietor must determine the quantity by weight as provided in part 30 of this chapter.

(b) *Bulk Gauge for Tax Determination.* When determining the quantity of bulk spirits for determination of tax or when performing a production gauge that will be used for tax determination, the proprietor must determine the quantity by weight as provided in part 30 of this chapter or by an accurate mass flow meter. For tax determination purposes, an accurate mass flow meter is a mass flow meter that has been certified by the manufacturer or other qualified person as accurate within a tolerance of $+/-0.1\%$.

(c) *Volumetric determination.* Except as provided in paragraphs (a) and (b) of this section, in all other instances when the proprietor is required to gauge bulk

spirits in bond, the proprietor may determine the quantity by either weight or volume. When the proprietor determines the quantity by volume, the proprietor must measure the spirits by using:

(1) A tank or bulk conveyance for which a calibration chart is provided, with the calibration charts certified as accurate by persons qualified to calibrate tanks or bulk conveyances; or

(2) An accurate mass flow meter. For purposes of this paragraph, an accurate mass flow meter is a mass flow meter that has been certified by the manufacturer or other qualified person as accurate within a tolerance of +/−0.5%; or

(3) Another device or method when approved by the appropriate TTB officer.

(26 U.S.C. 5559)

§ 19.285 Proof determination of distilled spirits.

(a) Except as provided in paragraph (b) of this section, when the proprietor is required to gauge distilled spirits, the proprietor must determine the proof in accordance with the procedures prescribed in part 30 of this chapter, Gauging Manual.

(b) *Use of Initial proof.* After a proprietor has determined the proof of distilled spirits in accordance with the procedures in part 30 of this part, a proprietor may use the initial determination of proof when required to make a later gauge at the same plant. However, a proprietor must determine the proof again when:

(1) A bottling tank gauge is required by § 19.353;

(2) A gauge for tax determination is required by § 19.226; or

(3) In any case where the proof may have changed.

(26 U.S.C. 5559)

§ 19.286 Gauging of spirits in bottles.

When gauging spirits in bottles, the proprietor may determine the proof and quantity from case markings and label information if the bottles are full and there is no evidence that tampering has occurred.

(26 U.S.C. 5204, 5559)

§ 19.287 Gauging of alcoholic flavoring materials.

Generally, alcoholic flavoring material must be gauged when dumped. However, when received from a manufacturer in a closed, nonporous container such material may be gauged by using the proof shown on the container label or a related statement of proof from the manufacturer. When the proof is determined from a label or manufacturer's statement, the proprietor will test a sufficient number of samples to verify the accuracy of the proof so determined. TTB may require that alcoholic flavoring materials be gauged by the methods provided in part 30 of this chapter.

(26 U.S.C. 5204, 5559)

§ 19.288 Determination of tare.

When packages are to be individually gauged for withdrawal from bonded premises, the actual tare must be determined in accordance with part 30 of this chapter.

(26 U.S.C. 5204)

§ 19.289 Production gauge.

(a) *General requirements for production gauges.* A proprietor must gauge all spirits by determining the quantity and proof as soon as reasonably possible after production is completed. Except as otherwise provide in this section, a proprietor may determine the quantity by volume or by weight, by an accurate mass flow meter, or when approved by the appropriate TTB officer, by other devices or methods that accurately determine the quantities. If caramel is added to brandy or rum, the proof of the spirits must be determined after the addition. Spirits in each receiving tank will be gauged before any reduction in proof and both before and after each removal of spirits. The gauges must be recorded in the records required by § 19.585.

(b) *Tax to be determined on production gauge.* If the tax is to be determined based on the production gauge, all transaction records must be marked ''Withdrawal on Production Gauge.'' A proprietor may determine the tax based on the production gauge if the spirits are:

(1) Weighed into bulk conveyances or metered using an accurate mass flow meter;

(2) Uniformly filled by weight or an accurate mass flow meter into metal packages; or

(3) Filled by weight or an accurate mass flow meter into packages for immediate withdrawal from bonded premises with the details recorded on a package gauge record in accordance with § 19.619.

(c) *Tax not to be determined on production gauge.* If spirits are drawn from the production system into barrels, drums, or similar portable containers of the same rated capacity and the containers are filled to capacity, and the tax is not to be determined on the basis of the production gauge, the gauge may be made by:

(1) Weighing in a tank, converting the weight into proof gallons, and determining the average content of each container;

(2) Measuring volumetrically, in a calibrated tank, converting the wine gallons determined into proof gallons, and determining the average content of each container;

(3) Converting the rated capacity into proof gallons to determine the average content of each container. Rated capacity will be determined from specifications of the manufacturer. The proprietor will determine the rated capacity of used cooperage; or

(4) Determining by an accurate mass flow meter or a device or method approved under paragraph (a) of this section, the total quantity filled into containers, and determining the average content of each container.

(d) *Records of production gauge.* For the production gauge, fractional proof gallons will be rounded to the nearest one-tenth and the average content and the number of packages filled will be used in computing the quantity produced. The actual proof gallons in each remnant container must be shown. As provided in § 19.618, a separate gauge record will be prepared for each lot of packages filled (see § 19.485) and for each removal by pipeline or bulk conveyance for deposit in bond on the same plant premises. The gauge record will show ''Deposit in storage'' or ''Deposit in processing.'' If spirits are to be transferred in bond or withdrawn from bond, the production gauge will be made on the form or record required by this part (accompanied by a package gauge record, if required).

(26 U.S.C. 5204, 5211)

Subpart L—Production of Distilled Spirits

§ 19.291 General.

The regulations in this subpart cover production operations. A proprietor authorized to produce distilled spirits must conduct production operations in accordance with the provisions of this subpart. Subpart V of this part sets forth record keeping requirements that apply to production operations.

(26 U.S.C. 5201)

Notification to TTB When Beginning or Suspending Production Operations

§ 19.292 Notice of operations.

A proprietor authorized to produce distilled spirits may not commence, suspend, or resume production operations at the plant without first providing written notice to TTB.

(a) *Beginning operations.* A proprietor must file a letterhead notice with the appropriate TTB officer before

beginning or resuming production operations. A proprietor must not begin or resume operations before the time specified in the notice.

(b) *Suspending operations.* If a proprietor intends to suspend production operations for a period of 90 days or more, the proprietor must file a letterhead notice with the appropriate TTB officer specifying the date on which operations will be suspended.

(c) *Discontinuing reports.* A proprietor is not required to prepare or file reports of production operations under subpart V of this part for periods during which production operations are suspended.

(26 U.S.C. 5221)

Rules for Receipt, Use, and Disposal of Materials

§ 19.293 Receipt of materials.

When a proprietor receives certain materials on bonded premises, the proprietor must determine the quantity received and record those quantities in the records prescribed by subpart V of this part. This requirement applies to:

(a) Fermenting materials;

(b) Distilling materials (including nonpotable chemical mixtures containing spirits); and

(c) Spirits, denatured spirits, articles, and spirits residue for redistillation.

(26 U.S.C. 5201, 5222, 5223)

§ 19.294 Removal of fermenting material.

Material received for use as fermenting material may be removed from or used on bonded premises for other purposes. The proprietor must keep a record of use or removal as provided in subpart V of this part.

(26 U.S.C. 5201)

§ 19.295 Removal or destruction of distilling material.

(a) *Distilling material.* Generally, a proprietor may not remove distilling material from bonded premises before it is distilled. However, a proprietor may remove mash, wort, wash or other distilling material:

(1) To plant premises, other than bonded premises, for use in any business authorized under § 19.55;

(2) To other premises for use in processes not involving the production of spirits, alcohol beverages, or vinegar by the vaporizing process; or

(3) For destruction.

(b) *Residues.* A proprietor may remove the residue of distilling material not introduced into the production system from the premises if the liquid is extracted from the material before removal and the liquid is not received at any distilled spirits plant or bonded wine cellar. A proprietor may return residue of beer used as distilling material to the producing brewery. A proprietor may destroy distilling material produced and wine and beer received for use as distilling material.

(c) *Records.* A proprietor must keep a record of removal or destruction as provided in subpart V of this part.

(26 U.S.C. 5222, 5370)

§ 19.296 Fermented materials

Fermented materials that a proprietor intends to use in the production of spirits must be:

(a) Produced on the bonded premises where used;

(b) Received from a bonded wine cellar in the case of wine;

(c) Beer received from a brewery without payment of tax, or beer that was removed from a brewery upon determination of tax; or

(d) Apple cider exempt from tax under 26 U.S.C. 5042(a)(1).

(26 U.S.C. 5201, 5222, 5223)

§ 19.297 Use of materials in production of spirits.

A proprietor may produce spirits from any suitable material in accordance with the proprietor's statements of production procedure in the notice of registration. Materials from which alcohol will not be produced may be used in production only if the use of the materials is described in the approved statements of production procedure. The distillation of nonpotable chemical mixtures as described in § 19.36 will be deemed to be the original and continuous distillation of the spirits in such mixtures and to constitute the production of spirits.

(26 U.S.C. 5172, 5178)

Rules for Production of Spirits

§ 19.301 Distillation.

The distillation of spirits must be done in a continuous system. Distilling operations are continuous when the spirits are moved through the various steps of production as quickly as plant operation will permit. The proprietor may move the product through as many distilling or other production operations as desired, provided the operations are continuous. The collection of unfinished spirits for the purpose of redistillation is not considered to be a break in the continuity of the distilling procedure. However, the quantity and proof of any unfinished spirits must be determined and recorded before any mingling with other materials or before any further operations involving the unfinished spirits outside the continuous system. Before the production gauge, spirits may be held only as long as reasonably necessary to complete the production procedure.

(26 U.S.C. 5178, 5211, 5222)

§ 19.302 Treatment during production.

During production, the proprietor may purify or refine the spirits by using any material that will not remain in the finished product. Juniper berries and other natural aromatics or their extracted oils may be used in the distillation of gin. Spirits may be percolated through or treated with oak chips that have not been treated with any chemical. The proprietor must destroy or so treat any materials used in treatment of spirits, and which do not remain in the spirits, so as to preclude the extraction of potable spirits.

(26 U.S.C. 5201)

§ 19.303 Addition of caramel to rum or brandy and addition of oak chips to spirits.

A proprietor may add caramel that has no material sweetening properties to rum or brandy in packages or tanks prior to production gauge. A proprietor may add oak chips that have not been treated with any chemical to packages of spirits prior to or after the production gauge. The proprietor must note the use of oak chips on all transaction records.

(26 U.S.C. 5201)

§ 19.304 Production gauge.

A proprietor must gauge all spirits by determining the quantity and proof as soon as reasonably possible after production is completed. Additional requirements regarding production gauges are found in subpart K of this part.

(26 U.S.C. 5204, 5211)

§ 19.305 Identification of spirits.

Upon completion of the production gauge, the proprietor must identify containers of spirits as provided in subpart S of this part. When the proprietor intends to enter spirits into bonded storage for later packaging in wooden packages, the proprietor may identify the spirits with the designation to which they would be entitled if drawn into wooden packages, followed by the word ''Designate,'' for example, ''Bourbon Whisky Designate.''

(26 U.S.C. 5201, 5206)

§ 19.306 Entry.

(a) Following completion of the production gauge, a proprietor must make the appropriate entry for:

(1) Deposit of the spirits on bonded premises for storage or processing;

(2) Withdrawal of the spirits on determination of tax;

(3) Withdrawal of the spirits free of tax;

(4) Withdrawal of the spirits without payment of tax; or

(5) Transfer of the spirits for redistillation.

(b) A proprietor may use the production gauge as the entry gauge when spirits are:

(1) Deposited for storage or processing at the same distilled spirits plant; or

(2) Entered for redistillation at the same distilled spirits plant.

(c) When spirits are entered for deposit at another distilled spirits plant or are entered for withdrawal or redistillation, the provisions subpart P of this part will apply.

(26 U.S.C. 5211)

§ 19.307 Distillates containing extraneous substances.

(a) *Use in production.* Distillates that contain substantial quantities of fusel oil, aldehydes, or other extraneous substances may be removed from the distilling system before the production gauge and promptly added to fermenting or distilling material at the distillery where produced.

(b) *Use at adjacent bonded wine cellar.* Distillates that contain aldehydes may be removed, without payment of tax, to an adjacent bonded wine cellar for use in fermentation of wine to be used as distilling material at the distilled spirits plant from which the distillates were removed. The removal of distillates to an adjacent bonded wine cellar must be done as provided in § 19.419. The receipt and use of those distillates must conform to the requirements of part 24 of this chapter.

(26 U.S.C. 5201, 5222, 5373)

Rules for Chemical By-Products

§ 19.308 Spirits content of chemicals produced.

All chemicals and chemical by-products produced must be substantially free of spirits before being removed from bonded premises. The spirits content of chemicals to be removed from bonded premises must not exceed 10 percent by volume unless the appropriate TTB officer approves higher limits. A proprietor must test chemicals for spirits content and maintain a record of such tests as required by § 19.584.

(26 U.S.C. 5201)

§ 19.309 Disposition of chemicals.

Chemicals that meet the requirements in § 19.308 may be removed from bonded premises by pipeline or in containers marked to show the contents. The proprietor must determine the quantities of chemicals removed from bonded premises and keep records of removals as required by § 19.586. A TTB officer may take samples of chemicals.

(26 U.S.C. 5201, 5222)

§ 19.310 Wash water.

Water used in washing chemicals to remove spirits may be run into a wash tank or a distilling material tank, or may be destroyed or disposed of on the premises.

(26 U.S.C. 5008, 5201)

Production Inventories

§ 19.312 Physical inventories.

A proprietor must take a physical inventory of the spirits and denatured spirits in tanks and other containers in the production account at the close of each calendar quarter. A proprietor must record the results of the inventory as provided in subpart V of this part and must show separately spirits and denatured spirits received for redistillation. TTB may require additional inventories be taken at any time.

(26 U.S.C. 5201)

Rules for Redistillation

§ 19.314 General.

Distillers or processors may redistill spirits, denatured spirits, articles, and spirits residues. Some redistillation requires an approved formula on form TTB F 5100.51, Formula and Process for Domestic and Imported Alcohol Beverages, as specified in §§ 5.26 and 5.27 of this chapter.

(26 U.S.C. 5223)

§ 19.315 Receipts for redistillation.

(a) A proprietor may receive and redistill spirits or denatured spirits that:

(1) Have not been removed from bond;

(2) Have been withdrawn from bond on payment or determination of tax and returned to bond under subpart Q of this part;

(3) Have been withdrawn from bond free of tax or without payment of tax and returned to bond under subpart T of this part; or

(4) Have been abandoned to the United States and sold to the proprietor without the payment of tax.

(b) A proprietor may also receive and redistill:

(1) Recovered denatured spirits and recovered articles returned under § 19.454, and

(2) Articles and spirits residues received under § 19.454.

(26 U.S.C. 5201, 5215, 5223, 5243)

§ 19.316 Redistillation.

(a) TTB has established standards of identity for the various classes and types of distilled spirits. Those standards are found in part 5 of this chapter. If a proprietor intends to redistill spirits, the proprietor must ensure that the redistillation process does not cause the distillate to be become ineligible for designation in the class or type of spirits that the proprietor intends to produce. Therefore, spirits must not be redistilled at a proof lower than that allowed for the class and type at which the spirits were originally produced, unless the redistilled spirits are to be:

(1) Used in wine production;

(2) Used in the manufacture of gin or vodka; or

(3) Designated as alcohol.

(b) In order to preserve the class and type of spirits during the redistillation process, different kinds of spirits must be redistilled separately, or with distilling material of the same kind or type as that from which the spirits were originally produced. However, this restriction does not apply when:

(1) Brandy is redistilled into ''spirits-fruit'' or ''neutral spirits-fruit''. In this case the resulting distillate must not be used for producing wine;

(2) Whiskey is redistilled into ''spirits-grain'' or ''neutral spirits-grain'';

(3) Spirits originally distilled from different kinds of material are redistilled into ''spirits-mixed'' or ''neutral spirits-mixed''; or

(4) The spirits are redistilled into alcohol.

(c) All spirits redistilled after the production gauge will be treated the same as if the spirits had been originally produced by the redistiller. Spirits recovered by redistillation of denatured spirits, articles, or spirits residues may not be withdrawn from bonded premises except for industrial use or after denaturation. Otherwise, all provisions of this part and 26 U.S.C. Chapter 51 applicable to the original production of spirits will be applicable to the redistillation of spirits. Nothing in this section affects any provision of this chapter relating to the labeling of distilled spirits.

(26 U.S.C. 5215, 5223)

Subpart M—Storage of Distilled Spirits

§ 19.321 General.

This subpart covers storage operations at distilled spirits plants. A proprietor qualified as a warehouseman and authorized to store bulk distilled spirits and wines must conduct storage operations in accordance with the provisions of this subpart. Subpart V of this part sets forth record keeping requirements that apply to storage operations.

(26 U.S.C. 5201)

Receipt and Storage of Spirits and Wines

§ 19.322 Receipt and storage of bulk spirits and wines.

(a) *Deposit of spirits into storage account.* A proprietor may receive bulk spirits into the storage account:

(1) From the production facilities of the same plant;

(2) By transfer in bond from another plant;

(3) From customs custody without payment of tax; or

(4) By return to bulk storage.

(b) *Deposit of wine into storage account.* A proprietor may receive bulk wine into the storage account:

(1) By transfer in bond from a bonded wine cellar; or

(2) By transfer in bond from another distilled spirits plant.

(c) *Storage.* A proprietor may store spirits or wines in packages, tanks or portable bulk containers in the storage account on the bonded premises. If stored in portable containers, the containers must be kept so that they can be readily inspected or inventoried by TTB officers.

(26 U.S.C. 5201, 5202, 5211, 5212, 5231, 5232, 5601)

Rules for Filling and Changing Packages

§ 19.324 Filling of packages from tanks.

A proprietor may fill spirits or wines into packages from storage tanks on bonded premises. The spirits or wines in the tank must be gauged before the filling of packages begins and again when the filling is finished if the tank is not empty. The results of the gauges must be recorded in the records required by § 19.618.

(26 U.S.C. 5201)

§ 19.325 Change of packages.

A proprietor may transfer spirits or wines in storage from one package to another. Each new package must contain spirits from only one package except in the case of spirits of 190 degrees or more proof. Packages of spirits must be marked as provided in subpart S of this part. Each package of wine must bear the same marks as the package from which the wine was transferred.

(26 U.S.C. 5201)

Rules for Mingling or Blending Spirits

§ 19.326 Mingling or blending of spirits for further storage.

A proprietor may mingle or blend spirits in the storage account according to the following rules:

(a) Spirits distilled at 190 degrees or more of proof, whether or not later reduced, may be mingled in storage.

(b) Domestic spirits distilled at less than 190 degrees of proof may be mingled for withdrawal or further storage if the spirits:

(1) Are of the same kind; and

(2) Were produced in the same State.

(c) Imported spirits distilled at less than 190 degrees of proof may be mingled for withdrawal or further storage if the spirits:

(1) Are of the same kind;

(2) Were produced in the same foreign country; and

(3) Were treated, blended, or compounded in the same foreign country and the U.S. import duty was paid at the same rate.

(d) Imported spirits distilled at less than 190 degrees of proof that are recognized as distinctive products under part 5 of this chapter may be mingled for withdrawal or further storage if the spirits:

(1) Are of the same kind;

(2) Were produced by the same proprietor in the same foreign country; and

(3) Were treated, blended, or compounded by the same proprietor in the same foreign country and the U.S. import duty was paid at the same rate.

(e) Fruit brandies distilled from the same kind of fruit at not more than 170 degrees of proof may, for the sole purpose of perfecting such brandies according to commercial standards, be blended with each other, or with any blend of such fruit brandies in storage. Rums may, for the sole purpose of perfecting them according to commercial standards, be blended with each other, or with any blend of rums.

(f) Packaging after mingling or blending must be done under the provisions of § 19.324. The mingled or blended spirits may be returned to the packages from which they were dumped, or as many of the packages as needed.

(26 U.S.C. 5201, 5214)

§ 19.327 Packages dumped for mingling.

A proprietor must examine each package of spirits to be dumped for mingling. If any package bears evidence of loss due to theft or unauthorized voluntary destruction, the proprietor must notify the appropriate TTB officer before dumping the package. Mingled spirits must be recorded on the tank record required by § 19.592 and § 19.593, as appropriate.

(26 U.S.C. 5201)

§ 19.328 Determining age of mingled spirits.

When spirits are mingled, the age of the spirits for the entire lot will be the age of the youngest spirits contained in the lot.

(26 U.S.C. 5201)

§ 19.329 Mingled spirits or wines held in tanks.

When wines or spirits of less than 190 degrees of proof are mingled in a tank, the proprietor must gauge the spirits or wines in the tank and record the mingling gauge on the tank record prescribed in § 19.592.

(26 U.S.C. 5201)

Use of Oak Chips and Caramel

§ 19.331 Use of oak chips in spirits and caramel in brandy and rum.

A proprietor may add oak chips that have not been treated with any chemical to packages of spirits. The proprietor must note the use of oak chips on all transaction records. A proprietor may add caramel that has no material sweetening properties to rum or brandy stored in packages or tanks.

(26 U.S.C. 5201)

Storage Inventories

§ 19.333 Physical inventories.

A proprietor must take a physical inventory of all spirits and wines held in the storage account in tanks and other containers (except packages) at the close of each calendar quarter. A proprietor must record the results of the inventory as provided in subpart V of this part. TTB may require additional inventories at any time.

(26 U.S.C. 5201)

Subpart N—Processing of Distilled Spirits

§ 19.341 General.

This subpart covers processing operations at distilled spirits plants. A proprietor authorized to perform processing operations must conduct processing operations in accordance with the provisions of this subpart. Subpart V of this part sets forth record keeping requirements that apply to processing operations. Also, the provisions of subpart O of this part apply if a proprietor denatures spirits or manufactures articles on bonded premises as part of processing operations under this subpart.

(26 U.S.C. 5201)

Rules for Receipt and Use of Spirits, Wines, and Alcoholic Flavoring Materials

§ 19.342 Receipt of spirits, wines, and alcoholic flavoring materials for processing.

(a) *Receipt of bulk spirits.* A proprietor may receive bulk spirits into the processing account:

(1) From the production or storage account at the same plant;

(2) By transfer in bond from another distilled spirits plant; or

(3) By withdrawal from customs custody under 26 U.S.C. 5232.

(b) *Receipt of wines.* A proprietor may receive wines into the processing account:

(1) From the storage account at the same plant; or

(2) By transfer in bond from a bonded wine cellar or another distilled spirits plant.

(c) *Receipt of spirits returned to bond.* A proprietor may receive spirits into the processing account that are returned to bond under the provisions of 26 U.S.C. 5215.

(d) *Receipt of alcoholic flavoring materials.* A proprietor may receive alcoholic flavoring materials into the processing account.

(e) *Dumping of spirits, wines, and alcoholic flavoring materials.* As provided in §§ 19.343 and 19.598, the proprietor must prepare a dump/batch record when spirits, wines, and alcoholic flavoring materials are dumped for use in the processing account. Spirits, wines, and alcoholic flavoring materials that are dumped into the processing account are subject to the following rules:

(1) Spirits and wines received in bulk containers or conveyances may be retained in the containers or conveyances in which received until used, but must be recorded as dumped upon receipt;

(2) Spirits and wines received by pipeline must be deposited in tanks and recorded as dumped on receipt; and

(3) Alcoholic flavoring materials may be retained in the containers in which received or may be transferred to another container if the proprietor marks or otherwise indicates thereon, the full identification of the original container, the date of receipt, and the quantity deposited. Alcoholic flavoring materials and nonalcoholic ingredients will be considered dumped when mixed with spirits or wines.

(f) *Gauging.* A proprietor must determine the proof gallon content of spirits, wines, and alcoholic flavoring materials at the time of dumping. Additional information regarding the gauging of spirits, wines, and alcoholic flavoring materials is found in subpart K of this part.

(26 U.S.C. 5201)

§ 19.343 Use of spirits, wines and alcoholic flavoring materials.

A proprietor must prepare a dump/batch record in accordance with § 19.598 for spirits, wines, alcoholic flavoring materials, and nonalcoholic ingredients used in the manufacture of a distilled spirits product according to the following rules.

(a) *Dump record.* A proprietor must prepare a dump record when spirits, wines, or alcoholic flavoring materials are dumped for use in the manufacture of a distilled spirits product, and when spirits are dumped for redistillation in the processing account.

(b) *Batch record.* A proprietor must prepare a batch record to report:

(1) The dumping of spirits that are to be used immediately and in their entirety in preparing a batch of a product manufactured under an approved formula;

(2) The use of spirits or wines previously dumped, reported on dump records and retained in tanks or receptacles; or

(3) The use of any combination of ingredients under paragraph (b)(1) or paragraph (b)(2) of this section in preparing a batch of product manufactured under an approved formula.

(26 U.S.C. 5201)

§ 19.344 Manufacture of nonbeverage products, intermediate products, or eligible flavors.

(a) Distilled spirits and wine may be used for the manufacture of flavors or flavoring extracts of a nonbeverage nature as intermediate products to be used exclusively in the manufacture of other distilled spirits products on bonded premises.

(b) Nonbeverage products on which drawback will be claimed, as provided in 26 U.S.C. 5131–5134, may not be manufactured on bonded premises. Premises used for the manufacture of nonbeverage products on which drawback will be claimed must be separated from bonded premises.

(c) For purposes of computing an effective tax rate, flavors manufactured on either the bonded or general premises of a distilled spirits plant are not eligible flavors. See § 19.1 for the definition of the term ''eligible flavor'' and further restrictions that apply to the manufacture of an eligible flavor.

(26 U.S.C. 5201)

Obscuration Determination

§ 19.346 Determining obscuration.

A proprietor may determine, as provided in § 30.32 of this chapter, the proof obscuration of spirits to be bottled on the basis of a representative sample taken from a storage tank before the transfer of the spirits to the processing account or from a tank after the spirits have been dumped for processing, whether or not combined with other alcoholic ingredients. The obscuration will be determined after the sample has been reduced to within one degree of bottling proof. Only water may be added to a lot of spirits to be bottled for which the determination of proof obscuration is made from a sample under this section. The proof obscuration for spirits gauged under this section must be frequently verified by testing samples taken from bottling tanks before bottling.

(26 U.S.C. 5204)

Filing Formulas With TTB

§ 19.348 Formula requirements.

A proprietor must obtain an approved formula on form TTB F 5100.51 as provided in §§ 5.26 and 5.27 of this chapter before a proprietor may:

(a) Blend, mix, purify, refine, compound or treat spirits in any manner which results in a change of character, composition, class or type of the spirits, including redistillation as provided in § 19.314; or

(b) Produce gin or vodka by other than original and continuous distillation.

(26 U.S.C. 5201, 5555)

Rules for Bottling, Packaging, and Removal of Products

§ 19.351 Removals from processing.

(a) *Method of removal.* A proprietor may remove spirits or wines from the processing account in any approved bulk container, by pipeline, or in bulk conveyances in compliance with the provisions of this part. Spirits may be bottled and cased for removal.

(b) *Authorized removals from processing.* A proprietor may remove from processing:

(1) Spirits, upon tax determination or withdrawal under 26 U.S.C. 5214 or 26 U.S.C. 7510;

(2) Spirits, to the production account at the same plant for redistillation;

(3) Bulk spirits, by transfer in bond to production or processing account at another distilled spirits plant for redistillation or further processing;

(4) Spirits or wines, for authorized voluntary destruction; or

(5) Wines, by transfer in bond to a bonded wine cellar or to another

distilled spirits plant. However, wine may not be removed from the bonded premises of a distilled spirits plant for consumption or sale as wine.

(c) *Exception.* Except as provided in paragraph (b)(2) and (3) of this section, spirits may not be transferred from the processing account to the storage account.

(26 U.S.C. 5001, 5006, 5008, 5201, 5206, 5212, 5214, 5223, 5362)

§ 19.352 Bottling tanks.

Generally, a proprietor must bottle all spirits from tanks that are listed in the notice of registration and have been certified as accurate. However, if a proprietor files a letterhead application and shows the need to do so, the appropriate TTB officer may authorize bottling from original packages, tank trucks, totes or special containers where it is not practical to use a bottling tank. In addition, a proprietor may bottle liqueurs directly from a tank truck or tote without applying for permission to TTB if the liqueurs are gauged prior to unloading and piped directly to the bottling line.

(26 U.S.C. 5201)

§ 19.353 Bottling tank gauge.

When a distilled spirits product is to be bottled or packaged, the proprietor must gauge the product after any filtering, reduction, or other treatment, and before bottling or packaging begins. The gauge must be made at labeling or package marking proof, and the details of the gauge must be entered on the bottling and packaging record required in § 19.599.

(26 U.S.C. 5201)

§ 19.354 Bottling or packaging records.

A proprietor must prepare a record for each batch of spirits bottled or packaged as provided in § 19.599. A proprietor must keep a separate daily summary record of spirits bottled or packaged as provided in § 19.601.

(26 U.S.C. 5201, 5207)

§ 19.355 Labels describing the spirits.

Labels affixed to containers must accurately describe the spirits in the tanks from which the containers are filled. The proprietor's records must enable TTB officers to readily determine which label was used on any filled container.

Additional information regarding labeling requirements is found in subpart T of this part and part 5 of this chapter.

(26 U.S.C. 5201)

§ 19.356 Alcohol content and fill.

(a) *General.* At representative intervals during bottling operations, a proprietor must examine and test bottled spirits to determine whether the alcohol content and quantity (fill) of those spirits agree with what is stated on the label or the bottle. A proprietor's test procedures must be adequate to ensure accuracy of labels on the bottled product. Proprietors must record the results of all tests of alcohol content and quantity (fill) in the record required by § 19.600.

(b) *Variations in fill.* Quantity (fill) must be kept as close to 100 percent fill as the equipment and bottles in use will permit. There must be approximately the same number of overfills and underfills for each lot bottled. In no case will the quantity contained in a bottle vary by more than plus or minus two percent from the quantity stated on the label or bottle.

(c) *Variations in alcohol content.* Variations in alcohol content, subject to a normal drop that may occur during bottling, must not exceed:

(1) 0.25 percent alcohol by volume for products containing solids in excess of 600 mg per 100 ml;

(2) 0.25 percent alcohol by volume for all spirits products bottled in 50 or 100 ml size bottles; or

(3) 0.15 percent alcohol by volume for all other spirits and bottle sizes.

(d) *Example.* Under paragraph (c) of this section, a product with a solids content of less than 600 mg per 100 ml, labeled as containing 40 percent alcohol by volume and bottled in a 750 ml bottle, would be acceptable if the test for alcohol content found that it contained 39.85 percent alcohol by volume.

(26 U.S.C. 5201, 5301)

§ 19.357 Completion of bottling.

When the contents of a bottling tank are not completely bottled at the close of the day, the proprietor must make entries on the bottling and packaging record covering the total quantity bottled that day from the tank. Entries must be made not later than the morning of the following business day unless the proprietor maintains auxiliary or supplemental records as provided in § 19.580.

(26 U.S.C. 5201)

§ 19.358 Cases.

(a) On completion of bottling, a proprietor must place filled bottles with properly affixed closures in cases. A proprietor may only fill cases with the same kind, size, and proof of spirits. Normally, the cases must be sealed; however, cases may be temporarily retained on bonded premises without being sealed pending the affixing to bottles of any required labels, State stamps, or seals. Unsealed cases must be marked in accordance with subpart S of this part, and segregated from other cases until sealed. All cases must be sealed and marked as provided in subpart S of this part before removal from the bonded premises.

(b) Filled bottles may remain on the bottling line at the end of the workday if the identical product will be bottled on the next bottling shift and if adequate security measures are in place to prevent theft.

(26 U.S.C. 5201, 5206)

§ 19.359 Remnants.

When at the end of a bottling run less bottles remain than the number necessary to fill a case, the remaining bottles may be placed in a case marked as a remnant case or kept uncased on the bonded premises until spirits of the same kind are again bottled. The remnant bottles may later be used to complete the filling of a case, or may be used for another lawful purpose such as replacing accidental breakage occurring on bonded premises.

(26 U.S.C. 5201, 5206)

§ 19.360 Filling packages.

A proprietor may draw spirits into packages from a tank meeting the requirements of § 19.182 through § 19.184. A proprietor must gauge the packages, report the details of the gauge on a package gauge record as provided in § 19.619, and attach a copy of the package gauge record to each copy of the bottling and packaging record covering the product. The packages must be marked as provided in subpart S of this part.

(26 U.S.C. 5201)

§ 19.361 Removals by bulk conveyances or pipelines.

(a) When a proprietor removes spirits from the processing account in bulk conveyances or by pipeline, the proprietor must record the removal on the bottling and packaging record.

(b) Transfers and withdrawals of bulk spirits from the processing account must be performed in accordance with the provisions of subpart P of this part.

(c) The consignor of the transfer must forward to the consignee a statement of composition or a copy of any formula under which the spirits were processed for determining the proper use of the spirits, or for the labeling of the finished product.

(d) Bulk conveyances must be marked as provided in subpart S of this part.

(26 U.S.C. 5201)

§ 19.362 Rebottling.

When spirits are dumped for rebottling, the proprietor must prepare an appropriately modified bottling and packaging record. If the spirits were originally bottled by another proprietor, the rebottling proprietor must obtain a statement from the original bottler consenting to the rebottling.

(26 U.S.C. 5201)

§ 19.363 Reclosing and relabeling.

(a) A proprietor may reclose or relabel distilled spirits before removal from, or after return to, bonded premises. The reclosing or relabeling of spirits returned to bonded premises must be done immediately, and the spirits promptly removed.

(b) If the spirits were originally bottled by another proprietor, the relabeling proprietor must have on file a statement from the original bottler consenting to the relabeling.

(c) When spirits are relabeled, the proprietor must have a certificate of label approval or certificate of exemption from label approval issued under part 5 of this chapter for the labels used on relabeled spirits.

(d) A proprietor must prepare a separate record under § 19.604 for the relabeling or reclosing of spirits.

(26 U.S.C. 5201, 5215)

§ 19.364 Bottled-in-bond spirits.

If a proprietor labels spirits as bottled-in-bond for domestic consumption, the labels must meet the requirements in part 5 of this chapter and the bottles must bear a closure or other device as required by subpart T of this part.

(26 U.S.C. 5201)

§ 19.365 Spirits not originally intended for export.

Spirits produced in the United States and originally intended for domestic use may be exported with benefit of drawback or without payment of tax if the containers are marked as required by part 28 of this chapter. A proprietor may relabel the spirits to show any of the information required by § 19.519. If a proprietor intends to file a claim for drawback on spirits prepared for export under this section, the proprietor must follow the provisions of § 28.195b of this chapter. If a proprietor intends to withdraw spirits without payment of tax for export, the proprietor must follow the procedures in subpart E of part 28 of this chapter.

(26 U.S.C. 5062, 5214)

§ 19.366 Alcohol.

(a) *Containers.* A proprietor may put alcohol for industrial use in bottles, packages, or other containers, subject to the provisions of subpart S of this part. A proprietor must follow the provisions of subpart T of this part when bottling alcohol for nonindustrial domestic use.

(b) *Closures.* Closures or other devices must be affixed to containers of alcohol as provided in subpart T of this part.

(c) *Bottle labels.* All bottles of alcohol for industrial use must have a label that is securely affixed to the bottle showing the word ''Alcohol'' and the name and plant number of the bottler. The proprietor may place additional information on the label if it is not inconsistent with the required information.

(d) *Case marks.* Each case of bottled alcohol must bear the marks required by subpart S of this part.

(26 U.S.C. 5201, 5206, 5235, 5301)

Requirements for Processing Inventories

§ 19.371 Inventories of wines and bulk spirits in processing.

A proprietor must take a physical inventory of all wines and bulk spirits (except packages) held in the processing account at the close of each calendar quarter. The results of the inventory must be recorded as provided in subpart V of this part. TTB may require additional inventories at any time.

(26 U.S.C. 5201)

§ 19.372 Physical inventories of bottled and packaged spirits.

(a) *Physical inventories.* Generally, a proprietor must take physical inventories of bottled and packaged spirits in the processing account for the return periods ending June 30 and December 31, and at any other time that the appropriate TTB officer requires. Physical inventories may be taken within a period of a few days before or after June 30 or December 31 if:

(1) The period does not include more than one complete weekend; and

(2) Necessary adjustments are made to the inventory record to reflect the actual quantities on hand June 30 or December 31.

(b) *Alternate dates.* On approval of an application filed with the appropriate TTB officer, required physical inventories may be taken on dates other than June 30 and December 31 if the dates established for taking such inventories:

(1) Coincide with the end of a return period, and

(2) Are approximately six months apart.

(c) *Waiver of physical inventory.* A proprietor may file an application to take only one physical inventory per year. The appropriate TTB officer may approve the application if he finds that only one physical inventory per year will be sufficient to protect the revenue. However, the requirement for the waived inventory may be reimposed if it becomes necessary for protection of the revenue.

(d) *Notification of physical inventory.* A proprietor must notify the appropriate TTB officer at least 5 business days in advance of the date and time of a physical inventory of bottled or packaged spirits. TTB officers may be assigned to verify or supervise physical inventories taken under the provisions of this section.

(26 U.S.C. 5201)

Subpart O—Denaturing Operations and Manufacture of Articles

§ 19.381 General.

This subpart covers the denaturation of spirits and the manufacture of articles by proprietors of distilled spirits plants. Denatured spirits are distilled spirits that have been rendered unsuitable for beverage use by the addition of specific amounts of approved denaturing materials. For purposes of this subpart, articles are products that contain denatured spirits and that are made in accordance with this subpart or part 20 of this chapter. Proprietors who are qualified under this part as processors may make denatured spirits and articles in accordance with the provisions of this subpart. Additional requirements regarding the distribution, use, and standards for denatured spirits are set forth in parts 20 and 21 of this chapter.

(26 U.S.C. 5178, 5241)

§ 19.382 Formulas.

(a) *Approved formulas.* A proprietor must denature spirits according to an approved formula listed in 27 CFR part 21.

(b) *Alternate formulas and denaturants.* If a proprietor wishes to denature spirits by using an alternative formula or a different denaturant, the proprietor must apply to TTB for authorization. A proprietor must receive written approval from the appropriate TTB officer before denaturing spirits using an alternative formula or a different denaturant. See also §§ 21.5 and 21.91 of this chapter for additional requirements that apply in these circumstances.

(26 U.S.C. 5241)

Rules for Denaturing Spirits and Testing Denaturants

§ 19.383 Gauge for denaturation.

(a) *General.* A proprietor must gauge spirits before denaturation and after denaturation and must record each gauge in the record of denaturation required by § 19.606(b). However, a proprietor is not required to gauge either spirits that are dumped from previously gauged containers or spirits that are transferred directly to mixing tanks from gauge tanks where they were gauged. Measurements of spirits and denaturants may be made by volume, weight, accurate mass flow meter, or by any other device that has been approved by the appropriate TTB officer.

(b) *Denaturation and article manufacture in a single process.* When a proprietor both denatures spirits and manufactures articles in a single, unified process, the proprietor may, in place of the procedure specified in paragraph (a) of this section, gauge the spirits before and after denaturation in the following manner:

(1) Gauge the spirits to be denatured by volume, weight, accurate mass flow meter, or other device or method approved by the appropriate TTB officer;

(2) Gauge the denaturants to be used by volume, weight, accurate mass flow meter, or other device approved by the appropriate TTB officer; and

(3) Compute the number of wine gallons of denatured spirits produced, and enter this figure in the record required by § 19.606(b). In calculating the amount of denatured spirits produced, the proprietor must not include in the calculation the amount of additional chemicals or denaturants used for article manufacture.

(26 U.S.C. 5204, 5241)

§ 19.384 Adding denaturants to spirits.

(a) When making denatured spirits, a proprietor must mix the denaturants and spirits only in packages, tanks or bulk conveyances and only on bonded premises. A proprietor must thoroughly mix the denaturants with the spirits to ensure that all of the spirits are effectively denatured.

(b) If a proprietor wishes to use another method of mixing denaturants and spirits not prescribed in this subpart, the proprietor must submit to the appropriate TTB officer a written application for approval of the alternative method in accordance with § 19.27. TTB may require that the proprietor submit additional information, including a flow diagram or other graphic representation of the alternative method, in support of the application.

(26 U.S.C. 5242)

§ 19.385 Making alcohol or water solutions of denaturants.

If a proprietor uses a denaturant that is difficult to dissolve in spirits at normal working temperatures, that is highly volatile, or that becomes solid at normal working temperature, the proprietor may liquefy or dissolve the denaturant in a small amount of spirits or water prior to its use in the production of denatured spirits. However, the proof of the denatured spirits produced must not fall below the proof required by the approved formula. In addition, if alcohol is used as a solvent, the proprietor must include this additional alcohol in calculating the total quantity of spirits denatured in the batch.

(26 U.S.C. 5242)

§ 19.386 Adjusting pH of denatured spirits.

A proprietor may add trace amounts of acidic or caustic chemical compounds to adjust or neutralize the pH of denatured spirits. However, a proprietor may not adjust the pH with any substance that will counteract or reduce the effect of the denaturants. A proprietor who adjusts the pH of denatured spirits must keep a record of the adjustment with reference to the formula number of the treated denatured spirits. The record must include the kinds and quantities of chemical compounds used for each batch of denatured spirits treated.

(26 U.S.C. 5241, 5242)

§ 19.387 Ensuring the quality of denaturants.

(a) *Testing.* Proprietors must ensure that the materials they receive for use in denaturing conform to the specifications prescribed in part 21 of this chapter. In addition, the appropriate TTB officer may require that a proprietor test the quality of denaturants at any time.

(b) *Sampling denaturants.* Proprietors must use good commercial practice when taking samples of denaturants for quality assurance testing. Samples of denaturants must be representative of the lot being sampled.

(c) *Third party testing.* A proprietor may employ an outside laboratory or other appropriate third party to test samples of denaturants. In the case of a third party test, the proprietor must obtain a copy of the analysis or statement of findings signed by the chemist who performed the test. On request, the proprietor must provide to the appropriate TTB officer samples of denaturants for quality control testing in a Government laboratory.

(d) *Substandard denaturants.* If TTB or a proprietor finds that a material does not conform to the specifications for a denaturant prescribed in part 21 of this chapter, the proprietor must immediately terminate use of the substandard material as a denaturant. However, the proprietor may continue to use the material as a denaturant after treating or reprocessing the substandard material to correct the deficiency and bring the material into conformity with the applicable specifications.

(26 U.S.C. 5242)

Rules for Storing Denatured Spirits and Filling Containers

§ 19.388 Storing denatured spirits.

(a) *Bonded storage.* A proprietor must store on bonded premises all denatured spirits produced, received in bond, or received by return to bond.

(b) *Storage methods.* A proprietor may store denatured spirits on bonded premises in any appropriate tank, package or container authorized for filling with denatured spirits. The proprietor must store containers of denatured spirits in a manner that allows for easy inspection and inventory of the denatured spirits by TTB officers. A proprietor must store portable containers of denatured spirits within a building or structure that protects the spirits from unauthorized access. A proprietor may apply to the appropriate TTB officer for authorization to store containers of denatured spirits in an alternative manner in accordance with § 19.27.

(c) *Tank Records.* A proprietor must maintain a record for tanks in which denatured spirits are stored in accordance with § 19.606.

(26 U.S.C. 5201)

§ 19.389 Filling containers from tanks.

(a) *Filling portable containers.* A proprietor may fill portable containers with denatured spirits from tanks on the bonded premises.

(b) *Accounting for denatured spirits in filling operations.* In performing filling operations under paragraph (a) of this section, a proprietor must:

(1) Gauge the denatured spirits remaining in the tanks at the end of each filling operation;

(2) Maintain a record of each gauge and document the quantity of denatured spirits drawn from the tank during each filling operation; and

(3) Make a record of any spirits lost during the filling operation.

(c) *Gauging requirements.* The provisions of § 19.289 (a) and (c) apply

to the filling and gauging of portable containers. In addition, a proprietor may withdraw denatured spirits from the bonded premises in portable containers based on the filling gauge.

(26 U.S.C. 5201)

§ 19.390 Container marking requirements.

A proprietor must mark packages and portable containers containing denatured spirits in accordance with the requirements of subpart S of this part.

(26 U.S.C. 5206)

Rules for Mixing and Converting Denatured Spirits

§ 19.391 Mixing denatured spirits.

(a) *Spirits of the same formula.* If a proprietor has two or more different batches of denatured spirits produced under the same formula, the proprietor may mix them on bonded premises.

(b) *Spirits of different formulas.* A proprietor may mix denatured spirits produced under different formulas on bonded premises for immediate redistillation at the same plant or at another plant subject to the provisions of §§ 19.314, 19.315, and 19.316.

(26 U.S.C. 5241, 5242)

§ 19.392 Converting denatured alcohol to a different formula.

(a) *General.* A proprietor may convert specially denatured alcohol (SDA) from one formula of SDA to another formula of SDA if the resultant mixture contains only alcohol and the denaturants listed for an approved SDA formula and in the correct concentrations, as set forth in part 21 of this chapter. Such converted SDA may be used only as authorized in part 21 of this chapter.

(b) *Converting SDA to SDA Formula No. 1*—(1) *All SDA other than SDA Formulas No. 3–A and No. 30.* A proprietor may convert any SDA, other than SDA produced under Formulas No. 3–A and No. 30, into SDA Formula No. 1 by adding methyl alcohol and any one of the other alternative denaturants listed in § 21.32 of this chapter in accordance with the formulation prescribed in that section.

(2) *SDA Formulas No. 3–A and No. 30.* SDA Formulas No. 3–A and No. 30 specify more methyl alcohol than is specified for SDA Formula No. 1. Therefore, in order to convert SDA produced under Formulas No. 3–A or No. 30 into SDA under Formula No. 1, a proprietor must first add a sufficient amount of ethyl alcohol to the SDA in question to bring the methyl alcohol content to the proportion prescribed for SDA Formula No. 1. After adjusting the proportion of methyl alcohol, the proprietor must add the specified amount of any one of the other alternative denaturants listed in § 21.32 of this chapter.

(c) *Converting SDA to SDA Formula No. 29.* A proprietor may convert any SDA into SDA Formula No. 29 by adding the amount of acetaldehyde or ethyl acetate specified in § 21.56 of this chapter. However, due to the presence of other denaturants from the original formula, SDA under Formula No. 29 that has been converted from another SDA formula may be used only as authorized in § 21.56(b) but not in the manufacture of vinegar, drugs or medicinal chemicals, and the conditions governing use provided in § 21.56(c) will apply.

(d) *Other conversions of SDA.* If a proprietor wishes to make an SDA formula conversion other than one authorized in paragraph (a), (b), or (c) of this section, the proprietor must obtain approval from the appropriate TTB officer prior to the conversion.

(e) *Conversions to completely denatured alcohol.* A proprietor may convert any SDA from a formula that does not contain methyl alcohol or wood alcohol to any one of the completely denatured alcohol (CDA) formulas prescribed in subpart C of part 21 of this chapter, by adding the denaturants specified for CDA.

(26 U.S.C. 5242)

Rules for Restoration and Redenaturation, Inventories, and Manufacture of Articles; Records Required

§ 19.393 Restoration and redenaturation of recovered denatured spirits and recovered articles.

(a) *Recovered denatured spirits and articles.* A proprietor may receive recovered denatured spirits and recovered articles on bonded premises for restoration (including redistillation, if necessary), or redenaturation, or both, as provided in subpart Q of this part. However, the proprietor may not withdraw the spirits from bonded premises except for industrial use or after redenaturation.

(b) *Spirits or articles retaining some denaturants.* If recovered denatured spirits or recovered articles are to be redenatured and do not require the full amount of denaturants for redenaturation, the proprietor must make an entry to that effect in the record of denaturation required by § 19.606(b).

(26 U.S.C. 5242)

§ 19.394 Inventory of denatured spirits.

A proprietor must take a physical inventory of all denatured spirits in the processing account at the close of each calendar quarter. The proprietor must record the results of that inventory as provided in subpart V of this part. TTB may require additional inventories at any time.

(26 U.S.C. 5201)

§ 19.395 Manufacture of articles.

A proprietor must manufacture, label, mark and dispose of articles in accordance with part 20 of this chapter.

(26 U.S.C. 5273)

§ 19.396 Required records.

(a) *Records of denaturing operations.* A proprietor who denatures spirits must maintain daily records of denaturing operations in accordance with § 19.606.

(b) *Records of manufacture of articles.* A proprietor who manufactures articles must maintain daily records in accordance with § 19.607.

(26 U.S.C. 5178, 5241)

Subpart P—Transfers, Receipts, and Withdrawals

§ 19.401 Authorized transactions.

(a) *General.* A proprietor of a distilled spirits plant may transfer spirits and wines in bond to other distilled spirits plants, receive spirits and wines in bond from other distilled spirits plants, receive spirits from customs custody, and withdraw spirits from the distilled spirits plant without payment of tax or free of tax under certain conditions. This subpart sets forth the rules that a proprietor must follow when so transferring, receiving, or withdrawing spirits and wines and also includes related rules for taking samples and securing conveyances.

(b) *Other transfers and withdrawals.* For withdrawals of spirits from bonded premises on determination or payment of tax, see subpart I of this part. For rules regarding withdrawals for exportation and transfers to foreign trade zones or to customs bonded warehouses, see part 28 of this chapter.

(26 U.S.C. 5181, 5212, 5213, 5214, 5232, 5362, 5373)

Transfers Between Bonded Premises

§ 19.402 Authorized transfers in bond.

The IRC allows a proprietor to transfer and receive spirits, wines, and industrial alcohol as provided in paragraphs (a) through (c) of this section.

(a) *Spirits.* Bulk spirits or denatured spirits may be transferred in bond between the bonded premises of plants qualified under 26 U.S.C. 5171 or 26 U.S.C. 5181 in accordance with §§ 19.403 and 19.733. However, spirits or denatured spirits produced from

petroleum, natural gas, or coal may not be transferred to alcohol fuel plants.

(b) *Wine.* Wines may be transferred:

(1) From a bonded wine cellar to the bonded premises of a distilled spirits plant;

(2) From the bonded premises of a distilled spirits plant to a bonded wine cellar; and

(3) Between the bonded premises of distilled spirits plants.

(c) *Alcohol for industrial purposes.* Alcohol bottled for industrial purposes in accordance with § 19.366 and subpart S of this part, may be transferred between the bonded premises of distilled spirits plants in the same manner as provided in § 19.403 through § 19.407 for bulk distilled spirits.

(26 U.S.C. 5181, 5212, 5362)

§ 19.403 Application to receive spirits in bond.

(a) When the proprietor of a distilled spirits plant qualified under 26 U.S.C. 5171 or of an alcohol fuel plant qualified under 26 U.S.C. 5181 wishes to have spirits or denatured spirits transferred in bond to his plant from another distilled spirits plant, the proprietor must complete an application on TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond, in triplicate, and forward it to the appropriate TTB officer for approval. A proprietor is not required to submit an application on TTB F 5100.16 for transfers from customs custody under 26 U.S.C. 5232.

(b) TTB will not approve the application submitted under paragraph (a) of this section unless the proprietor's operations bond or unit bond either is in the maximum penal sum amount or is sufficient to cover the tax on the spirits or denatured spirits to be transferred in addition to all other liabilities chargeable against the bond. If TTB approves the application, TTB will return two signed copies of the approved application to the proprietor.

(c) Upon receipt of an approved application from TTB, the proprietor must retain one of the signed copies for his files and forward the other signed copy to the consignor that will ship the spirits or denatured spirits.

(26 U.S.C. 5005, 5112)

§ 19.404 Termination of application.

A proprietor may at any time terminate an approved application on TTB F 5100.16 by retrieving the consignor's copy and returning it together with his own approved copy to the appropriate TTB officer for cancellation.

(26 U.S.C. 5005)

§ 19.405 Consignor for in-bond shipments.

(a) *General.* A proprietor who ships spirits, denatured spirits, or wines by transfer in bond, is the ''consignor'' of the shipment for purposes of this part. The following rules apply to these transfers:

(1) A consignor who is a proprietor of a distilled spirits plant must prepare a transfer record in accordance with § 19.620 to cover the transfer in bond of—

(i) Spirits or denatured spirits to another distilled spirits plant pursuant to an approved application on TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond;

(ii) Wine to the bonded premises of a distilled spirits plant or a bonded wine cellar; or

(iii) Spirits or denatured spirits to an alcohol fuel plant pursuant to an approved application on TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond; and

(2) A consignor who is a proprietor of an alcohol fuel plant must prepare a transfer record in accordance with § 19.620 to cover the transfer in bond of spirits to the bonded premises of a distilled spirits plant pursuant to an approved application on TTB F 5100.16.

(b) *Disposition of the transfer record.* On completion of lading or transfer by pipeline, the consignor must retain one copy of the transfer record and one copy of any accompanying document and must forward the original transfer record and any accompanying document to the consignee. If the shipment is made by truck, the original transfer record and accompanying documents must accompany the shipment.

(c) *Multiple shipments.* As a general rule, a consignor must prepare a transfer record for each conveyance. However, a consignor may prepare a single transfer record that covers all packages of spirits shipped by truck on the same day to the same plant. In such a case, the consignor must prepare a shipment and delivery order for each shipment showing the number of packages, their serial numbers or other package identification, the name of the producer, warehouseman, or processor, and the serial numbers of any seals or other security devices applied to the truck. The shipping and delivery order must be properly authenticated by the consignor and must constitute a complete record of the spirits transferred in each truck each day. The consignor must retain a copy of each shipping and delivery order. After lading the last truck for the day, the consignor must retain one copy of the single transfer record and one copy of any accompanying document and forward the original single transfer record and accompanying document to the consignee.

(d) *Packages.* When a consignor transfers spirits in packages, the consignor must weigh each package except in the following circumstances:

(1) When transferring the spirits in a secured conveyance;

(2) When the consignor has securely sealed the individual packages; or

(3) When the appropriate TTB officer waives this requirement upon a finding that there will be no jeopardy to the revenue.

(e) *Temporary serial numbers.* When packages are weighed at the time of shipment, the consignor must assign temporary serial numbers to the packages and show for each package its gross shipment weight on a package gauge record prepared in accordance with § 19.619. A copy of the package gauge record must accompany each original or copy of the transfer record.

(f) *Bulk conveyances and pipelines.* When a consignor transfers spirits, denatured spirits, or wines in bulk conveyances or by pipelines, the consignor must gauge the spirits, denatured spirits, or wines and record the quantity determined on the transfer record required under § 19.620 or § 24.309 of this chapter. The consignor must secure bulk conveyances of spirits or denatured spirits pursuant to § 19.441 of this part.

(26 U.S.C. 5212, 5362)

§ 19.406 Reconsignment of in-bond shipments.

A consignor may reconsign an in-bond shipment of spirits, denatured spirits, or wines prior to, or upon, arrival of the shipment at the premises of the consignee for any good faith reason. The consignor may reconsign the shipment to himself or to another consignee who is qualified to receive the shipment and has an adequate bond. In either case, an Application for Transfer of Spirits and/or Denatured Spirits in Bond on TTB F 5100.16 must have been previously approved for the new consignee, except that an approved form TTB F 5100.16 is not required for the transfer of wine. The bond of the new consignee will cover the shipment while in transit after reconsignment. When a consignor reconsigns a shipment, the consignor must prepare a new transfer record prominently marked with the word ''Reconsignment''. The consignor must also notify the original consignee that the transfer has been cancelled.

(26 U.S.C. 5212, 5362)

§ 19.407 Consignee premises.

(a) *General.* A proprietor who receives spirits, denatured spirits, or wines by transfer in bond is the ''consignee'' of the shipment for purposes of this part. Upon arrival of an in-bond shipment at the consignee's premises or at the destination point specified in the carrier's transportation documents, the consignee must:

(1) Examine each conveyance to determine whether the securing devices, if any, are intact upon arrival. If the securing devices are not intact, the consignee must immediately notify the appropriate TTB officer before removal of any spirits from the conveyance;

(2) Determine, record, and report any losses as required by subpart R of this part;

(3) Acknowledge receipt of the shipment on the transfer record as required by § 19.621 or § 24.309 of this chapter and retain the original of the transfer record and any accompanying documents for his files. Retained copies of transfer records will become deposit records for purposes of this part; and

(4) Identify separately any spirits that were produced at an alcohol fuel plant. Those spirits may not be withdrawn, used, sold or otherwise disposed of for other than fuel use.

(b) *Packages.* When a consignee receives spirits in packages, the consignee must weigh each package. The consignee must record the receiving weight of each package on the accompanying package gauge record or on a list according to temporary package serial numbers prepared by the consignor. A copy of the package gauge record or list must remain with the original transfer record. However, the consignee is not required to weigh each package when:

(1) The transfer is made in a secured conveyance and the securing devices are intact on arrival;

(2) The individual packages were sealed by the consignor and are intact on arrival; or

(3) The requirement for weighing the packages at the consignor premises has been waived under § 19.405(d)(3).

(c) *Bulk conveyances and pipelines.* When a consignee receives spirits, denatured spirits, or wines by bulk conveyance or by pipeline, the consignee must:

(1) Make a gauge and record the results on the transfer record in accordance with § 19.621 or § 24.309 of this chapter. However, the appropriate TTB officer may waive the gauging requirement for receipts by pipeline upon a finding that there will be no jeopardy to the revenue; and

(2) Ensure that each conveyance is empty and has been thoroughly drained.

(26 U.S.C. 5204, 5213, 5362)

Receipt of Spirits from Customs Custody

§ 19.409 General.

A proprietor may withdraw from customs custody spirits imported or brought into the United States in bulk containers for transfer of those spirits without payment of tax to the bonded premises of the proprietor's distilled spirits plant. The proprietor may receive these spirits either in bulk containers or by pipeline. Spirits received on bonded premises under this section may be:

(a) Withdrawn for any purpose authorized by chapter 51 of the IRC in the same manner as domestic spirits; or

(b) Redistilled or denatured only at 185 degrees or more of proof. For the requirements regarding transfers of bulk spirits from customs custody to the bonded premises of a distilled spirits plant, see subpart L of part 27 of this chapter.

(26 U.S.C. 5232)

§ 19.410 Age and fill date.

For purposes of this part, the age and fill date for spirits imported or brought into the United States will be:

(a) The claimed age, as shown on the documentation required under part 5 of this chapter; and

(b) The date that packages of spirits are released from customs custody or are filled on the bonded premises of a distilled spirits plant.

(26 U.S.C. 5201)

§ 19.411 Recording gauge.

(a) *Receipts into storage.* When a proprietor receives into the storage account packages of spirits from customs custody, the proprietor must use the last official gauge to compute and record the average content of the packages received in the storage records required under § 19.590. That gauge also will constitute the basis for entries on the package summary records required under § 19.591. If the last official gauge indicates a substantial variation in the contents of the packages, the proprietor must group the packages into lots according to their approximate contents and assign a separate lot identification to each group of packages, based on the date the packages were received on bonded premises.

(b) *Receipts into processing.* When a proprietor receives into the processing account packages of spirits from customs custody, the proprietor must determine the proof gallons of spirits received in each package. The determination may be made by using the last official gauge.

(26 U.S.C. 5232)

Marking Requirements for Imported Spirits

§ 19.414 Marks on containers of imported spirits.

(a) *General.* Except as provided in paragraph (c) of this section, when a proprietor receives imported bulk containers of spirits on bonded premises under § 19.409 or fills packages from imported bulk containers on the proprietor's bonded premises, each container or filled package must be marked with:

(1) The name of the importer;

(2) The country of origin of the spirits;

(3) The kind of spirits;

(4) In the case of filled packages, the package identification number as required under § 19.485 or the package serial number as required under § 19.490. Package identification numbers and package serial numbers must be preceded by the symbol ''IMP'';

(5) If the package is filled on bonded premises, the date of fill;

(6) The proof; and

(7) The proof gallons of spirits in the package.

(b) *Responsibility for marks.* Except as otherwise provided in paragraph (c) of this section, the proprietor who receives packages of imported spirits under § 19.409 is responsible for ensuring that the required marks are placed on the packages and for preparing the required deposit records.

(c) *Exception.* A proprietor is not required to place or ensure the placement of prescribed marks on packages when the spirits will be removed from the packages within 30 days after receipt at the distilled spirits plant. However, the proprietor must still assign package identification numbers or package serial numbers for use on deposit records and other transaction forms, records, or reports.

(26 U.S.C. 5206)

§ 19.415 Marks on containers of Puerto Rican and Virgin Islands spirits.

(a) *Packages from Puerto Rico.* When a proprietor receives packages of Puerto Rican spirits on bonded premises under the provisions of this subpart, the markings required under § 26.40 of this chapter will be acceptable in place of the markings required under § 19.414. However, the proprietor still must mark each package to show the date of fill as required under § 19.410, and must include on each package the words ''Puerto Rican'' or the abbreviation ''P.R.''.

(b) *Packages from the Virgin Islands.* When a proprietor receives packages of Virgin Islands spirits on bonded premises under the provisions of this subpart, the markings required under § 26.206 of this chapter will be acceptable in place of the markings required under § 19.414. However, the proprietor still must mark each package to show the date of fill as required under § 19.410, and must include on each package the words ''Virgin Islands'' or the abbreviation ''V.I.''.

(c) *Portable bulk containers.* Portable bulk containers of Puerto Rican or Virgin Islands spirits that are filled on premises bonded under this part must be marked in accordance with § 19.484. In addition, those containers must be marked with the serial number of any approved formula under which they were produced and with the words ''Puerto Rican'' or the abbreviation ''P.R.'' or ''Virgin Islands'' or the ''V.I.'', as applicable.

(d) *Cases of bottled alcohol.* Alcohol from Puerto Rico or the Virgin Islands that is bottled and cased on bonded premises must be marked as required by § 19.496. In addition, the words ''Puerto Rican'' or ''Virgin Islands'' or the abbreviation ''P.R.'' or ''V.I.'', respectively, must precede the word ''alcohol'' designation on the cases.

(26 U.S.C. 5206, 5235)

Spirits Withdrawn Without Payment of Tax

§ 19.418 Authorized withdrawals without payment of tax.

(a) A proprietor may withdraw spirits from bonded premises without payment of tax for:

(1) Export, as authorized under 26 U.S.C. 5214(a)(4);

(2) Transfer to customs manufacturing bonded warehouses, as authorized under 19 U.S.C. 1311;

(3) Transfer to foreign-trade zones, as authorized under 19 U.S.C. 81c;

(4) Supplies for certain vessels and aircraft, as authorized under 19 U.S.C. 1309;

(5) Transfer to customs bonded warehouses, as authorized under 26 U.S.C. 5066 or 5214(a)(9);

(6) Use in wine production, as authorized under 26 U.S.C. 5373;

(7) Transfer to any university, college of learning, or institution of scientific research for experimental or research use as authorized under 26 U.S.C. 5312(a);

(8) Research, development or testing, as authorized under 26 U.S.C. 5214(a)(10); or,

(9) Use on bonded wine cellar premises in the production of wine and wine products which will be rendered unfit for beverage use, as authorized under 26 U.S.C. 5362(d).

(b) If a proprietor withdraws spirits for any of the purposes listed under paragraphs (a)(1) through (a)(5) of this section, the proprietor must do so in accordance with the provisions of part 28 of this chapter.

(19 U.S.C. 1311), (26 U.S.C. 5066, 5214, 5312, 5373)

§ 19.419 Withdrawals of spirits for use in wine production.

A proprietor may withdraw wine spirits without payment of tax for transfer in bond to a bonded wine cellar for use in wine production. The proprietor, as consignor, must prepare a transfer record in accordance with § 19.620. In addition, the proprietor must prepare a package gauge record in accordance with § 19.619 and must attach it to the transfer record, unless the wine spirits are already in packages and are being withdrawn on the production or filling gauge.

(26 U.S.C. 5214, 5373)

§ 19.420 Withdrawals of spirits without payment of tax for experimental or research use.

A scientific university, college of learning, or institution of scientific research qualified under § 19.35 may withdraw spirits from bonded premises without payment of tax for experimental or research use. In order to withdraw a specific quantity of spirits for experimental or research use, the qualified institution must file a letterhead application with, and receive written approval from, the appropriate TTB officer.

(26 U.S.C. 5312)

§ 19.421 Withdrawals of spirits for use in production of nonbeverage wine and nonbeverage wine products.

A proprietor may withdraw spirits without payment of tax for transfer to a bonded wine cellar for use in the production of nonbeverage wine and nonbeverage wine products in accordance with part 24 of this chapter. The proprietor, as consignor, must prepare a transfer record in accordance with § 19.620. In addition, the proprietor must prepare a package gauge record in accordance with § 19.619 and must attach it to the transfer record, unless the wine spirits are already in packages and are being withdrawn on the production or filling gauge.

(26 U.S.C. 5214)

Spirits Withdrawn Free of Tax

§ 19.424 Authorized withdrawals free of tax.

A proprietor may withdraw spirits from bonded premises free of tax as provided in this chapter:

(a) Upon receipt of a signed photocopy of a permit to withdraw and use alcohol free of tax issued on TTB F 5150.9 under part 22 of this chapter;

(b) Upon receipt of a signed photocopy of a permit to procure spirits free of tax for use of the United States or any governmental agency, any State, any political division of a State, or the District of Columbia for nonbeverage purposes as provided in 26 U.S.C. 5214(a)(2) issued on TTB F 5150.33 under part 22 of this chapter;

(c) Upon receipt of a valid permit issued under this part to procure spirits by and for the use of the United States under the provisions of 26 U.S.C. 7510 for purposes other than those specified in paragraph (b) of this section;

(d) If the spirits are specially denatured—

(1) Upon receipt of a signed photocopy of a permit to procure specially denatured spirits issued on TTB F 5150.9 under part 20 of this chapter; or

(2) For export;

(e) If the spirits are completely denatured, for any lawful purpose; or

(f) If the spirits are contained in an article.

(26 U.S.C. 7510), (26 U.S.C. 5214)

§ 19.425 Withdrawal of spirits free of tax.

When a proprietor ships tax free spirits to a permit holder as provided under § 19.424, the proprietor must:

(a) Ship the spirits to the consignee designated in the permit;

(b) Ship the spirits in approved containers;

(c) Gauge each container, unless the spirits are in cases or are withdrawn based on the production or filling gauge;

(d) Prepare a package gauge record in accordance with § 19.619, and attach it to the record of shipment if the spirits are in packages that are to be gauged;

(e) Prepare a record of shipment (shipping invoice, bill of lading, or other document serving the same purpose) for each shipment and forward the original to the consignee as provided in § 19.625; and

(f) Secure all bulk conveyances as provided in § 19.441.

(26 U.S.C. 5214)

§ 19.426 Withdrawal of spirits by the United States.

(a) *Withdrawal for nonbeverage use*—(1) *Permit required.* Agencies of the

United States Government that wish to obtain either specially denatured spirits or spirits free of tax for nonbeverage purposes must apply for and receive a permit on TTB F 5150.33 or must have a previously issued permit on ATF Form 1444. TTB issues permits to Government agencies for:

(i) Withdrawal and use of specially denatured spirits under part 20 of this chapter;

(ii) Withdrawal and use of alcohol free of tax for nonbeverage purposes under part 22 of this chapter; and

(iii) Importation and use of alcohol free of tax for nonbeverage purposes under part 27 of this chapter.

(2) *Orders and shipments.* In order to obtain spirits under this section, the United States Government agency must forward a copy of a signed permit to the distilled spirits plant for the initial purchase. Later orders with the same plant may refer to that permit number. In the case of a Government agency holding a single permit for use by its sub-agencies, the copy of the signed permit must contain an attachment listing all sub-agencies authorized to obtain spirits under that permit. For each shipment that a proprietor makes to a Government agency under this section, the proprietor must prepare a record of shipment and forward the original to the Government agency as provided in § 19.625.

(b) *Withdrawal for beverage use.* Agencies of the United States Government that wish to obtain distilled spirits free of tax for beverage purposes under 26 U.S.C. 7510 must provide a proper purchase order signed by the head of the agency or an authorized designee. Each case of spirits withdrawn must bear a plain mark ''For Use of the United States'' in addition to the marks required by subpart S of this part. For each withdrawal under this paragraph, the proprietor must prepare a record containing the information required by § 19.611 for a record of tax determination and must mark this record ''Free of Tax For Use of the United States.''

(26 U.S.C. 7510), (26 U.S.C. 5271, 5313)

§ 19.427 Removal of denatured spirits and articles.

(a) *Specially denatured spirits.*

(1) Specially denatured spirits withdrawn by a proprietor free of tax under § 19.424(d) must be shipped in the type of containers authorized under subpart S to the consignee designated on the permit. Bulk conveyances used to transport specially denatured spirits must be secured as required by § 19.441, and the proprietor must prepare a record of shipment in accordance with § 19.625. If a proprietor withdraws specially denatured spirits for export or for transfer to a foreign-trade zone for export or for storage pending export, the provisions of part 28 of this chapter will apply to the withdrawal.

(2) A proprietor may transfer domestic specially denatured spirits to qualified users located in a foreign-trade zone for use in the manufacture of articles under part 20 of this chapter. The ''alcohol'', as defined in part 20 of this chapter, that is contained in domestic specially denatured spirits must have been produced entirely in the United States or Puerto Rico.

(b) *Completely denatured alcohol.* No permit, application, or notice is required for the removal of completely denatured alcohol from bonded premises.

(c) *Samples of denatured spirits.*

(1) A proprietor may take samples of denatured spirits free of tax that are necessary for the conduct of business. A proprietor may furnish samples of specially denatured spirits:

(i) To dealers in, and users of, specially denatured spirits in advance of sales; or

(ii) To applicants or prospective applicants for permits to use specially denatured spirits for experimental purposes or for use in preparing samples of a finished product for submission to TTB.

(2) A proprietor must maintain records to ensure that samples of specially denatured spirits furnished to each nonpermittee do not exceed five gallons per calendar year. However, a proprietor may furnish samples in excess of five gallons to a nonpermittee if the consignee has provided the proprietor with a letterhead application approved under § 20.252 of this chapter. The proprietor must retain the approved letterhead application on file as a part of the record of transaction. For each shipment of a sample over the five gallon limit, the proprietor must prepare a record of shipment and forward the original to the consignee as provided in § 19.625. Each such sample must bear a label showing the word ''Sample'', the words ''Specially Denatured Alcohol'' or ''Specially Denatured Rum'' as applicable, the formula number, and the proprietor's name, address, and plant number. The proprietor must maintain records of samples of less than five gallons as provided in § 19.616.

(d) *Articles.* A proprietor may remove articles from bonded premises in accordance with part 20 of this chapter.

(19 U.S.C. 81c), (26 U.S.C. 5214, 5271)

§ 19.428 Reconsignment.

(a) A consignor may reconsign a shipment of spirits or specially denatured spirits withdrawn free of tax under § 19.424. The shipment may be reconsigned while in transit or upon arrival at the consignee's premises for any bona fide reason. The consignor may reconsign the shipment:

(1) To himself;

(2) To a proprietor for return to bonded premises under § 19.454; or

(3) To another consignee holding a valid permit issued under part 20 or 22 of this chapter.

(b) In the case of reconsignment to a proprietor for return to bonded premises under § 19.454, the distilled spirits plant proprietor who will return the spirits to bond must file a consent of surety on TTB F 5000.18 to extend the terms of the operations or unit bond to cover the return of the spirits.

(c) When a consignor reconsigns a shipment, the consignor must cancel the initial record of shipment and prepare a new record of shipment marked ''Reconsignment''. The consignor must annotate the copies of the canceled record of shipment and the new record of shipment to cross-reference each other.

(26 U.S.C. 5201)

Spirits Withdrawn on Production Gauge

§ 19.431 Withdrawal of spirits on production gauge.

A proprietor may withdraw spirits from bonded premises for any lawful purpose based on the production gauge when it is made in accordance with § 19.289(b). Spirits may be withdrawn without payment of tax for export based on the production gauge when it is made under § 19.289(c). When spirits that are to be withdrawn on determination of tax on the original gauge are transferred in bond, all copies of the transfer record required by § 19.620 must be marked ''Withdrawal on Original Gauge''.

(26 U.S.C. 5204)

Rules for Taking Samples of Spirits

§ 19.434 Spirits withdrawn from bonded premises.

(a) *Laboratory samples.* A proprietor may withdraw spirits without payment of tax, or may withdraw wine spirits or brandy free of tax, to the proprietor's laboratory, to the laboratory of an affiliated or subsidiary corporation, or, if approved by the appropriate TTB officer, to a recognized commercial laboratory. The samples must be used only for testing or analysis to determine the quality or character of the finished product and must be withdrawn in the minimum amounts necessary for the purpose.

(b) *Customer samples.* If a bona fide purchase agreement exists that is contingent upon quality approval, a proprietor may furnish to a prospective customer a sample of spirits not exceeding 1 liter for quality testing. A proprietor may furnish a sample not to exceed 1 liter to a prospective customer for quality testing in anticipation of a purchase agreement if the customer is authorized to receive bulk spirits for industrial use.

(c) *Research or development.* A proprietor may withdraw spirits without payment of tax for research or development testing, for testing of processes, systems, or materials, or for the testing of equipment relating to distilled spirits or distilled spirits plant operations. The amount withdrawn must be limited to the amount reasonably necessary to conduct the test. If the test is to be conducted by someone other than the proprietor, the proprietor must obtain a written statement, executed by the consignee, agreeing to maintain records of the receipt, use, and disposition of all spirits received for purposes of the test. The statement must specify that records of operations will be available during regular business hours for inspection by TTB officers.

(d) *Conditions.* The following conditions apply to the withdrawal and testing of samples under this section:

(1) The spirits may not be used for consumer testing or other market analysis;

(2) The proprietor must maintain the records specified in § 19.616; and

(3) Remnants or residues of spirits not used during testing must be destroyed or returned to the bonded premises of the proprietor.

(e) *Liability for tax.* The proprietor must pay the tax on any samples of spirits withdrawn, used, or disposed of in a manner not authorized by this section.

(f) *Losses.* When spirits are lost before use for a purpose authorized under this section, the proprietor must pay the tax or must file a claim for remission of tax liability in accordance with § 19.263.

(26 U.S.C. 5214, 5173)

§ 19.435 Samples used on bonded premises.

A proprietor may take samples of spirits for research, development, testing, or laboratory analysis conducted in a laboratory located on the bonded premises. The purposes, conditions, and limitations specified for samples under § 19.434 will also apply to samples used under this section.

(26 U.S.C. 5008)

§ 19.436 Taxpayment of samples.

When a proprietor is required to pay tax on samples under § 19.434(f), the proprietor may include the tax on the next semimonthly or quarterly tax return, as appropriate, if qualified to defer payment of tax. If a proprietor is not qualified to defer payment of tax, the proprietor must prepay the tax on TTB F 5000.24. See subpart I of this part for rules regarding the payment of taxes.

(26 U.S.C. 5005, 5061)

§ 19.437 Labels.

(a) On each container of spirits withdrawn under § 19.434, the proprietor must affix a label showing the following information:

(1) The proprietor's name and plant number;

(2) The date withdrawn;

(3) The purpose for which withdrawn;

(4) The kind of spirits;

(5) The size and the proof of the sample, if known; and

(6) The name and address of the consignee, if the spirits are removed other than to the proprietor's adjacent or contiguous premises.

(b) The labeling prescribed under paragraph (a) of this section is not required when the sample container bears a label approved under part 5 of this chapter and subpart S of this part and the sample is removed from bonded premises to the general premises of the same distilled spirits plant or to any laboratory owned and operated by the proprietor of that distilled spirits plant.

(26 U.S.C. 5206, 5214, 5373)

Securing Conveyances

§ 19.441 Securing of conveyances.

(a) *Construction for securing.* When the securing of a conveyance is required by this part, the conveyance must be constructed so that all openings, including valves, may be closed and secured.

(b) *Approval of securing devices.* Seals, locks or other devices on conveyances used to transport taxpaid spirits, denatured spirits transferred in bond, or denatured spirits withdrawn free of tax do not require approval by TTB. On the other hand, all seals, locks, or devices used on conveyances in which spirits are transferred in bond, withdrawn free of tax, or withdrawn without payment of tax, require approval by the appropriate TTB officer before use. However, cap seals at least 3/4 of an inch in diameter, ball-strap-type (railroad) seals with a strap at least 5/16 of an inch wide, and locking security cable with at least 1/16 of an inch cable may be used on conveyances without approval by TTB. Such seals must:

(1) Be made of durable materials;

(2) Bear the plant registration number or the name, or readily recognizable abbreviation of the name, of the proprietor;

(3) Bear a serial number, including letter prefixes or suffixes, that will not be repeated within the following six month period;

(4) Be durably and legibly marked; and

(5) Be constructed to show evidence of tampering.

(c) *Furnishing and affixing securing devices.* The proprietor must furnish and affix any seals, locks or other devices used on conveyances. However, TTB may require any conveyance in which spirits are transferred in bond, withdrawn free of tax, or withdrawn without payment of tax, to be secured by a device furnished by TTB and affixed by a TTB officer. The securing of a conveyance will be done:

(1) As soon as the conveyance is loaded for shipment; and

(2) In such a manner that access to the contents of the conveyance cannot be gained without leaving evidence of tampering.

(26 U.S.C. 5206, 5682)

Subpart Q—Return of Spirits to Bonded Premises and Voluntary Destruction

§ 19.451 Scope.

The IRC allows a proprietor of a distilled spirits plant to return distilled spirits, denatured spirits, and articles to the bonded premises of that plant under certain conditions. This subpart covers the types of returns allowed, sets forth the procedures that the proprietor must follow when returning these products to bonded premises, and prescribes rules for voluntary destruction on or off bonded premises.

Conditions for Return of Spirits to Bond

§ 19.452 Return of taxpaid spirits to bonded premises for destruction, denaturation, redistillation, reconditioning, or rebottling.

(a) *Allowable returns.* A proprietor may return spirits to bonded premises if the spirits were taxpaid or tax determined by him, by another distilled spirits plant proprietor, or by an importer upon importation through U.S. Customs and Border Protection. However, under section 5215(a) of the IRC the proprietor may return such spirits to bond only for one of the following reasons:

(1) Destruction, in accordance with § 19.459;

(2) Denaturation, in accordance with subpart O of this part;
(3) Redistillation, in accordance with subpart L of this part;
(4) Reconditioning; or
(5) Rebottling.

(b) *Dump and gauge of returned spirits.* The proprietor must immediately dump spirits returned to bonded premises under this section unless the spirits are returned in the sealed metal drums in which they were withdrawn. The proprietor must gauge spirits returned under this section upon their receipt. The proprietor may gauge spirits in bottles based upon the case markings and label information in accordance with § 19.286.

(c) *Claims for credit or refund of tax.* A proprietor may file a claim under § 19.264 for credit or refund of tax on spirits returned to bonded premises under this section. In addition to the information specified in § 19.264, a proprietor filing a claim for credit or refund of tax must have on file at the plant where spirits are returned to bond the following documentation for each lot of spirits returned:

(1) Documentation that establishes the amount of tax for which the claim for credit or refund is filed. If the spirits contain eligible wine or eligible flavors, the proprietor must have on file a copy of the record of tax determination as prescribed by § 19.611, or other documentation that establishes the rate of tax that was paid on the product. In lieu of establishing the actual effective tax rate of the product, the proprietor may claim a credit or refund based on the lowest effective tax rate applied to the product; and

(2) Credit memoranda or comparable financial records evidencing the return of each lot of spirits.

(d) *Applicability of IRC Chapter 51.* All provisions of Chapter 51 of the IRC and of this part that apply to spirits under TTB bond also apply to spirits when returned to bond under this section.

(26 U.S.C. 5008, 5010, 5201, 5207, 5215)

§ 19.453 Return of bottled spirits for relabeling or reclosing.

A proprietor may return bottled distilled spirits to his bonded premises for relabeling or reclosing. When bottled spirits are returned for relabeling or reclosing, the proprietor may not claim credit or refund of tax on the returned spirits, and no tax will be due on their subsequent removal. The proprietor must relabel or reclose the bottles immediately and must promptly remove the spirits from bonded premises. The provisions of § 19.363 apply to relabeling and reclosing performed under this section.

(26 U.S.C. 5215)

§ 19.454 Other authorized returns to bonded premises.

In addition to the returns to bonded premises specified in §§ 19.452 and 19.453, there are other distilled spirits products that a proprietor may return to his bonded premises. These other products, the purposes for which they may be returned, and the conditions for their return are listed in the table below. All of these products must be gauged upon receipt.

Type of product	Purpose of return	Conditions
SDA withdrawn free of tax under part 20 of this chapter.	(1) For redistillation	To any DSP authorized to produce or process.
	(2) For subsequent lawful withdrawal	To any DSP. The DSP proprietor must file a consent of surety, form TTB F 5000.18, to extend the terms of the operations or unit bond to cover the return of spirits.
Recovered denatured spirits	For restoration or redenaturation	—To any DSP authorized to denature. —If SDA needs to be redistilled, the DSP must be authorized to produce or process spirits. —Returns must be in accordance with part 20 of this chapter.
Recovered articles	For restoration or redenaturation	—To any DSP authorized to denature. —If recovered articles need to be redistilled, the DSP must be authorized to produce or process spirits. —Returns must be in accordance with part 20 of this chapter.
Articles manufactured under part 20 of this chapter and spirits residues from manufacturing processes.	For recovery by redistillation	To a DSP authorized to produce or process spirits.
SDA withdrawn free of tax for export under part 28 of this chapter.	(1) For redistillation	To any DSP authorized to produce or process.
	(2) For subsequent lawful withdrawal	To any DSP. The DSP proprietor must file a consent of surety, form TTB F 5000.18, to extend the terms of the operations or unit bond to cover the return of spirits
Tax-free spirits withdrawn under part 22 of this chapter.	(1) For redistillation	To any DSP authorized to produce or process.
	(2) For subsequent lawful withdrawal	To any DSP. The DSP proprietor must file a consent of surety, form TTB F 5000.18, to extend the terms of the operations or unit bond to cover the return of spirits.
Recovered tax-free spirits withdrawn under part 22 of this chapter.	(1) For redistillation	To any DSP authorized to produce or process.
	(2) For restoration (not including redistillation)	To any DSP. The DSP proprietor must file a consent of surety, form TTB F 5000.18, to extend the terms of the operations or unit bond to cover the return of spirits.

Type of product	Purpose of return	Conditions

Spirits withdrawn without payment of tax under part 28 of this chapter for export, for transfer to a customs bonded storage, manipulation, or manufacturing warehouse, for deposit in an FTZ, or for use on vessels or aircraft, and not so exported, transferred, deposited, or used.	(1) For redistillation
	(2) For later lawful removal
		For (1)—To any DSP authorized to produce or process spirits.
		For (2)—To the bonded premises from which withdrawn for later lawful removal.
		For (1) and (2)—Returns must be made in accordance with the provisions of part 28 of this chapter.

Wine spirits withdrawn without payment of tax for use in wine production.	Any lawful purpose	—To any DSP. —The proprietor must obtain approval as provided in § 19.403. —Removal of wine spirits from a winery must be in accordance with part 24 of this chapter.
Spirits withdrawn without payment of tax for research, development, or testing.	For destruction, or return to containers, or return to the distilling system.	To the DSP from which the spirits were withdrawn.

(19 U.S.C. 81(c), 26 U.S.C. 5001, 5062, 5066, 5214, 5215, 5223, 5273, 5373)

§ 19.455 Return of spirits withdrawn for export with benefit of drawback.

(a) Subject to the provisions of §§ 28.197 through 28.199 of this chapter, whole or partial shipments of spirits withdrawn for export with benefit of drawback may be returned to:

(1) The bonded premises of the distilled spirits plant, pursuant to § 19.452; or

(2) To a wholesale liquor dealer or taxpaid storeroom.

(b) Claims for export drawback filed by proprietors on form TTB F 5110.30 which include the returned spirits shall be reduced by the amount of tax paid or determined on the returned spirits.

(26 U.S.C. 5215)

§ 19.457 Receipt of spirits abandoned to the United States.

Spirits abandoned to the United States may be sold, without payment of the tax, to a proprietor of a distilled spirits plant for denaturation or for redistillation and denaturation, provided that the plant is authorized to denature or redistill and denature spirits. The proprietor must gauge the spirits upon receipt and must keep the spirits apart from all other spirits or denatured spirits until denatured.

(26 U.S.C. 5243)

Rules for Voluntary Destruction

§ 19.459 Voluntary destruction.

(a) *General.* A proprietor may voluntarily destroy spirits, denatured spirits, articles, or wines on bonded premises as provided in this section. There is no tax liability on spirits, denatured spirits, articles, or wines destroyed in accordance with this section.

(b) *Wine notice.* A proprietor may destroy wine held on bonded premises only after the proprietor has filed a notice of intent to destroy with the appropriate TTB officer stating the kind and quantity of wine to be destroyed and the date and manner in which the wine is to be destroyed. The wine may be destroyed after the filing of the notice.

(c) *Gauging.* A proprietor must gauge all spirits, denatured spirits, articles, or wines to be destroyed. The proprietor may establish the gauge of spirits in bottles on the basis of legible case markings and label information in accordance with § 19.286. The proprietor must individually count bottles in partial cases.

(d) *Destruction off bonded premises.* If a proprietor intends to remove spirits, denatured spirits, articles, or wines from bonded premises in order to destroy them at a location off bonded premises, the proprietor must file a consent of surety to cover the removal. When the destruction takes place off plant premises, the proprietor must comply with applicable Federal, State, and local environmental laws and regulations.

(e) *Record of destruction.* The proprietor must record the destruction of spirits, denatured spirits, articles, or wines as provided in § 19.617.

(26 U.S.C. 5008, 5370)

Subpart R—Losses and Shortages

§ 19.461 Losses and shortages in general.

(a) *Allowable losses and shortages.* Except as otherwise provided in paragraph (b) of this section, TTB will not collect tax on spirits, denatured spirits, or wines that are lost, destroyed, or otherwise unaccounted for while in bond, and if the tax has already been paid, TTB will refund the tax.

(b) *Exceptions.* TTB will collect the tax in the case of:

(1) Theft, unless the appropriate TTB officer finds that the theft occurred without connivance, collusion, fraud or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or any employee or agent of any of them;

(2) Voluntary destruction carried out other than as provided in subpart Q of this part;

(3) An unexplained shortage of bottled spirits.

(c) *Burden of proof.* When it appears that a theft occurred, the burden of proof will be on the proprietor or other person liable for the tax to establish to the satisfaction of the appropriate TTB officer that the theft did not result from connivance, collusion, fraud, or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or any employee or agent of any of them.

(d) *Claims.* Claims for losses and shortages allowable under this section must be filed in accordance with the provisions of subpart J of this part.

(e) *Limitations.* TTB will abate, remit, credit, or refund taxes on spirits, denatured spirits, or wines lost by theft only to the extent that the claimant is not indemnified against, or recompensed for, the taxes paid or owed.

(26 U.S.C. 5008, 5370)

§ 19.462 Determination of losses in bond.

(a) *Times for determining losses.* A proprietor must determine at any of the following times whether a loss of spirits, denatured spirits, or wines has occurred:

(1) Each time a tank or bulk conveyance is emptied;

(2) Upon discovery of an accident or an unusual variation in a gauge; and

(3) When required to take a physical inventory.

(b) *Losses from theft, tampering, or unauthorized voluntary destruction.* Whenever any spirits, denatured spirits, or wines are lost or destroyed in bond, whether by theft, tampering, or unauthorized voluntary destruction, the proprietor may elect voluntarily to pay the tax on the quantity lost. If the

proprietor does not elect to pay the tax, the proprietor must promptly report the loss or destruction to the appropriate TTB officer. TTB may require that the proprietor file any claim for relief from the tax in accordance with § 19.263.

(c) *Missing packages.* When a proprietor cannot locate or otherwise account for any packages of spirits, denatured spirits, or wine recorded as deposited on bonded premises, the proprietor must promptly report that fact to the appropriate TTB officer. In such case the proprietor must either pay the tax on the lost spirits, denatured spirits, or wines or file a claim for relief from the tax in accordance with § 19.263.

(d) *Excessive in-transit losses.* A proprietor must promptly report excessive in-transit losses to the appropriate TTB officer. As a general rule, when spirits, denatured spirits, or wines are received in bond in bulk conveyances TTB will consider as excessive a loss that exceeds one percent of the quantity consigned. However, in the case of transcontinental transfers of wine in bond, TTB will consider as excessive only a loss in excess of two percent of the quantity of wine consigned.

(e) *Excessive storage losses.* A proprietor must pay the tax on excessive storage account losses of spirits unless the proprietor files a claim for remission in accordance with § 19.263 and TTB allows the claim under § 19.268. TTB will consider a storage account loss as excessive when the quantity of spirits lost during a calendar quarter from all storage tanks and stored bulk conveyances exceeds 1½ percent of the total quantity contained in the tanks and stored bulk conveyances during the calendar quarter.

(26 U.S.C. 5008, 5370)

§ 19.463 Loss of spirits from packages.

(a) *Tampering or theft.* The appropriate TTB officer may require that a proprietor pay the tax on any loss caused by tampering or theft of spirits from packages in storage unless the proprietor establishes to the satisfaction of the appropriate TTB officer that the loss was not due to connivance, collusion, fraud or negligence on the part of the proprietor. As a general rule, the tax will be assessed on the quantity of spirits that represents the difference between the quantity originally entered in the package and the quantity remaining after discovery of the tampering or theft. However, if the proprietor can show that the package had already sustained normal storage losses before the tampering or theft occurred, the proprietor may exclude the amount of the normal storage losses from the quantity to be taxpaid.

(b) *Alternative method of tax assessment.* If tampering or theft has occurred at a proprietor's plant and the proprietor has failed to use effective controls to prevent it, the appropriate TTB officer may use an alternative to the general method of tax assessment specified in paragraph (a) of this section. In this case, the appropriate TTB officer may assess on each package showing evidence of tampering or theft an amount equal to the tax on 5 proof gallons of spirits.

(26 U.S.C. 5006)

§ 19.464 Losses after tax determination.

If a proprietor sustains a loss of spirits after tax determination but prior to completion of physical removal of the spirits from bonded premises, the proprietor may file a claim in accordance with subpart J of this part.

(26 U.S.C. 5008)

§ 19.465 Shortages of bottled spirits.

(a) *Determination of shortage.* The determination of whether an unexplained shortage of bottled distilled spirits exists must be made by comparing the spirits recorded as being on hand to either the results of the physical inventory required by § 19.372 or the results of any other complete physical inventory taken by the proprietor. When the recorded quantity is greater than the quantity determined by physical inventory, the difference is an unexplained shortage. The proprietor must adjust his records to reflect the results of the physical inventory.

(b) *Payment of tax on shortage.* A proprietor must pay the tax on any unexplained shortage of bottled distilled spirits:

(1) Immediately on a prepayment return on TTB F 5000.24, Excise Tax Return; or

(2) On a deferred payment return on TTB F 5000.24 for the period during which the shortage was determined.

(26 U.S.C. 5008)

Subpart S—Containers and Marks

§ 19.471 General.

The proprietor of a distilled spirits plant must comply with the container and marking requirements that apply to both industrial and nonindustrial spirits. This subpart covers those requirements. For the requirements that apply to articles made with denatured spirits, see part 20 of this chapter. For the requirements that apply to wine, see part 24 of this chapter.

(26 U.S.C. 5206)

§ 19.472 Need to determine use of spirits: industrial or nonindustrial.

Many of the container and marking requirements set forth in this subpart are based on the intended use of the spirits, that is, whether they are for ''industrial'' or ''nonindustrial'' use. For purposes of this subpart, the terms ''industrial'' use and ''nonindustrial'' use refer to the uses specified in paragraphs (a) and (b) of this section.

(a) *Industrial use.* The word ''industrial'' when used with reference to the use of spirits has the same meaning as in §§ 1.60 and 1.62 of this chapter. Those uses are as follows:

(1) Free of tax by, and for the use of, the United States or any governmental agency thereof, any State, any political subdivision of a State, or the District of Columbia, for nonbeverage purposes;

(2) Free of tax for nonbeverage purposes and not for resale or use in the manufacture of any product for sale—

(i) For the use of any educational organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is exempt from income tax under 26 U.S.C. 501(a), or for the use of any scientific university or college of learning;

(ii) For any laboratory for use exclusively in scientific research;

(iii) For use at any hospital, blood bank, or sanitarium (including use in making analysis or test at such hospital, blood bank, or sanitarium), or at any pathological laboratory exclusively engaged in making analyses, or tests, for hospitals or sanitariums; or

(iv) For the use of any clinic operated for charity and not for profit (including use in compounding of bona fide medicines for treatment outside of such clinics of patients thereof);

(3) Free of tax, after denaturation of such spirits in the manner prescribed by law for—

(i) Use in the manufacture of ether, chloroform, or other definite chemical substance where such distilled spirits are changed into some other chemical substance and do not appear in the finished product; or

(ii) Any other use in the arts and industries (except for uses prohibited by 26 U.S.C. 5273(b) or (d)) and for fuel, light, and power; and

(4) The use of distilled spirits for experimental purposes and in the manufacture of—

(i) Medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists;

(ii) Toilet preparations;

(iii) Flavoring extracts, syrups, or food products; or

(iv) Scientific, chemical, mechanical, or industrial products, provided such products are unfit for beverage use.

(b) *Nonindustrial use.* The word ''nonindustrial'' when used with reference to the use of spirits refers to any use not listed as an ''industrial'' use in paragraph (a) of this section. Nonindustrial uses include the following:

(1) For beverage purposes;

(2) In the manufacture, rectification, or blending of alcoholic beverages; or in the preparation of food or drink by a hotel, restaurant, tavern, or similar establishment; or as a medicine; and

(3) Distilled spirits in containers with a capacity of 1 wine gallon or less, other than anhydrous alcohol and alcohol that may be withdrawn from bond free of tax.

(26 U.S.C. 5206, 5301)

Requirements for Containers

§ 19.473 Authorized containers.

(a) *General.* A proprietor may only use containers that are authorized under this part for use in containing, storing, transferring, conveying, removing, or withdrawing spirits or denatured spirits.

(b) *Approval of other containers.* The appropriate TTB officer may approve the use of another type of container for a particular purpose in place of a type of container specifically authorized in this part for that purpose if the use of that container:

(1) Will provide protection to the revenue equal to or greater than that provided by the authorized container; and

(2) Will not hinder the effective administration of this part.

(c) *Approval of other container materials.* The appropriate TTB officer may approve the use of a container made of a material other than one prescribed in this subpart if he finds the other material to be suitable for the intended purpose. If the appropriate TTB officer approves another material for a container, the approval may also specify how the container must be constructed, protected, marked, and used.

(26 U.S.C. 5002, 5206, 5212, 5213, 5214, 5301)

§ 19.474 Spirits for nonindustrial use.

(a) *Containers.* A proprietor may fill spirits for nonindustrial use into packages or into other containers that are filled during processing operations, if consistent with the provisions of part 5 of this chapter.

(b) *Bottles and labels.* The provisions of subpart T of this part and part 5 of this chapter govern the liquor bottles and labels that a proprietor must use in bottling spirits for nonindustrial domestic use.

(c) *Cases.* If spirits for nonindustrial use are in containers with a capacity of one gallon or less the proprietor must place the containers in cases constructed to afford reasonable protection against breakage.

(26 U.S.C. 5206, 5212, 5301)

§ 19.475 Spirits for industrial use.

(a) *Containers.* A proprietor may fill denatured spirits or other spirits for industrial use into suitable containers. The proprietor must ensure that all containers for spirits that will be used in food products comply with applicable U.S. Food and Drug Administration health and safety laws and regulations.

(b) *Encased containers.* A proprietor may encase unlabeled containers of denatured spirits and other spirits for industrial use in wood, fiberboard or similar material if:

(1) The cases are constructed so that the surface, including the opening of the container, is not exposed;

(2) Required marks are applied to an exterior surface of the case;

(3) The case is constructed so that the portion containing marks will remain attached to the inner container until all the contents have been removed; and

(4) A statement reading, ''Do not remove inner container until emptied'' or a statement of similar meaning appears on the portion of the case bearing the marks.

(c) *Cases.* With the exception of encased containers covered in paragraph (b) of this section, if the containers for denatured spirits and spirits for industrial use have a capacity of not more than 1 gallon, the proprietor must place the containers in cases that provide reasonable protection against breakage.

(26 U.S.C. 5206, 5301)

§ 19.476 Packages.

A proprietor may use packages on bonded premises for original entry of spirits, and for packaging from tanks, storing, transferring in bond, and withdrawing spirits and denatured spirits from bonded premises. Packages must be constructed so as to be capable of secure closure.

(26 U.S.C. 5206)

§ 19.477 Use of bulk conveyances.

If a bulk conveyance meets the construction requirements of § 19.478 or is approved under § 19.473(b), a proprietor may use the bulk conveyance on bonded premises for the original entry of spirits, and for filling from tanks, storing, transferring in bond, and withdrawing taxpaid spirits and denatured spirits. A proprietor may use such a bulk conveyance to withdraw spirits free of tax, in accordance with the provisions of this part, for use of the United States or to a specified consignee if so authorized by the appropriate TTB officer under § 19.473(b). A proprietor may also use such a bulk conveyance to withdraw spirits without payment of tax, in accordance with the provisions in this part, for any one of the following purposes:

(a) Export, as authorized under 26 U.S.C. 5214(a)(4);

(b) Transfer to customs manufacturing bonded warehouses, as authorized under 19 U.S.C. 1311;

(c) Transfer to foreign-trade zones, as authorized under 19 U.S.C. 81c;

(d) Transfer to customs bonded warehouses, as authorized under 26 U.S.C. 5066 or 5214(a)(9); or

(e) Use in wine production, as authorized under 26 U.S.C. 5373.

(26 U.S.C. 5206)

§ 19.478 Construction requirements for bulk conveyances.

(a) *Construction.* The following standards apply to bulk conveyances authorized by this part:

(1) If the conveyance consists of two or more compartments, each compartment must be constructed or arranged so that the emptying of any compartment does not provide access to the contents of any other compartment;

(2) The conveyance (or in the case of compartmented conveyances, each compartment) must be arranged so that it can be completely drained;

(3) Each tank car or tank truck must have permanently and legibly marked thereon its number, its capacity in wine gallons, and the name or symbol of its owner;

(4) If the conveyance consists of two or more compartments, each compartment must be identified by a number and the capacity in wine gallons of each shall be marked thereon;

(5) The conveyance must have a route board or other suitable device for carrying required marks or brands; and

(6) Calibrated charts, showing the capacity of each compartment in wine gallons for each inch of depth, must be available for use in measuring the contents of each tank truck, tank ship, or barge.

(b) *Proprietor's responsibility.* Before filling any bulk conveyance, a proprietor must examine it to verify that it meets the requirements of this section or of an approval under § 19.473(b) and that it is otherwise suitable for receiving the spirits or denatured spirits. A proprietor must refrain from using, or discontinue use of, any conveyance

found by him or by the appropriate TTB officer not to meet the applicable requirements.

(26 U.S.C. 5206, 5212, 5213, 5214)

§ 19.479 Restrictions on dispositions of bulk spirits.

(a) *Bulk spirits for nonindustrial use.* A proprietor may sell or dispose of spirits for nonindustrial use in containers holding more than one wine gallon only to the persons and for the purposes specified in § 1.80 of this chapter.

(b) *Bulk spirits for industrial use.* If a proprietor withdraws spirits (other than alcohol or neutral spirits) from bond in containers holding more than one wine gallon for industrial use, the proprietor must ship or deliver the spirits directly to the user of the spirits as provided in § 1.95 of this chapter.

(26 U.S.C. 5201)

Marking Requirements for Spirits

§ 19.482 General.

A proprietor must mark, identify, and label all containers of spirits or denatured spirits as provided in this part. For information regarding liquor bottle label requirements, see subpart T of this part and part 5 of this chapter.

(26 U.S.C. 5204, 5206)

§ 19.483 Specifications for marks.

(a) *Basic requirements.* A proprietor must place the marks prescribed by this subpart on cases, encased containers, and packages of spirits and denatured spirits so that they are:

(1) Of adequate size to be easily read;

(2) Of a color in distinct contrast to the color of the background;

(3) Legible; and

(4) Durably affixed.

(b) *Use of labels.* A proprietor may use labels as the means for applying prescribed marks if the labels meet the requirements of paragraph (a) of this section.

(c) *Location.* A proprietor must place the prescribed marks on one side of the case or encased container, or on the head of the package.

(26 U.S.C. 5206)

§ 19.484 Marks on packages filled in production or storage.

(a) *Packages filled in production or storage.* Except as otherwise provided in this part, a proprietor must mark packages of spirits filled in production or storage with:

(1) The name of the producer, or the producer's trade name, in accordance with paragraph (b) of this section;

(2) The distilled spirits plant number of the producer, such as ''DSP–KY–708'';

(3) The kind of spirits or, in the case of distillates removed under § 19.307, the kind of distillate such as ''Grape Distillate'' or ''Peach Distillate'';

(4) The package identification number;

(5) ''BSA'' or ''OC'' when spirits are treated with caramel (burnt sugar) or oak chips, as the case may be;

(6) The rated capacity of the package in gallons shown as ''RC–G''; and

(7) The name or trade name and the plant number of the packaging proprietor in place of the name or trade name and plant number of the producer if packages of spirits of 190° or more of proof are filled by a proprietor other than the producer.

(b) *Real or trade names.* The producer's or other proprietor's real name or the authorized trade name used in accordance with § 19.94 at the time of production, may be placed on any package filled at the time of the production gauge, or at the time of the original packaging of the spirits in wood when, as provided in § 19.305, the spirits were not filled into wooden packages at the time of production gauge. When spirits have been mingled in accordance with § 19.326, the proprietor may use only a producer name associated with any portion of the mingled spirits on packages filled with such mingled spirits.

(26 U.S.C. 5206)

§ 19.485 Package identification numbers in production and storage.

(a) *General.* A proprietor must mark with a lot identification number each package of spirits filled during production or storage operations. The lot identification number shows when the package is filled and must consist of, in order, the following:

(1) The last two digits of the calendar year;

(2) An alphabetical designation for the month from ''A'' through ''L'', representing, in order, January through December;

(3) Two digits corresponding to the day of the month; and

(4) When more than one lot is filled into packages during the same day, for successive lots after the first lot, a letter suffix sequence starting with ''A'' representing the second lot, with ''B'' representing the third lot, and so forth. For example: The first three lots filled into packages on January 2, 2002, would be identified as ''02A02'', ''02A02A'', and ''02A02B''.

(b) *Packages constituting a lot.* Packages of spirits, including any remnant package, received from customs custody or filled during any one day will receive the same lot identification number, subject to the following conditions:

(1) They are of the same type and either are of the same rated capacity or are uniformly filled with the same quantity by weight or other measurement method prescribed in § 19.289;

(2) They are filled with spirits of the same kind and same proof;

(3) If they are filled with mingled spirits, the mingling was conducted in accordance with § 19.326; and

(4) In the case of spirits imported or brought into the United States, they are filled with imported spirits, Puerto Rican spirits or Virgin Island spirits, as applicable.

(c) *Serial numbers.* At the time of filling, receipt on bonded premises, or withdrawal from bond, the appropriate TTB officer may require serial numbers on packages of spirits within the same lot in conjunction with the lot identification number. The proprietor must assign temporary serial numbers to packages for control purposes when they are transferred in bond in an unsecured conveyance or gauged after tampering within the storage account.

(26 U.S.C. 5206)

§ 19.486 Change of packages in storage.

When a proprietor transfers spirits from one package to another as permitted in § 19.325, the proprietor must give the new package the same package identification number and marks as the original package. The proprietor must also prepare and sign a label to be affixed to the head of each new package. The label must be in the following form:

The spirits in this _____ [kind of cooperage: barrel or drum], package identification No. _____, were transferred from a _____ [kind of cooperage: barrel or drum], on _____ [Date], _____ [Proprietor]

(26 U.S.C. 5206)

§ 19.487 Kind of spirits.

(a) *Designation.* The designations of kind of spirits required for packages filled on bonded premises must be consistent with the classes and types of spirits set forth in part 5 of this chapter subject to the following exceptions or conditions:

(1) A proprietor may designate as ''Alcohol'' spirits distilled at more than 160° proof, which lack the taste, aroma, and other characteristics generally attributed to whisky, brandy, rum, or gin, and which are substantially neutral in character. When alcohol so designated is withdrawn on determination of tax, the designation

must consist of the word ''Alcohol'' preceded or followed by a word or phrase that describes the material from which the alcohol was produced;

(2) The designation for vodka, neutral spirits, or gin must include a word or phrase that describes the material from which the spirits were produced;

(3) A proprietor may designate as ''Spirits'', preceded or followed by a word or phrase that describes the material from which the spirits were produced, those distilled spirits that are distilled at less than 190° proof which lack the taste, aroma, and other characteristics generally attributed to whisky, brandy, rum, or gin. However, the proprietor may not designate such spirits as ''Spirits grain'' or ''Grain spirits'';

(4) A proprietor must designate spirits distilled from fruit at or above 190° proof, if intended for use in wine production, as ''Neutral Spirits-Fruit'', preceded or followed by the name of the fruit from which the spirits were produced;

(5) A proprietor may designate as ''Whisky'' spirits distilled at not more than 160° proof from a fermented mash of not less than 51 percent rye, corn, wheat, malted barley, or malted rye grain, packaged in reused cooperage, provided that the designation is further qualified with the words ''Distilled from rye mash'' (or bourbon, wheat, malt, or rye malt mash, as the case may be). However, spirits designated as ''Whisky'' must, if distilled from a fermented mash of not less than 80 percent corn, carry the designation ''Corn Whisky.''

(b) *Change of designation.* After written application to, and approval of, the appropriate TTB officer, a proprietor may at any time before their withdrawal from bonded premises, change the original designation for spirits to a new designation properly describing the spirits in accordance with the provisions of this section.

(c) *Other designations.* If a proprietor proposes to produce spirits for which a designation has not been prescribed in this section or in part 5 of this chapter, the proprietor must first make written application to the appropriate TTB officer for a designation for such spirits, and the proprietor must then designate the spirits accordingly.

(d) *Spirits for nonindustrial use.* A proprietor may not treat the provisions of this section as constituting authorization to apply designations to spirits withdrawn for nonindustrial use if those designations do not conform to the requirements of part 5 of this chapter.

(26 U.S.C. 5206)

§ 19.488 Marks on packages filled in processing.

(a) *Packages filled in processing.* Except as otherwise provided in this part, a proprietor must mark packages of spirits filled in processing with:

(1) The name of the processor, or the processor's trade name;

(2) The distilled spirits plant number of the processor, such as ''DSP–KY–708'';

(3) The kind of spirits in accordance with § 19.487 or, in the case of an intermediate product, the product name shown on form TTB F 5110.38, Formula for Distilled Spirits Under the Federal Alcohol Administration Act;

(4) The serial number or lot identification number, in accordance with § 19.490, and the date of filling;

(5) The proof of the spirits; and

(6) The serial number of the formula if it was manufactured under an approved formula.

(b) *Real or trade names.* The proprietor's real name or any trade name used in accordance with § 19.94 may be placed on any package filled with spirits during processing operations.

(26 U.S.C. 5206)

§ 19.489 Marks on cases filled in processing.

(a) *Mandatory marks.* Except for cases marked in accordance with § 19.496, a proprietor must mark in accordance with § 19.483 the following information on each case of spirits filled in processing:

(1) Serial number in accordance with § 19.490;

(2) Kind of spirits in accordance with the classes and types of spirits set forth in part 5 of this chapter;

(3) The distilled spirits plant number where bottled;

(4) Date filled;

(5) Proof; and

(6) Liters or proof gallons.

(b) *Export marks.* In addition to the marks referred to in paragraph (a) of this section, the proprietor must include the marks required by part 28 of this chapter on cases removed for export, for transfer to any customs bonded warehouses, for transfer to foreign-trade zones, or for use as supplies on certain vessels and aircraft.

(c) *Other marks.* A proprietor may include other marks on cases filled in processing in addition to the marks prescribed under this section. Any additional marks must not interfere with, or detract from, the marks prescribed in this section. The proprietor may include other marks such as:

(1) The name or trade name, and the location if desired, of the bottler, displayed with the word ''Bottler'';

(2) For products distilled or processed by the proprietor, the proprietor's name or trade name, and the location of the distilled spirits plant, if desired, displayed with the words ''Distiller'' or ''Processor'', as applicable;

(3) For products imported and bottled by the proprietor, the words ''Imported and Bottled By'', followed by the proprietor's name or trade name the and location of the distilled spirits plant if desired;

(4) For products bottled for a dealer, the words ''Bottled For'', followed by the name of that dealer;

(5) Any material required by Federal or State law and regulations; and

(6) Labels or data describing the contents for commercial identification or accounting purposes or indicating payment of State or local taxes.

(26 U.S.C. 5206, 5066)

§ 19.490 Numbering of packages and cases filled in processing.

(a) *Packages of spirits and denatured spirits filled during processing operations.* When a proprietor fills packages of spirits and denatured spirits during processing, the proprietor must identify the packages consecutively beginning with ''1'' and continuing the series until the number ''1,000,000'' is reached, except that any series of such numbers already in use may be continued to that limit. When the identification in any series reaches ''1,000,000'', the proprietor may begin a new series with ''1'' but must add an alphabetical prefix or suffix to the new series number. For example, the first identifier in the second series of 1,000,000 packages filled might be ''1A'' or ''A1''.

(b) *Cases containing bottles or other containers of spirits and denatured spirits.* When a proprietor fills cases containing bottles or other containers of spirits and denatured spirits during processing, the proprietor must identify the cases consecutively beginning with ''1'' and continuing the series until the number ''1,000,000'' is reached, except that any series of such numbers already in use may be continued to that limit. When the identification in any series reaches ''1,000,000'', the proprietor may begin a new series with ''1''. This series of identifiers for cases containing bottles or other containers must be distinct from the series of serial numbers required for packages under paragraph (a) of this section.

(c) *Additional identification.* A proprietor may establish separate series of identifiers, distinguished from each

other by the use of alphabetical prefixes or suffixes, to identify the size of bottles, the brand names, or other information, on written notice to the appropriate TTB officer. The proprietor must identify remnant cases by placing the identifier of the last full case followed by the letter ''R'' on the remnant case. When there is a change in the name, or trade name of the proprietor, all series in use may be continued. However, if there is a change in proprietorship, a new series must be commenced.

(d) *Alternative marking for spirits for industrial use.* A proprietor may mark packages and cases of spirits for industrial use, including denatured spirits, filled in processing with the lot identification numbers specified in § 19.485 instead of using the identifiers specified in paragraphs (a), (b) and (c) of this section.

(26 U.S.C. 5206)

§ 19.491 Marks on containers of specially denatured spirits.

(a) *General.* A proprietor must mark or label each package, case, or encased container of specially denatured spirits filled on bonded premises to show:

(1) The quantity in gallons;

(2) The serial number or lot identification number;

(3) The plant number of the proprietor;

(4) The designation or abbreviation of the specially denatured spirits by kind (alcohol or rum);

(5) The applicable formula number; and

(6) The proof of the spirits, if they were denatured at other than 190 proof.

(b) *Bottles.* A proprietor must mark or label each bottle to show the information prescribed in paragraphs (a)(1), (3), (4), (5), and (6) of this section.

(c) *Alternate formulations.* When spirits are denatured under a formula authorizing a choice of types and quantities of denaturants, the proprietor must mark the container or case to show the actual types and quantities of denaturants used.

(26 U.S.C. 5206)

§ 19.492 Marks on containers of completely denatured alcohol.

Except in the case of completely denatured alcohol transported by pipelines and bulk conveyances, a proprietor must mark each container of completely denatured alcohol on the head of the package or on the side of the can or carton with:

(a) The name of the proprietor who filled the containers;

(b) The plant number where the container was filled;

(c) The container's contents in wine gallons;

(d) The apparent proof;

(e) The words ''Completely Denatured Alcohol''; and

(f) The applicable formula number.

(26 U.S.C. 5206)

§ 19.493 Caution label for completely denatured alcohol.

A proprietor must place a label containing the words ''Completely Denatured Alcohol'' and the statement ''Caution—contains poisonous ingredients'' on each container of completely denatured alcohol containing five gallons or less that is sold or offered for sale. The label must be written in plain, legible letters. The proprietor may print the name and address of the denaturer on such label, but may not include any other non-essential matter on the label without approval from the appropriate TTB officer. The word ''pure'' may not appear on the label or the container.

(26 U.S.C. 5206)

§ 19.494 Additional marks on portable containers.

(a) In addition to the other marks prescribed in this part, a proprietor must mark portable containers of spirits or denatured spirits (other than bottles enclosed in cases) that will be withdrawn from the bonded premises as follows:

(1) Without payment of tax, for export, for transfer to customs manufacturing bonded warehouses, for transfer to foreign-trade zones, or as supplies for certain vessels and aircraft, in accordance with the provisions in 27 CFR part 28; or

(2) If tax-free, with the word ''Tax-Free.''

(b) A proprietor may show other optional information such as brand or trade name; a caution notice, or other information required by Federal, State, or local law or regulations; wine or proof gallons; and plant control data. However, any such mark must not conceal, obscure, interfere with, or conflict with the markings required by this subpart.

(26 U.S.C. 5206)

§ 19.495 Marks on bulk conveyances.

(a) A proprietor must securely attach a label identifying each conveyance or compartment to the route board, or to another equivalent device, for each bulk conveyance used to transport spirits or denatured spirits setting forth the following information:

(1) The name, plant number, and location of the consignor;

(2) The name, distilled spirits plant number, permit number, or registry number (as applicable), and the location of the consignee;

(3) The date of shipment;

(4) The quantity (proof gallons for spirits, wine gallons for denatured spirits); and

(5) The formula number for denatured spirits.

(b) If the conveyance is accompanied by documentation containing the information specified in paragraph (a) of this section, the proprietor is not required to label each conveyance or compartment.

(c) Export shipments must conform to the requirements of part 28 of this chapter.

(26 U.S.C. 5206)

§ 19.496 Cases of industrial alcohol.

(a) *Mandatory marks.* A proprietor must mark each case and each encased container of alcohol bottled for industrial use under the provisions of subpart N of this part to show the following information:

(1) The designation ''Alcohol'';

(2) The serial number or lot identification number;

(3) The distilled spirits plant number of the proprietor;

(4) The proof;

(5) The proof gallons;

(6) The designation ''Tax-Free''; and

(7) Any information required by part 28 of this chapter, for cases that are withdrawn for export, transferred to customs bonded warehouses, transferred to foreign-trade zones, or are for use on vessels and aircraft.

(b) *Other marks.* A proprietor may mark cases of industrial alcohol with other marks, provided that they do not interfere with, or detract from, mandatory case marks in the manner permitted under § 19.489.

(26 U.S.C. 5206, 5235)

§ 19.497 Obliteration of marks.

Except as otherwise provided in § 19.487(b), the marks required to be placed on any container or case under this part must not be destroyed or altered before the container or case is emptied.

(26 U.S.C. 5206)

§ 19.498 Relabeling and reclosing off bonded premises.

The proprietor of a distilled spirits plant may relabel, affix brand labels, or reclose bottled taxpaid spirits on wholesale liquor dealer premises or at a taxpaid storeroom on, contiguous to, adjacent to, or in the immediate vicinity of the proprietor's distilled spirits plant,

provided that the wholesale liquor dealer premises or taxpaid storeroom is operated in connection with the distilled spirits plant. If products relabeled under this section were originally bottled by another proprietor, the relabeling proprietor must have on file a statement from the original bottler consenting to the relabelling.

(26 U.S.C. 5201)

§ 19.499 Authorized abbreviations to identify marks.

In addition to the other abbreviations and symbols authorized under this part for use in marking containers, a proprietor may use the following abbreviations to identify the following marks:

Mark	Abbreviation
Completely Denatured Alcohol	CDA
Gallon or Wine Gallon	WG
Gross Weight	G
Proof	P
Specially Denatured Alcohol	SDA
Specially Denatured Rum	SDR
Tare	T
Tax Determined	TD
Wine Spirits Addition	WSA

(26 U.S.C. 5206)

Subpart T-Liquor Bottle, Label, and Closure Requirements

Authorized Liquor Bottles

§ 19.511 Bottles authorized.

Each liquor bottle for nonindustrial distilled spirits for domestic use must conform to a bottle size specified in the standards of fill set forth in subpart E of part 5 of this chapter. This rule applies to liquor bottles intended for distribution in both interstate and intrastate commerce.

(26 U.S.C. 5301)

§ 19.512 Bottles not constituting approved containers.

A proprietor may not use any liquor bottle that the appropriate TTB officer finds is misleading within the meaning of § 5.46 of this chapter. Misleading liquor bottles do not constitute approved containers for the purposes of this part, and a proprietor may not use them for packaging distilled spirits for domestic purposes.

§ 19.513 Distinctive liquor bottles.

(a) Application. A proprietor must submit form TTB F 5100.31, Application for and Certification/Exemption of Label/Bottle Approval, to the appropriate TTB officer in order to obtain approval to use domestic liquor bottles of distinctive shapes or designs. The proprietor must certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on each copy of the form. In addition, the proprietor must affix a readily legible photograph (showing both front and back of the bottle) to the front of each copy of TTB F 5100.31 along with the label(s) to be used on the bottle. The proprietor must submit to TTB an actual bottle or accurate model only when specifically requested to do so.

(b) Approval. The appropriate TTB officer will approve a distinctive liquor bottle on a properly completed TTB F 5100.31 if the bottle is found to:

(1) Meet the requirements of part 5 of this chapter;

(2) Be distinctive;

(3) Be suitable for its intended purpose;

(4) Not jeopardize the revenue; and

(5) Be not misleading to the consumer.

(c) Retention. A proprietor must keep on file at his premises a copy of the complete approved TTB F 5100.31 for the distinctive liquor bottle.

(d) Cross reference. For procedures regarding issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see part 13 of this chapter.

(26 U.S.C. 5301)

Labeling Requirements

§ 19.516 Certificate of label approval or exemption.

A proprietor must obtain a certificate of label approval or an exemption from label approval under part 5 of this chapter on form TTB F 5100.31 for any label that the proprietor will use on bottles of spirits for domestic use. Upon request by the appropriate TTB officer, the proprietor must provide evidence of label approval, or of exemption from label approval, for a label used on a bottle of spirits for domestic use. For procedures regarding the issuance, denial and revocation of certificates of label approval and certificates of exemption from label approval, as well as appeal procedures, see part 13 of this chapter.

(26 U.S.C. 5201)

§ 19.517 Statements required on labels under an exemption from label approval.

If a proprietor bottles spirits for domestic use under a certificate of exemption from label approval on form TTB F 5100.31, the following information must appear on the label used on the bottle, in the manner indicated:

(a) *Brand name.* The brand name on the label must conform to the requirements of § 5.34 of this chapter;

(b) *Kind.* The class and type of the spirits identified on the label must conform to the requirements of § 5.35 of this chapter;

(c) *Alcohol content.* The alcohol content on the label must conform to the requirements of § 5.37(a) of this chapter;

(d) *State of distillation.* In the case of whisky, the state of distillation statement on the label must conform to the requirements of § 5.36(d) of this chapter;

(e) *Net contents.* The label must show the net contents, unless the statement of net contents is permanently marked on the side, front, or back of the bottle;

(f) *Name and address of bottler.* The name and address of the bottler must conform to the requirements of § 19.518;

(g) *Age of whisky containing no neutral spirits.* In the case of whisky containing no neutral spirits, statements of age and percentage by volume on the label must conform to the requirements of § 5.40 of this chapter;

(h) *Age of whisky containing neutral spirits.* In the case of whisky containing neutral spirits, the label must state the age of the whisky or whiskies and the respective percentage by volume of whisky or whiskies and neutral spirits in accordance with § 5.40 of this chapter;

(i) *Age of brandy.* In the case of brandy aged for a period of less than two years, the label must state the age.

(j) *Presence of neutral spirits or coloring, flavoring, or blending material.* The label must indicate the presence of neutral spirits or coloring, flavoring, or blending material in accordance with § 5.39 of this chapter; and

(k) *Country of origin.* Labels of imported spirits must state the country of origin in substantially the following form: ''Product of _____,'' with the blank filled in with the name of the country of origin.

(26 U.S.C. 5201)

§ 19.518 Name and address of bottler.

In setting forth the name and address of the bottler required by § 19.517(f), the label must contain the words ''Bottled by'', ''Packed by'', or ''Filled by'' followed immediately by the name (or trade name) of the bottler and the place where the bottling takes place. If the bottler is the proprietor of more than one distilled spirits plant engaged in bottling operations, the label may include the addresses of all such plants immediately following the name (or trade name) of the bottler. The following additional rules apply to name and address labeling under this section:

(a) Where distilled spirits are bottled by or for the distiller of the spirits, the label may state, in lieu of the words

''Bottled by'', ''Packed by'', or ''Filled by'', followed by the bottler's name (or trade name) and address or addresses, the words ''Distilled by'', followed immediately by the name (or trade name) under which the particular spirits were distilled, or by any trade name shown on the distiller's permit covering the premises where the particular spirits were distilled, and the address (or addresses) of the distiller;

(b) Where ''straight whiskies'' of the same type produced in the same State by two or more different distillers are combined (either at time of bottling or at a warehouseman's bonded premises for further storage) and are subsequently bottled and labeled as ''straight whisky'', that ''straight whisky'' must be labeled as provided in the introductory paragraph of this section. However, where that combined ''straight whisky'' is bottled by or for the distillers of the whiskies, the label may contain, in lieu of the wording specified in that introductory paragraph, the words ''Distilled by'', followed immediately by the name (or trade name) of each distiller that distilled a portion of the ''straight whisky'', the address of each of the of the distilled spirits plants where a portion of the ''straight whisky'' was distilled, and the percentage of ''straight whisky'' distilled by each distiller (with a tolerance of plus or minus 2 percent). In addition, where ''straight whisky'' is made up of a mixture of ''straight whiskies'' of the same type distilled at two or more distilled spirits plants of the same proprietor located within the same State, and where that ''straight whisky'' is bottled by or for that proprietor, the label for the ''straight whisky'' may contain, in lieu of the wording specified in the introductory paragraph of this section, the words ''Distilled by'' followed by the name (or trade name) of the proprietor and the address of each of the distilled spirits plants that distilled a portion of the ''straight whisky'';

(c) Where distilled spirits are bottled by or for the proprietor of a distilled spirits plant, the label may state, in lieu of the words ''Bottled by'', ''Packed by'', or ''Filled by'' followed by the bottler's name (or trade name) and address, the words ''Blended by'', ''Made by'', ''Prepared by'', ''Manufactured by'', or ''Produced by'' (whichever is appropriate to the process involved), followed by the name (or trade name) and the address (or addresses) of the distilled spirits plant proprietor;

(d) In the case of labels of distilled spirits bottled for a retailer or other person who is not the proprietor of the distilled spirits plant where the distilled spirits were distilled, the label may also state the name and address of that retailer or other person, preceded immediately by the words ''Bottled for'', ''Distributed by'', or other similar statement; and

(e) The label may state the address of the proprietor's principal place of business in lieu of the place where the bottling, distilling or processing operation occurred, provided that the address where the bottling, distilling, or other operation occurred is indicated by printing, coding, or other markings, on the label or on the bottle. The coding system employed must permit TTB to determine where the operation stated on the label occurred. Prior to using such a label or bottle coding system, the proprietor must send a notice to the appropriate TTB officer explaining the coding system.

(26 U.S.C. 5201)

§ 19.519 Labels for export spirits.

(a) *Required information.* If a proprietor bottles spirits for export, the bottles must have a securely affixed label showing:

(1) The kind (class and type) of spirits;

(2) The percent-alcohol-by-volume of the spirits;

(3) The net contents, unless the markings on the bottle indicate such contents; and

(4) The name (or trade name) of the bottler.

(b) *Additional information.* The bottler may place additional information on the export label if it is not inconsistent with the information required under paragraph (a) of this section.

(c) *Language.* The export label information may appear in the language of the country to which the spirits are to be exported provided that the proprietor maintains on file an English translation of that information. The export label may state the net contents and percent-alcohol-by-volume in the units of measurement of the foreign country, provided that the proprietor maintains a record of the equivalent units as required for labels of spirits bottled for domestic consumption.

(d) *Waiver.* The appropriate TTB officer may waive the requirement to show any information required by this section, other than the kind of spirits, upon a showing that the country to which the spirits are to be exported prohibits the showing of such information. In regard to kind (class and type) of spirits, the appropriate TTB officer may waive the designation required by § 5.22 of this chapter, only to the extent that the label need not bear the word ''diluted'' for distilled spirits bottled below the minimum bottling proof, and provided that this is in accordance with the rules of the country to which the product is to be exported.

(26 U.S.C. 5201, 5301)

§ 19.520 Spirits for shipment to Puerto Rico.

Spirits removed for shipment to Puerto Rico with benefit of drawback or without payment of tax in accordance with part 28 of this chapter are subject to the provisions of part 5 of this chapter in regard to labeling and standards of fill for bottles.

(26 U.S.C. 5201)

Closure Requirements

§ 19.523 Affixing closures.

Each bottle or other container of spirits having a capacity of one gallon (3.785 liters) or less must have a closure or other device securely affixed to the container prior to withdrawal from bond or customs custody. The closure or other device must be constructed in such a manner as to require breaking in order to gain access to the contents of the container.

(26 U.S.C. 5301)

§ 19.525 Reclosing.

A proprietor may reclose bottles of distilled spirits filled on bonded premises as provided in subpart N of this part. A proprietor may also reclose bottles of distilled spirits to which closures or other devices have been affixed as provided in § 19.498.

(26 U.S.C. 5215)

Subpart U—[Reserved]

Subpart V—Records and Reports

General Rules for Records

§ 19.571 Records in general.

Each proprietor of a distilled spirits plant must maintain records that accurately reflect the operations and transactions occurring at the plant. This subpart specifies the types of records that a proprietor must maintain. In general, a proprietor is responsible for recording activities and transactions related to the three primary operational accounts at a plant: production, storage, and processing. A proprietor's records must show receipts in each account, movement from one account to another, transfers in bond, and withdrawals of spirits, denatured spirits, articles, or wines. The types of records that a proprietor must keep include:

(a) All individual transaction forms, records, and summaries that are specifically required by this part;

(b) All supplemental, auxiliary, and source data that a proprietor uses to compile required forms, records, and summaries, and to prepare reports, returns and claims; and

(c) Copies of notices, reports, returns, and approved applications and other documents relating to operations and transactions.

(26 U.S.C. 5207)

§ 19.572 Format of records.

As a general rule, the provisions of this subpart do not require proprietors to keep their records in any particular format or medium. For example, a proprietor may keep required records on paper, on microfilm or microfiche, or on a computer or other electronic medium, so long as the records are readily retrievable in hard-copy format for review by TTB officers as necessary. The required records may consist of documents created in the ordinary course of business, rather than documents created expressly to meet the requirements of this part, provided that those documents:

(a) Contain all of the relevant information required under this part;

(b) Are consistent with the general standards of clarity and accuracy; and

(c) Can be readily understood by TTB personnel.

(26 U.S.C. 5207)

§ 19.573 Location of required records.

A proprietor may keep the records required by this part at the distilled spirits plant where operations or transactions occur or at a central recordkeeping location maintained by the proprietor. If a proprietor keeps the required records at any location other than the distilled spirits plant where operations or transactions occur, the proprietor must notify the Director, National Revenue Center, of the location where the records are kept.

(26 U.S.C. 5207)

§ 19.574 Availability of records.

The records required by this part must be available for inspection by the appropriate TTB officer during normal business hours. If a proprietor keeps the records at a location other than the distilled spirits plant where operations or transactions occur, the proprietor upon request must make them available at the distilled spirits plant premises undergoing a TTB audit or inspection. The records must be produced within two days of the request except that data accumulated on cards, tapes, discs, or other accepted record media must be retrievable within five business days. Applicable data processing programs must be made available for examination if requested by any authorized TTB officer.

(26 U.S.C. 5207)

§ 19.575 Retention of records.

A proprietor must retain any records required by this part for a period of not less than three years from the date of the record or the date of the last entry required to be made, whichever is later. However, the appropriate TTB officer may require a proprietor to keep records for an additional period not exceeding three years in any case where such retention is deemed appropriate for the protection of the revenue.

(26 U.S.C. 5207)

§ 19.576 Preservation of records.

A proprietor must maintain required records to ensure their readability and availability for inspection. Whenever the condition of any record will render it unsuitable for its intended or continued use, the proprietor must create an accurate and legible reproduction of the original record. TTB will treat the reproduced record as an original record, and all of the provisions of law that would apply to the original record also will apply to the reproduced record.

(26 U.S.C. 5207, 5555)

§ 19.577 Documents that are not records.

The term ''records'' as used in this subpart does not include qualifying documents required under subpart D of this part, or bonds required under subpart F of this part. Approved active formulas, plant registrations and similar records are permanent in nature and must be maintained in a permanent file.

(26 U.S.C. 5207)

§ 19.578 Financial records and books of account.

See 27 CFR 70.22 for information regarding TTB examination of financial records and books of account.

(26 U.S.C. 7602)

§ 19.580 Time for making entries in records.

(a) *Daily record entries.* A proprietor must make entries required by this part in records on a daily basis for each transaction or operation and not later than the close of the next business day after the transaction or operation occurred. However, if a proprietor prepares supplemental or auxiliary records when an operation or transaction occurs and those records contain all of the required information, the proprietor may make entries into the daily records not later than the close of business on the third business day following the day on which the transaction or operation occurred.

(b) *Tax records.* A proprietor must enter the tax determination and the taxable removal of distilled spirits in the proprietor's records on the day on which tax determination and taxable removal occurs.

(26 U.S.C. 5207)

§ 19.581 Details of daily records.

The daily records required by this part must include the following information:

(a) The date of each operation or transaction;

(b) For spirits, the kind and the quantity in proof gallons;

(c) For denatured spirits, the formula number and the quantity in wine gallons;

(d) For distilling materials produced on the premises, the kind and the quantity in wine gallons. For chemical byproducts containing spirits, articles, spirits residues, and distilling material received on the premises, the kind, the percent of alcohol by volume, and the quantity in wine gallons;

(e) For wines, the kind, the quantity in wine gallons and the percent of alcohol by volume;

(f) For alcoholic flavoring materials, the kind, formula number (if any), and the quantity in proof gallons;

(g) For containers (other than those bearing lot identification numbers) or cases, the type, serial number, and the number of containers (including identifying marks on bulk conveyances), or cases. However, a proprietor may withdraw spirits in cases without recording the serial numbers of the cases, unless the appropriate TTB officer requires such recording. A proprietor must record package identification numbers, number of packages, and proof gallons per package on deposit records in the storage account reflecting production gauges or filling of packages from tanks; however, the proprietor need show only the lot identification, number of packages, and proof gallons per package for transactions in packages of spirits unless package identification numbers are specifically required by this part;

(h) For materials intended for use in the production of spirits, the kind and the quantity, with liquids recorded in gallons and other nonliquid materials recorded by weight;

(i) For each receipt or removal of material, spirits, denatured spirits, articles, spirits residues, and wine, the name and address of the consignee or consignor, and, if any, the plant number

or industrial use permit number of such person;

(j) The serial number of any tank used;

(k) On the transaction record, the rate of duty paid on imported spirits;

(l) Identification of imported spirits, spirits from Puerto Rico, and spirits from the Virgin Islands, or a showing that a distilled spirits product contains such spirits; and

(m) Identification of spirits that are to be used exclusively for fuel use.

(26 U.S.C. 5207)

§ 19.582 Conversion from metric to U.S. units.

When liters are converted to wine gallons, the proprietor must multiply the quantity in liters by 0.264172 to determine the equivalent quantity in wine gallons. If cases contain the same quantity of spirits of the same proof in metric bottles, the proprietor must convert the cases to U.S. units by multiplying the liters in one case by the number of cases to be converted, as follows:

(a) If the conversion from liters to U.S. units is made before multiplying by the number of cases, the quantity in U.S. units must be rounded to the sixth decimal; or

(b) If the conversion is made after multiplying by the number of cases, the quantity in U.S. units must be rounded to the nearest hundredth. Once converted to wine gallons, the proprietor must determine the proof gallons of spirits in cases as provided in § 30.52 of this chapter.

(26 U.S.C. 5201)

Production Records

§ 19.584 Materials for the production of distilled spirits.

A proprietor must maintain daily records of materials produced or received for, or used in, the production of distilled spirits. This includes records covering:

(a) Receipt and use of fermenting material or other nonalcoholic materials for the production of distilled spirits;

(b) Receipt and use of spirits, denatured spirits, articles, and spirits residues for redistillation;

(c) Distilling materials produced, received for production, and used in the production of distilled spirits;

(d) Receipt of beer from brewery premises without payment of tax, and receipt of beer removed from brewery premises upon determination of tax as authorized by 26 U.S.C. 5222(b);

(e) Distilling material destroyed in, or removed from the premises before distillation, including residue of beer returned to the producing brewery;

(f) The quantity of fusel oils or other chemicals removed from the production system, including the disposition thereof, with the name of the consignee, if any, together with the results of alcohol content tests performed on those fusel oils or chemicals; and

(g) The kind and quantity of distillates removed from the production system pursuant to § 19.307.

(26 U.S.C. 5207)

§ 19.585 Production and withdrawal records.

(a) *Production of spirits.* The following rules apply to the maintenance of production records:

(1) A proprietor must maintain daily production account records of the kind and quantity of distilled spirits produced. The records must show the gauge of spirits in each receiving tank and the production gauge (in proof gallons) of spirits removed from each tank. If packages are filled according to the production gauge for immediate withdrawal from bond, the proprietor must record the details of the individual packages filled;

(2) A proprietor must maintain daily records of spirits lost or destroyed prior to the production gauge; and

(3) A proprietor must maintain production account records in a manner that will ensure the tracing of spirits through the distilling system to the mash or other material from which the spirits were produced and that will clearly establish the identity of the spirits.

(b) *Withdrawals from production.* A proprietor must maintain daily records of the distilled spirits withdrawn from the production account. This includes withdrawals for:

(1) Tax payment;

(2) Use of the United States;

(3) Hospital, scientific or educational use;

(4) Export;

(5) Transfer to a foreign trade zone;

(6) Transfer to customs bonded manufacturing warehouse;

(7) Use as supplies on vessels and aircraft;

(8) Use in wine production;

(9) Transfer in bond to other bonded premises;

(10) Transfer to storage operations;

(11) Transfer to processing operations; and

(12) Research, development, or testing.

(26 U.S.C. 5207)

§ 19.586 Byproduct spirits production record.

Each proprietor who manufactures substances other than spirits in a process that produces spirits as a byproduct must maintain daily production records of:

(a) The kind and quantity of materials received and used in production;

(b) The kind and quantity of spirits produced and disposed of; and

(c) The kind and quantity of other substances produced.

(26 U.S.C. 5207)

Storage Records

§ 19.590 Storage operations.

(a) *Receipts.* A proprietor must maintain daily records of the kind and quantity of distilled spirits or wines received in the storage account. The proprietor must use copies of gauge records, transfer records, and tank records of wines or spirits to record spirits or wines received into storage. Receipts into storage include:

(1) Receipts of spirits or wines for deposit into storage;

(2) Receipts by transfer in bond;

(3) Receipts of spirits from customs custody; and

(4) Receipts of spirits returned to bond.

(b) *Storage activities.* A proprietor must maintain daily records of the activities and operations within the storage account at the plant, including records regarding:

(1) The mingling of spirits;

(2) Spirits in tanks;

(3) Spirits or wines filled into packages from tanks and retained for storage;

(4) Spirits of less than 190 degrees of proof or wines transferred from one tank to another;

(5) The transfer of spirits or wine from one package to another; and

(6) The addition of oak chips to spirits and the addition of caramel to brandy or rum.

(c) *Withdrawals from storage.* A proprietor must maintain daily records of the kind and quantity of distilled spirits or wines withdrawn from the storage account, including records regarding:

(1) Taxpayment;

(2) Use by the United States;

(3) Hospital, scientific or educational use;

(4) Export;

(5) Transfer to a foreign trade zone;

(6) Transfer to a customs bonded manufacturing warehouse;

(7) Use as supplies on vessels and aircraft;

(8) Transfer to a bonded winery;

(9) Transfer to a customs bonded warehouse;

(10) Use for research, development, or testing;

(11) Transfer to processing operations;
(12) Transfer to production operations;
(13) Transfer in bond to other bonded premises;
(14) Destruction; and
(15) Loss.

(26 U.S.C. 5207)

§ 19.591 Package summary records.

(a) *General.* A proprietor must keep current summary records for each kind of spirits or wine in packages, showing each spirits or wine deposited in, withdrawn from, and remaining in, the storage account. A proprietor must keep separate records for domestic spirits, imported spirits, Virgin Islands spirits, Puerto Rican spirits, and wine. A proprietor may keep package records for spirits according to the season or the year in which the packages were filled with spirits.

(b) *Arrangement of records.* The proprietor must prepare and arrange separately package summary records:

(1) For domestic spirits, alphabetically by State and by the plant number and name of the producer or warehouseman;

(2) For imported spirits, alphabetically by the country of origin and by the name of the producer;

(3) For Puerto Rican or Virgin Islands spirits, by the name of the producer in Puerto Rico or the Virgin Islands; and

(4) For wine, by the kind and the tax rate imposed by 26 U.S.C. 5041.

(c) *Details of records.* Package summary records must show the following details:

(1) The date on which each of the summarized transactions occurred;

(2) For spirits, the number of packages and the proof gallons covered by the summary record;

(3) For wine, the number of packages and the wine gallons covered by the summary record;

(4) Any gains or shortages disclosed by inventory or when an account is closed; and

(5) The gallon balances on summary records for spirits and wines remaining in the account at the end of each month.

(d) *Consolidation.* A proprietor must consolidate package summary records at the end of each month, or for lesser periods when required by the appropriate TTB officer, to show, for all types of containers and kinds of spirits, the total proof gallons received in, withdrawn from, and remaining in the storage account.

(26 U.S.C. 5207)

§ 19.592 Tank record of wine and spirits of less than 190 degrees of proof.

A proprietor must keep a record for each tank (including each bulk conveyance) containing wine or spirits of less than 190 degrees of proof. The record must show deposits into, withdrawals from, and the balance remaining in, each tank in the storage account. A proprietor must prepare a new record each time wine or spirits are deposited into an empty tank and must make entries each day that transactions occur. Tank records must show the following details:

(a) The identification of the tank;

(b) The tank record serial number, beginning with ''1'' for each record initiated on or after January 1 of each calendar year;

(c) The date of each transaction;

(d) For spirits, the kind of spirits and, as applicable,—

(1) For domestic spirits, the plant number and name of the producer, or, for blended rums or brandies, the plant number and name of the warehouseman;

(2) For imported spirits, the country of origin and the name and plant number of the warehouseman;

(3) For Puerto Rican or Virgin Islands spirits, the name of the producer;

(4) The number and average proof gallon content of packages of spirits dumped in the tank, or a notation indicating the deposit of spirits in the tank by pipeline; and

(5) If subject to age labeling requirements under part 5 of this chapter, the age of the youngest spirits in years, months and days, each time that spirits are deposited;

(e) For wine, the kind and the tax rate imposed by 26 U.S.C. 5041;

(f) The wine gallons of wine, or proof gallons of spirits, deposited into the tank;

(g) The wine gallons of wine, or proof gallons of spirits, withdrawn from the tank;

(h) Any related transaction form or record and its serial number for deposits and withdrawals;

(i) The wine gallons of wine, or proof gallons of spirits, remaining in the tank, recorded at the end of each month; and

(j) Any gain or loss disclosed by inventory or on emptying of the tank.

(26 U.S.C. 5207)

§ 19.593 Tank summary record for spirits of 190 degrees or more of proof.

(a) *General.* A proprietor must keep a tank summary record for spirits of 190 degrees or more of proof held in storage tanks. The record must show the proof gallons deposited into, withdrawn from, and remaining in the tanks in the storage account. The proprietor must prepare a separate tank summary record for each kind of spirits of 190 degrees or more of proof. The proprietor must make an entry for each day on which a transaction occurs, and the entry must summarize the individual transactions shown on the deposit records.

(b) *Arrangement of records.* The proprietor must prepare and arrange the tank summary records as follows:

(1) For domestic spirits, by the name of the producer or warehouseman;

(2) For imported spirits, by the name of the warehouseman who received the spirits from customs custody; and

(3) For spirits from Puerto Rico or the Virgin Islands, by the name of the producer in Puerto Rico or the Virgin Islands.

(c) *Details of records.* Tank summary records must show the following details:

(1) The kind of spirits;

(2) The date of the transactions summarized;

(3) The proof gallons deposited;

(4) The proof gallons withdrawn;

(5) The proof gallons remaining in tanks; and

(6) Any gain or loss disclosed by inventory or on emptying of the tanks covered by the tank summary record.

(26 U.S.C. 5207)

Processing Records

§ 19.596 Processing records in general.

A proprietor who processes spirits must maintain daily records of transactions and operations in the processing account relating to:

(a) The manufacture of distilled spirits products;

(b) Finished products;

(c) The denaturation of spirits; and

(d) The manufacture of articles.

(26 U.S.C. 5207)

§ 19.597 Manufacturing records.

(a) *Receipts.* A proprietor must maintain daily records of the spirits, wines, and alcoholic flavoring materials received into the processing account for the manufacture of distilled spirits products. Total receipts must be summarized showing the amount of:

(1) Spirits received from storage or production at the same plant;

(2) Spirits received from other plants by transfer in bond;

(3) Spirits received from customs custody;

(4) Spirits received by return to bond;

(5) Wines received from the storage at the same plant;

(6) Wines received by transfer in bond; and

(7) Alcoholic flavoring materials received.

(b) *Additional receipt information.* The records described in paragraph (a) of this section must also show the name and plant number of the producer or

processor (or the warehouseman in the case of blended beverage rums or brandies or spirits of 190 degrees or more of proof received from storage) for domestic spirits, the name of the importer and the country of origin for imported spirits, and the name and address of the producer for wines and alcoholic flavoring materials.

(c) *Usage.* A proprietor must maintain daily records of the spirits, wines, and alcoholic flavoring materials and other ingredients used in the manufacture of distilled spirits products as provided in § 19.598.

(d) *Bottling or packaging.* A proprietor must maintain daily records of the bottling or packaging of each batch of spirits as provided in § 19.599.

(e) *Other dispositions.* A proprietor must maintain daily records of all other dispositions of spirits, wines and alcoholic flavoring materials, including, but not limited to, records regarding the following:

(1) Spirits, wines, and alcoholic flavoring materials removed from the distilled spirits plant premises;

(2) Transfers in bond;

(3) Spirits transferred to the production account for redistillation;

(4) Redistillation of spirits, including the production of gin or vodka by other than original and continuous distillation;

(5) Voluntary destruction of spirits or wines; and

(6) Losses of spirits, wines and alcoholic flavoring materials.

(26 U.S.C. 5207)

§ 19.598 Dump/batch records.

A proprietor who processes, mixes, or blends spirits in the processing account must maintain ''dump/batch'' records setting forth detailed information regarding the processing of the spirits. The dump/batch records must contain each of the following items of information that applies to the processing in question:

(a) Serial number of the record or batch number;

(b) Name and distilled spirits plant number of the producer;

(c) Kind and age of the spirits used, together with a notation, if applicable, that the spirits—

(1) Were treated with oak chips;

(2) Contain added caramel;

(3) Were imported; or

(4) Are from Puerto Rico or the Virgin Islands;

(d) Serial number of the tank or container to which ingredients are added for use;

(e) Serial or identification number of the tank or container from which spirits are removed;

(f) Quantity by ingredient of other alcoholic ingredients used, showing wine in wine gallons, the percentage of alcohol by volume and proof, and alcoholic flavoring materials in proof gallons;

(g) Serial number of the source transaction record (for example, the record for spirits previously dumped);

(h) Date of each transaction;

(i) Quantity, by ingredient (other than water), of nonalcoholic ingredients used;

(j) Formula number;

(k) Quantity of ingredients used in the batch that have been previously dumped, reported on dump records, and held in tanks or containers;

(l) Total quantity in proof gallons of all alcoholic ingredients used;

(m) Identification of each record to which spirits are transferred;

(n) Quantity of each lot transferred;

(o) Date of each transfer;

(p) Total quantity in proof gallons of the product transferred;

(q) Batch gain or loss; and

(r) For each batch to be tax determined in accordance with § 19.247, the effective tax rate.

(26 U.S.C. 5207)

§ 19.599 Bottling and packaging record.

A proprietor who bottles or packages spirits must prepare a ''bottling and packaging'' record for each lot of spirits bottled or packaged. The bottling and packaging record must contain the following information:

(a) Bottling tank number;

(b) Serial number of the record (beginning with ''1'' at the start of each calendar or fiscal year);

(c) Formula number (if any) under which the batch was produced;

(d) Serial number of the dump/batch record from which the spirits were received;

(e) Kind of distilled spirits product (including age, if claimed);

(f) Details of the tank gauge (including proof, wine gallons, proof gallons, and, if applicable, obscuration);

(g) The date the bottles or packages were filled;

(h) The size of the bottles or packages filled, the number of bottles per case, and the number of cases or packages filled;

(i) Serial numbers by brand name of the cases or other containers filled;

(j) Proof of the spirits bottled or packaged (if different from the proof recorded under paragraph (f) of this section);

(k) Total quantity bottled, packaged or otherwise disposed of in bulk;

(l) Losses or gains of the distilled spirits product; and

(m) If labeled as bottled in bond, a statement to that effect.

(26 U.S.C. 5207)

§ 19.600 Alcohol content and fill test record.

A proprietor must maintain a record of the results of all tests of alcohol content and quantity (fill) conducted. The record must include information that will enable TTB officers to determine whether the proprietor is complying with the requirements of § 19.356. The record of alcohol content and fill tests must contain, at a minimum, the following information:

(a) Date and time of the test;

(b) Bottling tank number;

(c) Serial number of the bottling record;

(d) Bottling line designation;

(e) Size of the bottle filled;

(f) Number of bottles tested;

(g) Labeled alcohol content;

(h) Alcohol content found by the test;

(i) Percentage of variation from 100 percent fill; and

(j) Corrective action taken, if any.

(26 U.S.C. 5207, 5555)

§ 19.601 Finished products records.

(a) *Bottling and packaging.* A proprietor must maintain daily transaction records and a daily summary record of the kind and quantity of finished products bottled or packaged within the processing account at the distilled spirits plant. These records must show:

(1) The beginning and ending quantity of bottled or packaged spirits on hand;

(2) The spirits bottled or packaged; and

(3) Inventory overages.

(b) *Disposition of finished products.* A proprietor must also maintain daily records of the disposition of finished products from the processing account at the distilled spirits plant. These disposition records must show any spirits:

(1) Transferred in bond (packages);

(2) Withdrawn tax determined;

(3) Withdrawn free of tax for U.S., hospital, scientific, or educational use;

(4) Withdrawn without payment of tax for addition to wine;

(5) Withdrawn for exportation, for vessels and aircraft supplies and for transfer to a customs bonded warehouse;

(6) Transferred to the production account for redistillation;

(7) Withdrawn for research, development or testing (including government samples);

(8) Voluntarily destroyed;

(9) Dumped for further processing;

(10) Recorded losses or shortages of finished product; and

(11) Disposed of as samples of the finished product.

(26 U.S.C. 5207)

§ 19.602 Redistillation record.

If a proprietor redistills spirits in the processing account (as in the production of gin or vodka by redistillation), the proprietor must prepare a record of the redistillation. The record must show the kind and quantity of the spirits entered into the distilling system and the kind and quantity of the spirits removed from the distilling system upon completion of the process.

(26 U.S.C. 5207)

§ 19.603 Liquor bottle record.

A proprietor must maintain records of the receipt, use, and disposition of liquor bottles.

(26 U.S.C. 5207)

§ 19.604 Rebottling, relabeling, and reclosing records.

(a) If a proprietor dumps spirits for rebottling, the proprietor must prepare in accordance with § 19.599 a bottling and packaging record that covers the rebottling operation.

(b) If a proprietor relabels or recloses bottled products in accordance with § 19.363, the proprietor must maintain records of the operation that reflect the following:

(1) The identity of the spirits relabeled or reclosed;

(2) The date of the transaction;

(3) The serial numbers of any cases involved; and

(4) The total number of bottles.

(26 U.S.C. 5207)

Denaturation and Article Manufacture Records

§ 19.606 Denaturation records.

(a) *General.* A processor who is authorized to denature spirits must maintain daily records of denaturation showing the following information:

(1) Spirits that are received for, and used in, denaturation;

(2) Spirits, denatured spirits, recovered denatured spirits, spirits residues, and articles that are redistilled in the processing account for denaturation;

(3) Kind and quantity of denaturants received and used in denaturation of spirits or otherwise disposed of;

(4) Conversion of denatured alcohol formulas in accordance with § 19.392;

(5) Denatured spirits produced, received, stored in tanks, filled into containers, removed, or otherwise disposed of;

(6) Recovered denatured spirits or recovered articles received, restored, or redenatured;

(7) Packages of denatured spirits filled, with a separate record for each formula number and filed in numerical order according to the serial number or lot identification number of the packages;

(8) Losses of denatured spirits; and

(9) Disposition of denatured spirits.

(b) *Record of denaturation.* Each time that a proprietor denatures spirits, the proprietor must prepare a record that shows the formula number, the tank in which denaturation takes place, the proof gallons of the spirits before denaturation, the quantity of each denaturant used (in gallons, or in pounds or ounces), and the wine gallons of denatured spirits produced.

(26 U.S.C. 5207)

§ 19.607 Article manufacture records.

A processor who is authorized to manufacture articles must maintain daily records arranged by the name and authorized use code of the article and showing the following:

(a) Quantity, by formula number of denatured spirits used in the manufacture of the article;

(b) Quantity of each article manufactured; and

(c) Quantity of each article removed, or otherwise disposed of, including the name and address of the person purchasing or otherwise disposing of the article.

(26 U.S.C. 5207)

Tax Records

§ 19.611 Records of tax determination in general.

(a) *Taxable withdrawals.* Except as otherwise provided in this part, a proprietor must gauge and determine the tax on spirits when they are withdrawn from bond. When spirits are withdrawn from bond, the proprietor must also prepare a record of the tax determination in accordance with paragraph (b) of this section.

(b) *Form of record.* A serially numbered invoice or shipping document, signed or initialed by an agent or employee of the proprietor, will constitute the record of tax determination. Although neither the proof gallons nor the effective tax rate must be shown on the record of tax determination, each invoice or shipping document must contain information sufficient to enable TTB officers to determine the total proof gallons and, if applicable, each effective tax rate and the proof gallons removed at each effective tax rate. For purposes of this part, the total proof gallons calculated from each invoice or shipping document constitutes a single withdrawal.

(26 U.S.C. 5207)

§ 19.612 Summary record of tax determinations.

Each proprietor who withdraws distilled spirits on determination of tax, but before payment of tax, must maintain a daily summary record of tax determinations. The summary record must show for each day on which tax determinations occur:

(a) The serial numbers of the records of tax determination, the total proof gallons rounded to the nearest tenth proof gallon on which tax was determined at each effective tax rate, and the total tax; or

(b) The serial numbers of the records of tax determination, the total tax for each record of tax determination, and the total tax.

(26 U.S.C. 5207)

§ 19.613 Average effective tax rate records.

(a) *Daily record.* For each distilled spirits product to be tax determined using an average effective tax rate in accordance with § 19.249, the proprietor must prepare a daily summary record showing:

(1) The serial number of the batch record of each batch of the product that will be bottled or packaged, in whole or in part, for domestic consumption;

(2) The proof gallons in each such batch derived from distilled spirits, eligible wine, and eligible flavors; and

(3) The tax liability of each such batch determined as follows—

(i) Proof gallons of all distilled spirits (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed in 26 U.S.C. 5001;

(ii) Wine gallons of each eligible wine, multiplied by the tax rate which would be imposed on the wine under 26 U.S.C. 5041(b)(1), (2), or (3) but for its removal to bonded premises; and

(iii) Proof gallons of all distilled spirits derived from eligible flavors, to the extent that those distilled spirits exceed 2½% of the proof gallons in the product, multiplied by the tax rate prescribed in 26 U.S.C. 5001.

(b) *Monthly records.* At the end of each month during which the product is manufactured, the proprietor must:

(1) Determine the total proof gallons and total tax liability for each summary record prescribed by paragraph (a) of this section;

(2) Add the sums derived under paragraph (b)(1) of this section to the like sums determined for each of the preceding five months; and

(3) Divide the total tax liabilities by the total proof gallons.

(26 U.S.C. 5207)

§ 19.614 Inventory reserve records.

(a) *General.* For each eligible distilled spirits product to be tax determined in accordance with § 19.250, the proprietor must establish an inventory reserve account, in accordance with this section.

(b) *Deposit records.* For each batch of the bottled or packaged product, the proprietor must enter into the inventory reserve account a deposit record, which may be combined with the bottling and packaging record required by § 19.599, showing:

(1) The name of the product;

(2) The bottling and packaging record serial number;

(3) The date the bottling or packaging was completed;

(4) The total proof gallons bottled and packaged; and

(5) The effective tax rate of the product computed in accordance with § 19.246.

(c) *Depletions.* The inventory reserve account for each product must be depleted in the same order in which the deposit records were entered into the account. The proprietor must record a depletion for each disposition (for example, a taxable removal, an exportation, an inventory shortage or breakage) by entering on the deposit record:

(1) The transaction date;

(2) The transaction record serial number;

(3) The proof gallons disposed of; and

(4) The proof gallons remaining. If any depletion exceeds the quantity of product remaining on the deposit record, the proprietor must deplete the remaining quantity, close the deposit record, and deplete the remainder of the transaction from the next deposit record.

(26 U.S.C. 5207)

§ 19.615 Standard effective tax rate records.

For each product to be tax determined using a standard effective tax rate in accordance with § 19.248, a proprietor must prepare a record of the standard effective tax rate computation showing, for one proof gallon of the finished product, the following information:

(a) The name of the product;

(b) The least quantity of each eligible flavor that will be used in the product, in proof gallons, or 0.025 proof gallon, whichever is less;

(c) The least quantity of each eligible wine that will be used in the product, in proof gallons;

(d) The greatest effective tax rate applicable to the product, calculated in accordance with § 19.246 with the values indicated in paragraphs (a) and (b) of this section; and

(e) The date on which the use of the standard effective tax rate commenced.

(26 U.S.C. 5207)

Other Required Records

§ 19.616 Record of samples.

(a) *Required records.* A proprietor must maintain records of all samples taken under §§ 19.434 and 19.435. The sample record must show the:

(1) The date that the samples were taken;

(2) The account from which taken;

(3) The purpose for which taken;

(4) The size and number of samples taken;

(5) The kind of spirits;

(6) The disposition of each sample (for example, destroyed, returned to containers or the distilling system, retained for library purposes); and

(7) The name and address of the recipient of the sample if a sample is to be analyzed or tested elsewhere than at the distilled spirits plant where taken.

(b) *Sample schedule.* When a proprietor takes samples pursuant to an established schedule, the proprietor may maintain the schedule as the required record if it contains the information required by paragraphs (a)(2) through (a)(7).

(26 U.S.C. 5207)

§ 19.617 Destruction record.

Each time that a proprietor voluntarily destroys spirits, denatured spirits, articles, or wines, the proprietor must prepare a record of the destruction that sets forth:

(a) The identification of the spirits, denatured spirits, articles, or wines, including kind, quantity, elements of gauge, name and permit number of the producer, warehouseman or processor, and identity and type of container;

(b) The date, time, place and manner of the destruction;

(c) A statement that the spirits had, or had not, previously been withdrawn and returned to bond; and

(d) The name and title of any representative of the proprietor who accomplished or supervised the destruction.

(26 U.S.C. 5207)

§ 19.618 Gauge record.

When a gauge record is required by this part, the proprietor must prepare the gauge record in a manner that shows:

(a) The serial number of the gauge record, commencing with ''1'' at the start of each calendar or fiscal year;

(b) From the following, the applicable circumstances requiring the gauge—

(1) Production gauge and entry for deposit in the storage or processing account at the distilled spirits plant where the spirits were produced;

(2) Packaging of spirits or wine filled from a tank in the storage account at the same distilled spirits plant;

(3) Transfer from the processing or storage account to the production account for redistillation;

(4) Repackaging of spirits of 190 degrees or more of proof; or

(5) Gauge on return to bond in production or processing operations of spirits, denatured spirits, recovered spirits, recovered denatured spirits, articles, recovered articles, or spirits residues;

(c) The date of the gauge;

(d) Any related form or record (identification, serial number and date);

(e) The kind of spirits or formula number for denatured spirits;

(f) The proof of distillation (not required for denatured spirits, spirits for redistillation, or spirits of 190 degrees or more of proof);

(g) When containers are to be filled, the type and number of containers;

(h) The age of the spirits;

(i) The name and distilled spirits plant number of the producer or warehouseman; and

(j) The following gauge data—

(1) Package identification, tank number, volumetric or weight gauge details, proof, and wine gallons;

(2) Cooperage identification (''C'' for charred, ''REC'' for recharred, ''P'' for plain, ''PAR'' for paraffined, ''G'' for glued, or ''R'' for reused, and ''PS'' if a barrel has been steamed or water soaked before filling);

(3) Entry proof for whiskey;

(4) Proof gallons per filled package; and

(5) Total proof gallons of spirits or wine gallons of denatured spirits, recovered denatured spirits, articles, spirits residues, or wine.

(26 U.S.C. 5207)

§ 19.619 Package gauge record.

When this part or part 28 of this chapter requires a proprietor to gauge packages of spirits, the proprietor must prepare a package gauge record in a manner that shows:

(a) The date the record is prepared;

(b) The identity of the related transaction form or record, and its serial number;

(c) The name and distilled spirits plant number of the producer or processor. For blended rums or brandies the proprietor must enter the name and plant number of the blending warehouseman. For spirits of 190 degrees or more of proof, the proprietor

must enter the name and plant number of the producer or warehouseman, as appropriate and, where the packages have already been marked, the name and distilled spirits plant number marked thereon. For imported spirits, the proprietor must enter the name of the warehouseman who received the spirits from customs custody and the name of the importer. For Virgin Islands or Puerto Rican spirits, the proprietor must enter the name of the producer in the Virgin Islands or Puerto Rico;

(d) The proof of distillation for spirits not over 190 degrees proof; and

(e) For each package—

(1) The serial or identification number;

(2) The designation for wooden barrels (''C'' for charred, ''REC'' for recharred, ''P'' for plain, ''PAR'' for paraffined, ''G'' for glued, ''R'' for reused, and ''PS'' if a barrel has been steamed or water soaked before filling);

(3) The kind of spirits;

(4) The gross weight determined at the time of the original gauge or regauge or at the time of shipment;

(5) The present tare on regauge;

(6) The net weight for filling gauge or regauge;

(7) The proof;

(8) The proof gallons for regauge;

(9) The original proof gallons; and

(10) The receiving weights, when a material difference appears on receipt after transfer in bond of weighed packages.

(26 U.S.C. 5207)

§ 19.620 Transfer record—consignor's responsibility.

When this part requires a consignor proprietor to prepare a transfer record covering spirits, denatured spirits, or wines shipped in bond from his distilled spirits plant, the transfer record must include:

(a) A serial number, commencing with ''1'' on January 1 of each year;

(b) The serial number and date of TTB Form 5100.16 (not required for wine spirits withdrawn without payment of tax for use in wine production);

(c) The name and distilled spirits plant number of the consignor proprietor;

(d) The name and distilled spirits plant number or bonded wine cellar number of the consignee;

(e) The account from which the spirits or wines were removed for transfer (that is, the production, storage, or processing account);

(f) A description of the spirits, denatured spirits, or wine, including—

(1) The name and plant number of the producer, warehouseman, or processor (not required for denatured spirits or wine). For imported spirits transferred in bond between distilled spirits plants, the transfer record must show the name and plant number of the warehouseman or processor who received the spirits from customs custody. For Virgin Islands or Puerto Rican spirits, the transfer record must show the name of the producer in the Virgin Islands or Puerto Rico. For spirits of different producers or warehousemen that have been mixed in the processing account, the transfer record must show the name of the processor;

(2) The kind of spirits or wines. For denatured spirits, the transfer record must show the kind and formula number. For alcohol, the transfer record must show the material from which it was produced. For bulk spirits and for alcohol in packages, the transfer record must show the kind and proof. For other spirits and wines, the transfer record must show the kind designation as specified in part 4 or part 5 of this chapter, as appropriate;

(3) The age (in years, months, and days) and year of production;

(4) The number of packages or cases with their lot identification numbers or serial numbers and dates of fill;

(5) The type of container (if the spirits, denatured spirits or wines are to be transferred by pipeline, the transfer record must show ''P/L'');

(6) The proof gallons for distilled spirits, or wine gallons for denatured spirits or wine; and

(7) For distilled spirits products that contain eligible wine or eligible flavors, the transfer record must show the elements necessary to compute the effective tax rate as follows—

(i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each; and

(iii) Proof gallons of distilled spirits derived from eligible flavors;

(g) A notation to indicate when spirits are being transferred in bond from a production facility to another distilled spirits plant;

(h) The identification of the conveyance;

(i) The identity of the seals, locks or other devices affixed to the conveyance or package (permanent seals affixed to a conveyance that remain intact need not be recorded on the transfer record when a permanent record is maintained);

(j) The date of transfer; and

(k) The signature and title of the consignor, with a penalties of perjury statement as prescribed in § 19.45.

(26 U.S.C. 5207)

§ 19.621 Transfer record—consignee's responsibility.

(a) When a proprietor receives wine by transfer in bond from a bonded wine cellar as the consignee, that proprietor must complete the transfer record covering the transfer in accordance with § 24.284 of this chapter.

(b) When a proprietor receives spirits from an alcohol fuel plant or from customs custody, or receives spirits, denatured spirits, and wines from the bonded premises of another distilled spirits plant as the consignee, that proprietor must record the results of the receipt by including the following on the related transfer record:

(1) The date of receipt;

(2) A notation that the securing devices on the conveyance were, or were not, intact on arrival (not applicable to denatured spirits or spirits transferred in unsecured conveyances);

(3) The gauge of spirits, denatured spirits, or wine showing the tank number, proof (percent of alcohol by volume for wine) and specifications of the weight or volumetric determination of quantity, wine gallons or proof gallons received, and any losses or gains;

(4) A notation of any excessive in-transit loss, missing packages, tampering, or apparent theft;

(5) The account into which the spirits, denatured spirits, or wines were deposited (that is, production, storage or processing); and

(6) The signature and title of the consignee proprietor, with a penalties of perjury statement as prescribed in § 19.45.

(c) When spirits are transferred from customs custody as provided in subpart P of this part, the transfer record must contain the information specified in § 27.138 of this chapter.

(26 U.S.C. 5207)

§ 19.622 Daily record of wholesale liquor dealer and taxpaid storeroom operations.

(a) *General.* If a proprietor in connection with plant operations conducts wholesale liquor dealer operations, or operates a taxpaid storeroom on, or in the immediate vicinity of, general plant premises, or operates taxpaid storage premises at another location from which distilled spirits are not sold at wholesale, that proprietor must maintain daily records covering the receipt and disposition of all distilled spirits and wines and all reclosing and relabeling operations at those premises. The proprietor must keep separate records for each of those premises.

(b) *Receipt and disposition records.* The records covering receipt and

disposition of distilled spirits and wines required under paragraph (a) of this section must show:

(1) The date of the transaction (or date of discovery in the case of casualty or theft);

(2) The name and address of each consignor or consignee, as the case may be;

(3) The brand name;

(4) The kind of spirits;

(5) The actual quantity of distilled spirits involved (proof and proof gallons if in packages, wine gallons or liters and proof if in bottles);

(6) The package identification or serial numbers of the packages involved;

(7) The name of the producer; and

(8) The country of origin in the case of imported spirits.

(c) *Case dispositions.* In addition to the records required under paragraph (b) of this section, the appropriate TTB officer may, upon notice, require the proprietor to record the case serial numbers for dispositions.

(d) *Reclosing or relabeling.* The records of reclosing and relabeling required under paragraph (a) of this section must include:

(1) The date of the transaction;

(2) The serial numbers of the cases involved;

(3) The total number of bottles; and

(4) The name of the bottler.

(26 U.S.C. 5114, 5555)

§ 19.623 Record of inventories.

(a) *General.* When conducting an inventory required by this part, the proprietor must prepare a record of the inventory taken. The record must include the following:

(1) The date of the inventory;

(2) The identity of the container(s);

(3) The kind and quantity of spirits, denatured spirits, and wines;

(4) Any losses (whether by theft, voluntary destruction or otherwise), gains or shortages; and

(5) The proprietor's signature, or the signature of the person taking the inventory, with the penalties of perjury statement as prescribed in § 19.45.

(b) *Overages, gains, or losses.* A proprietor must record in the daily records of operations, tank records, dump/batch records, bottling and packaging records, or denaturation records, as appropriate, any overages, gains, or losses disclosed by an inventory.

(c) *Retention.* A proprietor must retain inventory records and make them available for inspection by TTB officers.

(26 U.S.C. 5207)

§ 19.624 Removal of Puerto Rican and Virgin Islands spirits and rum imported from all other areas.

(a) *General.* A proprietor must maintain separate accounts, in proof gallons, of Puerto Rican spirits having an alcoholic content of at least 92 percent rum, of Virgin Islands spirits having an alcoholic content of at least 92 percent rum, and of rum imported from all other areas removed from the processing account on determination of tax. A proprietor may determine the quantities of spirits in these categories that are contained in products mixed in processing with other alcoholic ingredients by using one of the methods referred to in paragraph (b), (c), or (d) of this section. The proprietor must report these quantities on the monthly report of operations referred to in § 19.632.

(b) *Standard method.* For purposes of maintaining the separate accounts referred to in paragraph (a) of this section, a proprietor may determine the quantities of spirits in those specified categories based on the least amount of those spirits that may be used in each product as stated in the approved TTB F 5110.38, Formula for Distilled Spirits Under the Federal Alcohol Administration Act.

(c) *Averaging method.* For purposes of the separate accounts referred to in paragraph (a) of this section, a proprietor may determine the quantities of spirits in those specified categories by computing the average quantity of those spirits contained in all batches of the same product formulation manufactured during the preceding 6-month period. The average must be adjusted at the end of each month in order to include only the preceding 6-month period.

(d) *Alternative method.* If a proprietor wishes to use a method for determining the quantities of spirits as an alternative for a method prescribed in paragraphs (b) or (c) of this section, the proprietor must file an application with the appropriate TTB officer. The written application must specifically describe the proposed alternative method and must explain the reasons for using the alternative method.

(26 U.S.C. 5555, 7652)

§ 19.625 Shipping record for spirits and specially denatured spirits withdrawn free of tax.

(a) *General.* A proprietor must prepare a shipping record when:

(1) Spirits are withdrawn free of tax in accordance with §§ 19.424(a) through (c);

(2) Specially denatured spirits are withdrawn free of tax in accordance with §§ 19.424(d) and 19.427; and

(3) Samples of specially denatured spirits in excess of five gallons are withdrawn in accordance with § 19.427(c);

(b) *Form of record.* The shipping record referred to in paragraph (a) of this section may be any commercial document, such as an invoice or bill of lading, so long as it reflects the following information:

(1) The name and address of the consignor;

(2) A serial number;

(3) The date of shipment;

(4) The name, address, and permit number of consignee;

(5) The kind of spirits;

(6) The proof of the spirits;

(7) The formula number(s), for specially denatured spirits;

(8) The number and size of the shipping containers;

(9) The package identification numbers or serial numbers of the shipping containers; and

(10) The total wine gallons (specially denatured spirits) or the total proof gallons (tax-free alcohol).

(c) *Disposition of the shipping record.* The proprietor must forward a copy of the shipping record to the company that receives the spirits and must retain a copy for his files.

(26 U.S.C. 5207)

§ 19.626 Record of distilled spirits shipped to manufacturers of nonbeverage products.

(a) *General.* When a proprietor ships distilled spirits to a manufacturer of nonbeverage products, the proprietor must prepare a record of the shipment, forward the original to the consignee, and retain a copy.

(b) *Form of record.* The record of shipment referred to in paragraph (a) of this section may consist of either the record of tax determination required by § 19.611 or any other document that contains the necessary information specified in paragraph (c) of this section.

(c) *Required information.* The record of shipment required under this section must contain the following information:

(1) The name, address, and registry number of the proprietor;

(2) The date of shipment;

(3) The name and address of the consignee;

(4) The kind, proof, and quantity of distilled spirits in each container;

(5) The number of shipping containers of each size;

(6) The package identification numbers or serial numbers of containers;

(7) The serial number of the applicable record of tax determination; and

(8) For distilled spirits containing eligible wine or eligible flavors, the effective tax rate.

(26 U.S.C. 5201, 5207)

§ 19.627 Alternating premises record.

When distilled spirits plant bonded premises are alternated to or from bonded or taxpaid wine, brewery, manufacturer of nonbeverage products, or general premises, under an approved alternation plan described in the plant registration, the proprietor must record in a logbook, or must maintain in commercial records retrievable and available for TTB inspection upon request, the following information:

(a) The date and hour of the alternation;

(b) The kind of premises being curtailed, including the plant identification number, if applicable;

(c) The kind of premises being extended, including the plant identification number, if applicable;

(d) The identity of the special diagrams in the registration documents depicting the premises before and after the alternation; and

(e) The purpose of the alternation.

(26 U.S.C. 5555)

Filing Forms and Reports

§ 19.631 Submission of transaction forms.

When required to submit a transaction form to the appropriate TTB officer under this part, the proprietor must submit the form no later than the close of business of the third business day following the day on which the transaction took place.

(26 U.S.C. 5207)

§ 19.632 Submission of monthly reports.

(a) Each proprietor must submit monthly reports of his distilled spirits plant operations to TTB in accordance with paragraph (b) of this section. The proprietor must submit the original reports to TTB and must retain a copy for his records. The required monthly report forms are as follows:

(1) Monthly Report of Production Operations, TTB F 5110.40, except that no report is required when production operations are suspended as provided in § 19.292;

(2) Monthly Report of Storage Operations, TTB F 5110.11;

(3) Monthly Report of Processing Operation, TTB F 5110.28; and

(4) Monthly Report of Processing (Denaturing) Operations, TTB F 5110.43.

(b) Each proprietor must submit the monthly reports specified in paragraph (a) of this section to the Director, National Revenue Center, not later than the 15th day of the month following the close of the reporting period. A proprietor may submit monthly reports in either paper format or electronically via TTB Pay.gov.

(26 U.S.C. 5207)

§ 19.634 Computer-generated reports and transaction forms.

TTB will accept computer-generated reports of operations and transaction forms made using a computer printer on plain white paper without pre-approval from TTB if they conform to the following standards:

(a) The computer-generated report or form must approximate the physical layout of the corresponding TTB report or form, although the typeface may vary;

(b) The text of the computer-generated report or form including each line entry, must exactly match the official TTB report or form; and

(c) Each penalty of perjury statement specified for the TTB report or form must be reproduced in its entirety.

(26 U.S.C. 5207)

Subpart W—Production of Vinegar by the Vaporizing Process

Vinegar Plants in General

§ 19.641 Application.

(a) *In general.* This subpart covers the production of vinegar by the vaporizing process. It prescribes rules regarding the qualification, location, construction, and operation of vinegar plants and the maintenance of records of operations at vinegar plants.

(b) *Application of other regulations.* As a general rule, the provisions of subparts A through V and subpart X of this part do not apply to vinegar plants using the vaporizing process. However, the following sections do apply to vinegar plants using the vaporizing process: § 19.1 (definitions); § 19.11 (right of entry and examination); § 19.12 (furnishing facilities and assistance); § 19.52 (restriction on locations of plants); § 19.55 (other businesses); § 19.79 (registry of stills); § 19.573 (location of required records); § 19.574 (availability of records); § 19.575 (retention of records); § 19.576 (preservation of records).

(26 U.S.C. 5501–5505)

Qualification, Construction, and Equipment Requirements for Vinegar Plants

§ 19.643 Qualification requirements.

Before beginning the business of manufacturing vinegar by the vaporizing process, a person must make written application to the appropriate TTB officer and receive approval of the application from TTB. The application must include:

(a) The applicant's name and principal business address (including the plant address if different from the applicant's principal business address);

(b) A description of the plant premises;

(c) A description of the operations to be conducted; and

(d) A description of each still, including the name and address of the owner, the kind of still and its capacity, and the purpose for which the still was set up.

(26 U.S.C. 5502)

§ 19.644 Changes after original qualification.

If there is any change in the information that was provided in an approved application, the proprietor of the vinegar plant must immediately notify the appropriate TTB officer in writing of the change. The notice must identify the change and the effective date of the change.

(26 U.S.C. 5502)

§ 19.645 Notice of permanent discontinuance of business.

If the proprietor of a vinegar plant decides to permanently discontinue operations, the proprietor must so notify the appropriate TTB officer in writing. The proprietor must include in the notice a statement regarding the status of each still.

(26 U.S.C. 5502)

§ 19.646 Construction and equipment requirements.

The proprietor of a vinegar plant must construct and equip the plant to ensure that:

(a) The distilled spirits vapors that are separated by the vaporizing process from the mash are condensed only by introducing them into the water or other liquid used in making the vinegar; and

(b) The distilled spirits produced are accurately accounted for and are secure from unlawful removal from the premises or from unauthorized use.

(26 U.S.C. 5502)

Rules for Operating Vinegar Plants

§ 19.647 Authorized operations.

After approval of an application by TTB, a plant qualified for the production of vinegar may only:

(a) Produce vinegar by the vaporizing process; and

(b) Produce distilled spirits of 30 degrees of proof or less for use in the manufacture of vinegar on the vinegar plant premises.

(26 U.S.C. 5501)

§ 19.648 Conduct of operations.

A vinegar manufacturer qualified under this subpart may:

(a) Separate by a vaporizing process the distilled spirits from a mash; and

(b) Condense the distilled spirits vapors by introducing them into the water or other liquid to make the vinegar.

(26 U.S.C. 5504)

§ 19.649 Restrictions on alcohol content.

No person may remove from the vinegar plant premises vinegar or other fluid or any other material containing more than 2 percent alcohol by volume.

(26 U.S.C. 5504)

Required Records for Vinegar Plants

§ 19.650 Daily records.

Each manufacturer of vinegar by the vaporizing process must keep accurate and complete daily records of production operations. It is not necessary to create records to satisfy this requirement if the records kept by the manufacturer in the ordinary course of business contain all required information. The required information consists of the following:

(a) The kind and quantity of fermenting or distilling materials received on the premises;

(b) The kind and quantity of materials fermented or mashed;

(c) The proof gallons of distilled spirits produced;

(d) The proof gallons of distilled spirits used in the manufacture of vinegar;

(e) The wine gallons of vinegar produced; and

(f) The wine gallons of vinegar removed from the premises.

(26 U.S.C. 5504)

Liability for Distilled Spirits Tax

§ 19.651 Liability for distilled spirits tax.

The distilled spirits excise tax imposed by 26 U.S.C. 5001 must be paid on any distilled spirits produced in, or removed from, the premises of a vinegar plant in violation of law or regulations.

(26 U.S.C. 5505)

Subpart X—Distilled Spirits for Fuel Use

§ 19.661 Scope.

This subpart covers the establishment and operation of alcohol fuel plants.

(26 U.S.C. 5181)

General

§ 19.662 Definitions.

As used in this subpart, the following terms have the meanings indicated.

Alcohol fuel plant. A special type of distilled spirits plant authorized under 26 U.S.C. 5181 and established under this subpart solely for producing, processing, and storing, and using or distributing distilled spirits to be used exclusively for fuel use.

Bonded premises. The premises of an alcohol fuel plant where distilled spirits are produced, processed, and stored, and used or distributed as described in the application for alcohol fuel producer permit. The term includes the premises of small alcohol fuel plants exempt from bonding requirements under § 19.673(e).

Fuel alcohol. Distilled spirits that have been made unfit for beverage use at an alcohol fuel plant as provided in this subpart.

Large plant. An alcohol fuel plant that produces (including receives) more than 500,000 proof gallons of spirits per calendar year.

Make unfit for beverage use. Add materials to distilled spirits that will preclude their beverage use without impairing their quality for fuel use as prescribed and authorized by the provisions of this subpart.

Medium plant. An alcohol fuel plant that produces (including receives) more than 10,000 but not more than 500,000 proof gallons of spirits per calendar year.

Permit. The document issued pursuant to 26 U.S.C. 5181 and this subpart authorizing the person named to engage in business as an alcohol fuel plant.

Plant. An alcohol fuel plant.

Proprietor. The person qualified under this subpart to operate an alcohol fuel plant.

Small plant. An alcohol fuel plant that produces (including receives) not more than 10,000 proof gallons of spirits per calendar year.

Spirits or distilled spirits. The substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), but not fuel alcohol unless specifically stated. The term does not include spirits produced from petroleum, natural gas, or coal.

Transfer in bond. The transfer of spirits between alcohol fuel plants or between a distilled spirits plant qualified under 26 U.S.C. 5171 and an alcohol fuel plant.

(26 U.S.C. 5181)

§ 19.663 Application of other provisions.

The provisions of 26 U.S.C. Chapter 51 and the regulations in subparts A through W of this part do not apply to alcohol fuel plants except for the following:

(a) 26 U.S.C. 5181;

(b) The definitions contained in § 19.1, unless the same term is defined in this subpart;

(c) Any provision incorporated by reference in this subpart;

(d) Any provision requiring the payment of tax; and

(e) Any provision applicable to distilled spirits that deals with penalty, seizure, or forfeiture.

(26 U.S.C. 5181)

§ 19.665 Alternate methods or procedures.

(a) *General.* The appropriate TTB officer may approve the use of an alternate method or procedure that varies from the regulatory requirements in this subpart or from any regulatory requirements in subparts A through W of this part that have been incorporated by reference in this subpart. The appropriate TTB officer may approve the use of an alternate method or procedure only if the proprietor shows good cause for its use and the alternate method or procedure:

(1) Is not contrary to law;

(2) Will not have the effect of merely waiving an existing regulatory requirement;

(3) Is consistent with the purpose and effect of the method or procedure prescribed in this subpart;

(4) Provides equal security to the revenue; and

(5) Will not cause an increase in cost to the Government and will not hinder TTB's administration of this subpart.

(b) *Exceptions.* TTB will not authorize the use of an alternate method or procedure relating to the giving of any bond, or to the assessment, payment, or collection of tax.

(26 U.S.C. 5181)

§ 19.666 Application for and use of an alternate method or procedure.

(a) *Application.* If a proprietor wishes to use an alternate method or procedure as described in § 19.665, the proprietor must submit a written letterhead application to the appropriate TTB officer for approval. The application must identify the method or procedure specified in the regulation, must describe the proposed alternate method or procedure in detail, and must explain why the alternate method or procedure is needed.

(b) *Approval and use.* The proprietor may not use an alternate method or procedure until the appropriate TTB officer has in writing approved the proprietor's letterhead application. During the period that the proprietor is authorized to use the alternate method

or procedure, the proprietor must comply with any conditions imposed on its use by TTB. TTB may withdraw the approval to use the alternate method or procedure if TTB finds that the revenue is jeopardized, that the alternate method or procedure hinders effective administration of the laws or regulations, that the proprietor has violated any of the conditions imposed by TTB, or that the circumstances that gave rise to the need for the alternate method or procedure no longer exist.

(c) *Retention.* The proprietor must retain each alternate method or procedure approval as part of the proprietor's records and must make the approval available for examination by TTB officers upon request.

(26 U.S.C. 5181)

§ 19.667 Emergency variations from requirements.

(a) *Application.* A proprietor may request emergency approval of the use of a method or procedure relating to construction, equipment, and methods of operation that represents a variance from the requirements of this subpart or from any regulatory requirement in subparts A through W of this part that have been incorporated by reference in this subpart. When a proprietor wishes to use an emergency method or procedure, the proprietor must submit a written letterhead application to the appropriate TTB officer for approval; the proprietor may send the application via regular mail, e-mail, or facsimile transmission. The application must describe the proposed emergency method or procedure and the emergency situation it will address. For purposes of this section, an emergency is considered to exist only if it results from a weather or other natural event or from an accident or other event not involving an intentional act on the part of the proprietor.

(b) *Approval.* The appropriate TTB officer may approve in writing the use of an emergency method or procedure if the proprietor demonstrates that an emergency exists and the proposed method or procedure:

(1) Is not contrary to law;

(2) Is necessary to address the emergency situation;

(3) Will afford the same security and protection to the revenue as intended by the regulations; and

(4) Will not hinder the effective administration of this subpart.

(c) *Terms of emergency method or procedure approval and use.*

(1) The proprietor may not use an emergency method or procedure until the application has been approved by TTB except when the emergency method or procedure requires immediate implementation to correct a situation that threatens life or property. In a situation involving a threat to life or property, the proprietor may implement the corrective action while concurrently notifying the appropriate TTB officer by telephone of the action and filing the required written application. Use of the emergency method or procedure must conform to any conditions specified in the approval.

(2) The proprietor must retain the emergency method or procedure approval as part of the proprietor's records and must make the approval available for examination by TTB officers upon request.

(3) The emergency method or procedure will automatically terminate when the situation that created the emergency no longer exists. TTB may withdraw the approval to use the emergency method or procedure if TTB finds that the revenue is jeopardized, that the emergency method or procedure hinders effective administration of the laws or regulations, or that the proprietor has failed to follow any of the conditions specified in the approval. When use of the emergency method or procedure terminates, the proprietor must revert to full compliance with all applicable regulations.

(26 U.S.C. 5181)

Liability for Taxes

§ 19.669 Distilled spirits taxes.

(a) Proprietors may withdraw distilled spirits free of tax from an alcohol fuel plant if the spirits are withdrawn exclusively for fuel use in accordance with this subpart. However, TTB will require payment of the tax if the spirits are diverted to beverage use or to another use not authorized by this subpart.

(b) The following provisions of this part apply to distilled spirits for fuel use:

(1) Imposition of tax liability (§§ 19.222, 19.223, 19.225);

(2) Assessment of tax (§§ 19.253, 19.254); and

(3) Claims for tax (§§ 19.262 and 19.263).

(26 U.S.C. 5001, 5181)

§ 19.670 Special (occupational) tax.

(a) *General rule.* Except during the suspension period described in § 19.201(b) when special tax stamps are not issued, the proprietor of an alcohol fuel plant established under this subpart is subject to a special (occupational) tax as prescribed in subpart H this part and must hold a separate special tax stamp to cover the alcohol fuel operations.

(b) *Exemption for small plants.* The proprietor of a small plant exempt from bonding requirements under § 19.673(e) is not required to pay special (occupational) tax. However, once the proprietor's annual production (including receipts) exceeds 10,000 proof gallons in any calendar year, the proprietor must pay special tax as provided in subpart H of this part. The proprietor must pay the special (occupational) tax for the tax year (July 1–June 30) that starts during the calendar year in which production (including receipts) exceeds 10,000 proof gallons. The proprietor must pay the tax regardless of whether an application for change of plant type under § 19.685 has been filed or approved.

(c) *Medium or large plants.* If a proprietor operates a medium plant or a large plant with bona fide production operations at which annual production (including receipts) is 10,000 proof gallons or less in any calendar year, the proprietor is exempt from special (occupational) tax for the tax year (July 1 through June 30) that starts during the calendar year in which production (including receipts) is 10,000 proof gallons or less. This exemption applies regardless of whether an application for change of plant type under § 19.685 has been filed or approved.

(26 U.S.C. 5081)

Obtaining a Permit

§ 19.672 Types of plants.

There are three types of alcohol fuel plants: small plants, medium plants, and large plants. All alcohol fuel plants are classified according to the amount of spirits that they will produce and receive during each calendar year. When applying for a permit, an applicant should apply for the type of permit that fits the applicant's needs based on the type of alcohol fuel plant the applicant intends to operate.

(26 U.S.C. 5181)

§ 19.673 Small plant permit applications.

(a) *General.* Any person wishing to establish a small plant must file form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181, with the appropriate TTB officer. Except as otherwise provided in § 19.674(d), a person may not commence operations before issuance of the permit.

(b) *Application information.* The applicant for a small plant permit must include the following information with the application:

(1) Name and mailing address of the applicant, and the location of the plant if not the same as the mailing address;

(2) A diagram of the plant premises;

(3) A statement regarding ownership of the premises. If the premises are not owned by the applicant, the owner's consent for access by TTB officers must be furnished;

(4) A description of the stills on the premises and a statement of the maximum capacity of each;

(5) A description of the materials from which spirits will be produced; and

(6) A description of the security measures to be used to protect the premises, buildings, and equipment where spirits are produced, processed, and stored.

(c) *Information already on file.* If any of the information required by this section is already on file with TTB and the information is accurate and complete, the applicant may advise the appropriate TTB officer that the information on file is incorporated by reference and made part of the application, unless the applicant will not conduct bona fide production operations.

(d) *Additional information.* When required by the appropriate TTB officer, the applicant must furnish, as part of the application for a permit under this section, any additional information required by TTB to determine whether the application should be approved.

(e) *Bonds.* The applicant is not required to provide a bond in order to establish a small plant, unless the applicant will not conduct bona fide production operations. Plants for the receipt of spirits without production must furnish a bond in accordance with § 19.699 with a penal sum as prescribed in § 19.700. The appropriate TTB officer must approve the bond before issuance of the permit.

(26 U.S.C. 5181)

§ 19.674 TTB action on small plant applications.

(a) *Notice of receipt.* Within 15 days of receipt of an application for a small plant permit, the appropriate TTB officer will send a written notice of receipt to the applicant. The notice will include a statement as to whether the application meets the requirements of § 19.673. If the application does not meet the requirements of § 19.673, the appropriate TTB officer will return the application to the applicant, and a new 15-day period will commence upon receipt of an amended or corrected application.

(b) *Action on application.* Within 45 days from the date that the appropriate TTB officer sent the applicant a notice of receipt of a completed application for a small plant permit, the appropriate TTB officer will either issue the permit or give notice in writing to the applicant stating in detail the reason that a permit will not be issued. Denial of an application will not prejudice any later application for a permit by the same applicant.

(c) *Failure to give notice.* If the notice of receipt required by paragraph (a) is not sent, and the applicant has a receipt indicating that the appropriate TTB officer received the application, the 45-day period provided for in paragraphs (b) and (d) of this section will commence on the fifteenth day after the date the appropriate TTB officer received the application.

(d) *Presumption of approval.* If, within 45 days from the date of the notice to the applicant of receipt of a completed application for a small plant permit, the appropriate TTB officer has not notified the applicant of issuance of the permit or denial of the application, the application will be deemed approved and the applicant may proceed as if a permit had been issued.

(e) *Limitation.* The provisions of paragraphs (a) and (c) of this section apply only to the first application submitted for any one small plant in any calendar quarter and to an amended or corrected first application.

(26 U.S.C. 5181)

§ 19.675 Medium plant permit applications.

(a) *General.* Any person wishing to establish a medium plant must file form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181, with the appropriate TTB officer.

(b) *Application information.* The applicant for a medium plant permit must include the following information with the application:

(1) Name and mailing address of the applicant, and the location of the plant if not the same as the mailing address;

(2) A diagram of the plant premises;

(3) A statement regarding ownership of the premises. If the premises are not owned by the applicant, the owner's consent for access by TTB officers must be furnished;

(4) A description of the stills on the premises and a statement of the maximum capacity of each;

(5) A description of the materials from which spirits will be produced;

(6) A description of the security measures to be used to protect the premises, buildings, and equipment where spirits are produced, processed, and stored;

(7) A statement of the maximum total proof gallons of spirits that will be produced and received during a calendar year;

(8) Information identifying the principal persons involved in the business. This identifying information must include the person's name, address, title, social security number, date of birth, and place of birth;

(9) A statement indicating whether or not the applicant or any other person involved in the business has been convicted of a felony or misdemeanor under Federal or State law. The statement may exclude convictions for misdemeanor traffic violations; and

(10) A statement of the amount and source of funds invested in the business.

(c) *Bond.* The applicant for a medium plant permit must provide a bond in accordance with § 19.699 with a sufficient penal sum as prescribed in § 19.700. The applicant must submit the bond on form TTB F 5110.56, Distilled Spirits Bond, and the appropriate TTB officer must approve the bond before issuance of the permit.

(d) *Information already on file.* If any of the information required by this section is already on file with TTB and the information is accurate and complete, the applicant may advise the appropriate TTB officer that the information on file is incorporated by reference and made part of the application.

(e) *Additional information.* When required by the appropriate TTB officer, the applicant must furnish, as part of the application for a permit under this section, any additional information required by TTB to determine whether the application should be approved.

(f) *Approval of permit.* The applicant may not commence operations before approval of the application and issuance of the medium plant permit.

(26 U.S.C. 5181)

§ 19.676 Large plant permit applications.

(a) *General.* Any person wishing to establish a large plant must file form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181, with the appropriate TTB officer.

(b) *Application information.* The applicant for a large plant permit must include the following information with the application:

(1) Name and mailing address of the applicant, and the location of the plant if not the same as the mailing address;

(2) A diagram of the plant premises;

(3) A statement regarding ownership of the premises. If the premises are not owned by the applicant, the owner's consent for access by TTB officers must be furnished;

(4) A description of the stills on the premises and a statement of the maximum capacity of each;

(5) A description of the materials from which spirits will be produced;

(6) A description of the security measures to be used to protect the premises, buildings, and equipment where spirits are produced, processed, and stored;

(7) A statement of the maximum total proof gallons of spirits that will be produced and received during a calendar year;

(8) Information identifying the principal persons involved in the business. This identifying information must include the person's name, address, title, social security number, date of birth and place of birth;

(9) A statement indicating whether or not the applicant or any other person involved in the business has been convicted of a felony or misdemeanor under Federal or State law. The statement may exclude convictions for misdemeanor traffic violations;

(10) A statement of the amount and source of funds invested in the business; and

(11) A statement identifying the type of business organization and the persons having an interest in the business. The applicant must support this statement by providing the information specified in § 19.677.

(c) *Bond.* The applicant for a large plant permit must provide a bond in accordance with § 19.699 with a sufficient penal sum as prescribed in § 19.700. The applicant must submit the bond on form TTB F 5110.56, Distilled Spirits Bond, and the appropriate TTB officer must approve the bond before issuance of the permit.

(d) *Power of attorney.* The applicant for a large plant permit, or the proprietor of the plant if different from the applicant, must execute and file with the appropriate TTB officer form TTB F 5000.8, Power of Attorney, for each person authorized to sign or act on behalf of the proprietor unless that authority has been furnished elsewhere in the application.

(e) *Information already on file.* If any of the information required by this section is already on file with TTB and the information is accurate and complete, the applicant may advise the appropriate TTB officer that the information on file is incorporated by reference and made part of the application.

(f) *Additional information.* When required by the appropriate TTB officer, the applicant must furnish as part of the application for a permit under this section, any additional information required by TTB to determine whether the application should be approved.

(g) *Approval of permit.* The applicant may not commence operations before approval of the application and issuance of the large plant permit.

(26 U.S.C. 5181)

§ 19.677 Large plant applications—organizational documents.

In addition to the information required by § 19.676, any person who wants to establish a large plant must provide with the application the documents and other information specified in paragraphs (a) through (d) of this section, as applicable, and must make those and related documents available for inspection by TTB as provided in paragraph (e) of this section.

(a) *Corporate documents.* If the applicant is a corporation, the applicant must provide the following:

(1) The corporate charter or a certificate of corporate existence or incorporation;

(2) A list of officers and directors with their names and addresses, other than officers and directors who will have no responsibilities in connection with the operation of the alcohol fuel plant;

(3) Certified minutes or extracts of board of directors meetings, showing those individuals authorized to sign for the corporation;

(4) A statement showing the number of shares of each class of stock or other basis of ownership, authorized and outstanding, and the voting rights of the respective owners or holders; and

(5) A list of the offices or positions, the incumbents of which are authorized by the articles of incorporation or the board of directors to act on behalf of the proprietor or to sign the proprietor's name.

(b) *Partnership documents.* If the applicant is a partnership, the applicant must provide a copy of the articles of partnership or association, or certificate of partnership or association if required to be filed by any State, county, or municipality.

(c) *Limited liability company/limited liability partnership documents.* If the applicant is a limited liability company or limited liability partnership or other entity recognized by law as a person, the applicant must provide a copy of the articles of organization, the operating agreement and the names and addresses of all members and managers.

(d) *Statement of interest.*

(1) The application must include the names and addresses of the 10 persons that have the largest stock ownership, by stock class, or other interest in the corporation, limited liability company/limited liability partnership, or other legal entity, and the nature and amount of the stock or other interest of each, whether the interest is recorded in the name of the interested party or in the name of another for the interested party. If a corporation is wholly owned or controlled by another corporation, the appropriate TTB officer may request that the applicant furnish the same information for persons of the parent corporation.

(2) In the case of an individual owner or a partnership, the application must include the name and address of each person interested in the large plant, whether the interest is recorded in the name of the interested party or in the name of another for the interested party.

(e) *Availability of documents.* An applicant must make available to any appropriate TTB officer upon request all originals of documents submitted under this section and any additional related organizational documents such as articles of incorporation, by-laws, operating agreements and State certifications.

(26 U.S.C. 5181, 5271)

§ 19.678 Criteria for issuance of permit.

As a general rule, the appropriate TTB officer will issue an alcohol fuel plant permit to any person who completes the required application for a permit and, when required, furnishes a bond. However, the appropriate TTB officer may begin proceedings to deny an application for a permit, in accordance with part 71 of this chapter, if the appropriate TTB officer determines that

(a) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder, and, in the case of a partnership, a partner) is, by reason of business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. Chapter 51, or the regulations issued thereunder;

(b) The applicant failed to disclose any material information required with the application, or has made any false statement as to any material fact in connection with the application; or

(c) The premises where the applicant proposes to conduct the operations are not adequate to protect the revenue.

(26 U.S.C. 5181, 5271)

§ 19.679 Duration of permit.

The proprietor of an alcohol fuel plant may conduct the operations authorized by the permit on a continuing basis unless:

(a) The proprietor voluntarily surrenders the permit;

(b) TTB suspends or revokes the permit pursuant to § 19.697; or

(c) The permit is automatically terminated under its own terms or in accordance with § 19.684.

(26 U.S.C. 5181)

§ 19.680 Registration of stills.

The description of stills provided with the application for an alcohol fuel plant permit under this subpart will fulfill the requirement to register a still under § 29.55 of this chapter.

(26 U.S.C. 5179, 5181)

Changes to Permit Information

§ 19.683 Changes affecting permit applications.

(a) *General.* If there is a change relating to any of the information contained in, or considered a part of, the application on form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181, the proprietor must amend the information previously submitted within 30 days of the change unless another time period is specified in this subpart.

(b) *Amended TTB F 5110.74.* Except when a letterhead application or letterhead notice procedure is followed under this subpart, the proprietor must submit an amended application to the appropriate TTB officer on form TTB F 5110.74 within 30 days of a change referred to in paragraph (a) of this section if the change affects the terms and conditions of the permit.

(c) *Letterhead applications.* For the changes specified in §§ 19.685(c), 19.686, and 19.690 of this subpart, the proprietor may submit a letterhead application to the appropriate TTB officer for a change instead of filing an amended form TTB F 5110.74. A letterhead application must be on letterhead signed by an authorized representative of the permit holder. The letterhead application must identify the alcohol fuel plant to which the application applies. The letterhead application change is subject to TTB approval. The appropriate TTB officer may, at any time, require that the proprietor submit an amended application on form TTB F 5110.74 if administrative difficulties occur as a result of the letterhead application.

(d) *Letterhead Notices.* For the changes specified in §§ 19.687 and 19.695 of this subpart only a letterhead notice to the appropriate TTB officer is required. A letterhead notice must be on letterhead signed by an authorized representative of the permit holder. A letterhead notice does not require approval action by TTB. The appropriate TTB officer may, at any time, require that the proprietor submit an amended application on form TTB F 5110.741 if administrative difficulties occur as a result of the letterhead notice.

(26 U.S.C. 5172, 5271, 5181)

§ 19.684 Automatic termination of permits.

(a) *Permits not transferable.* An alcohol fuel plant permit is not transferable and, except as otherwise provided in paragraph (b) of this section, will automatically terminate if:

(1) The operations that are authorized by the permit are leased, sold, or transferred to another person; or

(2) The permit holder is dissolved on a date certain or upon an event specified by the laws of the State where the permit holder operates.

(b) *Corporations.* In the case of a corporation holding a permit under this subpart, if actual or legal control of that corporation changes, directly or indirectly, whether by reason of change in stock ownership or control (in the permittee corporation or in any other corporation), by operation of law, or in any other manner, the permit may remain in effect until the expiration of 30 days after the change, whereupon the permit will automatically terminate. However, if operations are to be continued after the change in control, and an application for a new permit is filed within 30 days of the change, the outstanding permit may remain in effect until final action is taken on the new application. When final action is taken on the application, the outstanding permit will automatically terminate.

(26 U.S.C. 5181, 5271)

§ 19.685 Change in type of alcohol fuel plant.

(a) *Small plants.* If the proprietor of a small plant intends to increase production (including receipts) to more than 10,000 proof gallons of spirits per calendar year, the proprietor must first obtain an amended permit by filing an application for a medium plant or a large plant, as appropriate, under § 19.675 or § 19.676. If any of the required information is already on file with TTB, that information may be incorporated by reference in the new application. The proprietor must also provide a new or strengthening bond in accordance with §§ 19.699 and 19.700.

(b) *Medium plants.* If the proprietor of a medium plant intends to increase production (including receipts) to more than 500,000 proof gallons of spirits per calendar year, the proprietor must first obtain an amended permit by filing an application for a large plant under § 19.676. If any of the required information is already on file with TTB, that information may be incorporated by reference in the new application. If the penal sum of the proprietor's current bond is below the amount specified for the new production level, the proprietor must obtain a new or strengthening bond in accordance with § 19.700.

(c) *Curtailment of activities.* A proprietor of a medium or large plant who curtails operations to a level whereby the proprietor is eligible to requalify as a small or medium plant may so qualify by submitting a letterhead application to the appropriate TTB officer for approval. If the appropriate TTB officer approves the application, the proprietor automatically will be relieved of those regulatory requirements that apply only to the superseded qualification. In addition, in the case of a change to small plant status, the proprietor may be allowed to terminate the bond in accordance with the procedure set forth in § 19.170 of this part.

(26 U.S.C. 5271, 5181)

§ 19.686 Change in name of proprietor.

When there is a change the name of the individual, firm, corporation, or other entity holding the permit, the proprietor must file an application to amend the permit on form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181, or file a letterhead application to amend the permit within 30 days of the change. The proprietor is not required to file a new bond or consent of surety in this case.

(26 U.S.C. 5172, 5271, 5181)

§ 19.687 Changes in officers, directors, members, managers, or principal persons.

If there is a change in the list of officers, directors, members, managers, or other principal persons furnished under the provisions of §§ 19.675, 19.676, or § 19.677, the proprietor must submit a letterhead notice to the appropriate TTB officer within 30 days of the change. The letterhead notice must identify each change and must include the following identifying information for each new officer, director, member, manager, or other principal person: Name, address, title, social security number, date of birth, and place of birth.

(26 U.S.C. 5181)

§ 19.688 Change in proprietorship.

(a) *General.* If there is a change in proprietorship at an alcohol fuel plant, the following requirements apply to the outgoing proprietor and to the new, incoming proprietor:

(1) The outgoing proprietor must comply with the notice requirements of § 19.695; and

(2) The incoming successor proprietors must—

(i) File and obtain a permit on form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181; and

(ii) File the required bond, if any.

(b) *Fiduciary responsibilities.* A successor to the proprietorship of an alcohol fuel plant who is an administrator, executor, receiver, trustee, assignee, or other fiduciary must comply with paragraph (a)(2) of this section. In addition, the following rules apply to a successor who is a fiduciary:

(1) The successor may furnish a consent of surety to extend the terms of the outgoing proprietor's bond instead of filing a new bond;

(2) The successor may incorporate by reference in the application on form TTB F 5110.74 any information that is still valid and that was contained in the application filed by the outgoing proprietor;

(3) The successor must furnish a certified copy of the order of the court or other pertinent document appointing the successor as a fiduciary; and

(4) The effective dates of the qualifying documents filed will be the date of the court order, the date specified in the court order for assuming control or the date control is assumed if the fiduciary was not appointed by a court.

(26 U.S.C. 5172)

§ 19.689 Continuing partnerships.

(a) If there is a death or insolvency of a partner in the business that holds a permit under this subpart, the surviving partner or partners may continue to operate under the permit if:

(1) The partnership is not immediately terminated under the laws of the particular state but continues until the winding up of the partnership affairs is complete;

(2) The surviving partner or partners have the exclusive right to control and possession of the partnership assets for purpose of liquidation and settlement; and

(3) In the case of a plant required to file a bond, a consent of surety is filed under which the surety and the surviving partner or partners agree to remain liable on the bond.

(b) If the surviving partner or partners acquire the business upon settlement of the partnership, the surviving partner or partners must file an application in their own name and receive a permit in accordance with § 19.688(a).

(26 U.S.C. 5172, 5181)

§ 19.690 Change in location.

If there is a change in the location of the alcohol fuel plant or of the area included within the plant premises, the proprietor must:

(a) File an application to amend the permit on form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181, or a letterhead application to amend the permit;

(b) File a new bond on form TTB F 5110.56 or a consent of surety on form TTB F 5000.18 if a bond is required; and

(c) Not begin operations at the new location prior to approval of the amended application and issuance of the amended permit.

(26 U.S.C. 5172, 5173, 5181, 5271)

Alternating Proprietorship

§ 19.692 Qualifying for alternating proprietorship.

(a) *General.* A proprietor may alternate use of an alcohol fuel plant or part of an alcohol fuel plant with one or more proprietors qualified under this subpart. In order to do so, each proprietor must file and receive approval of the applications and bonds required by this subpart. Each proprietor must also conduct operations and keep records in accordance with this subpart. Where operations by alternating proprietors will be limited to part of an alcohol fuel plant, that part must be suitable for qualification as a separate alcohol fuel plant.

(b) *Qualifying documents.* Each person desiring to operate an alcohol fuel plant as an alternating proprietor must file the following with the appropriate TTB officer:

(1) An application on form TTB F 5110.74, Application and Permit for an Alcohol Fuel Producer Under 26 U.S.C. 5181, to cover the proposed alternation;

(2) A diagram of the premises, in duplicate, showing the arrangement for the alternation of the premises. Where operations by alternating proprietors are limited to parts of an alcohol fuel plant, a diagram designating the parts that are to be alternated must be submitted. A diagram must be submitted for each arrangement under which the premises will be operated. The diagram must be in sufficient detail to establish the boundaries of the alcohol fuel plant or any part of it that will be involved in the alternation;

(3) Evidence of an existing operations bond (if any), consent of surety, or new operations bond to cover the proposed alternation of premises; and

(4) Any additional information required by the appropriate TTB officer.

(26 U.S.C. 5171, 5181, 5271)

§ 19.693 Operating requirements for alternating proprietorships.

(a) *Alternation journal.* Once the applications submitted under § 19.692 have been approved by the appropriate TTB officer, the alcohol fuel plant, or parts of the alcohol fuel plant, may be alternated. The outgoing and incoming proprietor must make entries in an alternation journal when the alcohol fuel plant, or parts of it are alternated. The outgoing and incoming proprietor must enter the following information in the alternation journal:

(1) Name or trade name of the proprietor;

(2) Alcohol fuel plant permit number;

(3) Date and time of alternation;

(4) Quantity of spirits transferred in proof gallons.

(b) *Commencement of operations.* Except for spirits transferred to the incoming proprietor, the outgoing proprietor must remove all spirits from areas, rooms, or buildings to be alternated, prior to the effective date and time shown in the alternation journal. Fuel alcohol may be transferred to the incoming proprietor or may be retained by the outgoing proprietor in areas, rooms, or buildings to be alternated when the areas, rooms, or buildings are secured with locks, the keys to which are in the custody of the outgoing proprietor. Whenever operation of the areas, rooms, or buildings is to be resumed by a proprietor following suspension of operations by an alternating proprietor, the outgoing proprietor (except the proprietor of a small plant not required to file a bond) must furnish a consent of surety on form TTB F 5000.18 to continue in effect the operations bond covering his operations. The proprietor must do this prior to alternating the premises.

(c) *Records.* Each alternating proprietor must maintain separate records and submit separate reports in accordance with § 19.720. Entries in each proprietor's records must be in accordance with §§ 19.714 through 19.718 of this subpart. The following requirements also apply:

(1) Each alternating proprietor must show all transfers of spirits in the records;

(2) The outgoing proprietor must show in his production and disposition records the quantity of spirits and fuel alcohol transferred to the incoming proprietor;

(3) The incoming proprietor must show in his receipt record the quantity of spirits received by transfer;

(4) Each proprietor must include spirits transferred in the determinations

of alcohol fuel plant size and bond amounts; and

(5) The provisions of § 19.685 regarding change of alcohol fuel plant type apply to each proprietor.

(26 U.S.C. 5171, 5181, 5271)

Discontinuance of Business and Permit Suspension or Revocation

§ 19.695 Notice of permanent discontinuance.

When a proprietor permanently discontinues operations as an alcohol fuel plant, the proprietor must file a letterhead notice with the appropriate TTB officer along with the following:

(a) The original copy of the alcohol fuel plant permit and the proprietor's request that the permit be cancelled;

(b) A written statement disclosing whether or not all spirits, including fuel alcohol, have been lawfully disposed of, and whether or not there are any spirits in transit to the premises; and

(c) A report on form TTB 5110.75, Alcohol Fuel Plant Report covering the discontinued operations, with the report marked, ''Final Report.''

(26 U.S.C. 5172, 5181, 5271)

§ 19.697 Permit suspension or revocation.

TTB may begin proceedings to revoke or suspend an alcohol fuel plant permit in accordance with the procedures in part 71 of this chapter if the appropriate TTB officer has a reason to believe that a person holding a permit:

(a) Has not in good faith complied with the provisions of 26 U.S.C. Chapter 51 or the regulations issued thereunder;

(b) Has violated the conditions of the permit;

(c) Has made any false statement as to any material fact in the application for the permit;

(d) Has failed to disclose any material information required to be furnished under this part;

(e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor;

(f) Has been convicted of any offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense; or

(g) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years.

(26 U.S.C. 5271)

Bonds

§ 19.699 General bond requirements.

(a) *Operations bond.* Any person who plans to establish a large plant, a medium plant, or a small plant without production operations must provide an operations bond on form TTB F 5110.56, Distilled Spirits Bond, in duplicate, with the original permit application. If a proprietor fails to fails to pay any liability covered by the bond, TTB may seek payment from the proprietor, from the surety on the bond, or from both the proprietor and the surety. Additional provisions applicable to bonds for alcohol fuel plants are found in subpart F of this part §§ 19.155 through 19.157 and §§ 19.167 through 19.173.

(b) *Corporate surety.* A company that issues bonds is called a ''corporate surety.'' Proprietors must obtain the surety bonds required by this subpart from a corporate surety approved by the Secretary of the Treasury. The Department of the Treasury publishes a list of approved corporate sureties in Treasury Department Circular No. 570, ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.'' Circular No. 570 is published annually in the **Federal Register**. The most current edition of the circular is posted at the website of the Financial Management Service, Department of the Treasury, at *http://www.fms.treas.gov/c570.* Printed copies of Circular No. 570 are available for purchase from the Government Printing Office.

(c) *Alternative to a corporate surety.* A proprietor may also guarantee payment under a bond without using a corporate surety, by filing a bond that guarantees payment of the liability by pledging and depositing one or more acceptable negotiable securities having a par value (face amount) equal to or greater than the penal sums of the required bonds. Should the proprietor fail to pay one or more of the guaranteed liabilities, TTB may take action to sell the deposited securities to satisfy the debt. Pledged securities will be released to the proprietor if there are no outstanding liabilities when the bond is terminated; the provisions of § 19.173 apply to the release of pledged securities under this subpart. A list of securities acceptable as collateral in lieu of surety bonds is available from the Bureau of the Public Debt, Office of the Commissioner, Government Securities Regulations Staff. Current information and guidance from the Bureau of the Public Debt Web site may be found at *http://www.publicdebt.treas.gov.*

(31 U.S.C. 9301, 9303, 9304, 9306)

(26 U.S.C. 5173, 5181)

§ 19.700 Amount of bond.

A proprietor must determine the penal sum of the bond based on the total quantity of distilled spirits that will be produced and received during a calendar year. The method for computing required bond amounts is as follows:

(a) *Small plants without production operations.* A proprietor who operates a small plant that receives not more than 10,00 proof gallons of spirits per year and does not conduct bona fide production operations must provide a bond with a penal sum of $1,000.

(b) *Medium plants.* A proprietor who operates a medium plant that produces and receives more than 10,000 but not more than 20,000 proof gallons of spirits per year must provide a bond with a penal sum of at least $2,000.00. The proprietor must increase the penal sum of the bond by $1,000 for each additional 10,000 gallons, or fraction of 10,000 gallons, that he will produce and receive over 20,000 gallons. The maximum bond for a medium plant is $50,000.00, representing the penal sum applicable to 500,000 proof gallons. The following table provides examples of required minimum bond amounts:

ANNUAL PRODUCTION AND RECEIPTS IN PROOF GALLONS

More than	But not over	Amount of bond
10,000	20,000	$2,000
20,000	30,000	3,000
90,000	100,000	10,000
190,000	200,000	20,000
490,000	500,000	50,000

(c) *Large Plants.* A proprietor who operates a large plant that produces and receives more than 500,000 but not more than 510,000 proof gallons of spirits per year must provide a bond with a penal sum of at least $52,000.00. The proprietor must increase the penal sum of the bond by $2,000 for each additional 10,000 gallons, or fraction of 10,000 gallons, that he will produce and receive over 510,000 gallons. The maximum bond for a large plant is $200,000,00. The following table provides examples of required minimum bond amounts:

ANNUAL PRODUCTION AND RECEIPTS IN PROOF GALLONS

More than	But not over	Amount of bond
500,000	510,000	$52,000
510,000	520,000	54,000
740,000	750,000	100,000
990,000	1,000,000	150,000
1,240,000	.....	200,000

(d) New or strengthening bonds. A proprietor must obtain a new bond or a strengthening bond in accordance with § 19.167 if the level of production and receipts at the alcohol fuel plant increases so that the current bond no longer reflects the required minimum penal sum.

(26 U.S.C. 5173, 5181)

Requirements for Construction, Equipment, and Security

§ 19.703 Construction and equipment.

A proprietor must construct and arrange the buildings and enclosures where distilled spirits will be produced, processed, or stored so as to ensure adequate security and deter the diversion of spirits. Distilling equipment must be constructed to prevent unauthorized removal of spirits, from the point where distilled spirits come into existence until production is complete and the quantity of spirits has been determined. A proprietor also must equip tanks and other vessels so that they may be locked and must provide a method for determining the quantity of spirits in each vessel.

(26 U.S.C. 5178)

§ 19.704 Security.

(a) *General.* The proprietor of an alcohol fuel plant must provide adequate security measures at the alcohol fuel plant in order to protect against the unauthorized removal of spirits.

(b) *Storage.* The proprietor must store spirits in a building or a storage tank, or within an enclosure, that will be kept locked when operations are not being conducted.

(c) *Additional security.* The appropriate TTB officer may require additional security measures for the premises if the alcohol fuel plant's security is found to be inadequate. The additional measures required may depend upon past security problems experienced at the alcohol fuel plant, the volume of alcohol produced, the risk to tax revenue, and any safety requirements. Additional security measures may include, but are not limited to:

(1) A fence around the alcohol fuel plant;

(2) Flood lights;

(3) A security or alarm system;

(4) A guard service; or

(5) Locked or barred windows.

(26 U.S.C. 5178, 5202)

TTB Rights and Authorities

§ 19.706 Supervision of operations.

TTB may assign appropriate TTB officers to supervise operations at an alcohol fuel plant at any time. Appropriate TTB officers may exercise certain rights and authorities at an alcohol fuel plant. Those rights and authorities are set forth in the following provisions of this part: § 19.11 (right of entry and examination); § 19.12 (furnishing facilities and assistance); § 19.13 (assignment of officers and supervision of operations); § 19.17 (detention of containers); § 19.18 (samples for the United States); and § 19.282 (general requirements for gauging and measuring equipment).

(26 U.S.C. 5006, 5201, 5202, 5203, 5204, 5207, 5213, 5555)

Accounting for Spirits

§ 19.709 Gauging.

(a) *Gauging equipment and methods.* A proprietor of an alcohol fuel plant must perform periodic gauges of the distilled spirits and fuel alcohol at the alcohol fuel plant. The procedures for the gauging of spirits set forth in part 30 of this chapter also apply under this subpart. In addition, the following rules for the gauging of distilled spirits and fuel alcohol under this subpart also apply:

(1) The proprietor must determine the proof of spirits by using a glass cylinder, hydrometer, and thermometer;

(2) The proprietor must ensure that hydrometers, thermometers, and other equipment used to determine proof, volume, or weight are accurate;

(3) The proprietor may determine the quantity of spirits or fuel alcohol either by volume or weight;

(4) To determine quantity by volume, the proprietor may use a tank or receptacle with a calibrated sight glass installed, a calibrated dipstick, conversion charts, an accurate mass flow meter, or other devices approved by the appropriate TTB officer;

(5) Unless the proprietor chooses to do so, the proprietor is not required to determine the proof of fuel alcohol manufactured, on hand, or removed; and

(6) The proprietor may account for fuel alcohol in wine gallons;

(b) *Verification by TTB.* TTB officers may at any time verify the accuracy of the gauging equipment used.

(c) *When gauges are required.* A proprietor must gauge spirits and record the results in the records required by § 19.718, at the following times:

(1) Upon completing the production of distilled spirits;

(2) On the receipt of spirits at the plant;

(3) Prior to the addition of materials to render the spirits unfit for beverage use;

(4) Before withdrawal from plant premises or other disposition of spirits (including fuel alcohol); and

(5) When spirits are inventoried.

(26 U.S.C. 5201, 5204)

§ 19.710 Inventory of spirits.

A proprietor of an alcohol fuel plant must take a physical inventory of all spirits and fuel alcohol on the bonded premises at the end of each calendar year. The proprietor must record the results of this physical inventory in the records required by § 19.718.

(26 U.S.C. 5201)

Recordkeeping

§ 19.714 General requirements for records.

A proprietor of an alcohol fuel plant must maintain records that accurately reflect the operations and transactions at the alcohol fuel plant. The records must contain sufficient information that will allow appropriate TTB officers to determine the quantities of spirits produced, received, stored, or processed and to verify that all spirits have been used or otherwise lawfully disposed of.

(26 U.S.C. 5207)

§ 19.715 Format of records.

(a) Proprietors of alcohol fuel plants are not required under this subpart to keep their records in any particular format or media. A proprietor may keep required records on paper, microfilm or microfiche, diskette or other electronic medium. However, the records that a proprietor maintains must be readily retrievable in, or convertible to, hard-copy format for review by TTB officers as necessary.

(b) Required records may consist of commercial documents maintained in the ordinary course of business, rather than records prepared expressly to meet the requirements of this subpart, if those documents:

(1) Contain all of the information required by this subpart;

(2) Reflect general standards of clarity and accuracy; and

(3) Can be readily understood by TTB personnel.

(c) Where the format or arrangement of the record is such that the information is not readily understandable, the appropriate TTB officer may require the proprietor to present the information in a format or arrangement that will facilitate the review of the information.

(26 U.S.C. 5207)

§ 19.716 Maintenance and retention of records.

(a) A proprietor of an alcohol fuel plant may keep the records required by this subpart at the alcohol fuel plant where operations or transactions occur, or at a central recordkeeping location maintained by the proprietor. If the proprietor keeps the required records at any location other than the alcohol fuel plant where operations or transactions occur, the proprietor must notify the appropriate TTB officer of the location where the records are kept. The proprietor must make those records available at the alcohol fuel plant premises to which they relate during normal business hours for the purpose of a TTB audit or inspection. The proprietor must produce those records at that location within two days of notice by the appropriate TTB officer.

(b) A proprietor of an alcohol fuel plant must maintain any records required by this subpart for a period of not less than three years from the date of creation of the record or the date of the last entry required to be made in the record, whichever is later.

(c) A proprietor of an alcohol fuel plant may be required to reproduce records in order to maintain their readability and availability for inspection. Whenever any record might become unreadable or otherwise unsuitable for its intended or continued use, the proprietor is responsible for reproducing the record by a process that accurately and legibly reproduces the original record.

(d) For records kept on electronic media, the provisions of § 19.574 apply.

(26 U.S.C. 5207)

§ 19.717 Time for making entries in records.

A proprietor of an alcohol fuel plant must record entries required by this subpart in the proprietor's records on a daily basis, as the transaction or operation occurs, but not later than the close of the next business day after the occurrence of the transaction or operation. However, if a proprietor prepares supplemental or auxiliary records when an operation or transaction occurs and those records contain all of the information required under this subpart, the proprietor may make entries in the required records not later than the close of business on the third business day following the day on which the transaction or operation occurred.

(26 U.S.C. 5207)

§ 19.718 Required records.

A proprietor of an alcohol fuel plant must maintain records that accurately reflect the operations and transactions occurring at the plant. These records must include production, receipt, manufacture, and disposition records.

(a) *Production, receipt, manufacture records.* The proprietor must maintain records of all production, receipts, and manufacture at the alcohol fuel plant. This includes records of:

(1) The quantity and proof of spirits produced;

(2) The kind and quantity of materials used to produce spirits, if the proprietor is a medium plant or large plant;

(3) The proof gallons of spirits on-hand;

(4) The proof gallons of spirits received. The proprietor may use a copy of the consignor's invoice or other document received with the shipment if the proprietor records the date of receipt and quantity received;

(5) The quantities and types of materials added to each lot of spirits to render the spirits unfit for beverage use; and

(6) The quantity of fuel alcohol manufactured. Fuel alcohol may be recorded in wine gallons.

(b) *Disposition records.* The proprietor must maintain records of all dispositions of spirits and fuel alcohol removed from the alcohol fuel plant. Records for dispositions of fuel alcohol and spirits must be maintained separately. Required records include:

(1) The amount of fuel alcohol removed. The commercial record or other document required by § 19.729 will constitute the required record;

(2) The amount of spirits transferred. For all spirits transferred to another qualified distilled spirits plant or alcohol fuel plant the proprietor must maintain the commercial invoice or other documentation required by § 19.405 and § 19.734;

(3) Record of other dispositions. If the proprietor has other dispositions of spirits or fuel alcohol such as losses, destruction or redistillation, the proprietor must keep a record of those dispositions. The record must include the quantity of spirits (in proof gallons) or fuel alcohol (in wine gallons), the date of disposition, and the purpose for which used or the nature of any other disposition;

(4) Testing records. If the proprietor conducts testing and analysis of samples of spirits or fuel alcohol in accordance with § 19.749, the proprietor must keep a record of the date of the testing and the amount of spirits (in proof gallons) or fuel alcohol (in wine gallons) tested.

(26 U.S.C. 5181, 5207)

§ 19.719 Spirits made unfit for beverage use in the production process.

If an alcohol fuel plant makes spirits unfit for beverage use before the spirits are removed from the production process, for example by the in-line addition of materials or by the addition of materials to receptacles where spirits are first deposited, the proprietor must determine the quantity and proof of the spirits produced for purposes of the production records by:

(a) Determining the proof of each lot of spirits by procuring a representative sample of each lot, prior to the addition of any materials for rendering the spirits unfit for beverage use, and then proofing the spirits; and

(b) Determining the quantity (proof gallons) of spirits produced by subtracting the quantity of materials added to render the spirits unfit for

beverage use from the quantity of fuel alcohol (in gallons) produced and multiplying the resulting figure by the proof of the spirits divided by 100.

(26 U.S.C. 5181, 5207)

Reports

§ 19.720 Reports.

Each proprietor of an alcohol fuel plant must submit to the appropriate TTB officer an annual report of operations on form TTB F 5110.75, Alcohol Fuel Plant Report, for each calendar year. The proprietor must submit this report by January 30 following the end of the calendar year.

(26 U.S.C. 5207)

Redistillation

§ 19.722 General rules for redistillation of spirits or fuel alcohol.

The proprietor of an alcohol fuel plant may receive and redistill spirits. The proprietor may also receive fuel alcohol for redistillation and recovery of the spirits contained in the fuel alcohol. The following general rules apply to redistillation activities at an alcohol fuel plant:

(a) The proprietor must separately identify in the required records any spirits and fuel alcohol received for redistillation;

(b) The proprietor must keep all spirits and fuel alcohol received for redistillation physically separate from each other and from other spirits and fuel alcohol until they are redistilled;

(c) Spirits recovered by redistillation will be treated the same as spirits that have not been redistilled; and

(d) All provisions of this subpart and 26 U.S.C. Chapter 51, including provisions regarding liability for tax applicable to spirits when originally produced, apply to spirits recovered by distillation.

(26 U.S.C. 5181)

§ 19.723 Effect of redistillation on plant size and bond amount.

The redistillation of spirits at an alcohol fuel plant may affect the alcohol fuel plant size category and the resulting bond penal sum amount. The following rules apply in this regard:

(a) Spirits originally produced by the alcohol fuel plant and subsequently recovered by redistillation are not includable in the determination of plant size and bond amount; and

(b) Spirits originally produced elsewhere and subsequently recovered by redistillation at the alcohol fuel plant are includable in the determination of plant size and bond amount.

(26 U.S.C. 5181)

§ 19.724 Records of redistillation.

(a) Except as otherwise provided in paragraph (b) of this section, a proprietor must record in a separate record the following information for spirits and fuel alcohol received at the alcohol fuel plant for redistillation:

(1) Date of receipt;

(2) Identification as spirits or fuel alcohol;

(3) Quantity received;

(4) From whom received;

(5) Reason for redistillation;

(6) Date redistilled; and

(7) The quantity of spirits recovered by redistillation.

(b) A proprietor may use a document required by § 19.729 or § 19.734 or any other commercial record covering spirits or fuel alcohol received in lieu of the record required by paragraph (a) of this section, provided that it contains all of the information required by paragraph (a) of this section, including any such information added to it by the proprietor.

(26 U.S.C. 5181, 5223)

Rules for Use, Withdrawal, and Transfer of Spirits

§ 19.726 Prohibited uses, transfers, and withdrawals.

No person may withdraw, use, sell or otherwise dispose of distilled spirits, including fuel alcohol, produced under this subpart for any purpose other than for fuel use. The law imposes criminal penalties on any person who withdraws, uses, sells or otherwise disposes of distilled spirits, including fuel alcohol, produced under this subpart for other than fuel use.

(26 U.S.C. 5181, 5601)

§ 19.727 Use on premises.

A proprietor may use spirits as a fuel on the premises of the alcohol fuel plant where they were produced without having to make them unfit for beverage use. A proprietor using spirits in this way must keep the applicable records concerning such use as provided in § 19.718(b)(3).

(26 U.S.C. 5181)

§ 19.728 Withdrawal of spirits.

Before withdrawal of spirits from the premises of an alcohol fuel plant, the proprietor must render the spirits unfit for beverage use as provided in this subpart. Spirits rendered unfit for beverage use may be withdrawn free of tax from the alcohol fuel plant premises if they will be used exclusively for fuel.

(26 U.S.C. 5181, 5214)

§ 19.729 Withdrawal of fuel alcohol.

(a) For each shipment or other removal of fuel alcohol from the alcohol fuel plant premises, the consignor proprietor must prepare a commercial invoice, sales slip, or similar document that shows:

(1) The date of the withdrawal;

(2) The quantity of fuel alcohol removed;

(3) A description of the shipment that includes the number and size of containers, tank trucks, etc.; and

(4) The name and address of the consignee.

(b) The consignor proprietor must retain in its records a copy of the document described in paragraph (a) of this section.

(26 U.S.C. 5181)

Transfer of Spirits Between Alcohol Fuel Plants

§ 19.733 Authorized transfers between alcohol fuel plants.

A proprietor may remove spirits from the bonded premises of an alcohol fuel plant, including the premises of a small plant, for transfer in bond to another alcohol fuel plant. A proprietor of an alcohol fuel plant may also receive spirits from another alcohol fuel plant. The following conditions apply to such transfers:

(a) The transfer of spirits must be pursuant to an approved application on TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond in accordance with § 19.403;

(b) Bulk conveyances in which spirits are transferred must be secured with locks, seals, or other devices in accordance with § 19.441;

(c) It is not necessary to render the spirits unfit for beverage use prior to the transfer;

(d) The transferred spirits may not be withdrawn, used, sold, or disposed of for other than fuel use; and

(e) Each proprietor must adhere to the requirements for transfers between alcohol fuel plants prescribed in §§ 19.734 through 19.736, as applicable.

(26 U.S.C. 5212, 5181)

§ 19.734 Consignor for in-bond shipments.

A proprietor who ships distilled spirits in bond to another alcohol fuel plant is the ''consignor'' of the shipment. When shipping spirits in bond, the consignor must:

(a) Ship the spirits pursuant to an approved application on TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond;

(b) Prepare a duplicate commercial invoice or shipping document for each shipment of spirits that includes the following:

(1) The quantity of the spirits transferred;

(2) The proof of the spirits transferred;

(3) A description of the shipment that includes the number and size of drums, barrels, tank trucks, etc.;

(4) The consignor's name, address, and permit number and the name, address, and permit number of the proprietor of the alcohol fuel plant who will receive the spirits; and

(5) The serial numbers of seals, locks or other devices used to secure the shipment; and

(c) Forward the original invoice or shipping document with the shipment to the proprietor of the receiving alcohol fuel plant and retain a copy in the alcohol fuel plant's records.

(26 U.S.C. 5212)

§ 19.735 Reconsignment while in transit.

A consignor may reconsign an in-bond shipment of spirits while the shipment is in transit or upon arrival at the premises of the consignee for any bona fide reason such as when the spirits transferred in bond are found to be unsuitable for the intended purpose or the spirits were shipped in error. The consignor may reconsign the shipment to himself or to another consignee who is qualified to receive the spirits. In either case, an Application for Transfer of Spirits and/or Denatured Spirits in Bond on TTB F 5100.16 must have been previously approved for the new consignee and must be on file at the alcohol fuel plant. The bond of the new consignee of the spirits will cover the spirits while they are in transit after reconsignment. When reconsigning a shipment, the consignor must notify the original consignee that the transfer has been cancelled and must make a notation on the original invoice or shipping document that the shipment was reconsigned. The consignor must also prepare a new invoice or shipping document for the new consignee and must mark the new invoice or shipping document ''reconsignment.''

(26 U.S.C. 5181, 5212)

§ 19.736 Consignee for in-bond shipments.

(a) *General.* A proprietor who receives spirits in bond from another alcohol fuel plant is the ''consignee'' of the shipment. When receiving spirits in bond, the consignee must:

(1) Examine each conveyance and notify the appropriate TTB officer immediately if any of the locks, seals, or other devices that secure each conveyance do not arrive at the premises intact;

(2) Determine the quantity of spirits received and record the quantity and date of receipt on the invoice or shipping document sent with the shipment; and

(3) Retain the invoice or shipping document as part of the records required by § 19.718.

(b) *Portable containers.* A consignee who receives spirits in barrels, drums, or other portable containers that are not secured by seals or other devices must verify the contents of each container. The consignee must record the quantity received in each container on a list and must attach the list to the invoice or shipping document received with the shipment.

(c) *Bulk conveyances or pipelines.* A consignee who receives spirits in bulk conveyances or by pipeline must gauge the spirits received and record the quantity determined on the invoice or shipping document received with the shipment. The appropriate TTB officer may waive the requirement for gauging spirits received by pipeline if requested in writing by the consignee and if there is no jeopardy to the revenue.

(26 U.S.C. 5181, 5204, 5212)

Transfer of Spirits to and From Distilled Spirits Plants

§ 19.739 Authorized transfers to or from distilled spirits plants.

Except for spirits produced from petroleum, natural gas, or coal, a proprietor of an alcohol fuel plant may receive spirits in bond from a distilled spirits plant qualified under subpart D of this part. A proprietor of an alcohol fuel plant may also transfer spirits in bond from the alcohol fuel plant to a distilled spirits plant qualified under subpart D. The following conditions apply to such transfers:

(a) Bulk conveyances in which spirits are transferred must be secured with locks, seals, or other devices in accordance with § 19.441;

(b) It is not necessary to render the spirits unfit for beverage use prior to the transfer;

(c) The transferred spirits may not be withdrawn, used, sold, or disposed of for other than fuel use;

(d) An alcohol fuel plant proprietor transferring spirits filled into portable containers to the bonded premises of a distilled spirits plant must mark the containers as required by § 19.752(b);

(e) The procedures in §§ 19.403 through 19.406 and § 19.620 apply to the transfer of spirits from an alcohol fuel plant to a distilled spirits plant; and

(f) The procedures in §§ 19.403, 19.405, 19.407 and § 19.771 apply to the transfer of spirits from a distilled spirits plant to an alcohol fuel plant.

(26 U.S.C. 5181, 5212)

Receipt of Spirits From Customs Custody

§ 19.742 Authorized transfers from customs custody.

A proprietor of an alcohol fuel plant may withdraw from customs custody spirits imported or brought into the United States in bulk containers and may transfer those spirits without payment of tax to the proprietor's alcohol fuel plant subject to the following conditions:

(a) The transfer of the spirits may only be to an alcohol fuel plant that is required to file, and has filed, a bond;

(b) The spirits must not have been produced from petroleum, natural gas, or coal;

(c) The alcohol fuel plant must further manufacture or process the spirits after receipt;

(d) The proprietor of the alcohol fuel plant may only redistill or denature the spirits if the imported spirits are 185 degrees or more of proof and will be withdrawn for fuel use; and

(e) The proprietor of the alcohol fuel plant must follow the procedures for receiving spirits prescribed in § 19.736 and subpart L of part 27 of this chapter.

(26 U.S.C. 5232)

Materials for Making Spirits Unfit for Beverage Use

§ 19.746 Authorized materials.

(a) *General.* The appropriate TTB officer determines what materials make spirits unfit for beverage use but do not impair the quality of the spirits for fuel use. Spirits treated with materials authorized under this section will be considered rendered unfit for beverage use and eligible for withdrawal as fuel alcohol.

(b) *Authorized materials.* Subject to the specifications in paragraph (c) of this section, proprietors are authorized to render spirits unfit for beverage use by adding to each 100 gallons of spirits any of following materials in the quantities specified:

(1) Two gallons or more of—

(i) Gasoline or automotive gasoline (for use in engines that require unleaded gasoline, the Environmental Protection Agency and manufacturers specifications may require that unleaded gasoline be used to render spirits unfit for beverage use);

(ii) Natural gasoline;

(iii) Kerosene;

(iv) Deodorized kerosene;

(v) Rubber hydrocarbon solvent;

(vi) Methyl isobutyl ketone;

(vii) Mixed isomers of nitropropane;

(viii) Heptane;

(ix) Ethyl tertiary butyl ether (ETBE);

(x) Raffinate;

(xi) Naphtha; or

(xii) Any combination of the materials listed in (b)(1)(i) through (xi) of this section; or

(2) Five gallons or more of Toluene; or

(3) One-eighth (⅛) ounce of denatonium benzoate N.F. and 2 gallons of isopropyl alcohol.

(c) *Specifications*—(1) Specifications for gasoline, unleaded gasoline, kerosene, deodorized kerosene, rubber hydrocarbon solvent, methyl isobutyl ketone, mixed isomers of nitropropane, heptane, toluene, and isopropyl alcohol are found in part 21, subpart E, of this chapter.

(2) Natural gasoline must meet the following specifications:

(i) Natural gasoline (drip gas) is a mixture of butane, pentane, and hexane hydrocarbons extracted from natural gas.

(ii) Distillation range: no more than 10% of the sample may distill below 97 ° F.; at least 50% shall distill at or below 156 ° F.; and at least 90% shall distill at or below 209 ° F.

(3) Raffinate must meet the following specifications:

(i) Octane (R+M/2): 66–70;

(ii) Distillation, in Degrees F: 10%: 120–150; 50%: 144–180; 90%: 168–200; end point: 216–285;

(iii) API Gravity: 76–82; and

(iv) Reid Vapor Pressure: 5–11.

(4) Naphtha must meet the following specifications:

(i) API Gravity @ 60/60 Degrees F: 64–70;

(ii) Lb/Gal: 5.845–6.025;

(iii) Density: .7022–.7238;

(iv) Reid Vapor Pressure: 8 P.S.I.A. Max.;

(v) Distillation in Degrees F: I.B.P.: 85 Max.; 10%: 130 Max.; 50%: 250 Max.; 90%: 340 Max.; end point: 380;

(vi) Copper Corrosion: 1; and

(vii) Sabolt Color: 28 Min.

(d) *Published list.* The appropriate TTB officer periodically publishes a list of materials that may be used to make spirits unfit for beverage use in addition to those listed in paragraph (b) of this section. The list can be found at *http://www.ttb.treas.gov*. The list will specify the material name and quantity required to render spirits unfit for beverage use.

(26 U.S.C. 5181)

§ 19.747 Other materials.

If a proprietor wishes to use a material to render spirits unfit for beverage use that is not authorized under § 19.746 or that is not on the published list of materials, the proprietor may submit an application for approval to the appropriate TTB officer. The application must include the name of the material and the quantity of material that the proprietor proposes to add to each 100 gallons of spirits. The appropriate TTB officer may require the proprietor to submit an eight-ounce sample. The proprietor may not use any proposed material until the appropriate TTB officer approves its use. Any material that impairs the quality of the spirits for fuel use will not be approved. The proprietor must retain as part of the records available for inspection by appropriate TTB officers any application approved by the appropriate TTB officer under this section.

(26 U.S.C. 5181)

Rules for Taking Samples

§ 19.749 Samples.

The following rules apply to the testing and analysis of samples of spirits and fuel alcohol for purposes of this subpart:

(a) A proprietor may take samples of spirits and fuel alcohol for on-site testing and analysis at the proprietor's alcohol fuel plant;

(b) A proprietor may not remove samples of spirits from the premises of the alcohol fuel plant for testing and analysis;

(c) A proprietor may remove samples of fuel alcohol from the premises of the alcohol fuel plant for testing and analysis at a qualified laboratory;

(d) A proprietor of an alcohol fuel plant must account for all samples in the record required by § 19.718(b)(4); and

(e) A proprietor of an alcohol fuel plant must indicate on each container that the spirits or fuel alcohol inside is a sample.

(26 U.S.C. 5181)

Marking Requirements

§ 19.752 Marks.

(a) *Fuel alcohol.* A proprietor of an alcohol fuel plant must place a conspicuous and permanent warning mark or label on each container of 55 gallons or less of fuel alcohol that the proprietor will withdraw from the plant premises. The proprietor must place the mark or label on the head or side of the container and must use plain, legible letters. The proprietor may place other marks or labels on the container if the other marks or labels do not obscure the required warning. The required warning is as follows:

WARNING

FUEL ALCOHOL

MAY BE HARMFUL OR FATAL IF SWALLOWED

(b) *Spirits.* If a proprietor intends to transfer barrels, drums, or similar portable containers of spirits to a distilled spirits plant qualified under subpart D of this part, the proprietor must mark or label each container. The proprietor must place the mark or label on the head or side of the container and must use plain, legible letters. The proprietor may place other marks or labels on the container if the other marks or labels do not obscure the required marks or labels. The required mark or label each container must contain the following information:

(1) Quantity in wine gallons;

(2) Proof of the spirits;

(3) Name, address, and permit number of the alcohol fuel plant;

(4) The words ''Spirits—For Alcohol Fuel Use Only''; and

(5) The serial number of the container. Serial numbers must be assigned as follows—

(i) Consecutively commencing with ''1'';

(ii) When the numbering system of any series reaches ''1,000,000'' the proprietor may begin the series again by adding an alphabetical prefix or suffix to the series; and

(iii) When there is a change in proprietorship or a change in the

individual, firm, corporate name, or trade name, the series in use at the time of the change may be continued.

(26 U.S.C. 5181, 5206)

Subpart Y—Paperwork Reduction Act

§ 19.761 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This subpart displays the control numbers assigned to information collection requirements in this part by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, Public Law 104–13.

(b) *Display.* The following display identifies each section in this part that contains an information collection requirement and the OMB control number that is assigned to that information collection requirement.

Section where contained	Current OMB Control No.
19.11	1513–0088
19.13	1513–0048
19.26	1513–0048
19.27	1513–0048
19.28	1513–0048
19.33	1513–0048
19.35	1513–0048
19.37	1513–0048
19.54	1513–0048
19.55	1513–0048
	1513–0081
19.56	1513–0048
19.59	1513–0013
19.60	1513–0013
	1513–0048
19.71	1513–0048
19.72	1513–0048
19.73	1513–0048
19.74	1513–0048
19.75	1513–0048
19.76	1513–0048
19.77	1513–0046
	1513–0048
19.78	1513–0014
	1513–0048
19.79	1513–0048
19.91	1513–0040
19.92	1513–0040
19.93	1513–0040
19.94	1513–0040
19.95	1513–0040
19.97	1513–0040
19.112	1513–0048
19.113	1513–0048
19.113	1513–0088
19.114	1513–0048
19.115	1513–0048
19.116	1513–0013
	1513–0048
	1513–0088
19.117	1513–0013
	1513–0048
19.118	1513–0013
	1513–0048
19.119	1513–0048
	1513–0088
19.120	1513–0048
	1513–0088
19.121	1513–0048
19.122	1513–0048
19.123	1513–0048
19.126	1513–0040
19.127	1513–0088
19.128	1513–0040
19.129	1513–0040
	1513–0088
19.130	1513–0040
	1513–0088
19.131	1513–0040
	1513–0088
19.132	1513–0013
	1513–0040
	1513–0088
19.133	1513–0013
	1513–0040
19.134	1513–0013
	1513–0040
	1513–0088
19.135	1513–0040
19.141	1513–0013
	1513–0044
19.142	1513–0044
19.143	1513–0013
	1513–0044
19.154	1513–0044
19.155	1513–0013
19.156	1513–0014
19.168	1513–0013
19.170	1513–0048
19.171	1513–0048
19.172	1513–0048
19.187	1513–0080
19.189	1513–0080
19.191	1513–0080
19.192	1513–0048
19.198	1513–0048
19.201	1513–0088
	1513–0113
19.202	1513–0113
19.203	1513–0113
19.205	1513–0088
	1513–0113
19.206	1513–0088
	1513–0113
19.207	1513–0088
	1513–0113
19.208	1513–0088
	1513–0113
19.209	1513–0014
	1513–0088
	1513–0113
19.210	1513–0113
19.211	1513–0113
19.212	1513–0113
19.213	1513–0113
19.214	1513–0113
19.222	1513–0045
	1513–0088
19.225	1513–0045
19.226	1513–0045
19.226	1513–0056
19.227	1513–0045
19.230	1513–0045
	1513–0083
19.231	1513–0045
19.233	1513–0045
	1513–0083
	1513–0088
19.234	1513–0045
	1513–0083
	1513–0088
19.235	1513–0088
19.236	1513–0083
	1513–0088
19.237	1513–0045
	1513–0083
19.238	1513–0045
	1513–0083
19.239	1513–0045
	1513–0083
	1513–0088
19.240	1513–0045
	1513–0083
	1513–0088
19.242	1513–0045
	1513–0083
19.243	1513–0045
19.246	1513–0045
19.247	1513–0045
19.248	1513–0045
19.249	1513–0045
19.253	1513–0088
19.256	1513–0045
19.257	1513–0045
19.261	1513–0048
19.262	1513–0030
	1513–0045
	1513–0088
19.263	1513–0030
	1513–0045
	1513–0088
19.264	1513–0030
	1513–0045
	1513–0088
19.265	1513–0030
	1513–0088
19.266	1513–0030
	1513–0045
	1513–0088
19.267	1513–0045
	1513–0088
19.268	1513–0088
19.269	1513–0030
	1513–0045
19.281	1513–0048
19.283	1513–0056
19.284	1513–0056
19.286	1513–0056
19.287	1513–0056
19.288	1513–0056
19.289	1513–0056
	1513–0056
19.292	1513–0044
19.293	1513–0047
19.294	1513–0047
19.295	1513–0047
19.303	1513–0056
19.305	1513–0039
	1513–0056
19.306	1513–0056
19.307	1513–0056
19.308	1513–0047
19.309	1513–0047
19.312	1513–0056
19.322	1513–0039
	1513–0056
19.324	1513–0039
	1513–0056
19.327	1513–0039
19.329	1513–0039
19.331	1513–0056
19.333	1513–0056
19.343	1513–0041
19.352	1513–0048
19.353	1513–0041

Section where contained	Current OMB Control No.
19.354	1513–0088
19.357	1513–0041
19.360	1513–0041
	1513–0056
19.362	1513–0041
19.363	1513–0041
19.371	1513–0056
	1513–0088
19.372	1513–0048
	1513–0056
	1513–0088
19.381	1513–0049
19.383	1513–0056
19.384	1513–0048
19.386	1513–0049
19.387	1513–0049
19.388	1513–0048
19.389	1513–0056
19.392	1513–0048
19.393	1513–0049
19.394	1513–0056
19.402	1513–0056
19.403	1513–0038
19.404	1513–0038
19.405	1513–0038
	1513–0056
19.406	1513–0038
	1513–0056
19.407	1513–0056
19.411	1513–0039
19.414	1513–0056
19.419	1513–0056
19.420	1513–0048
19.425	1513–0056
19.427	1513–0056
19.431	1513–0056
19.434	1513–0048
	1513–0056
19.435	1513–0056
19.436	1513–0045
	1513–0083
19.441	1513–0048
19.452	1513–0030
	1513–0056
19.454	1513–0056
19.457	1513–0056
19.459	1513–0048
	1513–0056
19.461	1513–0045
19.462	1513–0030
	1513–0039
	1513–0048
	1513–0056
19.464	1513–0030
	1513–0045
19.465	1513–0045
	1513–0056
	1513–0083
19.478	1513–0080
19.487	1513–0048
19.513	1513–0020
19.571	1513–0039
	1513–0045
	1513–0049
	1513–0056
	1513–0088
19.572	1513–0049
19.573	1513–0039
	1513–0049
	1513–0056
	1513–0088
19.574	1513–0039
	1513–0045
	1513–0049
	1513–0056
	1513–0088
19.575	1513–0039
	1513–0045
	1513–0049
	1513–0056
	1513–0088
19.576	1513–0039
	1513–0045
	1513–0049
	1513–0056
	1513–0088
19.577	1513–0039
	1513–0045
	1513–0056
	1513–0088
19.580	1513–0039
	1513–0045
	1513–0049
	1513–0088
19.581	1513–0039
	1513–0045
	1513–0049
	1513–0088
19.584	1513–0047
19.585	1513–0047
19.586	1513–0047
19.590	1513–0039
19.591	1513–0039
19.592	1513–0039
19.593	1513–0039
19.596	1513–0041
19.597	1513–0041
19.598	1513–0041
19.599	1513–0041
19.600	1513–0041
19.601	1513–0041
19.602	1513–0041
19.603	1513–0041
19.604	1513–0041
19.606	1513–0049
19.607	1513–0049
19.611	1513–0045
	1513–0088
19.612	1513–0045
	1513–0088
19.613	1513–0045
19.614	1513–0045
19.615	1513–0045
19.616	1513–0056
19.617	1513–0056
19.618	1513–0056
19.619	1513–0056
19.620	1513–0038
	1513–0056
19.621	1513–0056
19.623	1513–0056
19.624	1513–0041
19.626	1513–0056
19.627	1513–0044
19.632	1513–0039
	1513–0041
	1513–0047
	1513–0049
	1513–0049
	1513–0088
19.641	1513–0081
19.643	1513–0081
19.644	1513–0081
19.645	1513–0081
19.650	1513–0081
	1513–0088
19.665	1513–0052
19.666	1513–0052
19.667	1513–0052
19.669	1513–0088
19.670	1513–0088
	1513–0113
19.673	1513–0051
19.675	1513–0051
19.676	1513–0014
	1513–0051
19.677	1513–0051
19.680	1513–0051
19.683	1513–0051
	1513–0052
19.684	1513–0051
19.685	1513–0051
	1513–0052
	1513–0088
19.686	1513–0051
	1513–0088
19.687	1513–0052
	1513–0088
19.688	1513–0051
	1513–0088
19.689	1513–0051
	1513–0088
19.690	1513–0051
	1513–0088
19.692	1513–0051
	1513–0052
	1513–0088
19.695	1513–0052
19.709	1513–0052
19.710	1513–0052
19.714	1513–0052
19.715	1513–0052
	1513–0088
19.716	1513–0052
	1513–0088
19.717	1513–0052
19.718	1513–0052
	1513–0088
19.719	1513–0052
19.720	1513–0052
19.724	1513–0052
19.727	1513–0052
19.729	1513–0052
19.733	1513–0052
19.734	1513–0052
19.735	1513–0038
	1513–0052
19.736	1513–0052
19.739	1513–0052
19.746	1513–0052
19.747	1513–0052
19.749	1513–0052
	1513–0052
19.752	1513–0052

Signed: July 31, 2007.

John J. Manfreda,

Administrator.

Approved: November 14, 2007.

Timothy E. Skud,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

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Thursday,
May 8, 2008

Part III

The President

Proclamation 8252—Military Spouse Day, 2008

Federal Register
Vol. 73, No. 90
Thursday, May 8, 2008

Presidential Documents

Title 3—

The President

Proclamation 8252 of May 5, 2008

Military Spouse Day, 2008

By the President of the United States of America

A Proclamation

Military spouses embody the courage, nobility of duty, and love of country that inspire every American. On Military Spouse Day, we pay tribute to the husbands and wives who support their spouses in America's Armed Forces during times of war and peace.

The legacy of military spouses began when colonial Americans were fighting for independence. Martha Washington boosted the morale of her husband's troops by visiting battlefields and tending to the wounded. Since then, members of our Armed Forces have served our Nation accompanied by the steadfast love and support of their spouses and families.

While our men and women in uniform are protecting our country's founding ideals of liberty, democracy, and justice, their spouses live with uncommon challenges, endure sleepless nights, and spend long periods raising children alone. Many military spouses are also committed volunteers, serving other military families and local communities. Our Nation benefits from the sacrifices of our military families, and we are inspired by their courage, strength, and leadership.

On Military Spouse Day and throughout the year, we honor the commitment spouses have made to freedom's cause. To learn about ways to support our troops and their spouses and families, I encourage all Americans to visit www.americasupportsyou.mil.

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 May 9, 2008, as Military Spouse Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities and by expressing their gratitude to the husbands and wives of those serving in the United States Armed Forces.

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

[FR Doc. 08–1240
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Federal Register

Vol. 73, No. 90

Thursday, May 8, 2008

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Presidential Documents

Executive orders and proclamations **741–6000**

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Privacy Act Compilation **741–6064**

Public Laws Update Service (numbers, dates, etc.) **741–6043**

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FEDERAL REGISTER PAGES AND DATE, MAY

23939–24138 1
24139–24496 2
24497–24850 5
24851–25502 6
25503–25960 7
25961–26312 8

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

1200 24139

3 CFR

Proclamations:
8247 24133
8248 24135
8249 24137
8250 25501
8251 25503
8252 26311

Executive Orders:
EO 13464 24491

5 CFR

250 24851

7 CFR

305 24851
318 24851
319 25505
1221 25398

Proposed Rules:
319 24886

12 CFR

201 25505

Proposed Rules:
261a 25594
712 23982
741 23982

14 CFR

21 24497
39 ..... 23939, 23942, 24141, 24143, 24145, 24147, 24149, 24151, 24153, 24155, 24157, 24160, 24162, 24164, 24168, 24856, 24858, 24864, 25961, 25962, 25967, 25970, 25974, 25977, 25984, 25986, 25990, 25997
71 ..... 25506, 25999
95 23944
97 24171
121 25506

Proposed Rules:
39 ..... 23988, 23990, 23993, 23995, 24887, 25597, 25599, 25601, 25606, 25609, 25612, 26043, 26045
71 ..... 26047, 26048
91 26049
125 26049
135 26049

15 CFR

774 26000

16 CFR

Proposed Rules:
317 25614

18 CFR

35 25832
381 23946

20 CFR

401 25507
402 25507
403 26001

21 CFR

101 23947
529 25507

26 CFR

Proposed Rules:
1 24186

27 CFR

Proposed Rules:
19 26200

30 CFR

Proposed Rules:
732 24120
785 24120
870 24120
872 24120

32 CFR

204 23953
706 24173

Proposed Rules:
199 24509

33 CFR

100 ..... 25508, 26002, 26005, 26007
101 25562
102 25562
104 25562
105 25562
106 25562
117 24866
155 24497
156 24497
165 ..... 26017, 26019

Proposed Rules:
110 26054
117 24510
165 ..... 24513, 24889, 24899, 24901, 24904, 25624

34 CFR

Proposed Rules:
5b 26056

37 CFR

Proposed Rules:
201 25627

38 CFR

3 24868

39 CFR

111.....25508, 25509

40 CFR

9.....25098
51.....24174
52 .....23957, 23959, 24174, 24175, 24500, 24868, 25516, 26019
60.....24870
61.....24870
62.....24870
63.....24870
70.....24174
71.....24174
85.....25098
86.....25098
89.....25098
92.....25098
94.....25098
180 .....25518, 25524, 25528, 25533
300.....26025
1033.....25098
1039.....25098
1042.....25098
1065.....25098
1068.....25098

Proposed Rules:

52 .....23998, 24187, 24515, 26059
704.....24187
720.....24187
721.....24187
723.....24187

41 CFR

302-17.....25539

42 CFR

412.....24871

Proposed Rules:

413.....25918
418.....24000

44 CFR

64.....24178
65.....26026
67 .....25542, 25560, 26030

Proposed Rules:

67 .....24036, 25633, 26060

46 CFR

10.....25562
12.....25562
15.....25562

47 CFR

0.....25566
1.....25420
2.....25420
20.....25566
24.....24180
25.....25420, 25591
27.....24180, 26032
68.....25566
73.....25420
74.....25420
76.....24502
90.....25420
97.....25420

Proposed Rules:

27.....26067
76.....24515

48 CFR

3002.....25592
3036.....24881
9904.....23961

49 CFR

29.....24139
1572.....25562

Proposed Rules:

18.....24188
19.....24188
107.....24519
512.....26071
523.....24352
531.....24190, 24352
533.....24190, 24352
534.....24352
536.....24352
537.....24352
544.....24906

50 CFR

17.....23966
660.....25592
229.....23970
622.....24883, 24884
648.....24885
660.....23971
679.....24184

Proposed Rules:

17 .....24910, 24911, 24915, 25354
80.....24523
600.....24922
635.....24922
648.....24936

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 8, 2008

COMMERCE DEPARTMENT
Industry and Security Bureau
Technical Corrections to the Export Administration Regulations based upon a Systematic Review of the CCL; Correction; published 5-8-08

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and Threatened Species:
Designation of Critical Habitat for North Pacific Right Whale; published 4-8-08
Endangered and Threatened Wildlife:
Sea Turtle Conservation; published 4-8-08
Fisheries of the Northeastern United States:
Tilefish Fishery; Quota Harvested for Full-time Tier 2 Category; published 5-6-08

ENVIRONMENTAL PROTECTION AGENCY
National Priorities List; published 5-8-08

SOCIAL SECURITY ADMINISTRATION
Testimony by Employees and the Production of Records and Information in Legal Proceedings; Change, etc.; published 5-8-08

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness Directives:
Air Tractor, Inc. Models AT-300, et al.; published 4-28-08
Boeing Model 757 Airplanes and Model 767 200, 767 300, and 767 300F Series Airplanes; published 4-23-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
National Organic Program, Sunset Review; comments due by 5-13-08; published 3-14-08 [FR E8-05103]
Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Increased Assessment Rate; comments due by 5-13-08; published 3-14-08 [FR E8-05102]

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
National School Lunch, Special Milk and School Breakfast Programs—
Free and reduced price meals; comments due by 5-12-08; published 11-13-07 [FR E7-22053]

AGRICULTURE DEPARTMENT
Rural Housing Service
Community Facilities Grant Program; comments due by 5-16-08; published 3-17-08 [FR E8-05271]
Income Limit Modification; comments due by 5-12-08; published 4-10-08 [FR E8-07205]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program; comments due by 5-15-08; published 3-31-08 [FR E8-06584]
Fisheries of the Northeastern United States:
Scallop Dredge Exemption Areas; Addition of Monkfish Incidental Catch Trip Limits; comments due by 5-14-08; published 4-29-08 [FR E8-09353]
Listing Endangered and Threatened Species and Designating Critical Habitat:
Finding on a Petition to List Five Rockfish Species in Puget Sound (Washington) as Endangered or Threatened Species; comments due by 5-16-08; published 3-17-08 [FR E8-05309]
Listing Endangered and Threatened Species:
Petition to List Pacific Eulachon; comments due by 5-12-08; published 3-12-08 [FR E8-04957]
Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Shock Trial; comments due by 5-12-08; published 4-11-08 [FR E8-07778]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Mandatory Reliability Standard for Nuclear Plant Interface Coordination; comments due by 5-13-08; published 4-23-08 [FR E8-08615]

ENVIRONMENTAL PROTECTION AGENCY
Air Quality Implementation Plans; Approval and Promulgation:
Pennsylvania; 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory, Wayne County Area; comments due by 5-14-08; published 4-14-08 [FR E8-07875]
Approval and Promulgation of Air Quality Implementation Plans:
Maryland; comments due by 5-15-08; published 4-15-08 [FR E8-08005]
Approval and Promulgation of Implementation Plans:
Iowa; comments due by 5-15-08; published 4-15-08 [FR E8-07815]
Environmental Statements; Notice of Intent:
Coastal Nonpoint Pollution Control Programs; States and Territories—
Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]
National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; comments due by 5-16-08; published 4-1-08 [FR E8-06544]

FEDERAL DEPOSIT INSURANCE CORPORATION
Agency Information Collection Activities: Submission for OMB Review; Comment Request; comments due by 5-14-08; published 4-14-08 [FR E8-07847]

FEDERAL TRADE COMMISSION
Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products; comments due by 5-12-08; published 2-27-08 [FR E8-03715]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare Program; Application of Certain Appeals Provisions to the Medicare Prescription Drug Appeals Process; comments due by 5-16-08; published 3-17-08 [FR E8-05189]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food Labeling:
Health Claims; Soluble Fiber From Certain Foods and Risk of Coronary Heart Disease; comments due by 5-12-08; published 2-25-08 [FR E8-03418]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge Operation Regulations:
Gulf Intracoastal Waterway, mile 49.8, near Houma, Lafourche Parish, LA; comments due by 5-12-08; published 3-12-08 [FR E8-04940]
Regulated Navigation Areas, Safety Zones, Security Zones, and Deepwater Port Facilities:
Navigable Waters of Boston Captain of the Port Zone; comments due by 5-12-08; published 4-11-08 [FR E8-07676]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 5-13-08; published 3-14-08 [FR E8-05104]
Real Estate Settlement Procedures Act (RESPA):
Proposed Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs; comments due by 5-13-08; published 3-14-08 [FR 08-01015]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and Threatened Wildlife and Plants:
Designation of Critical Habitat; Bay Checkerspot Butterfly (Euphydryas editha bayensis); comments due by 5-15-08; published 4-15-08 [FR E8-07689]
Revised Designation of Critical Habitat for the San Bernardino Kangaroo Rat (Dipodomys merriami

parvus); comments due by 5-16-08; published 4-16-08 [FR E8-06874]

LABOR DEPARTMENT

Mine Safety and Health Administration

Petitions for Modification; comments due by 5-14-08; published 4-14-08 [FR E8-07804]

NUCLEAR REGULATORY COMMISSION

Power Reactor Security Requirements; comments due by 5-12-08; published 4-10-08 [FR E8-07582]

PERSONNEL MANAGEMENT OFFICE

Competitive Area; comments due by 5-15-08; published 4-15-08 [FR E8-07968]

SECURITIES AND EXCHANGE COMMISSION

Foreign Issuer Reporting Enhancements; comments due by 5-12-08; published 3-12-08 [FR E8-04366]

STATE DEPARTMENT

Amendment to the International Traffic in Arms Regulations:

The United States Munitions List; comments due by 5-14-08; published 4-11-08 [FR 08-01122]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

ATR Model ATR42 Airplanes and Model ATR72-101, -102, -201, -202, 211, and 212 Airplanes; comments due by 5-12-08; published 4-11-08 [FR E8-07658]

Bell Helicopter Textron, Inc.; comments due by 5-12-08; published 3-13-08 [FR E8-05060]

Boeing Model 737-300, -400, and -500 Series Airplanes; comments due by 5-12-08; published 3-26-08 [FR E8-06106]

Boeing Model 747 100, 747 200B, 747 300, and 747SR Series Airplanes; comments due by 5-16-08; published 4-1-08 [FR E8-06613]

Bombardier Model CL 600 1A11 (CL 600), et al.; comments due by 5-14-08; published 4-14-08 [FR E8-07592]

Cessna Aircraft Co. Model 525 Airplanes; comments due by 5-12-08; published 3-13-08 [FR E8-05005]

Cirrus Design Corporation Model SR20 Airplanes; comments due by 5-12-08; published 3-12-08 [FR E8-04864]

General Avia Costruzioni Aeronatiche Models F22B, F22C, and F22R Airplanes; comments due by 5-12-08; published 4-11-08 [FR E8-07657]

Helicopters, Inc. Model 369A, OH-6A, 369D, 369E, 369F, 369FF, 369H, 369HE, 369HM, and 369HS Helicopters; comments due by 5-12-08; published 3-13-08 [FR E8-05068]

M7 Aerospace LP SA226 and SA227 Series Airplanes; comments due by 5-13-08; published 3-14-08 [FR E8-05193]

MORAVAN a.s. Model Z-143L Airplanes; comments due by 5-12-08; published 4-11-08 [FR E8-07654]

Airworthiness Directives; Cessna Aircraft Company, Models 208 and 208B Airplanes; comments due by 5-16-08; published 3-17-08 [FR E8-05269]

Class D Airspace:

San Bernardino International Airport, San Bernardino, CA; comments due by 5-14-08; published 4-17-08 [FR E8-08311]

Class E Airspace:

Deadhorse, AK, Revision; comments due by 5-15-08; published 3-31-08 [FR E8-06597]

Class E Airspace; Establishment:

Hinton, OK; comments due by 5-12-08; published 3-26-08 [FR E8-05931]

Class E Airspace; Modification:

Staunton, VA; comments due by 5-15-08; published 3-31-08 [FR E8-06330]

Proposed Establishment of Class E Airspace:

Salida, CO; comments due by 5-12-08; published 3-28-08 [FR E8-06317]

Special Conditions:

Embraer S.A., Model ERJ 190-100 ECJ Airplane; Fire Protection; comments due by 5-12-08; published 4-21-08 [FR E8-08577]

Embraer S.A., Model ERJ 190-100 ECJ Airplane; Flight-Accessible Class C Cargo Compartment; comments due by 5-12-08; published 4-21-08 [FR E8-08582]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Federal Motor Vehicle Safety Standards, Child Restraint Systems; Anthropomorphic Test Devices; comments due by 5-12-08; published 3-26-08 [FR 08-01072]

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials:

Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments; comments due by 5-16-08; published 4-16-08 [FR E8-08185]

Pipeline Safety:

Standards for Increasing the Maximum Allowable Operating Pressure for Gas Transmission Pipelines; comments due by 5-12-08; published 3-12-08 [FR E8-04656]

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Rail Transportation Contracts; comments due by 5-12-08; published 3-13-08 [FR E8-05058]

TREASURY DEPARTMENT

Internal Revenue Service

Payments from the Presidential Primary Matching Payment Account; comments due by 5-14-08; published 2-14-08 [FR 08-00675]

VETERANS AFFAIRS DEPARTMENT

Elimination of Co-payment for Weight Management Counseling; comments due by 5-16-08; published 4-16-08 [FR E8-08097]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3196/P.L. 110–210

To designate the facility of the United States Postal Service located at 20 Sussex Street in Port Jervis, New York, as the ''E. Arthur Gray Post Office Building''. (May 7, 2008; 122 Stat. 723)

H.R. 3468/P.L. 110–211

To designate the facility of the United States Postal Service located at 1704 Weeksville Road in Elizabeth City, North Carolina, as the ''Dr. Clifford Bell Jones, Sr. Post Office''. (May 7, 2008; 122 Stat. 724)

H.R. 3532/P.L. 110–212

To designate the facility of the United States Postal Service located at 5815 McLeod Street in Lula, Georgia, as the ''Private Johnathon Millican Lula Post Office''. (May 7, 2008; 122 Stat. 725)

H.R. 3720/P.L. 110–213

To designate the facility of the United States Postal Service located at 424 Clay Avenue in Waco, Texas, as the ''Army PFC Juan Alonso Covarrubias Post Office Building''. (May 7, 2008; 122 Stat. 726)

H.R. 3803/P.L. 110–214

To designate the facility of the United States Postal Service located at 3100 Cashwell Drive in Goldsboro, North Carolina, as the ''John Henry Wooten, Sr. Post Office Building''. (May 7, 2008; 122 Stat. 727)

H.R. 3936/P.L. 110–215

To designate the facility of the United States Postal Service located at 116 Helen Highway in Cleveland, Georgia, as the ''Sgt. Jason Harkins Post Office Building''. (May 7, 2008; 122 Stat. 728)

H.R. 3988/P.L. 110–216

To designate the facility of the United States Postal Service located at 3701 Altamesa Boulevard in Fort Worth, Texas, as the ''Master Sergeant Kenneth N. Mack Post Office Building''. (May 7, 2008; 122 Stat. 729)

H.R. 4166/P.L. 110–217

To designate the facility of the United States Postal Service

located at 701 East Copeland Drive in Lebanon, Missouri, as the ''Steve W. Allee Carrier Annex''. (May 7, 2008; 122 Stat. 730)

H.R. 4203/P.L. 110–218

To designate the facility of the United States Postal Service located at 3035 Stone Mountain Street in Lithonia, Georgia, as the ''Specialist Jamaal RaShard Addison Post Office Building''. (May 7, 2008; 122 Stat. 731)

H.R. 4211/P.L. 110–219

To designate the facility of the United States Postal Service located at 725 Roanoke Avenue in Roanoke Rapids, North Carolina, as the ''Judge Richard B. Allsbrook Post Office''. (May 7, 2008; 122 Stat. 732)

H.R. 4240/P.L. 110–220

To designate the facility of the United States Postal Service located at 10799 West Alameda Avenue in Lakewood, Colorado, as the ''Felix Sparks Post Office Building''. (May 7, 2008; 122 Stat. 733)

H.R. 4454/P.L. 110–221

To designate the facility of the United States Postal Service located at 3050 Hunsinger Lane in Louisville, Kentucky, as the ''Iraq and Afghanistan Fallen Military Heroes of Louisville Memorial Post Office Building'', in honor of the servicemen and women from Louisville, Kentucky, who died in service during Operation Enduring Freedom and Operation Iraqi Freedom. (May 7, 2008; 122 Stat. 734)

H.R. 5135/P.L. 110–222

To designate the facility of the United States Postal Service located at 201 West Greenway Street in Derby, Kansas, as the ''Sergeant Jamie O. Maugans Post Office Building''. (May 7, 2008; 122 Stat. 735)

H.R. 5220/P.L. 110–223

To designate the facility of the United States Postal Service located at 3800 SW. 185th Avenue in Beaverton, Oregon, as the ''Major Arthur Chin Post Office Building''. (May 7, 2008; 122 Stat. 736)

H.R. 5400/P.L. 110–224

To designate the facility of the United States Postal Service located at 160 East Washington Street in Chagrin Falls, Ohio, as the ''Sgt. Michael M. Kashkoush Post Office Building''. (May 7, 2008; 122 Stat. 737)

H.R. 5472/P.L. 110–225

To designate the facility of the United States Postal Service located at 2650 Dr. Martin Luther King Jr. Street, Indianapolis, Indiana, as the ''Julia M. Carson Post Office Building''. (May 7, 2008; 122 Stat. 738)

H.R. 5489/P.L. 110–226

To designate the facility of the United States Postal Service located at 6892 Main Street in Gloucester, Virginia, as the ''Congresswoman Jo Ann S. Davis Post Office''. (May 7, 2008; 122 Stat. 739)

H.R. 5715/P.L. 110–227

Ensuring Continued Access to Student Loans Act of 2008 (May 7, 2008; 122 Stat. 740)

Last List May 7, 2008

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