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9 a.m.–12:30 p.m.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS–FV–10–0060; FV10–984–1 FIR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the California Walnut Board (Board) for the 2010–11 and subsequent marketing years from $0.0177 to $0.0174 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order that regulates the handling of walnuts grown in California. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* Effective February 17, 2011.

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

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

Under the order, California walnut handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable walnuts for the entire marketing year, and continue until amended, suspended, or terminated. The marketing year begins on September 1 and ends on August 31.

In an interim rule published in the **Federal Register** on September 15, 2010, and effective on September 16, 2010 (75 FR 55944, Doc. No. AMS–FV–10–0060; FV 10–984–1 IR), § 984.347 was amended by decreasing the assessment rate established for the Board for the 2010–11 and subsequent marketing years from $0.0177 to $0.0174 per kernelweight pound of assessable walnuts. The decrease in assessment rate was possible due to an expected increase in the quantity of assessable walnuts in the 2010–2011 marketing year.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 4,500 growers of California walnuts in the production area and approximately 58 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

USDA's National Agricultural Statistics Service (NASS) reports that the average yield for the 2009–10 crop was 1.96 tons per acre and the value of the 2009–10 crop was $1,690 per ton. Approximately 90 percent of California's walnut farms are smaller than 100 acres. A 100-acre farm with an average yield would have produced about 196 tons of walnuts during 2009–10. At $1,690 per ton, that farm's production would have had an approximate value of $331,240. Based on these numbers, the majority of growers had receipts of less than $750,000. According to information supplied by the industry, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under $7,000,000 during the 2009–10 marketing year. Therefore, the majority of California's walnut growers and handlers could be considered small entities according to SBA's definition.

This rule continues in effect the action that decreased the assessment rate established for the Board and collected from handlers for the 2010–11 and subsequent marketing years from $0.0177 to $0.0174 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2010–11 expenditures of $6,812,100 and an assessment rate of $0.0174 per kernelweight pound of assessable walnuts, which is $0.0003 lower than the rate previously in effect. The quantity of assessable walnuts for the 2010–11 marketing year is estimated at 391,500,000 kernelweight pounds. Thus, the $0.0174 rate should provide $6,812,100 in assessment income and be adequate to cover budgeted expenses.

Major budget expenditures recommended by the Board for the 2010–11 marketing year include: $4,400,000 for domestic market development, $1,042,000 for production research, $577,500 for employee

expenses, and $118,850 for office expenses. Budgeted expenses for these items in 2009–2010 were $4,030,500, $725,000, $535,000, and $123,750, respectively.

The Board recommended decreasing the assessment rate due to an expected increase in the quantity of assessable walnuts in the 2010–11 marketing year.

Prior to arriving at this budget, the Board considered alternative expenditure levels but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate of $0.0174 per kernelweight pound of assessable walnuts was derived by dividing anticipated expenses of $6,812,100 by expected 2010–11 shipments of California walnuts. Merchantable shipments for the year are estimated at 391,500,000 kernelweight pounds, which should provide $6,812,100 in assessment income and allow the Board to cover its expenses.

Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses. If not retained in a financial reserve, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom they were collected within five months after the end of the year, according to § 984.69 of the order.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2010–2011 season could range between $1.42 and $1.88 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2010–2011 season as a percentage of total grower revenue could range between 0.9 and 1.2 percent.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the cost savings may be passed on to growers. The Board's meeting was widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the June 11, 2010, meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue.

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

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

Comments on the interim rule were required to be received on or before November 15, 2010. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change. To view the interim rule, go to *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480b4f686.*

This action also affirms information contained in the interim rule concerning the Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (75 FR 55944, September 15, 2010) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

PART 984—WALNUTS GROWN IN CALIFORNIA

Accordingly, the interim rule amending 7 CFR part 984, which was published at 75 FR 55944 on September 15, 2010, is adopted as a final rule, without change.

Dated: February 10, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–3500 Filed 2–15–11; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AI09

[NRC–2008–0361]

License and Certificate of Compliance Terms

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations that govern licensing requirements for the independent storage of spent nuclear fuel. These amendments include changes that enhance the effectiveness and efficiency of the licensing process for spent nuclear fuel storage. Specifically, they extend and clarify the term limits for storage cask Certificates of Compliance (CoCs) and independent spent fuel storage installation (ISFSI) specific licenses. The amendments also provide consistency between the general and specific ISFSI license requirements, and allow general licensees subject to these regulations to implement changes authorized by an amended CoC to a cask loaded under the initial CoC or an earlier amended CoC (a "previously loaded cask").

DATES: *Effective Date:* This final rule is effective on May 17, 2011.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2008–0361. Address questions about NRC dockets to Carol Gallagher at 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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FOR FURTHER INFORMATION CONTACT: Keith McDaniel, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–415–5252, *e-mail: Keith.McDaniel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 29, 2002, the Virginia Power and Electric Company (Dominion) submitted an application to renew Special Nuclear Materials (SNM) License SNM–2501 for the Surry ISFSI. SNM–2501 authorizes the storage of spent nuclear fuel in casks at the Surry Nuclear Power Plant. In the renewal application, Dominion requested an exemption from the 20-year license renewal term specified in 10 CFR 72.42(a) and sought approval for a 40-year license renewal term. Similarly, on February 27, 2004, Progress Energy Carolinas, Inc. submitted an application for the renewal of H. B. Robinson's ISFSI license which requested an exemption from the provisions of § 72.42(a), so that the license renewal period for the H. B. Robinson's ISFSI could be extended from 20 to 40 years.

The NRC staff determined the 40-year renewal exemption request to be a policy decision, not a technical one, because the safety evaluation indicated sufficient technical information had been provided in the application to grant the 40-year renewal period. As a result, a Commission paper (SECY–04–0175) entitled, "Options for Addressing the Surry Independent Spent Fuel Storage Installation License-Renewal Period Exemption Request," was submitted on September 28, 2004, to request Commission approval of the Surry 40-year renewal exemption request.

On November 29, 2004, the Commission issued a Staff Requirements Memorandum (SRM) for SECY–04–0175, which authorized the NRC staff to approve a 40-year license renewal term for the Surry ISFSI, with appropriate license conditions to manage the effects of aging. The SRM further directed the NRC staff to: (1) Initiate a program to review the technical basis for future rulemaking; (2) provide recommendations on the license term for part 72 CoCs for spent nuclear fuel cask storage systems; and (3) apply the Commission-approved guidance for part 72 renewals to future specific license exemption requests without further Commission approval. In response to this direction, the staff submitted a Commission paper (SECY–06–0152) entitled, "Title 10 *Code of Federal Regulations* part 72 License and Certificate of Compliance Terms," on July 7, 2006, to recommend the scope of rulemaking.

In an SRM, dated August 14, 2006, the Commission authorized the staff to proceed with rulemaking proposals described in SECY–06–0152. In addition, the Commission specifically directed the staff to address the following points in the rulemaking: (1) Clarify the start of the 20-year term limit for cask designs approved under general license provisions; (2) identify whether the cask vendor or licensee is responsible for applying for the CoC renewals; (3) discuss possible conflicts that could arise for storage cask designs that are granted a license term extension and that have been approved for transport with a different license term; (4) discuss how the cask expiration dates are tracked at each general license site so that it is clearly understood when the CoC for each cask design must be renewed; and (5) clarify the difference between CoC "approval" and "renewal."

As this rulemaking commenced, the NRC staff identified a related issue regarding its approval of Amendment 4 to CoC 72–1026, which revised cask monitoring and surveillance requirements for the BNG Fuel Solutions W–150 storage cask. Subsequent to the approval, the certificate holder requested guidance from the NRC on the implementation of the changes authorized by the CoC amendment to previously loaded casks. In addition to this request, the NRC staff became aware of the belief among some general licensees that changes authorized by CoC amendments can be applied to previously loaded casks without prior NRC approval, if an analysis under § 72.48 is performed.

The NRC staff determined that under the current regulations, changes authorized by CoC amendments cannot be applied to previously loaded casks without express NRC approval, if such change results in a change to the terms or conditions of the CoC under which the cask was loaded. A previously loaded cask is bound by the terms and conditions (including the technical specifications) of the CoC applicable to that cask when the licensee loaded the cask. Therefore, under the current regulations, general licensees that want to apply changes approved by a CoC amendment to a previously loaded cask must request an exemption from the

NRC if these changes alter the terms or conditions of the CoC under which that cask was loaded.

In the SRM for COMSECY–07–0032, dated December 12, 2007, the Commission stated that it did not object to the staff expanding the scope of the proposed rulemaking to include the following two issues: (1) To extend the terms of specific ISFSI licenses, for both initial and renewal terms, to not to exceed 40 years; and (2) to allow a general licensee to apply changes for a CoC amendment to a previously loaded cask without express NRC approval, while still ensuring that this action protects public health and safety.

In the August 14, 2006, SRM for SECY–06–0152, the Commission directed the NRC staff to be as transparent as possible in developing the proposed rule package, including making draft text available for comment to stakeholders, and holding public meetings, if necessary, before formal submission of the proposed rule to the Commission. In response, the NRC staff held public meetings on November 7, 2006, and February 29, 2008, to discuss the technical basis of the rulemaking with stakeholders. In addition, on August 4, 2008, the NRC staff made preliminary draft rule text available for comment to stakeholders on Regulations.gov (Docket ID NRC–2008–0361). The only external stakeholders that submitted comments were the Nuclear Energy Institute and Florida Power and Light. The comments generally supported the rulemaking. The "Discussion" section of this document includes NRC responses to significant stakeholder comments.

The NRC published the proposed rule, "License and Certificate of Compliance Terms" in the **Federal Register** on September 15, 2009 (74 FR 47126), for public comment. The NRC received five comment letters on the proposed rule. These comments and the NRC responses are discussed in Section III of this document, "Summary and Analysis of Public Comments on the Proposed Rule."

II. Discussion

A. What action is the NRC taking, and why?

The NRC is revising part 72 requirements for specific and general ISFSI licensees and part 72 requirements pertaining to CoCs to enhance the effectiveness and efficiency of the licensing process.

For specific ISFSI licenses, the Commission is codifying a technical approach consistent with that applied in granting the 40-year exemptions for the Surry and H. B. Robinson specific ISFSI license renewals, so that all specific ISFSI licensees will have the flexibility to request initial and renewal terms not to exceed 40 years while ensuring safe and secure storage of spent nuclear fuel.

For CoCs, the Commission is also allowing the flexibility for CoC applicants and CoC holders to request, respectively, initial terms and renewal terms not to exceed 40 years. The response to Question "C" of this section discusses the technical basis for this change. Under this change, applicants and CoC holders will be required to demonstrate that design and operational programs are suitable for the requested term. The NRC staff has developed a standard review plan (SRP) for renewal applications. The final rule amendments also clarify the term (length) of the general license, particularly as the general license term relates to CoC renewals (*see* the response to Question "I" of this section for further detail).

For both specific licenses and CoCs, the final rule adds a requirement that renewal applicants must provide TLAAs and a description of an AMP (*see* the responses to Questions "F", "G", and "H") to ensure that storage casks will perform as designed under extended license terms.

The NRC is replacing the term "reapproval," which is used to describe the process of extending the CoC terms, to "renewal" for consistency with specific license terminology. Question "E" of this section discusses the rationale for this change.

The final rule will also allow general licensees to implement changes authorized by a CoC amendment to a previously loaded cask, provided that the loaded cask then conforms to the CoC amendment codified by the NRC in § 72.214 and thus, continues to ensure the safe and secure storage of spent nuclear fuel. Question "N" of this section discusses the rationale for this change.

B. Whom does this action affect?

The final rule will affect part 72 specific and general licensees and CoC holders and applicants for a CoC.

C. Why is the NRC increasing initial terms and renewal terms for specific ISFSI licenses from not to exceed 20 years to not to exceed 40 years?

The NRC is amending § 72.42 to increase the initial terms and renewal terms for specific ISFSI licenses from not to exceed 20 years to not to exceed 40 years. This increase is consistent with the NRC staff's findings regarding the safety of spent nuclear fuel storage, as documented in the renewal exemptions issued to the Surry and H. B. Robinson ISFSIs. During the review for the Surry and H. B. Robinson renewal applications, the NRC staff evaluated the technical data resulting from an NRC-supported research program at the Idaho National Laboratory (INL), formerly Idaho National Engineering and Environmental Laboratory, and also considered experience with spent fuel storage casks used at Surry. Under the INL research program, INL opened a storage cask after the fuel had been stored for approximately 15 years. At Surry, several casks were also opened after less than 15 years of storage as a result of some faulty weather covers, which were corrected. Summaries of the findings regarding the condition of the fuel and cask components follow:

(1) Cladding creep is a time-dependent change in the dimension of the cladding resulting from high temperature and stress. It was considered as a potential degradation mechanism during storage. Confirmatory inspection of the spent fuel stored at INL verified that no cladding creep had occurred. The spent fuel in storage at Surry also supports this finding. The NRC staff expects very little to no fuel degradation at the end of an extended licensing period. The established limits for cladding temperature during storage accompanied by a continually decreasing level of cladding stress and temperature, further remove creep as a degradation mechanism. Assessment of these factors indicates that cladding creep will not be an issue during a 40 year term.

(2) The NRC staff also expects limited degradation of other internal components because there are no significant corrosive influences in the inert environment, either for the fuel or for other components. The INL inspection verified that there was no indication of corrosion for any internal canister components. The NRC staff has also concluded that radiation levels are too low to significantly alter the properties of the metals for any storage canister components.

(3) The other external components of the storage systems (which are exposed to weathering effects) would already be covered by an inspection and corrective action program, or routine maintenance, to ensure that any degradation will be identified and assessed for its importance to safety, and will be addressed through corrective actions to ensure continued safe operation of the storage system.

Based on these findings, the Commission concludes that, with

appropriate aging management and maintenance programs, license terms not to exceed 40 years are reasonable and protect public health and safety.

D. Can applicants apply for an initial term or renewal term greater than 40 years?

This final rule amends § 72.42 by extending the term allowed for specific ISFSI licenses from not to exceed 20 years to not to exceed 40 years. This extension applies to both the initial terms and renewal terms. Any request for a term greater than 40 years would be processed as an exemption under § 72.7. The NRC does not plan to ordinarily grant license term requests for greater than 40 years. As discussed in Question "C" of this section, the NRC believes that terms that do not exceed 40 years are reasonable and provide adequate protection of public health and safety, if the applicant demonstrates to the NRC appropriate aging management and maintenance programs.

If an applicant requests a specific license term greater than 40 years, that applicant would have to provide information on the long-term material degradation of spent fuel storage casks, as well as associated aging management activities, to justify safe operation during such an extended period, and the NRC would need to evaluate this information.

E. Why is the NRC changing the word "reapproval" to "renewal"?

The NRC is changing the word "reapproval" to "renewal" in the final rule to be consistent with the terminology used in other license requirements under part 72. Currently, § 72.240 uses "reapproval" to describe the process of extending the terms of CoCs. However, this terminology differs from other sections in part 72. For example, § 72.42 uses the word "renewal" to define the process for extending the term of specific ISFSI licenses, and § 72.212(a)(3) uses "renewals" to define the process for the continued use of storage casks of a particular design under a general license. Although "reapproval" and "renewal" are similar words, they are subject to different regulatory interpretations. "Renewal" typically implies a process whereby the term of an existing license or CoC is extended. As such, a renewal reaffirms the original design basis, perhaps with some modifications. "Reapproval," on the other hand, implies a process to reevaluate the original design basis in accordance with current review standards, which may be different from the standards in place when the cask design was initially certified.

In addition, the Statements of Consideration (SOC) for the final rule (55 FR 29184; July 18, 1990) that added the general license provisions to part 72 stated that "the procedure for reapproval of cask designs was not intended to repeat all the analyses required for the original approval." The referenced SOC also reported that, "the Commission believes that the staff should review spent fuel storage cask designs periodically to consider any new information, either generic to spent fuel storage or specific cask designs, that may have arisen since issuance of the Certificate of Compliance." Clearly, measures would need to be taken if the "new information" involves safety concerns. These measures would depend on the nature of the safety concerns and the cask design. Requests for Additional Information (RAIs) may be generated during the renewal process to prompt applicants for CoC renewals to address such safety concerns.

The NRC recognizes that a cask design certified years ago may not meet the latest standards, yet that design may be fully acceptable to continue to store spent fuel already loaded into casks of that design. If the cask design were subject to a reapproval process, and as such, to current standards, there is the possibility that certain components of the original design would not meet the current standards. Under this scenario, general licensees would be forced to remove the cask from service and repackage the spent fuel. Obviously, there are significant safety considerations if spent fuel were to be repackaged. When considering repackaging, safety considerations associated with the repackaging operation should be weighed against any safety concerns with leaving the spent fuel in its existing storage container. Although the NRC continuously updates its review standards, no compelling safety concerns have been identified to date that warrant the removal of spent fuel from a cask design that does not meet the latest review standards.

Thus, the NRC concludes that the review of extending the term of a currently approved cask design is more in the nature of a renewal, because it is based on the cask design standards in effect at the time the CoC was approved, rather than a reapproval, which is based on the current standards. By replacing the word "reapproval" with the word "renewal," the final rule revisions will remove ambiguity from the process for extending the terms of CoCs.

F. Why is the NRC adding a definition for the term "time-limited aging analyses" (TLAAs)?

Stakeholders asked for a definition of TLAAs when they reviewed the initial guidance document for the Surry and H. B. Robinson specific ISFSI license renewals. TLAA is a process to assess systems, structures, and components (SSCs) important to safety which have a time-dependent operating life. This final rule adds a definition of TLAA to the part 72 definitions section, § 72.3, and makes revisions to §§ 72.42(a)(1) and 72.240(c)(2), respectively, because TLAAs will be required for the renewal of a specific license and for the renewal of a spent fuel storage cask CoC.

G. What is an "aging management program" (AMP)?

An AMP is a program for addressing aging effects that may include prevention, mitigation, condition monitoring, and performance monitoring. The final rule adds a definition of AMP to the part 72 definitions section, § 72.3, because SSCs must be evaluated to demonstrate that aging effects will not compromise the SSCs' intended functions during the renewal period.

H. Why is the NRC requiring an AMP?

The NRC is amending §§ 72.42 and 72.240 to require that applicants for specific license and CoC renewals describe a program, in their applications, for the management of issues associated with aging that could adversely affect SSCs. In this regard, degradation of the SSCs at an ISFSI, such as degradation due to corrosion and radiation, are time-dependent mechanisms and are expected to be addressed in renewal applications. AMP requirements will ensure that SSCs will perform as designers intended during the renewal period. AMP requirements will be reflected in the terms, conditions and technical specifications of the renewed CoC and thus made applicable to the general licensee per § 72.212(b). For specific licensees, AMP requirements will be reflected in the terms and conditions of the renewed specific license.

I. Why is the NRC changing the 20-year general license term for cask designs approved for use under the general license provisions? When would a general license term begin and end?

The final rule changes the 20-year general license term limit for the storage of spent fuel in casks fabricated under a CoC to be consistent with the revisions to CoC initial and renewal terms (which

establish a CoC term not to exceed 40 years).

Under § 72.210, a general license for the storage of spent fuel in an ISFSI at power reactor sites is issued to those persons authorized to possess or operate nuclear power reactors under 10 CFR parts 50 or 52. The general license is limited to that spent fuel which the general licensee is authorized to possess at the site under the part 50 or 52 license for the site. The general license is further limited to storage of spent fuel in casks approved and fabricated under the provisions of subpart L of part 72; the approved cask designs are listed in § 72.214. Currently, the general licensee's authority to use a particular cask design under an approved CoC terminates 20 years after the date that the general licensee first uses the particular cask to store spent fuel, unless the cask's CoC is renewed, in which case the general license terminates 20 years after the CoC renewal date. In the event the cask's CoC were to expire, any loaded spent fuel storage casks of that design will need to be removed from service after a storage period not to exceed 20 years.

This final rule amends §§ 72.3 and 72.212(a)(3) to clarify the term of the general license and to match the term of the general license to the term of the applicable CoC. The final rule also amends § 72.3 by adding a definition for the phrase "the term certified by the cask's Certificate of Compliance," which is defined to mean, for a CoC that is not renewed, the period of time commencing with the CoC effective date and ending with the CoC expiration date, and for a renewed CoC, the period of time commencing with the most recent CoC renewal date and ending with the CoC expiration date.

The final rule amends § 72.212(a)(3) to clarify that the term of the general license runs through any renewal periods, unless otherwise specified in the CoC. In addition, the final rule also amends § 72.212(a)(3) to clarify that the general license term for those casks placed into service during the final renewal term of a CoC (*i.e.,* during the CoC term immediately preceding the expiration of the CoC), or similarly, during the term of a CoC that is not renewed, begins when the cask is first used (*i.e.,* when the cask is loaded with spent fuel) and expires after a storage period not to exceed the length of "the term certified by the cask's Certificate of Compliance."

The following scenarios are provided as illustrative examples:

Scenario 1: The CoC has a term of 20 years. The general licensee places a cask into service at the end of the 19th year of the CoC term. The CoC is not renewed and expires at the end of the 20th year; that is 1 year after the general licensee loaded the cask. The term of a general license for a cask shall be for a storage period not to exceed the term certified by the cask's CoC (*i.e.,* for a CoC that is not renewed, the period of time commencing with the CoC effective date and ending with the CoC expiration date). Thus, in this scenario, the general license commences upon loading at the end of the 19th year and runs for 20 years (terminating 19 years after the date of the CoC expiration, giving a storage period of 20 years).

Scenario 2: The initial CoC has a term of 20 years. The CoC is renewed (by rulemaking amending the appropriate entry in § 72.214) for 40 years. The general licensee places a cask into service at the end of the 39th year of the renewal term. The CoC is not renewed a second time and as such, expires 40 years after the effective date of the renewal amendment to § 72.214 (here, 1 year after the general licensee loaded the cask). The term of a general license for a cask shall be for a storage period not to exceed the term certified by the cask's CoC (*i.e.,* for a renewed CoC, that is the period of time commencing with the most recent CoC renewal date and ending with the CoC expiration date). Thus, in this scenario, the term of the general license for the cask would commence upon loading and terminate 40 years after loading (in this case, 39 years after expiration of the CoC, giving a storage period of 40 years).

Scenario 3: The initial CoC has a term of 20 years. The CoC is then renewed for 40 years. The general licensee places a cask into service at the end of the 39th year of the renewal term. The CoC is then renewed a second time for an additional 40 years. In this case, the general license would run through the second renewal period. Thus, the general license for that cask would commence upon loading and terminate at the expiration of the CoC (giving a storage period of 41 years).

Scenario 4: The initial CoC has a term of 20 years. The CoC is then renewed for 40 years. The general licensee places a cask into service at the end of the 39th year of the renewal term. The CoC is then renewed two more times, each additional CoC renewal term being for a 40-year period. In this case, the general license would run through both renewal periods. Thus, the general license for that cask would commence upon loading and terminate at the expiration of the CoC (giving a storage period of 81 years).

Scenario 5: The initial CoC has a term of 20 years. The CoC is then renewed for 40 years. The CoC is then renewed a second and final time, but only for a 30 year period. The general licensee places a cask into service at the end of the 29th year of the final renewal term. In this scenario, the general license for that cask would be for a storage period not to exceed the term certified by the cask's CoC (for a renewed CoC, that is the period of time commencing with the most recent CoC renewal date and ending with the CoC expiration date). Thus, in this scenario, the general license for this cask would commence upon loading and terminate 30 years after loading (in this case, 29 years after expiration of the CoC, giving a storage period of 30 years).

In short, the general license term for any given cask will be, at a minimum, for a storage period not to exceed "the term certified by the cask's CoC" (as that term is defined in § 72.3). The rationale for extending the general license through any CoC renewal term is two-fold. First, the extension of the general license through a CoC renewal term is premised upon the licensee implementing all appropriate aging management requirements. Second, the NRC concluded that the occupational risks of taking a cask out of service and repackaging the spent fuel into another storage cask exceed the risks of leaving the spent fuel in the original cask.

J. Are there possible conflicts that could arise for storage cask designs that are granted a term extension that are also approved for a different term limit as a transportation package?

The Commission raised this issue in its SRM for SECY–06–0152, dated August 14, 2006. The NRC staff does not foresee any possible conflicts. The current regulations in part 72 encourage, but do not require, storage cask designs to have a compatible, approved transportation cask. So called "dual use" systems must be separately certified under the requirements in 10 CFR part 71 (transportation) and part 72 (storage). Typically, the only common item between these systems is the inner canister, which holds the spent fuel contents.

Part 71 certificates for transportation packages are issued for a 5-year term whereas part 72 CoCs are issued for much longer periods (under the current regulations, all approved CoCs have 20-year terms; under this final rule, the CoC term is extended to a not to exceed 40-year term). For each transportation cask certified under 10 CFR part 71, the CoC specifies "approved contents." The description of the approved contents for a spent fuel transportation package defines the acceptable fuel types and

characteristics and, typically, it is the condition of the fuel, not its age, that determines its acceptability. Spent fuel stored in casks, even for extended terms, is not expected to experience any significant degradation that would affect its acceptability to be shipped in a suitable transportation cask. The part 72 general design criteria require fuel retrievability (§ 72.122(l)) and for CoC applications, the design of the storage cask should consider, to the extent practicable, compatibility with removal of the stored spent fuel from a reactor site, transportation, and ultimate disposition by the Department of Energy (§ 72.236(m)). Based upon the NRC-supported INL research program and the Surry and H. B. Robinson ISFSI renewal applications, the NRC staff has concluded that typical spent fuel can be safely stored in casks without appreciable degradation.

If the condition of spent fuel, or its storage canister, was believed to have degraded during extended storage such that it no longer met the criteria for approved contents, a licensee would have other alternatives for transport of that spent fuel. A new or modified approved transportation cask might be used, or the fuel might be repackaged, to place it in an acceptable configuration.

K. How does the NRC track cask expiration dates?

Section 72.212(b)(2) of the final rule will require general licensees to register use of each cask with the Commission no later than 30 days after using that cask to store spent fuel. To register casks, licensees must submit their name and address, reactor license and docket numbers, the name and title of a person responsible for providing additional information concerning spent fuel storage under the general license, the cask certificate number, the amendment number, if applicable, cask model number, and the cask identification number. With this information, the Commission will know the loading and expiration dates of each cask. This information will also enable the NRC to schedule any necessary inspections and will permit the NRC to maintain an independent record of use for each cask.

L. Who is responsible for applying for CoC renewals?

The final rule retains the structure of the current rule, which emphasizes that the certificate holder (the cask vendor) applies for cask renewal. If the certificate holder chooses not to apply for the renewal of a particular cask design or is no longer in business, a licensee, a licensee's representative, or another certificate holder may apply for renewal in its place. If the applicant for CoC renewal seeks to fabricate this cask design, it must satisfy the applicable requirements of part 72, including establishment and maintenance of the requisite quality assurance (QA) program (general licensees may rely upon previously established part 50 or 71 QA programs if they meet the requirements of §§ 72.140 and 72.174).

M. Does the NRC have a definition for "terms, conditions, and specifications" as they relate to the CoC?

The NRC does not include a definition for "terms, conditions, and specifications" in the final rule because these words are generic in nature, and are used in other parts of the NRC's regulations without definition.

N. Can a licensee apply CoC amendments to previously loaded casks?

This final rule amends § 72.212(b) to clarify that general licensees may apply changes authorized by a CoC amendment to a previously loaded cask provided that the licensee demonstrates, through a written evaluation, that the cask meets the terms and conditions of the subject CoC amendment (*i.e.,* the loaded cask must conform to the CoC amendment codified by the NRC in § 72.214).

O. May a general licensee implement only some of the authorized changes in a CoC amendment without prior NRC approval?

If a general licensee elects to apply the changes authorized by a CoC amendment to a previously loaded cask, then the cask, after the changes have been applied, must conform to the terms and conditions (including the technical specifications) of the CoC amendment. Partial or selective application of some of the authorized changes, but not others, requires prior NRC approval (in this case, the general licensee would apply for an exemption). The basis for allowing licensees to apply the changes authorized by a CoC amendment to a previously loaded cask without prior approval from the NRC is that the cask will remain in an analyzed condition if, after the changes have been applied, it conforms to the terms and conditions of the CoC amendment. The NRC has previously stated, "a spent fuel storage cask will be relied on to provide safe confinement of radioactive material independent of a nuclear power reactor's site, so long as conditions of the Certificate of Compliance are met" (54 FR 19381; May 5, 1989). However, partial or selective application of a CoC amendment's changes could result in a cask that would be in an unanalyzed condition.

In a related issue, the NRC agrees with an industry comment raised in response to the publication of the draft preliminary rule text (73 FR 45173; August 4, 2008). The draft preliminary rule text required that a general licensee ensure that once the changes authorized by a CoC amendment had been applied to a previously loaded cask, that the cask then "fully conforms" to the terms and conditions of the CoC amendment. The industry comment raised the concern that the phrase "fully conforms" was overly restrictive and requiring conformance with all the changes authorized by a CoC amendment would not be feasible or logical in certain instances, namely, in those cases where the amended CoC requirements do not apply to that particular general licensee site or ISFSI (*e.g.,* requirements for pressurized water reactors (PWR) fuel at a boiling water reactor (BWR) plant).

In light of this comment, the final rule language now requires that the cask, once CoC amendment changes have been applied, "conforms" to the terms and conditions of the CoC amendment. Thus, CoC amendment requirements for PWR fuel need not be met at a BWR plant.

Similarly, if the CoC amendment includes changes to the Technical Specifications for loading, general licensees may have difficulty demonstrating that the previously loaded cask complies with the new loading requirements. As revised by this final rule, § 72.212(b)(5) will require general licensees to perform written evaluations prior to applying the changes authorized by an amended CoC to a previously loaded cask. If the evaluation indicates that the loading conditions under the initial or older CoC amendment would not affect the ability of the previously loaded cask to meet the storage or unloading requirements of the newer CoC amendment, then the cask would be considered as conforming with the terms and conditions of the newer CoC amendment without having to meet the new loading requirements.

P. Do later CoC amendments encompass earlier CoC amendments?

No, later CoC amendments do not encompass earlier amendments unless the language of the later CoC amendment expressly indicates otherwise. Generally, when the NRC reviews an amendment to a CoC, the NRC staff considers the changes associated with the amendment request only and limits its review to the

bounding conditions of the analysis. Specific changes associated with earlier CoC amendments for previously loaded casks are not considered during the review process for a later amendment. Thus, depending on the nature of the changes, later amendments do not necessarily encompass earlier amendments and sometimes may be inconsistent with earlier amendments.

Q. Why can't general licensees use the § 72.48 process to apply CoC amendment changes to previously loaded casks?

The principal requirement of § 72.48 regarding changes to cask designs is that the desired changes do not result in a change in the terms, conditions, or specifications incorporated in the CoC. A previously loaded cask is bound by the terms, conditions, and technical specifications of the CoC applicable to that cask at the time the licensee loaded the cask. Thus, under § 72.48, a licensee may only make those cask design changes that do not result in a change to the terms, conditions, or specifications of the CoC under which the cask was loaded. The final rule will not amend § 72.48, but will amend § 72.212 by authorizing a general licensee to apply the changes authorized by a CoC amendment to a previously loaded cask, provided that after the changes have been applied, the cask conforms to the terms and conditions, including the technical specifications, of the CoC amendment.

R. If a general licensee selects and purchases a cask fabricated under an earlier CoC amendment, but does not load the cask, can the general licensee adopt the most recent CoC amendment for the empty cask before loading it?

Adoption of the most recent CoC amendment depends on the nature of the changes between the CoC amendment under which the cask system was fabricated and the most recent amendment. CoC amendments are routinely requested by cask manufacturers or vendors (also referred to as the certificate holders) to account for advances in cask design and technology. Some amendments will be associated with cask hardware changes. A cask system that was purchased under an older amendment may or may not be able to be modified to a cask system that meets the most recent amendment.

As revised by this final rule, § 72.212(b)(5) will require that general licensees perform written evaluations demonstrating that the cask, once loaded with spent fuel, will conform to the terms, conditions and specifications of a CoC or an amended CoC listed in § 72.214. In the case of an unloaded cask fabricated under the initial or earlier CoC amendment, the cask cannot be loaded under a later CoC amendment if the § 72.212(b)(5) evaluation shows that the cask, once loaded, will fail to meet the terms, conditions and specifications of the later CoC amendment. If the evaluation demonstrates that the terms, conditions and specifications of the later CoC amendment are met, then the cask can be loaded under the later CoC amendment.

S. What are the NRC's plans for providing guidance and examples of aging analyses and AMPs to licensees?

The NRC has developed NUREG–1927 "Standard Review Plan for Renewal of Independent Spent Fuel Storage Installation Licenses and Dry Cask Storage System Certificates of Compliance." This SRP provides guidance to the NRC staff in reviewing licensees' programs for managing the effects of aging on spent fuel storage casks or ISFSI sites. Aging analyses and AMPs are two components of an overall program for managing the effects of aging. Because applicants will need to submit a TLAA and a description of their program to manage the effects of aging when applying for renewal of either CoCs or specific licenses under the final rule, this SRP will also assist potential applicants in identifying parameters to be included in a renewal application and measures necessary to ensure that the cask or ISFSI can be operated during the renewal period without undue risk to the public health and safety. The SRP will be published following the publication of this final rule.

T. Could the NRC maintain the current paragraph designations of § 72.212(b)?

The NRC understands the burden arising from changing the paragraph designations of a regulation. However, the NRC is rearranging the provisions of § 72.212(b) to better organize regulatory requirements. For example, the final rule will group recordkeeping requirements at the end of § 72.212(b) rather than dispersing them among other requirements, as is currently the case. The NRC's intent for rearranging § 72.212(b) is to make this provision more user-friendly. These changes are documented in Table 1 located in Section IV (Item 4) of this document (Discussion of Final Amendments by Section under the discussion pertaining to § 72.212).

U. When are licensees required to submit cask registration letters?

Under final § 72.212(b)(2), general licensees must submit a cask registration letter no later than 30 days after using that cask to store spent fuel. One registration letter may be submitted for a campaign that loads more than one cask, provided that the letter lists the cask certificate number, the amendment number, the cask model number, and the cask identification number of each cask covered by the campaign.

In addition, under final § 72.212(b)(4), general licensees must submit a cask registration letter no later than 30 days after applying the changes authorized by an amended CoC to a previously loaded cask. One registration letter may be submitted for a campaign that applies CoC amendment changes to more than one cask, provided that the letter lists the cask certificate number, the amendment number to which the cask will conform, the cask model number, and the cask identification number of each cask covered by the campaign.

V. If a CoC is not renewed, how long would general licensees have to remove casks of that design from service?

For those cask storage systems for which renewals are not planned, general licensees should plan ahead to remove these cask storage systems from service at or before the termination of the general license (*see* the response to Question "I" above). Because users are most aware of the general cask schedule and the number of casks to be removed from service at their sites, users are in the best position to develop a reasonable schedule for the removal.

W. When the NRC renews a CoC, are all amendments to that CoC simultaneously renewed as well?

Section 72.214 lists one expiration date for each CoC. Amendments under a CoC may have different effective dates; however, they share the same certificate number and docket number. Therefore, when the NRC renews a CoC, all amendments to that CoC are renewed as well.

X. If a general licensee applies for the renewal of a given CoC (assuming the certificate holder went out of business or chose not to apply for the renewal of a given CoC), and if the NRC approves the renewal of that CoC, is the renewed CoC available only to that general licensee or is it available to all general licensees?

CoCs are generic designs and approved by rulemaking. The renewed CoC will be available to all persons who hold a general license under § 72.210.

Y. Can the requirements regarding TLAAs for CoC renewals be based upon a "current licensing basis" (CLB) patterned after 10 CFR part 54?

The NRC does not believe that the part 54 CLB is the appropriate basis for TLAAs in support of CoC renewals. The NRC does not believe that it is appropriate for the CLB to be applied to cask CoC renewals, which are generic. The CLB is typically the set of NRC requirements applicable to a specific plant and a specific licensee's written commitments for ensuring compliance with and operation within applicable NRC requirements, including the plant specific design basis (including all modifications and additions to regulatory commitments over the life of the license) that are docketed and in effect.

Z. What is the status of the draft NRC Regulatory Issue Summary (RIS) 2007–26 which was issued on January 14, 2008 (73 FR 2281)?

The NRC decided not to finalize the draft RIS 2007–26 because § 72.212(b) provides a path forward for implementation of later CoC amendments to previously loaded casks. An Enforcement Guidance Memorandum (EGM), dated September 15, 2009, was issued in conjunction with the publication of the proposed rule to provide guidance to NRC inspectors for exercising enforcement discretion concerning deficiencies related to implementing changes, authorized by CoC amendments to previously loaded casks, that occurred prior to issuance of the EGM.

III. Summary and Analysis of Public Comments on the Proposed Rule

This section presents a summary of the public comments received on the proposed rule and supporting documents, the NRC's response to the comments, and changes made in the final rule and supporting documents as a result of these comments.

The NRC received five comment letters on the proposed rule. These comments came from the Nuclear Energy Institute, the U.S. Department of Energy, Exelon Nuclear, Decommissioning Plant Coalition, and the Prairie Island Indian Community. Three of the commenters supported the new regulation, while two of the commenters expressed concern about the proposed regulation. The commenters opposed to the proposed regulation were primarily concerned about the increased license term extension from 20 to 40 years for specific ISFSI licensees. One of these commenters also had questions about the environmental review process. The other commenters provided comments on different topics within the proposed rule, including the proposed CoC terms, the CoC renewal process, the CoC amendment process, TLAAs, and spent fuel storage in general. These commenters made observations about these topics and recommended areas within the proposed rule where the NRC could make improvements. Two commenters suggested revisions to the proposed rule language and the SOC.

Copies of the public comments are available for review in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738. A review of the comments and the NRC responses follow:

General Support

Comment 1

A commenter agreed with the proposed amendments and stated that they are in the public interest and are consistent with scientific evidence. The commenter also noted that the proposed regulation would reduce the costs incurred by licensees and the NRC as a result of preparing and reviewing applications and exemption requests. The commenter stated that the proposed rule would provide the NRC and regulated entities with greater regulatory certainty.

Response

The NRC agrees with the comment.

General Opposition

Comment 2

A commenter suggested that the proposed revisions would negatively and directly impact their community and expressed opposition to extending specific ISFSI licenses by 40 years. The commenter also indicated that the proposed rule, along with the "scrapping" of Yucca Mountain, would lead to permanent spent fuel storage at nuclear power reactor sites. In addition, the commenter urged that the 20-year initial and renewal terms should remain unchanged. The commenter suggested that a 20-year term better protects the public because the casks are monitored more frequently.

Response

The NRC acknowledges the concerns raised by the commenter. The Commission believes there is reasonable assurance that spent fuel can be stored safely and without significant environmental impacts at ISFSIs during the extended license terms authorized by the final rule. This reasonable assurance is partly based on the technical data gained from an NRC supported research program and field data. Details are discussed in the response to Question "C" of the "Discussion" section of this document. Furthermore, this final rule would require all licensees to identify time-dependent degradations of the ISFSI SSCs when they apply for license renewal. If any aging issues which could adversely affect SSCs are identified, the final rule requires the license renewal applicant to describe an AMP in its license renewal application. The AMP will address the prevention and mitigation of aging effects. The NRC staff will evaluate the AMP and will only approve the renewal application if the AMP is deemed adequate.

An AMP would require licensees to monitor the casks and take other measures to ensure public health and safety. AMP requirements will be reflected in the terms and conditions of the renewed specific license, which are enforceable by NRC. The NRC will monitor the licensee's compliance with the terms and conditions of the license through the NRC's inspection program. The NRC concluded that, with appropriate aging management and maintenance programs, a license term up to 40 years is reasonable and provides adequate protection of public health and safety.

Comment 3

A commenter stated that the proposed rule, "like the proposed revision of the Waste Confidence Rule," validated the commenter's earlier concerns raised during the initial licensing process for the ISFSI located near its Tribal boundary and "exposes the false assurances that the ISFSI is an interim or temporary solution." The commenter added that the Commission's position is to "simply streamline approvals for extending the term that spent fuel can be stored at either onsite or offsite ISFSIs." The commenter suggested that "regulatory requirements should be further enhanced rather than relaxed."

Response

The NRC has not made any regulatory or policy decision which states that the storage of spent fuel at ISFSIs obviates the need for a permanent repository of spent fuel and other high-level waste. The establishment of such a repository is a national policy decision and is beyond the scope of this rulemaking.

The extension of specific license terms in § 72.42 does not relax any regulatory requirements. The rationale for extending the terms for specific ISFSI licenses, for both initial terms and

renewals, is set forth in the responses to Questions "C", "D", and "F–H", in Section II of this document. The rule requires that any applicant for license renewal demonstrate the safety of the continued storage of spent fuel for the requested term through TLAAs and the establishment of an AMP. If the applicant demonstrates to the NRC appropriate aging management and maintenance programs, then the NRC has concluded that a renewal term up to 40 years is reasonable and provides adequate protection of public health and safety.

CoC Terms and Renewal Process

Comment 4

A commenter stated that the term "unloaded cask" in the fifth paragraph of Section II, "Discussion," Question "E", of the proposed rule is unclear. The commenter asked whether the term "unloaded cask" is limited to a cask that has never been loaded or if it also includes a cask that has been used but subsequently unloaded of stored fuel. The commenter added that the review of a generic CoC renewal should not depend on whether or not a particular cask is unloaded. The commenter requested that the NRC delete the final sentence of the fifth paragraph of Section II, "Discussion," Question "E."

Response

In the context of the response to Question "E", the NRC considered the term "unloaded cask" to be either a cask that has never been loaded or one that was loaded and then subsequently unloaded. In any event, the NRC agrees with the comment. When a CoC is renewed by the NRC, it is the cask design that is being renewed. It does not matter whether the cask is loaded or not. Therefore, clarifying changes have been made to the response to Question "E", including the deletion of the sentence which contains the term "unloaded cask."

Comment 5

Two commenters requested that NRC clarify Section II, "Discussion," Questions "I" and "V" and Section III, "Discussion of Proposed Amendments by Section," Item 4 and § 72.212(a)(3) of the proposed rule. These sections of the SOC and § 72.212(a)(3) address the relationship between the term of a general license, the CoC term and renewal, and the date an individual cask is loaded.

One of the commenters stated that "[i]ndustry believes that each individual cask should be permitted to be operated for the full design life of the cask, including the full renewal period." The commenter stated that aging management requirements would be implemented during the renewal period. This commenter then provided two examples: the first, "a cask loaded under an active CoC with a 20-year initial term and not renewed should be permitted to be operated under a general license for 20 years from the date of initial use, no matter when that cask is placed into service;" and the second, "a cask loaded under an active CoC with a 20-year initial term and renewed for 40 years should be permitted to be operated under a general license for 60 years from the date of initial use, no matter when that cask is placed into service."

The commenter then asserted that each cask is fabricated to meet a specific design life and that the "successful renewal of the CoC extends that design life provided all design and maintenance parameters that were part of the renewal approval are met." The commenter further asserts that the design life "does not begin for each individual cask until the cask is loaded, *i.e.,* the cask is experiencing the conditions contemplated in design." The commenter concluded that "forcing casks to be taken out of service at an arbitrary date would result in unnecessary fuel repackaging and occupational radiation exposition with no commensurate public health and safety benefit."

The second commenter made a similar comment, stating that the "cask life should be solely based on the qualification of the cask, and not on the CoC expiration date." The commenter then suggested that "the NRC consider evaluating the lifespan of the fuel storage system based on date of loading (*i.e.,* activation of the system) of the cask system in compliance with all applicable terms, conditions, and specification, and not based on other external factors."

Response

The NRC agrees, in part, and disagrees, in part, with the comments. The part 72 regulations do not define the term "design life." Rather, the part 72 regulatory scheme is based on licenses, specific and general, and the terms of those licenses. The general license term is premised upon the CoC in effect at the time the cask was placed into service (*i.e.,* loaded with spent fuel and deployed onto the ISFSI pad). As explained in the response to Question "I" of Section II, the general license term, for loaded casks, will run through any consecutive CoC renewal terms as the occupational risk of unloading a cask and repackaging the spent fuel into another storage cask exceeds the risk of keeping the spent fuel in the original cask.

The NRC agrees with the first commenter's statement regarding the implementation of aging management requirements during the renewal period. The NRC further agrees with the first commenter's first example regarding a cask fabricated under a 20-year CoC term, which is not renewed. Under both the current regulation and the regulation as revised by this final rule, the general license term for such a cask would be 20 years, regardless of when during the 20-year CoC term the cask is placed into service. Of course, after the CoC expires, casks of that design could no longer be placed into service.

The NRC disagrees with the second example and the commenter's rationale to support that example. The commenter states "a cask loaded under an active CoC with a 20-year initial term and renewed for 40 years should be permitted to be operated under a general license for 60 years from the date of initial use, *no matter when that cask is placed into service*" (emphasis added). The NRC does not agree that successful renewals of the CoC cumulatively extend the general license term for that cask (the commenter uses the term "design life," which the NRC assumes to be the equivalent of the general license term desired by the commenter). The commenter uses the example of a CoC that has an initial term of 20 years followed by a renewal term of 40 years. The commenter then asserts that the design life of the cask would be 60 years. Thus, under this reasoning, a cask placed into service the day before the renewed CoC expires could be in service for 60 years. Essentially, the commenter appears to be asserting that the regulatory scheme should allow cumulative terms, such that each successive renewal of the CoC adds to the design life of the cask, and thus, to the term of the general license.

The intent of the amendments implemented by the final rule is that the use of a cask is determined by the general license term, which in turn is determined by the term specified in the applicable CoC in effect at the time the cask is placed into service; the general license term is not determined by adding all the successive CoC renewal terms to the initial CoC term. The term of the general license for any cask placed into service during a CoC renewal term is based upon the length of the renewal term (renewal date to expiration). Thus, if a CoC is renewed for 40 years and a cask fabricated under that CoC is placed into service during the 39th year of the renewal term, the

general license for that cask would be 40 years.

According to the commenter, if the initial term of the CoC was 20 years, and the CoC was then renewed twice, each time for 40 years, then a cask placed into service on the last day of the second renewal period would have a general license of 100 years (essentially, 100 years beyond the CoC expiration date). It is not the intent of the NRC to allow for such extended, cumulative license terms.[1] Such an interpretation of the regulatory scheme implemented by this final rule is well beyond the regulatory norm and is not aligned with the stated purpose of this rulemaking, which was to extend specific license terms from not to exceed 20 years to not to exceed 40 years and then to make the terms of CoCs and general licenses equal with those of specific licenses.

The NRC disagrees with the second commenter, who stated that "cask life should be solely based on the qualification of the cask, and not on the CoC expiration date." In this regard, the NRC will allow for casks already in service, *i.e.,* those already loaded prior to any given CoC renewal, to remain in service through any future renewal periods, given that the occupational hazards associated with unloading a cask and repackaging the spent fuel into another storage cask exceed the risks of leaving that fuel in the original cask. However, this is not the same as allowing an unloaded cask (*i.e.,* either a new cask or one formerly loaded and then subsequently unloaded) to be placed into service for a cumulative term that is equal to the length of the initial term and all renewal terms. The intent of this final rule is that the general license term for any cask placed into service shall not be longer than the term certified by the then effective CoC, unless that CoC is renewed after that cask has been placed into service, in which case, the general license will terminate at the expiration of the CoC (*i.e.,* at the end of the final CoC renewal term). Please *see* the response to Question "I" of this document for additional details, including examples of various general license scenarios.

In response to these comments, this final rule amends § 72.212(a)(3) to include clarifying language regarding general license terms and similarly, adds a definition of the phrase "the term certified by the cask's Certificate of Compliance" to the part 72 definitions section, § 72.3.

Comment 6

A commenter requested that the NRC clarify the QA program requirements for general licensees that seek to fabricate casks (as discussed in Section II, "Discussion," Question "L" of the proposed rule). The commenter asked whether a general licensee that seeks to fabricate a cask under its part 50 QA program may apply its part 50 QA program as long as it governs part 72 activities.

Response

Section 72.140 sets forth the requirements of a part 72 QA program. Under § 72.140(d), a QA program previously approved by the Commission as satisfying the requirements of Appendix B to part 50 or subpart H of part 71 will be accepted as satisfying the requirements of § 72.140(b), provided that the general licensee or other applicant meets the recordkeeping requirements of § 72.174. In filing the description of the QA program required by § 72.140(c), a general licensee who seeks to fabricate casks under a renewed CoC must notify the NRC, in accordance with § 72.4, of its intent to apply its previously-approved QA program to part 72 activities. The notification shall identify the previously-approved QA program by date of submittal to the Commission, docket number, and date of Commission approval.

Comment 7

A commenter suggested that the word "terms" in the phrase "terms, conditions, and specifications" may be confused with the word "term" as in the "term certified in the cask CoC." The commenter requested that the NRC revise Section III, "Discussion of Proposed Amendments by Section," Item 4 to address this issue. The commenter requested that the NRC add a definition to § 72.3 for the phrase "term certified by the cask's Certificate of Compliance."

Response

The NRC agrees that clarification is needed. The NRC added the following definition to § 72.3:

"*Term certified by the cask's Certificate of Compliance,* for the purposes of this part, means, for an initial CoC, the period of time commencing with the CoC effective date and ending with the CoC expiration date, and for a renewed CoC, the period of time commencing with the most recent CoC renewal date and ending with the CoC expiration date."

Comment 8

One commenter asked if a "cask user or user's representative" renews a CoC, then would that user or user's representative become the CoC holder and, as a result, obtain all CoC holder responsibilities. In particular, the commenter questioned whether the user or user's representative would assume responsibility for cask Final Safety Analysis Report (FSAR) updating and reporting requirements under § 72.48.

Response

In the SOC for the July 18, 1990, final rule which promulgated subparts K and L of part 72, the NRC stated its expectation that the cask vendor, if still in business and fabricating the subject cask design, would apply for cask renewal (55 FR 29184; July 18, 1990). If the certificate holder is no longer in business or chooses not to apply for the renewal of a particular cask design, then a cask user or user's representative (*i.e.,* the licensee or licensee's representative) could apply to renew a CoC. If approved by the NRC, the cask user or representative would then become the CoC holder. In this capacity, the cask user or representative absorbs all CoC holder responsibilities, such as cask FSAR updating and reporting requirements under § 72.48.

CoC Amendment Process

Comment 9

A commenter objected to a sentence in the first paragraph of Section II, "Discussion," Question "O" that stated, "However, partial or selective application of a CoC amendment's changes would result in a cask that would be in an unanalyzed condition." The commenter asserted that this sentence was a "significant overstatement" as not all partial or selective application of a CoC amendment's changes would result in the cask being in an unanalyzed condition. The commenter requested that the sentence be deleted or that the first instance of "would" be replaced with the word "could."

Response

The NRC agrees with the comment that, depending on the nature of changes in the amendment, partial or selective application of a CoC amendment's changes may not always result in the cask being in an unanalyzed condition. To minimize the possibility of the cask being in an unanalyzed condition, however, the general licensee is required to apply for

[1] As background, *see* the response to Question 21 in the July 18, 1990 (55 FR 29186), final rule that promulgated subparts K and L of part 72. In particular, the NRC stated that "the 20-year storage period will also apply to new casks put into use after a Certificate of Compliance is reapproved." Clearly, there was no intent that the storage period for a cask placed into service during the renewal term was to be for a term that was equal to the initial term plus the renewal term.

an exemption in those cases where the general licensee seeks such a partial or selective application of the changes authorized by a later CoC amendment to a previously loaded cask. The NRC has revised the sentence in Section II, "Discussion," Question "O" of this document as follows:

"However, partial or selective application of a CoC amendment's changes could result in a cask that would be in an unanalyzed condition."

Comment 10

A commenter suggested that the NRC should consider including in CoC amendments language addressing whether or not the CoC amendment encompasses all requirements of the initial CoC and previous amendments. The commenter asserted that such CoC amendment language would "significantly simplify" the adoption process for general licensees, "especially in cases where only the contents have changed and no cask hardware modifications are involved."

Response

The approach suggested by the commenter is not within the scope of this rulemaking because the commenter's recommended language would be placed within the text of the CoC amendment, not the NRC regulations. Moreover, the NRC has considered a process that requires the application of every part 72 CoC amendment to include a basis which proposes the applicability of the proposed amendment to previously loaded casks. The NRC staff's acceptance of the proposed applicability and its basis would then be documented in the CoC amendment and in the accompanying Safety Evaluation Report (SER). However, the NRC staff has concluded that conducting the requisite analyses to evaluate each prior CoC amendment in relation to the new amendment would impose more burdens on both the NRC and applicants as compared to the process in the final rule.

Comment 11

With respect to Section II, "Discussion," Question "W" of the proposed rule, a commenter asked whether, after the renewal of a CoC, subsequent amendments to that CoC continue the existing amendment numbering or if the numbering for these amendments "start over" as the first amendment against the renewed CoC.

Response

After a CoC is renewed, subsequent amendments to that CoC will continue with the existing numbering. For example, if there are seven amendments under a CoC before renewal, the next amendment, under the same CoC after renewal, will be Amendment No. 8.

Comment 12

A commenter provided comments as requested under Section II, "Discussion," Question "AA" of the proposed rule. Question "AA" is not included in the SOC of this final rule because it was intended only to solicit comments on the particular items identified. Question "AA" solicited public comment on whether or not the evaluation required by proposed § 72.212(b)(5) should be reviewed and approved by the NRC. The commenter does not support NRC review of "evaluations performed pursuant to § 72.212(b)(5) to apply a later CoC amendment to previously loaded casks." The commenter suggested that NRC review of these evaluations would be "inappropriate and contrary to the concept of a general licensee." The commenter stated that the NRC approves CoC amendments and that § 72.212 evaluations, and revisions to these evaluations, "are reviewed by NRC under the inspection program, at NRC's discretion."

Response

The NRC agrees with the comment. The amendments implemented by this final rule do not require any prior NRC review or approval of the evaluations conducted by a general licensee pursuant to § 72.212(b)(5). After a general licensee has made the findings required by § 72.212(b)(5)(i)–(iii), it may apply the changes authorized by a later CoC amendment to a previously loaded cask. Of course, the NRC may review these evaluations through the NRC inspection program.

Comment 13

A commenter described the proposed language in § 72.212(b)(7) that states, "and revise it to add a requirement to evaluate any changes to the site parameters determination and analyses required by § 72.212(b)(6)," as unnecessary and requested that the language of § 72.212(b)(7) be simplified. The commenter recommended that the NRC revise § 72.212(b)(7) from "paragraph (b)(5) of this section" to "paragraphs (b)(5) and (b)(6) of this section."

Response

The NRC agrees with the comment that § 72.212(b)(7) could be clarified by modifying the first sentence. Therefore, the NRC revised the first sentence of § 72.212(b)(7) as follows:

"Evaluate any changes to the written evaluations required by paragraphs (b)(5) and (b)(6) of this section using the requirements of § 72.48(c)."

Comment 14

A commenter stated that the proposed 30-day timeframes for licensees to notify the NRC of the initial use of a cask and the application of a later CoC amendment to a previously loaded cask will cause the licensee an "unnecessary administrative burden." Specifically, the commenter argued that the proposed rule language would require licensees to send two separate notifications into the NRC: (1) For new casks, licensees would need to notify the NRC within 30 days of deployment; and (2) for previously loaded casks, licensees would need to notify the NRC within 30 days of applying the changes authorized by a CoC amendment to a previously loaded cask. The commenter noted that applying the changes authorized by a CoC amendment to previously loaded casks is usually part of a larger campaign that includes deploying new casks. The commenter stated that allowing "120 days for both notifications would allow general licensees to combine these two notifications into one, in most cases."

Response

The NRC does not agree that the requirement to prepare two letters, one covering loading the new casks, and the second covering the application of the changes authorized by a later CoC amendment to previously loaded casks, is particularly burdensome. The NRC staff has concluded that the 30-day timeframe is a reasonable requirement.

The NRC acknowledges that applying the changes authorized by a later CoC amendment to previously loaded casks may be connected to a cask loading campaign. If the general licensee is loading new casks fabricated under a given CoC amendment and the changes authorized by that CoC amendment are also applied to previously loaded casks at the same time as explained by the commenter, one registration letter may be sufficient for that whole campaign, provided that the letter lists the cask certificate number, the appropriate CoC amendment number, the cask model number, and the cask identification number of each cask, both new and previously loaded.

The commenter states that the § 72.212(b)(5) report, which would cover both the loading of the new casks and the implementation of the changes to the previously loaded casks, would

be prepared well in advance of the loading campaign. Sections 72.212(b)(2) and (4), however, require the registration of the use of new casks and the application of changes authorized by a later CoC amendment to previously loaded casks, no later than 30 days after the action—not 30 days after the completion of the § 72.212(b)(5) report. Thus, even if the § 72.212(b)(5) evaluation report was completed well in advance of the campaign, the general licensee could time its actions such that changes to the previously loaded casks would be implemented at or near the same time that the new casks are deployed; and as such, have both parts of the campaign covered in one letter. In the event that the general licensee cannot time the loading of the new casks with the implementation of the changes authorized by the latter CoC amendment so as to have both actions covered by one 30-day letter, the licensee will be required to prepare two letters.

Comment 15

A commenter requested that the NRC remove the word "all" from the first sentence of § 72.212(b)(4) to be consistent with the discussion provided in Section II, Question "O" of the proposed rule.

Response

The NRC agrees with the comment that, in order to be consistent, the word "all" should be removed in the first sentence of § 72.212(b)(4). The NRC revised § 72.212(b)(4) accordingly.

Comment 16

A commenter stated that § 72.212(b)(4) is unclear with regard to when the 30-day "clock" starts for licensees to notify the NRC. The commenter added that § 72.212(b)(4) is inconsistent with the wording used in § 72.212(b)(2). The commenter suggested the following language to replace the first sentence in § 72.212(b)(4): "Register each cask with the Nuclear Regulatory Commission no later than 30 days after applying the changes authorized by an amended CoC to a cask loaded under the initial or an earlier amended CoC."

Response

The NRC disagrees with the comment. The 30-day clock starts after the application of changes authorized by the CoC amendment to the previously loaded cask (a cask loaded under the initial CoC or an earlier CoC amendment). The language suggested by the commenter is not sufficient because there is no direct nexus between the phrase "each cask" with the phrase "the changes authorized by an amended CoC to a cask loaded under the initial or an earlier amended CoC." The NRC concludes that the regulatory language of § 72.212(b)(4) is clear and will not be revised other than the deletion of the word "all" from the first sentence (as described in the response to Comment No. 15).

Comment 17

A commenter stated that the proposed wording of § 72.212(b)(7) is unnecessarily complex and recommended the following language: "Changes to the written evaluations required by § 72.212(b)(5) of this section shall be reviewed in accordance with § 72.48(c), as applicable." As an alternative, the commenter recommended that the NRC change the first word of this section of the proposed rule from "evaluate" to "review." The commenter suggested this revision because some general licensees could interpret the word "evaluate" as requiring a full § 72.48 evaluation, regardless of the nature of the change to the document.

Response

The NRC disagrees with the comment. In response to Comment 13 the NRC revised § 72.212(b)(7) to read as follows:

"Evaluate any changes to the written evaluations required by paragraphs (b)(5) and (b)(6) of this section using the requirements of § 72.48(c)."

Both the language of the proposed rule and the above revised language follow the same logic and pattern as the regulatory language in effect before this final rule's effective date (§ 72.212(b)(2)(ii) (2009)). The intent of this amendment was only to renumber the provision from § 72.212(b)(2)(ii) to § 72.212(b)(7) and make related clarifying changes (such as the reference to § 72.212(b)(6)). It is not the NRC's intent to change the substantive meaning of this provision, and as such, the NRC does not agree with changing the word "evaluate" to "review."

Comment 18

A commenter stated that the addition of the phrase "and, for those casks to which the licensee has applied the changes of an amended CoC, the amended CoC" to § 72.212(b)(11) is unnecessary. The commenter suggested the following language instead: "Maintain a copy of the CoC and each amended CoC(s) applicable to casks loaded and deployed at the ISFSI, and the documents referenced in such Certificates for each cask model used for the storage of spent fuel until use of the cask model is discontinued."

Response

The NRC disagrees with the comment because CoC amendments may have a different design basis from the initial CoC as well as each other. Consequently, it is necessary for general licensees to maintain the initial CoC (along with documents referenced in the initial CoC) for those casks operating under the terms and conditions of the initial CoC and for those casks operating under the terms and conditions of a given CoC amendment, to maintain that CoC amendment (along with documents referenced in the amended CoC).

Comment 19

A commenter stated that the rule applies to facilities that have one or more operating reactors. The commenter expressed concern that the proposed regulation would create unneeded burdens for permanently shut-down reactor sites. The commenter suggested that the NRC modify the proposed language in § 72.212(b) to address this issue, but did not provide alternative language. Specifically, the commenter raised concerns about the application of changes authorized by a later CoC amendment to a cask loaded under the initial CoC amendment or an earlier CoC amendment thereto (a "previously loaded cask").

Response

Part 72 does not draw a distinction between an operating facility and a decommissioned facility. The part 72 regulations make a distinction between specific licenses and general licenses. Under § 72.210, a holder of a part 50 or 52 power reactor license holds a part 72 general license. Section 72.212 sets forth the conditions of a general license. If a decommissioned facility does not have an active part 50 or 52 license, it would then not have a part 72 general license; most likely, the facility would be operating under a specific part 72 license. The application of changes authorized by a CoC amendment to a previously loaded cask is not applicable to a specific license ISFSI, as those provisions of the final rule only apply to general licenses.

In the case of a decommissioned facility that does operate under a part 50 or 52 license, and thus, has a part 72 general license, this rule would apply to the same extent as it would for any other part 50 or part 52 licensee. In this regard, there is no reason to treat a generally licensed ISFSI at a decommissioned site any differently

than a generally licensed ISFSI at an active part 50 or 52 facility.

The commenter may have assumed that this rule requires general licensees to apply the changes authorized by a CoC amendment to any previously loaded casks within the licensee's control. This is not correct. Under this final rule, the application of the changes authorized by a CoC amendment to a previously loaded cask is at the discretion of the general licensee; unless otherwise directed by the NRC, the general licensee can choose to continue to use the cask in accordance with the CoC under which the cask was loaded.

Time-Limited Aging Analyses and Aging Management Programs

Comment 20

A commenter asked the NRC to clarify when aging management requirements apply to casks, such as a cask placed into service during the renewal term of a CoC.

Response

Aging management requirements only apply after the cask is in service for the length of time equal to the term certified by the cask's initial CoC. For example, if the term of the initial CoC is 20 years, and a cask is placed into service at the end of the 19th year, then the general licensee would need to begin implementing the appropriate aging management requirements at the end of the 39th year, assuming the CoC was renewed. The appropriate time to initiate the aging management requirements will be identified in the NRC approval of a CoC renewal application. Specifically, the aging management requirements will be made conditions or specifications of the CoC and thus applicable to general licensees per § 72.212(b). The response to Question "H" in Section II was revised in light of this comment.

Comment 21

A commenter stated that the TLAAs for CoC renewals should be based on the CLB for the cask. The commenter described the CLB for the cask as the "original regulatory framework (*i.e.,* the regulations, review guidance, and the associated SER(s)) under which the cask design, including amendments, was approved, plus any mandated or voluntary changes applied thereafter, as tracked by the CoC holder and discussed in the cask FSAR." The commenter requested that the NRC clarify that at the time of renewal, the TLAAs do not have to adopt the latest regulatory framework unless that is part of the cask's CLB.

Response

The amendments to this final rule do not include a definition for CLB. The cask designs approved, both initially and for renewal, under the provisions of subpart L of part 72 are generic in nature. The CLB is appropriate for site specific licensing actions, not generic cask designs.

The certificate holder must submit the TLAA when it applies for renewal of a given CoC (for a CoC renewal that encompasses CoC amendments that each may have different design basis, the certificate holder will have to address how the TLAA applies to each CoC amendment covered by the CoC). The TLAA is an implicit part of any new storage canister evaluation even though it is not explicitly identified in the existing regulations. This may be illustrated by consideration of operationally induced degradation. Specifically, applicants must consider operationally induced degradation and its effects as part of the new design engineering process. Such an evaluation becomes part of the applicants' demonstration that a new cask design will perform as specified throughout its initial license period.

For a renewal, the applicant bears the same burden of showing that the materials of construction (or components) will perform as required during the extended operational period. This extended operational life may not have been addressed in the original design consideration. Consequently, TLAAs (and other issues) were explicitly identified in the proposed regulations. The evaluation effort for renewal shifts its focus from material selection, as would be the case for a new design certification, to existing material condition/degradation assessment. The NRC staff determined that this subtle but important distinction be clearly identified.

Comment 22

A commenter requested that the NRC clarify what is meant by the term "site aging issues," as stated in Section II, "Discussion," Question "AA" of the proposed rule. The commenter stated that CoC holders should identify the cask design features that are subject to age-related degradation and address them in a bounding manner for use of a cask beyond the initial CoC term. The commenter suggested that cask users review the CoC holder's aging analysis and perform their own analyses to supplement or supersede the CoC holder's generic analysis.

Response

To clarify the NRC's intent, the statement in the response to Section II, "Discussion," Question "AA" of the proposed rule should have read: "Site specific aging issues" rather than "site aging issues." The NRC asked whether the requirement for an AMP for CoC renewals should fully address possible aging issues related to a general licensee's specific site (*e.g.,* different environmental conditions).

The NRC agrees with the comment that CoC holders should identify the cask design features that are subject to age-related degradation and address them in a bounding manner for use of a cask beyond the initial CoC term. The NRC further agrees that general licensees should review the CoC holder's aging analysis and perform their own analyses to supplement or impose upon themselves a more restrictive analysis, but they cannot supersede the CoC holder's analysis. Therefore, the general licensees' analyses would address possible aging issues at their sites.

Question "AA" is not included in the SOC of this final rule because it was intended only to solicit comments on the particular items identified.

Comment 23

A commenter stated that AMP requirements, aging analyses, and other technical documents should be evaluated for a 20-year license renewal term instead of the proposed 40-year license renewal term.

Response

The basis for the NRC to increase specific ISFSI license terms from not to exceed 20 years to not to exceed 40 years is discussed in Question "C" of the "Discussion" section of the proposed rule. The NRC staff concluded that, with appropriate aging management and maintenance programs, license terms up to 40 years are reasonable and provide adequate protection of public health and safety.

General Comments Regarding Spent Fuel Storage

Comment 24

A commenter disagreed with the proposed rule's allowance for unlimited specific license renewals. The commenter expressed concern that the "indefinite nature of the length of time" the NRC describes for storage at an ISFSI could create a "national landscape of ISFSIs" at decommissioned sites. The commenter added that indefinite storage of fuel at ISFSIs is in conflict with "the Commission's long held policy that it

'does not intend to support storage of spent fuel for an indefinitely long period.' " The commenter also suggested that the NRC clearly state this policy in the Supplemental Information of the final rule document so that the "Commission's intent is clear and consistent across its regulatory landscape, including its Waste Confidence decision." The commenter stated that since 1998, the "federal government has had the obligation, by contract, to remove spent fuel and greater than class C waste from" nuclear power plant sites. The commenter urged the NRC to maintain its expectation "that these sites and future like sites not proliferate and linger as de facto long-term storage facilities."

Response

Please *see* the response to Comment 3.

Comment 25

A commenter agreed with the NRC that, with appropriate aging management and maintenance programs, 40-year licenses "are reasonable and protect public health and safety and the environment."

Response

The NRC acknowledges the commenter's support for the not to exceed 40-year license terms.

Environmental Review

Comment 26

A commenter stated that it is unclear how the requirements of the National Environmental Policy Act (NEPA) will be met. The commenter asked if licensees are required to submit an environmental report with their 40-year license renewal. The commenter concluded that license renewals should include a public environmental review process, such as a draft environmental assessment posted for public comment.

Response

The NRC implements its obligations under NEPA through its regulations in 10 CFR part 51. When a licensee applies for the renewal of a specific ISFSI license, the licensee is required to submit an environmental report under § 51.60(b)(1)(iii).

Under §§ 51.26, 51.27, 51.28, 51.29, 51.73 and 51.74, if the NRC prepares an environmental impact statement (EIS), the most comprehensive of the NEPA analyses, public participation would be required (the above provisions concern publication of a notice of intent, scoping, a request for comments on the draft EIS, and distribution of the draft EIS). If the NRC staff does not prepare an EIS, as determined by NRC staff's environmental assessment (EA), it will issue a finding of no significant impact (FONSI). The NRC may issue the FONSI in draft form, which will include a request for public comments (§ 51.33). Issuing a draft FONSI is discretionary with the NRC. After a FONSI is finalized, it must be published in the **Federal Register** (§ 51.35).

Miscellaneous Items and Rule Language Revisions

Comment 27

A commenter stated that, contrary to the first sentence of Section II, "Discussion," Question "K" of the proposed rule, the current regulations do not require general licensees to maintain or submit a cask loading schedule to the NRC. The commenter requested that the NRC delete this language or revise the wording.

Response

The intent of the response to Question "K" of the proposed rule was to inform readers that general licensees keep track of loading and expiration dates of each loaded cask. The NRC understands, however, that this is not an express regulatory requirement. As such, the NRC has rephrased Question "K" to ask how the NRC tracks cask expiration dates and has made clarifying changes to the response to Question "K." The registration letters required by the regulations, as amended by this final rule, provide the NRC with the requisite information to track cask expiration dates.

Comment 28

A commenter suggested that in Section II, "Discussion," Question "T" of the proposed rule, the regulation should include a provision to permit licensees with existing § 72.212 reports to maintain the current regulatory numbering system and not have to revise these reports to reflect the redesignated sections within the proposed regulation.

Response

The NRC disagrees with the comment that a provision be added to the regulations. There is no requirement to revise past § 72.212 reports to reflect the redesignation of provisions in § 72.212(b) resulting from the amendments of this final rule. Past § 72.212 reports can remain formatted to the regulation that was in effect at the time the report was written. Section 72.212 reports written after the effective date of this final rule must conform to the redesignations in the final rule.

Comment 29

A commenter stated that the phrase "no later than 30 days after using (loading) that cask" in Section II, "Discussion," Question "U" of the proposed rule and § 72.212(b)(2) is too vague. The commenter suggested replacing the above language with the following: "placing the cask in storage at the ISFSI" to clearly establish a start date.

Response

In response to the commenter, the NRC is not going to change the rule text; this rule language has been in effect since 1990 without any controversy. Rather, the NRC is clarifying its response to Question "U" of this document by removing the term "loading" from the response. It is the NRC's position that the 30-day clock starts when the loaded cask has been deployed in the ISFSI.

Comment 30

A commenter stated that the phrase "casks of that design" as used in § 72.212(a)(3) is unclear. The commenter recommended that the phrase be clarified or revised to be consistent with the language used earlier in the section, "cask[s] fabricated under a Certificate of Compliance." The commenter added that if the same meaning is not intended, then the NRC should define the two phrases in § 72.3.

Response

The NRC agrees with the comment that the terminology in § 72.212(a)(3) is not consistent; the NRC intended for the meaning to be the same in both instances. The NRC has revised § 72.212(a)(3) and it no longer contains the phrase "casks of that design."

Comment 31

A commenter asked whether "cask user or user's representative," as used in § 72.212(a)(3), is equivalent to the term "any licensee," as used in § 72.240(a). The commenter concluded that if these terms are equivalent, then the NRC should use the same term in both sections of the rule.

Response

The final rule makes several revisions to § 72.212(a)(3), including deletion of the language referring to "any cask user or user's representative." The NRC staff concluded that this language was redundant of the language in § 72.240(a). This final rule also revises § 72.240(a) to allow a licensee, a licensee's representative, or another certificate holder to apply for a cask renewal in the event that the original

certificate holder is either no longer in business or chooses not to apply for renewal of the cask.

Comment 32

A commenter requested that in § 72.212(b)(8), the NRC change "§ 50.59(c)(2)" to "§ 50.59(c)." The commenter suggested that the review of cask storage activities may require a full evaluation under § 50.59, which includes § 50.59(c)(1).

Response

The NRC agrees with the comment. Section 72.212(b)(8) has been changed accordingly.

Comment 33

A commenter asked whether the phrase "a new protected area" in section § 72.212(b)(9)(iii) only applies to an ISFSI located outside a nuclear power plant's protected area. The commenter requested that the NRC clarify this phrase.

Response

The phrase "a new protected area" in § 72.212(b)(9)(iii) applies only to an ISFSI that is physically separate from a reactor's protected area. As a further point of clarification, all references to "new protected area(s)" in § 72.212(b)(9) apply only to an ISFSI physically separate from a reactor's protected area. The NRC notes that the phrase "new protected area" has been part of the regulatory language after the rule was promulgated in 1990. The intent of this final rule is only to renumber § 72.212(b)(5)(iii) to § 72.212(b)(9)(iii). As additional background, the March 27, 2009, power reactor security rule (74 FR 13926, 13970) revised § 72.212(b)(5)(iii) to update the cross reference to the applicable part 73 section and add the word "personnel" before the word "searches."

Comment 34

A commenter stated that § 72.212(b)(12) uses the terms "cask supplier" and "cask vendor." The commenter suggested that these terms are inconsistent with the term "CoC holder," which the NRC uses elsewhere in the proposed rule. The commenter concluded that the terminology should be consistent throughout the rule.

Response

The NRC agrees with the comment that the terminology should be consistent. Therefore, the NRC has replaced the terms "cask supplier" and "cask vendor" in § 72.212(b)(12) with the term "CoC holder."

IV. Discussion of Final Amendments by Section

1. Section 72.3, Definitions

The final rule adds definitions for "Aging management program," "Term certified by the cask's Certificate of Compliance," and "Time-limited aging analyses."

2. Section 72.24, Contents of application; Technical information

The amendment to § 72.24(c) requires applicants seeking initial specific licenses or specific licensees seeking renewals to demonstrate in sufficient detail that the design of the ISFSI or monitored retrievable storage installation (MRS) is capable of performing the intended functions for the term requested in the application.

3. Section 72.42, Duration of license; renewal

The amendment to § 72.42(a) extends the term for both an initial specific license and a license renewal from a term of not to exceed 20 years to a term not to exceed 40 years. The final rule also adds a requirement that specific licensees seeking renewals submit a TLAA and a description of the AMP. Any license renewal application will be required to include an analysis that considers the effects of aging on SSCs important to safety for the requested renewal term.

The amendment to § 72.42(b) requires license renewal applications to include design bases information as documented in the most recently updated FSAR, as required by § 72.70.

4. Section 72.212, Conditions of general license issued under § 72.210

The final rule makes several changes to § 72.212. The final rule revises § 72.212(a)(3) to clarify the term of the general license and to match the term of the general license to the term of the applicable CoC. The final rule amendment also clarifies that the term of the general license runs through any renewal periods, unless otherwise specified in the CoC. In addition, the final rule also amends § 72.212(a)(3) to clarify the general license term for those casks placed into service during the final renewal term of a CoC or during the term of a CoC that was not renewed. The final rule amendment also states that, upon expiration of the general license, all casks subject to that general license must be removed from service.

The final rule amends § 72.212(b) by redesignating and reorganizing the provisions of that section. The following table cross references the amended regulations with the regulations in effect immediately prior to the effective date of this final rule. Use of "modified" in Table 1 refers to a section whose content has been modified. Remaining table entries are either new provisions or provisions that have been redesignated but whose content is unchanged.

TABLE 1—CROSS REFERENCE OF FINAL REGULATIONS WITH PRIOR REGULATIONS

Final rule	Prior rule
§ 72.212(b)(1)	§ 72.212(b)(1)(i).
§ 72.212(b)(2)	§ 72.212(b)(1)(ii) (modified).
§ 72.212(b)(3)	New section not in prior rule.
§ 72.212(b)(4)	New section not in prior rule.
§ 72.212(b)(5)	§ 72.212(b)(2)(i) (modified).
§ 72.212(b)(5)(i)	§ 72.212(b)(2)(i)(A).
§ 72.212(b)(5)(ii)	§ 72.212(b)(2)(i)(B).
§ 72.212(b)(5)(iii)	§ 72.212(b)(2)(i)(C).
§ 72.212(b)(6)	§ 72.212(b)(3) (modified).
§ 72.212(b)(7)	§ 72.212(b)(2)(ii) (modified).
§ 72.212(b)(8)	§ 72.212(b)(4) (modified).
§ 72.212(b)(9)	§ 72.212(b)(5).
§ 72.212(b)(9)(i)	§ 72.212(b)(5)(i).
§ 72.212(b)(9)(ii)	§ 72.212(b)(5)(ii).
§ 72.212(b)(9)(iii)	§ 72.212(b)(5)(iii).
§ 72.212(b)(9)(iv)	§ 72.212(b)(5)(iv).
§ 72.212(b)(9)(v)	§ 72.212(b)(5)(v).

TABLE 1—CROSS REFERENCE OF FINAL REGULATIONS WITH PRIOR REGULATIONS—Continued

Final rule	Prior rule
§ 72.212(b)(9)(vi)	§ 72.212(b)(5)(vi).
§ 72.212(b)(10)	§ 72.212(b)(6).
§ 72.212(b)(11)	§ 72.212(b)(7) (modified).
§ 72.212(b)(12)	§ 72.212(b)(8)(i).
§ 72.212(b)(12)(i)	§ 72.212(b)(8)(i)(A).
§ 72.212(b)(12)(ii)	§ 72.212(b)(8)(i)(B).
§ 72.212(b)(12)(iii)	§ 72.212(b)(8)(i)(C).
§ 72.212(b)(13)	§ 72.212(b)(9).
§ 72.212(b)(14)	§ 72.212(b)(10).
§ 72.212(c)	§ 72.212(b)(8)(ii) (modified).
§ 72.212(d)	§ 72.212(b)(8)(iii) (modified).
§ 72.212(e)	§ 72.212(b)(1)(iii).

The final rule redesignates current § 72.212(b)(1)(i) as § 72.212(b)(1) and makes minor editorial changes to this provision.

The final rule redesignates current § 72.212(b)(1)(ii) as § 72.212(b)(2) and further revises the provision to add a requirement that general licensees, when registering a cask no later than 30 days after loading, include the CoC amendment number, if applicable.

The final rule adds a new provision, § 72.212(b)(3), that requires general licensees to ensure that each cask used by the general licensee conforms to the terms, conditions, and specifications of a CoC or an amended CoC listed in § 72.214. Partial or selective application of the terms, conditions, and specifications of a CoC or an amended CoC, without prior NRC approval, may result in a cask that is in an unanalyzed condition and is therefore, prohibited.

The final rule adds a new provision, § 72.212(b)(4), that requires general licensees to register those previously loaded casks no later than 30 days after applying the changes authorized by an amended CoC.

The final rule revises § 72.212(b)(2)(i) by requiring general licensees to prepare written evaluations before applying the changes authorized by an amended CoC to a previously loaded cask. Thus, the revised rule requires a written evaluation before loading the cask with spent fuel and an additional written evaluation before any changes authorized by a CoC amendment are applied to a previously loaded cask. The final rule redesignates current § 72.212(b)(2)(i) as § 72.212(b)(5).

The final rule revises § 72.212(b)(2)(i) to state that the written evaluation must establish that the cask, once loaded with spent fuel or after changes authorized by an amended CoC have been applied, will conform to the terms, conditions, and specifications of a CoC or amended CoC listed in § 72.214, and redesignates current § 72.212(b)(2)(i)(A) as § 72.212(b)(5)(i). The final rule redesignates current §§ 72.212(b)(2)(i)(B) and (C) as §§ 72.212(b)(5)(ii) and (iii), respectively.

The final rule redesignates current § 72.212(b)(3) as § 72.212(b)(6) and revises this provision to add a reference to an amended CoC and to update the cross-reference to paragraph (b)(5).

The final rule redesignates current § 72.212(b)(2)(ii) as § 72.212(b)(7) and revises this provision to add a requirement to evaluate any changes to the site parameters determination and analyses required by § 72.212(b)(6), using the requirements of § 72.48.

The final rule redesignates current § 72.212(b)(4) as § 72.212(b)(8).

The final rule revises current § 72.212(b)(5) to reflect changes made by the final rulemakings dated October 24, 2008, and March 27, 2009, and redesignates current §§ 72.212(b)(5) and (b)(6) as §§ 72.212(b)(9) and (b)(10), respectively (*see* "Note on October 24, 2008, and March 27, 2009, Final Rule Revisions to § 72.212(b)(5), and Redesignation of § 72.212(b)(5) to § 72.212(b)(9)" at the end of this Section IV, below).

The final rule redesignates current § 72.212(b)(7) as § 72.212(b)(11) and revises this provision to add references to an amended CoC. The final rule also adds language to clarify that a licensee must comply with the technical specifications of the CoC, in addition to the terms and conditions of the CoC. Further, the revised language requires the licensee to comply with the terms, conditions, and specifications of the amended CoC for those casks to which the licensee has applied the changes of an amended CoC. The revised language further provides that licensees must also comply with the requirements of any AMP put into effect as a condition of the NRC approving a CoC renewal application.

The final rule redesignates current §§ 72.212(b)(8)(i), (b)(9), and (b)(10) as §§ 72.212(b)(12), (b)(13), and (b)(14), respectively.

The final rule redesignates current §§ 72.212(b)(8)(ii), (b)(8)(iii), and 72.212(b)(1)(iii) as §§ 72.212(c), (d), and (e), respectively, and makes conforming cross-reference changes.

5. Section 72.230, Procedures for spent fuel storage cask submittals

The final rule revises § 72.230(b) by adding language that establishes the term for a period not to exceed 40 years. The final rule further amends § 72.230(b) by replacing the words "for a period of at least 20 years" with "the term proposed in the application."

6. Section 72.236, Specific requirements for spent fuel storage cask approval and fabrication

The final rule revises § 72.236(g) by adding language that requires spent fuel storage casks to be designed to store spent fuel safely for the term proposed in the application, eliminating the current language that requires the cask design to store spent fuel safely for a minimum of 20 years.

7. Section 72.238, Issuance of an NRC Certificate of Compliance

The final rule revises § 72.238 by adding language that establishes the term for a CoC to be "not to exceed 40 years."

8. Section 72.240, Conditions for spent fuel storage cask renewal

The final rule revises the heading of § 72.240 and the language of §§ 72.240(a), (b), and (d) by replacing the word "reapproval" with "renewal." The final rule further revises § 72.240(a) to establish that the CoC renewal term shall be "not to exceed 40 years." The final rule also revises § 72.240(a) to clarify that in the event that a certificate holder does not apply for a CoC renewal, any general licensee that uses this cask model under the general license issued under § 72.210, any licensee's representative, or another

certificate holder may apply for renewal of the CoC.

The final rule adds a new § 72.240(c) to require the safety analysis report accompanying the renewal application to include design bases information as documented in the most recently updated FSAR, a TLAA of SSCs important to safety, and a description of the program for management of issues associated with aging that could adversely affect structures, systems, and components important to safety. The final rule redesignates § 72.240(c) as § 72.240(d) and revises this provision to add a requirement that any CoC renewal application must demonstrate compliance with the QA provisions of subpart G of part 72. The final rule also revises the last sentence of the provision to improve its readability.

The final rule adds a new § 72.240(e) that states the NRC may, as part of the approval of a CoC renewal application, revise the terms, conditions, and specifications of the CoC to require that the licensee implement an AMP.

Note on October 24, 2008, and March 27, 2009, Final Rule Revisions to § 72.212(b)(5), and Redesignation of § 72.212(b)(5) to § 72.212(b)(9):

This final rule redesignates § 72.212(b)(5) as § 72.212(b)(9). On October 24, 2008 (73 FR 63545, 63573), the NRC issued a final rule, "Protection of Safeguards Information," that revised § 72.212 by adding a new § 72.212(b)(5)(v) and redesignated the existing § 72.212(b)(5)(v) as § 72.212(b)(5)(vi). The new § 72.212(b)(5)(v) added language requiring a general licensee to "protect Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable." The redesignated § 72.212(b)(5)(vi) was otherwise unchanged and continued to require "for the purpose of this general license, the licensee is exempt from §§ 73.55(h)(4)(iii)(A) and 73.55(h)(5) of this chapter." These two cross referenced paragraphs dealt with reactor security requirements to (1) neutralize threats by interposing armed security personnel between the adversaries and reactor vital areas and (2) use force to prevent or impede attempted acts of theft of special nuclear material or radiological sabotage; and the NRC has historically not applied these requirements to ISFSI general licensees.

On March 27, 2009 (74 FR 13925, 13970), the NRC published a final rule, "Power Reactor Security Requirements," which included a conforming change to the security requirements contained in § 72.212(b)(5)(ii)–(v). The changes to § 72.212(b)(5)(ii)–(v) in the March 2009 final rule were intended to clarify these regulations to better use plain language and to update the exemption cross references to the reactor security regulations contained in § 73.55, due to the extensive revision of § 73.55.

In the March 2009 final rule, the NRC revised § 72.212(b)(5)(v) to update the exemption language to read "[f]or the purpose of this general license, the licensee is exempt from requirements to interdict and neutralize threats in § 73.55 of this chapter." However, the amendatory language in the 2009 final rule (74 FR 13970, Item 8) which read "[i]n § 72.212, paragraphs (b)(5)(ii), (b)(5)(iii), (b)(5)(iv), and (b)(5)(v) are revised to read as follows:" should instead have read "[i]n § 72.212, paragraphs (b)(5)(ii), (b)(5)(iii), (b)(5)(iv), *and (b)(5)(vi)* are revised to read as follows:" (emphasis added). Consequently, the NRC staff in developing the March 2009 final rule both (1) unintentionally eliminated language that had been added by the Commission in the October 2008 final rule that required general ISFSI licensees to protect Safeguards Information; and (2) unintentionally retained the incorrect exemption language in § 72.212(b)(5)(vi) (referring to §§ 73.55(h)(4)(iii)(A) and 73.55(h)(5)). The provision designated as § 72.212(b)(5)(v) by the March 2009 final rule was intended to replace § 72.212(b)(5)(vi), but did not accomplish that because of the above described mistake in the amendatory language.

Accordingly, to correct these errors, this final rule removes § 72.212(b)(5)(vi) (which was put in place by the October 24, 2008, final rule) and reinstates the provision added by the October 24, 2008, rule and then deleted by the March 27, 2009, rule, as a new § 72.212(b)(9)(vi). The remaining provisions of § 72.212(b)(5) are redesignated from § 72.212(b)(5)(i)–(v) to § 72.212(b)(9)(i)–(v).

V. Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is amending 10 CFR part 72 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

VI. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA, as amended, or the provisions of Title 10 of the CFR. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

VII. Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is clarifying the terms for spent fuel storage cask designs, or CoCs, and ISFSI licenses. In addition, the final action also allows part 72 general licensees to implement changes authorized by an amended CoC to a cask loaded under the initial CoC or an earlier amended CoC (a "previously loaded cask"). This action does not constitute the establishment of a standard that establishes generally applicable requirements. For this reason, the NRC concludes that the Act does not apply to this final rule.

VIII. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, not to prepare an environmental impact statement for this final rule because the Commission has concluded on the basis of an environmental assessment that this final rule would not be a major Federal action significantly affecting the quality of the human environment. The NRC has prepared an environmental assessment and, on the basis of this environmental assessment, has made a finding of no significant impact. The amendments are procedural in nature whereby extended license and CoC terms and the implementation of CoC amendments to previously loaded casks could be achieved by exemptions under the current regulations. They will not have a significant incremental effect on the environment. Therefore, the NRC has determined that an environmental

impact statement is not necessary for this rulemaking.

The determination of this environmental assessment is that there will be no significant impact to the public from this action.

This conclusion was published in the environmental assessment that was made available for comment for 75 days after publication of the proposed rule at the NRC Public Document Room, Room O1–F21, 11555 Rockville Pike, Rockville, MD 20852. No comments were received on the content of the environmental assessment. The environmental assessment is also available in ADAMS, accession number ML100710441.

IX. Paperwork Reduction Act Statement

This rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, control number 3150–0132. The burden to the public for these information collections is estimated to average −0.33 hours per response (or a reduction of approximately 1 hour for every three responses).

Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Information Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *Infocollects.Resource@NRC.gov* and to the Desk Officer, Christine Kymn, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0132), Office of Management and Budget, Washington, DC 20503. You may also e-mail comments to *Christine_J_Kymn@omb.eop.gov* or comment by telephone at 202–395–4638.

Public Protection Notification

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

X. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available in the NRC Public Document Room, Room O1–F21, 11555 Rockville Pike, Rockville, MD 20852, and in ADAMS, Accession Number ML100710139. As part of the proposed rule, the NRC sought public comments on the draft regulatory analysis. The NRC did not receive any comments that addressed the regulatory analysis.

XI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The majority of companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XII. Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 72.62, and the finality provisions of 10 CFR part 52) does not apply to this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR chapter I. These amendments do not require the addition, elimination, or modification of structures, systems, or components of an ISFSI or of the procedures or organization required to operate an ISFSI. Therefore, a backfit analysis is not required.

XIII. Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistle blowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

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

■ 2. In § 72.3, definitions for *AMP, Term certified by the cask's Certificate of Compliance,* and *TLAAs* are added in alphabetical order to read as follows:

§ 72.3 Definitions.

* * * * *

AMP, for the purposes of this part, means a program for addressing aging effects that may include prevention, mitigation, condition monitoring, and performance monitoring.

* * * * *

Term certified by the cask's Certificate of Compliance, for the purposes of this part, means, for an initial CoC, the period of time commencing with the CoC effective date and ending with the CoC expiration date, and for a renewed CoC, the period of time commencing with the most recent CoC renewal date and ending with the CoC expiration date.

TLAAs, for the purposes of this part, means those licensee or certificate holder calculations and analyses that:

(1) Involve structures, systems, and components important to safety within the scope of the license renewal, as delineated in subpart F of this part, or within the scope of the spent fuel storage certificate renewal, as delineated in subpart L of this part, respectively;

(2) Consider the effects of aging;

(3) Involve time-limited assumptions defined by the current operating term, for example, 40 years;

(4) Were determined to be relevant by the licensee or certificate holder in making a safety determination;

(5) Involve conclusions or provide the basis for conclusions related to the capability of structures, systems, and components to perform their intended safety functions; and

(6) Are contained or incorporated by reference in the design bases.

■ 3. In § 72.24, revise the introductory text of paragraph (c) to read as follows:

§ 72.24 Contents of application: Technical information.

* * * * *

(c) The design of the ISFSI or MRS in sufficient detail to support the findings in § 72.40 for the term requested in the application, including:

* * * * *

■ 4. In § 72.42, revise paragraphs (a) and (b) to read as follows:

§ 72.42 Duration of license; renewal.

(a) Each license issued under this part must be for a fixed period of time to be specified in the license. The license term for an ISFSI must not exceed 40 years from the date of issuance. The license term for an MRS must not exceed 40 years from the date of issuance. Licenses for either type of installation may be renewed by the Commission at the expiration of the license term upon application by the licensee for a period not to exceed 40 years and under the requirements of this rule. Application for ISFSI license renewals must include the following:

(1) TLAAs that demonstrate that structures, systems, and components important to safety will continue to perform their intended function for the requested period of extended operation; and

(2) A description of the AMP for management of issues associated with aging that could adversely affect structures, systems, and components important to safety.

(b) Applications for renewal of a license should be filed in accordance with the applicable provisions of subpart B of this part at least 2 years before the expiration of the existing license. The application must also include design bases information as documented in the most recently updated FSAR as required by § 72.70. Information contained in previous applications, statements, or reports filed with the Commission under the license may be incorporated by reference provided that these references are clear and specific.

* * * * *

5. In § 72.212, revise paragraphs (a)(3) and (b) and add paragraphs (c), (d), and (e) to read as follows:

§ 72.212 Conditions of general license issued under § 72.210.

(a) * * *

(3) The general license for the storage of spent fuel in each cask fabricated under a Certificate of Compliance shall commence upon the date that the particular cask is first used by the general licensee to store spent fuel, shall continue through any renewals of the Certificate of Compliance, unless otherwise specified in the Certificate of Compliance, and shall terminate when the cask's Certificate of Compliance expires. For any cask placed into service during the final renewal term of a Certificate of Compliance, or during the term of a Certificate of Compliance that was not renewed, the general license for that cask shall terminate after a storage period not to exceed the length of the term certified by the cask's Certificate of Compliance. Upon expiration of the general license, all casks subject to that general license must be removed from service.

(b) The general licensee must:

(1) Notify the Nuclear Regulatory Commission using instructions in § 72.4 at least 90 days before first storage of spent fuel under this general license. The notice may be in the form of a letter, but must contain the licensee's name, address, reactor license and docket numbers, and the name and means of contacting a person responsible for providing additional information concerning spent fuel under this general license. A copy of the submittal must be sent to the administrator of the appropriate Nuclear Regulatory Commission regional office listed in appendix D to part 20 of this chapter.

(2) Register use of each cask with the Nuclear Regulatory Commission no later than 30 days after using that cask to store spent fuel. This registration may be accomplished by submitting a letter using instructions in § 72.4 containing the following information: the licensee's name and address, the licensee's reactor license and docket numbers, the name and title of a person responsible for providing additional information concerning spent fuel storage under this general license, the cask certificate number, the CoC amendment number to which the cask conforms, unless loaded under the initial certificate, cask model number, and the cask identification number. A copy of each submittal must be sent to the administrator of the appropriate Nuclear Regulatory Commission regional office listed in appendix D to part 20 of this chapter.

(3) Ensure that each cask used by the general licensee conforms to the terms, conditions, and specifications of a CoC or an amended CoC listed in § 72.214.

(4) In applying the changes authorized by an amended CoC to a cask loaded under the initial CoC or an earlier amended CoC, register each such cask with the Nuclear Regulatory Commission no later than 30 days after applying the changes authorized by the amended CoC. This registration may be accomplished by submitting a letter using instructions in § 72.4 containing the following information: the licensee's name and address, the licensee's reactor license and docket numbers, the name and title of a person responsible for providing additional information concerning spent fuel storage under this general license, the cask certificate number, the CoC amendment number to which the cask conforms, cask model number, and the cask identification number. A copy of each submittal must be sent to the administrator of the appropriate Nuclear Regulatory Commission regional office listed in appendix D to part 20 of this chapter.

(5) Perform written evaluations, before use and before applying the changes authorized by an amended CoC to a cask loaded under the initial CoC or an earlier amended CoC, which establish that:

(i) The cask, once loaded with spent fuel or once the changes authorized by an amended CoC have been applied, will conform to the terms, conditions, and specifications of a CoC or an amended CoC listed in § 72.214;

(ii) Cask storage pads and areas have been designed to adequately support the static and dynamic loads of the stored casks, considering potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion; and

(iii) The requirements of § 72.104 have been met. A copy of this record shall be retained until spent fuel is no longer stored under the general license issued under § 72.210.

(6) Review the Safety Analysis Report referenced in the CoC or amended CoC and the related NRC Safety Evaluation Report, prior to use of the general license, to determine whether or not the reactor site parameters, including analyses of earthquake intensity and tornado missiles, are enveloped by the cask design bases considered in these reports. The results of this review must be documented in the evaluation made in paragraph (b)(5) of this section.

(7) Evaluate any changes to the written evaluations required by paragraphs (b)(5) and (b)(6) of this section using the requirements of § 72.48(c). A copy of this record shall be retained until spent fuel is no longer stored under the general license issued under § 72.210.

(8) Before use of the general license, determine whether activities related to storage of spent fuel under this general license involve a change in the facility Technical Specifications or require a license amendment for the facility pursuant to § 50.59(c) of this chapter. Results of this determination must be documented in the evaluations made in paragraph (b)(5) of this section.

(9) Protect the spent fuel against the design basis threat of radiological sabotage in accordance with the same provisions and requirements as are set forth in the licensee's physical security plan pursuant to § 73.55 of this chapter with the following additional conditions and exceptions:

(i) The physical security organization and program for the facility must be modified as necessary to assure that activities conducted under this general license do not decrease the effectiveness of the protection of vital equipment in accordance with § 73.55 of this chapter;

(ii) Storage of spent fuel must be within a protected area, in accordance with § 73.55(e) of this chapter, but need not be within a separate vital area. Existing protected areas may be expanded or new protected areas added for the purpose of storage of spent fuel in accordance with this general license;

(iii) For the purpose of this general license, personnel searches required by § 73.55(h) of this chapter before admission to a new protected area may be performed by physical pat-down searches of persons in lieu of firearms and explosives detection equipment;

(iv) The observational capability required by § 73.55(i)(3) of this chapter as applied to a new protected area may be provided by a guard or watchman on patrol in lieu of video surveillance technology;

(v) For the purpose of this general license, the licensee is exempt from requirements to interdict and neutralize threats in § 73.55 of this chapter; and

(vi) Each general licensee that receives and possesses power reactor spent fuel and other radioactive materials associated with spent fuel storage shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

(10) Review the reactor emergency plan, quality assurance program, training program, and radiation protection program to determine if their effectiveness is decreased and, if so, prepare the necessary changes and seek and obtain the necessary approvals.

(11) Maintain a copy of the CoC and, for those casks to which the licensee has applied the changes of an amended CoC, the amended CoC, and the documents referenced in such Certificates, for each cask model used for storage of spent fuel, until use of the cask model is discontinued. The licensee shall comply with the terms, conditions, and specifications of the CoC and, for those casks to which the licensee has applied the changes of an amended CoC, the terms, conditions, and specifications of the amended CoC, including but not limited to, the requirements of any AMP put into effect as a condition of the NRC approval of a CoC renewal application in accordance with § 72.240.

(12) Accurately maintain the record provided by the CoC holder for each cask that shows, in addition to the information provided by the CoC holder, the following:

(i) The name and address of the CoC holder or lessor;

(ii) The listing of spent fuel stored in the cask; and

(iii) Any maintenance performed on the cask.

(13) Conduct activities related to storage of spent fuel under this general license only in accordance with written procedures.

(14) Make records and casks available to the Commission for inspection.

(c) The record described in paragraph (b)(12) of this section must include sufficient information to furnish documentary evidence that any testing and maintenance of the cask has been conducted under an NRC-approved quality assurance program.

(d) In the event that a cask is sold, leased, loaned, or otherwise transferred to another registered user, the record described in paragraph (b)(12) of this section must also be transferred to and must be accurately maintained by the new registered user. This record must be maintained by the current cask user during the period that the cask is used for storage of spent fuel and retained by the last user until decommissioning of the cask is complete.

(e) Fees for inspections related to spent fuel storage under this general license are those shown in § 170.31 of this chapter.

■ 6. In § 72.230, revise paragraph (b) to read as follows:

§ 72.230 Procedures for spent fuel storage cask submittals.

* * * * *

(b) Casks that have been certified for transportation of spent fuel under part 71 of this chapter may be approved for storage of spent fuel under this subpart. An application must be submitted in accordance with the instructions contained in § 72.4, for a proposed term not to exceed 40 years. A copy of the CoC issued for the cask under part 71 of this chapter, and drawings and other documents referenced in the certificate, must be included with the application. A safety analysis report showing that the cask is suitable for storage of spent fuel, for the term proposed in the application, must also be included.

* * * * *

■ 7. In § 72.236, revise paragraph (g) to read as follows:

§ 72.236 Specific requirements for spent fuel storage cask approval and fabrication.

* * * * *

(g) The spent fuel storage cask must be designed to store the spent fuel safely for the term proposed in the application, and permit maintenance as required.

* * * * *

■ 8. Revise § 72.238 to read as follows:

§ 72.238 Issuance of an NRC Certificate of Compliance.

A Certificate of Compliance for a cask model will be issued by NRC for a term not to exceed 40 years on a finding that the requirements in § 72.236(a) through (i) are met.

■ 9. Revise § 72.240 to read as follows:

§ 72.240 Conditions for spent fuel storage cask renewal.

(a) The certificate holder may apply for renewal of the design of a spent fuel storage cask for a term not to exceed 40 years. In the event that the certificate holder does not apply for a cask design renewal, any licensee using a spent fuel storage cask, a representative of such licensee, or another certificate holder may apply for a renewal of that cask design for a term not to exceed 40 years.

(b) The application for renewal of the design of a spent fuel storage cask must be submitted not less than 30 days before the expiration date of the CoC.

When the applicant has submitted a timely application for renewal, the existing CoC will not expire until the application for renewal has been determined by the NRC.

(c) The application must be accompanied by a safety analysis report (SAR). The SAR must include the following:

(1) Design bases information as documented in the most recently updated final safety analysis report (FSAR) as required by § 72.248;

(2) Time-limited aging analyses that demonstrate that structures, systems, and components important to safety will continue to perform their intended function for the requested period of extended operation; and

(3) A description of the AMP for management of issues associated with aging that could adversely affect structures, systems, and components important to safety.

(d) The design of a spent fuel storage cask will be renewed if the conditions in subpart G of this part and § 72.238 are met, and the application includes a demonstration that the storage of spent fuel has not, in a significant manner, adversely affected structures, systems, and components important to safety.

(e) In approving the renewal of the design of a spent fuel storage cask, the NRC may revise the CoC to include terms, conditions, and specifications that will ensure the safe operation of the cask during the renewal term, including but not limited to, terms, conditions, and specifications that will require the implementation of an AMP.

Dated at Rockville, Maryland this 10th day of February, 2011.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–3493 Filed 2–15–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 61, 63, 91, 93, 121, 135, 142, 145, and 183

[Docket No. FAA–2011–0092; Amendment Nos. 21–93, 61–126, 63–38, 77–14, 91–320, 93–96, 121–352, 135–123, 142–6, 145–28, 183–14]

Removal of Expired Federal Aviation Administration Regulations and References

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is making minor technical changes to its regulations by removing expired Special Federal Aviation Regulations (SFARs) and cross-references, as well as other expired or obsolete regulations. None of these changes are substantive in nature since the regulations in question have expired and are not currently in effect. This technical amendment is necessary to update our regulations. The rule will not impose any additional burden or restriction on persons or organizations affected by these regulations.

DATES: Effective February 16, 2011.

FOR FURTHER INFORMATION CONTACT: Jackie Smith, (202) 267–9682; Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; e-mail *jackie.f.smith@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA periodically issues temporary regulations in 14 CFR called Special Federal Aviation Regulations (SFARs). These SFARs are typically necessary for a finite period of time, and usually specify an expiration date within the regulatory text. Additionally, certain subparts have specified expiration dates within the regulatory text. Currently, 14 CFR contains several SFARs, subparts, and sections that have become unnecessary or have expiration dates that have passed. To maintain an accurate body of regulations, we are removing and/or amending SFAR Nos. 36, 80, 92–5, 93, 98, 101–1; Subparts J and M of part 21; Subpart B of part 93; §§ 91.146(b), 121.360, 135.153, 183.61(a)(1), 183.63, and corresponding references. The following tables are presented for the reader's convenience.

TABLE 1—EXPIRED SFARS

Part(s)	SFARs removed	Expiration date
61, 63, 135, 142.	93	11/30/2001.
77	98	01/20/2009.
121, 145	36	11/14/2009.
121	80	03/12/2001.
121	92–5	07/31/2003 and 10/01/2003.

TABLE 2—EXPIRED SUBPARTS AND SECTIONS

Parts	Subparts and sections amended/removed	Expiration date
21	Subparts J and M	11/14/2006
91	§ 91.147(b)	09/11/2007
93	Subpart B	10/31/2008
121	§ 121.360	03/29/2005
135	§ 135.153	03/29/2005
183	§§ 183.61(a)(1) and 183.63	11/14/2006

Under the Administrative Procedure Act, an agency doesn't have to issue a notice of proposed rulemaking when the agency for good cause finds that public notice and procedure are "impracticable, unnecessary, or contrary to the public interest." *See* 5 U.S.C. 553(b). Because this technical amendment simply removes obsolete regulations and references, we find that publishing the changes for public notice and comment is unnecessary.

The Administrative Procedure Act also states that an agency must publish a substantive rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause. *See* 5 U.S.C. 553(d). We find that this technical amendment imposes no additional burden or requirement on the regulated industry, and is not substantive in nature. Moreover, we find that there is good cause to make the changes effective immediately upon publication in the **Federal Register.** It is in the public interest to remove these obsolete references from our regulations immediately.

This regulation is editorial in nature and imposes no additional burden on any person or organization. Therefore, we have determined the action: (1) Is not a significant rule under Executive Order 12866; and (2) is not a significant rule under Department of Transportation Regulatory Policy and

Procedures. No impact is expected as a result of removing these regulations and a full regulatory evaluation is not required. In addition, the FAA certifies the rule 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.

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 63

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Navigation (air), Reporting and recordkeeping requirements, Security measures

14 CFR Part 77

Administrative practice and procedure, Airports, Airspace, Aviation safety, Navigation (air), Reporting and recordkeeping requirements.

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

14 CFR Part 93

Air traffic control, Airports, Navigation (air), Reporting and recordkeeping requirements

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements.

14 CFR Part 142

Administrative practice and procedure, Airmen, Educational facilities, Reporting and recordkeeping requirements, Schools, Teachers.

14 CFR Part 145

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 183

Aircraft, Airmen, Authority delegations (Government agencies), Health professions, Reporting and recordkeeping requirements.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends parts 21, 61, 63, 77, 91, 93, 121, 135, 145, and 183 of Title 14, Code of Federal Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

■ 1. The authority citation for part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

Subpart J—[Removed and Reserved]

■ 2. Remove and reserve Subpart J, consisting of §§ 21.231 through 21.293.

Subpart M—[Removed and Reserved]

■ 3. Remove and reserve Subpart M, consisting of §§ 21.431 through 21.493.

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

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

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

Special Federal Aviation Regulation No. 93 [Removed]

■ 5. Remove SFAR No. 93.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

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

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

Special Federal Aviation Regulations No. 93 [Removed]

■ 7–9. Remove SFAR No. 93.

PART 91— GENERAL OPERATING AND FLIGHT RULES

■ 10. 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).

§ 91.147 [Amended]

■ 11. Amend § 91.147(b) by removing the words "by September 11, 2007".

PART 93—SPECIAL AIR TRAFFIC RULES

■ 12. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

Subpart B—[Removed and Reserved]

■ 13. Remove and reserve Subpart B, consisting of §§ 93.21 through 93.33.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 14. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

Special Federal Aviation Regulation No. 14 [Removed]

■ 15. Remove SFAR No. 14.

Special Federal Aviation Regulation No. 36 [Removed]

■ 16. Remove SFAR No. 36.

Special Federal Aviation Regulation No. 80 [Removed]

■ 17. Remove SFAR No. 80.

Special Federal Aviation Regulation No. 92–5 [Removed]

■ 18. Remove SFAR No. 92–5.

Special Federal Aviation Regulation No. 93 [Removed]

■ 19. Remove SFAR No. 93.

§ 121.360 [Removed and Reserved]

■ 20. Remove and reserve § 121.360.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 21. 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.

Special Federal Aviation Regulation No. 36 [Removed]

■ 22. Remove SFAR 36.

Special Federal Aviation Regulation No. 93 [Removed]

■ 23. Remove SFAR 93.

§ 135.153 [Removed and Reserved]

■ 24. Remove and reserve § 135.153.

PART 142—TRAINING CENTERS

■ 25. The authority citation for part 142 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45703, 45301–45302.

Special Federal Aviation Regulation No. 93 [Removed]

■ 26. Remove SFAR 93.

PART 145—REPAIR STATIONS

■ 27. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44709, 44717,

Special Federal Aviation Regulation No. 35 [Removed]

■ 28. Remove SFAR 36.

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

■ 29. The authority citation for part 183 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 40113, 44702, 45303

§ 183.61 [Amended]

■ 30. Amend § 183.61 by removing and reserving paragraph (a)(1).

§ 183.63 [Amended]

■ 31. Amend § 183.63 introductory text by removing the phrase "or under the delegation rules of subpart J or M of part 21, or SFAR 36 of this chapter,".

Issued in Washington, DC on February 11, 2011.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2011–3467 Filed 2–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS SPRUANCE (DDG 111) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective February 16, 2011 and is applicable beginning February 9, 2011.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jaewon Choi, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, *telephone number:* 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR Part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS SPRUANCE (DDG 111) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; Rule 21(a), pertaining to the arc of visibility of the forward masthead light; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, amend part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follow:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Four, Paragraph 15 by adding, in alpha numerical order, by vessel number, an entry for USS SPRUANCE (DDG 111);

■ B. In Table Four, Paragraph 16 by adding, in alpha numerical order, by vessel number, an entry for USS SPRUANCE (DDG 111); and

■ C. In Table Five, by adding, in alpha numerical order, by vessel number, an entry for USS SPRUANCE (DDG 111):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Table Four

■ 15. * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* *	* * *	* *
USS SPRUANCE	DDG 111	1.90 meters.
* *	* * *	* *

* * * * * ■ 16. * * *

Vessel	Number	Obstruction angle relative ship's headings
* *	* * *	* *
USS SPRUANCE	DDG 111	107.48 thru 112.50 [degrees].
* *	* * *	* *

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* *	* *	* *	* *	* *	*
USS SPRUANCE	DDG 111	X	X	X	14.9
* *	* *	* *	* *	* *	*

Approved: February 9, 2011.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Dated: February 9, 2011.

D.J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–3530 Filed 2–15–11; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0275; FRL–8860–8]

Polymerized Fatty Acid Esters With Aminoalcohol Alkoxylates; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of polymerized fatty acid esters with aminoalcohol alkoxylates (PFAEAA) with a minimum number average molecular weight (in amu) 1,200, limited to the chemicals listed in Unit 11 of the **SUPPLEMENTARY INFORMATION**, when used as an inert ingredient (surfactant) under 40 CFR 180.910 (growing crops and raw agricultural commodities after harvest) and 40 CFR 180.930 (animal application). Croda Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of PFAEAA.

DATES: This regulation is effective February 16, 2011. Objections and requests for hearings must be received on or before April 18, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0275. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Deirdre Sunderland, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone*

number: (703) 603–0851; *e-mail address: sunderland.deirdre@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.* To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0275 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 18, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0275, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Exemption

In the **Federal Register** of June 8, 2010 (75 FR 32463) (FRL–8827–5), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 0E7699) by Croda Inc., 315 Cherry Lane, New Castle, DE 19720. The petition requested that 40 CFR 180.910 and 180.930 be amended by establishing an exemption from the requirement of a tolerance for residues of polymerized fatty acid esters with aminoalcohol alkoxylates (PFAEAA); limited to the following chemicals: Dimethylaminoethanol, ethoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173188–38–9); dimethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173188–42–5 diethylaminoethanol, ethoxylated, reaction product with fatty acid dimers (CAS Reg. No. 1173188–72–1); diethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173188–75–4); dimethylaminoethanol, ethoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173188–49–2); dimethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173188–67–4); diethylaminoethanol, ethoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173188–81–2); diethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173188–83–4); hydroxyethylmorpholine, ethoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173189–00–8); hydroxyethylmorpholine, ethoxylated, propoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173189–06–4); hydroxyethylpiperidine, ethoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173189–20–2); hydroxyethylpiperidine, ethoxylated, propoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173189–22–4); hydroxyethylmorpholine, ethoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173189–09–7); hydroxyethylmorpholine, ethoxylated, propoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173189–17–7); hydroxyethylpiperidine, ethoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173189–25–7); hydroxyethylpiperidine, ethoxylated, propoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173189–28–0), when used as insert ingredients (surfactants) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest and formulations applied to animals. That notice referenced a summary of the petition prepared by Croda Inc., the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing. In the notice of filing "dimethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid trimers" was presented with the incorrect CAS Reg. No. of 1173189–17–7. The Petitioner mistakenly listed the same CAS Reg. No. for two of the chemicals in the petition. The correct CAS Reg. No. for dimethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid trimers is CAS Reg. No. 1173188–67–4. EPA has adopted the correct CAS Reg. No. in promulgating the tolerance exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and

hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *" EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(c)(2)(A) of FFDCA, and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for PFAEAA including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with PFAEAA follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The acute oral median lethal dose (LD_{50}) for one of the chemicals, (diethylaminoethanol, ethoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173188–81–2)) which has been used to represent the group of petitioned chemicals, was determined to be > 2,000 milligrams/kilogram (mg/kg) (Harmonized Test Guideline 870.1100). In a non-guideline study used for supplemental purposes, the chemical was shown to be non-irritating to both skin and eyes. A reverse mutation assay "Ames Test" with and without activation (Harmonized Test Guideline 870.5100) indicated that PFAEAA are non-mutagenic.

In addition, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk to human health or the environment (i.e. 40 CFR 180.960). The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). PFAEAA conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets all of the following criteria, with the exception of the "reactive functional group" criterion (specified in 40 CFR 723.250(e) in this Unit), that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, in order to meet the low risk polymer criteria, the polymer also meets as required the exemption criteria specified in 40 CFR 723.250(e) regarding minimum MW and reactive functional groups. The polymer's number average MW of 1,200 is greater than 1,000 and less than 10,000 daltons, as required by 40 CFR 723.250(e). Further, the polymer meets the 40 CFR 723.250(e) requirement that it contain less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000. This subsection also states that the polymer may not contain any reactive functional groups. PFAEAA contain one tertiary amine which makes it ineligible for registration under 40 CFR 180.960; however, the Agency believes that these reactive functional groups are not a safety concern for humans because information provided by the petitioner indicates that the polymer exists in a zwitterionic form in which the tertiary amine nitrogen is internally protonated and not available for further covalent bonding. Additionally, the structure of the polymer and its conformation appear to reduce the compound's basicity and nucleophilicity. This is further supported by a measurement of the isoelectric point (pI) of the polymer.

Available toxicity studies are limited. However, due to their large size (minimum number average molecular weight 1,200 amu) and the general conformance to the 40 CFR 180.960, polymerized fatty acid esters with aminoalcohol alkoxylates are not expected to pass through an intact gastrointestinal tract nor are they anticipated to penetrate intact human skin. Inhalation exposure is not expected. Because of their inability to enter systemic circulation when used as inert ingredients in pesticide formulation PFAEAA are essentially nontoxic. Therefore, the Agency concluded that a standard battery of toxicological studies are not necessary.

B. Toxicological Points of Departure/ Levels of Concern

Due to its low potential hazard and lack of a hazard endpoint, the Agency has determined that a quantitative risk assessment using safety factors applied to a point of departure protective of an identified hazard endpoint is not appropriate.

A reverse mutation assay "Ames Test" with and without activation (Harmonized Test Guideline 870.5100) indicated that a representative chemical, diethylaminoethanol, ethoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173188–81–2), is non-mutagenic and based on the available information on PFAEAAs; they are not anticipated to be carcinogenic.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses and drinking water.* In evaluating dietary exposure to PFAEAA, EPA considered exposure under the proposed exemption from the requirement of a tolerance. The primary route of exposure to PFAEAA from its use as an inert ingredient in pesticide products would most likely be through consumption of food to which pesticide products containing it have been applied, and possibly through drinking water (from runoff). Due to their physical and chemical properties it is unlikely that PFAEAA will pass through an intact gastrointestinal tract or intact human skin and are therefore, unlikely to enter systemic circulation. Because no hazard was identified for PFAEAA, a dietary exposure assessment for PFAEAA was not conducted.

2. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

The proposed exemption will allow for various types of residential exposure; however, due to the characteristics of these chemicals it is not expected that PFAEAA will be absorbed through the intact gastrointestinal tract or intact human skin nor is it expected to be available via inhalation. Therefore, there is no increased risk from exposure to residential products containing PFAEAA as an inert ingredient. For that reason the Agency believes a residential risk assessment is not necessary.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found PFAEAA to share a common mechanism of toxicity with any other substances, and PFAEAA does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that PFAEAA does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

Due to large size of the PFAEAA polymers it is unlikely that they will enter systemic circulation from either the gastrointestinal tract or intact human skin. As a result, they are unlikely to elicit a toxic response in infants and children when used as an inert ingredient in pesticide products. Available toxicity studies confirm this belief and indicate low toxicity; therefore, the Agency did not use a safety factor (SF) analysis for assessing risk. For similar reasons, the additional SF for the protection of infants and children is not necessary.

E. Aggregate Risks and Determination of Safety

As indicated in Unit IV, these nonirritant (eye and skin) inert ingredients would be incapable of entering systemic circulation and therefore, unable to elicit a toxic response in adults and infants/children. Taking into consideration all available information on PFAEAA, EPA has determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to PFAEAA under reasonable foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.910 and 180.930 for residues of PFAEAA when used as an inert ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest and formulations applied to animals are safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/ World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for PFAEAA.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 and 40 CFR 180.930 for the petitioned-for PFAEAA chemicals when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest and formulations applied to animals.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any

information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 7, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.910 Inert ingredients used pre-natal and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * *	*	*
Diethylaminoethanol, ethoxylated, reaction product with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–72–1).	.....	Surfactant.
Diethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–75–4).	.....	Surfactant.
Diethylaminoethanol, ethoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–81–2).	.....	Surfactant.
Diethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–83–4).	.....	Surfactant.
* * * * *	*	*
Dimethylaminoethanol, ethoxylated, reaction products with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–38–9).	.....	Surfactant.
Dimethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–42–5).	.....	Surfactant.
Dimethylaminoethanol, ethoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–49–2).	.....	Surfactant.
Dimethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–67–4).	.....	Surfactant.
* * * * *	*	*
Hydroxyethylmorpholine, ethoxylated, reaction products with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–00–8).	.....	Surfactant.
Hydroxyethylmorpholine, ethoxylated, propoxylated, reaction products with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–06–4).	.....	Surfactant.
Hydroxyethylpiperidine, ethoxylated, reaction products with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–20–2).	.....	Surfactant.
Hydroxyethylpiperidine, ethoxylated, propoxylated, reaction products with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–22–4.	.....	Surfactant.
Hydroxyethylmorpholine, ethoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–09–7).	.....	Surfactant.
Hydroxyethylmorpholine, ethoxylated, propoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–17–7).	.....	Surfactant.

Inert ingredients	Limits	Uses
Hydroxyethylpiperidine, ethoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–25–7).	.....	Surfactant.
Hydroxyethylpiperidine, ethoxylated, propoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–28–0).	.....	Surfactant.
* * * * * * *		

■ 3. In § 180.930, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

Inert ingredients	Limits	Uses
* * * * * * *		
Diethylaminoethanol, ethoxylated, reaction product with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–72–1).	.....	Surfactant.
Diethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–75–4).	.....	Surfactant.
Diethylaminoethanol, ethoxylated, reaction products with acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–81–2).	.....	Surfactant.
Diethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–83–4).	.....	Surfactant.
* * * * * * *		
Dimethylaminoethanol, ethoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–38–9).	.....	Surfactant.
Dimethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–42–5).	.....	Surfactant.
Dimethylaminoethanol, ethoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–49–2).	.....	Surfactant.
Dimethylaminoethanol, ethoxylated, propoxylated reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–67–4).	.....	Surfactant.
* * * * * * *		
Hydroxyethylmorpholine, ethoxylated, reaction products with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–00–8).	.....	Surfactant.
Hydroxyethylmorpholine, ethoxylated, propoxylated, reaction products with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–06–4).	.....	Surfactant.
Hydroxyethylpiperidine, ethoxylated, reaction products with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–20–2).	.....	Surfactant.
Hydroxyethylpiperidine, ethoxylated, propoxylated, reaction products with fatty acid dimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–22–4).	.....	Surfactant.
Hydroxyethylmorpholine, ethoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–09–7).	.....	Surfactant.
Hydroxyethylmorpholine, ethoxylated, propoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173188–67–4).	.....	Surfactant.
Hydroxyethylpiperidine, ethoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–25–7).	.....	Surfactant.
Hydroxyethylpiperidine, ethoxylated, propoxylated, reaction products with fatty acid trimers, minimum number average molecular weight (in amu), 1,200 (CAS Reg. No. 1173189–28–0).	.....	Surfactant.
* * * * * * *		

[FR Doc. 2011–3400 Filed 2–15–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect

for the listed communities prior to this date.

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: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 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 either to 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 other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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, Federalism.

Executive Order 12988, Civil Justice Reform. This final 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.
Arizona:					
Cochise (FEMA Docket No.: B–1156).	City of Sierra Vista (10–09–2513P).	August 11, 2010; August 18, 2010; *Sierra Vista Herald*.	The Honorable Bob Strain, Mayor, City of Sierra Vista, 1011 North Coronado Drive, Sierra Vista, AZ 85635.	August 30, 2010	040017
Maricopa (FEMA Docket No.: B–1156).	Town of Gilbert (10–09–0572P).	August 12, 2010; August 19, 2010; *Arizona Business Gazette*.	The Honorable John Lewis, Mayor, Town of Gilbert, 50 East Civic Center Drive, Gilbert, AZ 85296.	July 30, 2010	040044
Maricopa (FEMA Docket No.: B–1156).	City of Goodyear (10–09–1335P).	August 5, 2010; August 12, 2010; *Arizona Business Gazette*.	The Honorable James M. Cavanaugh, Mayor, City of Goodyear, P.O. Box 5100, Goodyear, AZ 85338.	July 30, 2010	040046
Maricopa (FEMA Docket No.: B–1135).	City of Phoenix (09–09–1059P).	May 7, 2010; May 14, 2010; *Arizona Republic*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	April 30, 2010	040051
Maricopa (FEMA Docket No.: B–1135).	City of Phoenix (10–09–0146P).	May 6, 2010; May 13, 2010; *Arizona Republic*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	April 28, 2010	040051
Maricopa (FEMA Docket No.: B–1141).	Unincorporated areas of Maricopa County (09–09–1387P).	June 10, 2010; June 17, 2010; *Arizona Business Gazette*.	Mr. Don Stapley, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	October 15, 2010	040037
Pima (FEMA Docket No.: B–1156).	City of Tucson (10–09–1751P).	July 23, 2010; July 30, 2010; *Arizona Daily Star*.	The Honorable Bob Walkup, Mayor, City of Tucson, 255 West Alameda, Tucson, AZ 85701.	July 13, 2010	040076

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.
Pinal (FEMA Docket No.: B–1156).	City of Casa Grande (10–09–1348P).	July 23, 2010; July 30, 2010; *Casa Grande Dispatch*.	The Honorable Robert M. Jackson, Mayor, City of Casa Grande, 510 East Florence Boulevard, Casa Grande, AZ 85122.	August 11, 2010	040080
Pinal (FEMA Docket No.: B–1156).	Town of Mammoth (10–09–1056P).	July 31, 2010; August 7, 2010; *Casa Grande Dispatch*.	The Honorable Craig Williams, Mayor, Town of Mammoth, P.O. Box 404, Mammoth, AZ 85618.	December 6, 2010	040086
Pinal (FEMA Docket No.: B–1156).	Unincorporated areas of Pinal County (10–09–1056P).	July 31, 2010; August 7, 2010; *Casa Grande Dispatch*.	Mr. Pete Rios, Chairman, Pinal County Board of Supervisors, P.O. Box 827, Florence, AZ 85132.	December 6, 2010	040077
Yavapai (FEMA Docket No.: B–1135).	City of Prescott (09–09–0658P).	May 10, 2010; May 17, 2010; *Prescott Daily Courier*.	The Honorable Marlin Kuykendall, Mayor, City of Prescott, 201 South Cortez Street, Prescott, AZ 86303.	April 30, 2010	040098
Yavapai (FEMA Docket No.: B–1135).	Unincorporated areas of Yavapai County (09–09–0658P).	May 10, 2010; May 17, 2010; *Prescott Daily Courier*.	Mr. Chip Davis, Chairman, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	April 30, 2010	040093
California:					
Sacramento (FEMA Docket No.: B–1156).	Unincorporated areas of Sacramento County (10–09–1947P).	August 11, 2010; August 18, 2010; *The Sacramento Bee*.	Mr. Roger Dickinson, Chairman, Sacramento County Board of Supervisors, 700 H Street, Suite 2450, Sacramento, CA 95814.	December 16, 2010	060262
San Diego (FEMA Docket No.: B–1156).	City of Oceanside (10–09–1317P).	August 2, 2010; August 9, 2010; *North County Times*.	The Honorable Jim Wood, Mayor, City of Oceanside, 300 North Coast Highway, Oceanside, CA 92054.	July 26, 2010	060294
San Diego (FEMA Docket No.: B–1135).	City of Poway (10–09–1118P).	May 13, 2010; May 20, 2010; *Poway News Chieftain*.	The Honorable Don Higginson, Mayor, City of Poway, 13325 Civic Center Drive, Poway, CA 92064.	September 17, 2010	060702
Ventura (FEMA Docket No.: B–1135).	City of Simi Valley (09–09–2409P).	May 28, 2010; June 4, 2010; *Ventura County Star*.	The Honorable Paul Miller, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	October 4, 2010	060421
Colorado:					
Arapahoe (FEMA Docket No.: B–1141).	City of Aurora (10–08–0421P).	June 3, 2010; June 10, 2010; *Aurora Sentinel*.	The Honorable Ed Tauer, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	October 8, 2010	080002
Boulder (FEMA Docket No.: B–1141).	City of Boulder (10–08–0267P).	June 10, 2010; June 17, 2010; *The Daily Camera*.	The Honorable Susan Osborne, Mayor, City of Boulder, P.O. Box 791, Boulder, CO 80306.	October 15, 2010	080024
Boulder (FEMA Docket No.: B–1141).	Unincorporated areas of Boulder County (10–08–0267P).	June 10, 2010; June 17, 2010; *The Daily Camera*.	Ms. Cindy Domenico, Chairwoman, Boulder County Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	October 15, 2010	080023
Eagle (FEMA Docket No.: B–1156).	Unincorporated areas of Eagle County (10–08–0478P).	September 2, 2010; September 9, 2010; *The Eagle Valley Enterprise*.	Ms. Sara Fisher, Chairwoman, Eagle County Board of Commissioners, P.O. Box 850, Eagle, CO 81631.	August 25, 2010	080051
Summit (FEMA Docket No.: B–1156).	Unincorporated areas of Summit County (10–08–0513P).	August 6, 2010; August 13, 2010; *Summit County Journal*.	Mr. Bob French, Chairman, Summit County Board of Commissioners, P.O. Box 68, Breckenridge, CO 80424.	July 30, 2010	080290
Florida:					
Charlotte (FEMA Docket No.: B–1141).	Unincorporated areas of Charlotte County (10–04–1461P).	May 28, 2010; June 4, 2010; *Charlotte Sun*.	Mr. Bob Starr, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	October 4, 2010	120061
Collier (FEMA Docket No.: B–1141).	City of Naples (10–04–3471P).	June 4, 2010; June 11, 2010; *Naples Daily News*.	The Honorable Bill Barnett, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	May 21, 2010	125130
Hillsborough (FEMA Docket No.: B–1156).	Unincorporated areas of Hillsborough County (10–04–4807P).	August 2, 2010; August 9, 2010; *The Tampa Tribune*.	Mr. Ken Hagan, Chairman, Hillsborough County Board of Commissioners, P.O. Box 1110, Tampa, FL 36601.	July 22, 2010	120112
Leon (FEMA Docket No.: B–1135).	City of Tallahassee (09–04–3114P).	May 11, 2010; May 18, 2010; *Tallahassee Democrat*.	The Honorable John Marks, Mayor, City of Tallahassee, 300 South Adams Street, B–28, Tallahassee, FL 32301.	September 15, 2010	120144
Orange (FEMA Docket No.: B–1135).	City of Ocoee (10–04–4198P).	May 28, 2010; June 4, 2010; *Orlando Sentinel*.	The Honorable S. Scott Vandergrift, Mayor, City of Ocoee, 150 North Lakeshore Drive, Ocoee, FL 34761.	May 21, 2010	120185
Polk (FEMA Docket No.: B–1156).	City of Lakeland (10–04–4064P).	August 11, 2010; August 18, 2010; *The Ledger*.	The Honorable Gow Fields, Mayor, City of Lakeland, 228 South Massachusetts Avenue, Lakeland, FL 33801.	July 30, 2010	120267
Pinellas (FEMA Docket No.: B–1135).	City of Clearwater (10–04–4136P).	May 7, 2010; May 14, 2010; *St. Petersburg Times*.	The Honorable Frank V. Hibbard, Mayor, City of Clearwater, P.O. Box 4748, Clearwater, FL 33758.	April 28, 2010	125096
Sarasota (FEMA Docket No.: B–1141).	City of Sarasota (10–04–3887P).	June 4, 2010; June 11, 2010; *Sarasota Herald-Tribune*.	The Honorable Kelly M. Kirschner, Mayor, City of Sarasota, 1565 1st Street, Sarasota, FL 34236.	May 26, 2010	125150

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.
St. Johns (FEMA Docket No.: B–1156).	Unincorporated areas of St. Johns County (10–04–2018P).	July 26, 2010; August 2, 2010; *St. Augustine Record*.	Mr. Michael Wanchick, St. Johns County Administrator, 500 San Sebastian View, St. Augustine, FL 32084.	July 21, 2010	125147
Georgia:					
DeKalb (FEMA Docket No.: B–1160).	Unincorporated areas of DeKalb County (10–04–4217P).	September 9, 2010; September 16, 2010; *The Champion Newspaper*.	Mr. W. Burrell Ellis, Jr., DeKalb County Chief Executive Officer, 330 West Ponce De Leon Avenue, Decatur, GA 30030.	October 4, 2010	130065
Polk (FEMA Docket No.: B–1141).	City of Cedartown (09–04–0250P).	April 22, 2010; April 29, 2010; *The Cedartown Standard*.	Mr. Larry Odom, Chairman, Cedartown Board of Commissioners, 201 East Avenue, Cedartown, GA 30125.	August 27, 2010	130153
Whitfield (FEMA Docket No.: B–1135).	City of Dalton (09–04–1965P).	March 26, 2010; April 2, 2010; *The Daily Citizen*.	The Honorable David Pennington, Mayor, City of Dalton, P.O. Box 1205, Dalton, GA 30720.	April 14, 2010	130194
Whitfield (FEMA Docket No.: B–1135).	Unincorporated areas of Whitfield County (09–04–1965P).	March 26, 2010; April 2, 2010; *The Daily Citizen*.	Mr. Mike Babb, Chairman, Whitfield County, 1407 Burleyson Drive, Dalton, GA 30720.	April 14, 2010	130193
Hawaii:					
Hawaii (FEMA Docket No.: B–1135).	Unincorporated areas of Hawaii County (09–09–1789P).	April 30, 2010; May 7, 2010; *Hawaii Tribune-Herald*.	The Honorable William P. Kenoi, Mayor, Hawaii County, 25 Aupuni Street, Hilo, HI 96720.	September 7, 2010	155166
Hawaii (FEMA Docket No.: B–1141).	Unincorporated areas of Hawaii County (09–09–2120P).	June 10, 2010; June 17, 2010; *Hawaii Tribune-Herald*.	The Honorable William P. Kenoi, Mayor, Hawaii County, 25 Aupuni Street, Hilo, HI 96720.	October 15, 2010	155166
Idaho:					
Ada (FEMA Docket No.: B–1135).	Unincorporated areas of Ada County (07–10–0642P).	May 13, 2010; May 20, 2010; *The Idaho Statesman*.	Mr. Fred Tilman, Chairman, Ada County Board of Commissioners, 200 West Front Street, 3rd Floor, Boise, ID 83702.	September 17, 2010	160001
Teton (FEMA Docket No.: B–1135).	Unincorporated areas of Teton County (09–10–0227P).	May 13, 2010; May 20, 2010; *Teton Valley News*.	Mr. Larry Young, Chairman, Teton County Board of Commissioners, 150 Courthouse Drive, Room 109, Driggs, ID 83422.	September 17, 2010	160230
Teton (FEMA Docket No.: B–1135).	City of Victor (09–10–0365P).	May 13, 2010; May 20, 2010; *Teton Valley News*.	The Honorable Scott Fitzgerald, Mayor, City of Victor, P.O. Box 122, Victor, ID 83455.	September 17, 2010	160119
Iowa:					
Hamilton (FEMA Docket No.: B–1135).	City of Webster City (09–07–1058P).	April 30, 2010; May 7, 2010; *The Daily Freeman-Journal*.	The Honorable Janet Adams, Mayor, City of Webster City, P.O. Box 217, Webster City, IA 50595.	September 7, 2010	190137
Kansas:					
Johnson (FEMA Docket No.: B–1141).	City of Fairway (09–07–1447P).	June 9, 2010; June 16, 2010; *The Johnson County Sun*.	The Honorable Jerry Wiley, Mayor, City of Fairway, 4210 Shawnee Mission Parkway, Suite 100 Fairway, KS 66205.	May 28, 2010	205185
Sedgwick (FEMA Docket No.: B–1135).	City of Derby (09–07–1398P).	May 12, 2010; May 19, 2010; *The Derby Informer*.	The Honorable Dion Avello, Mayor, City of Derby, 611 Mulberry Road, Derby, KS 67037.	September 16, 2010	200323
Louisiana:					
Tangipahoa (FEMA Docket No.: B–1141).	Unincorporated areas of Tangipahoa Parish (09–06–2518P).	June 4, 2010; June 11, 2010; *Hammond Daily Star*.	Mr. Gordon Burgess, President, Tangipahoa Parish, 206 East Mulberry Street, Amite, LA 70422.	July 23, 2010	220206
Mississippi:					
Lee (FEMA Docket No.: B–1135).	City of Tupelo (09–04–4664P).	May 21, 2010; May 28, 2010; *Northeast Mississippi Daily Journal*.	The Honorable Jack Reed, Jr., Mayor, City of Tupelo, P.O. Box 1485, Tupelo, MS 38802.	September 27, 2010	280100
Lee (FEMA Docket No.: B–1135).	Unincorporated areas of Lee County (09–04–4664P).	May 21, 2010; May 28, 2010; *Northeast Mississippi Daily Journal*.	Mr. Sean Thompson, President, Lee County, P.O. Box 1785, Tupelo, MS 38801.	September 27, 2010	280227
Rankin (FEMA Docket No.: B–1156).	City of Flowood (10–04–5433P).	August 20, 2010; August 27, 2010; *The Clarion-Ledger*.	The Honorable Gary Rhoads, Mayor, City of Flowood, P.O. Box 320069, Flowood, MS 39232.	August 10, 2010	280289
Missouri:					
Jackson (FEMA Docket No.: B–1135).	City of Lee's Summit (09–07–1328P).	May 7, 2010; May 14, 2010; *Lee's Summit Journal*.	The Honorable Karen R. Messerli, Mayor, City of Lee's Summit, 220 Southeast Green Street, Lee's Summit, MO 64063.	September 13, 2010	290174
St. Louis (FEMA Docket No.: B–1141).	City of Des Peres (09–07–0141P).	June 10, 2010; June 17, 2010; *The Countian*.	The Honorable Richard G. Lahr, Mayor, City of Des Peres, 12325 Manchester Road, Des Peres, MO 63131.	October 15, 2010	290347
Nevada:					
Independent City (FEMA Docket No.: B–1135).	City of Carson City (08–09–1740P).	May 12, 2010; May 19, 2010; *Nevada Appeal*.	The Honorable Robert L. Crowell, Mayor, City of Carson City, 201 North Carson Street, Suite 2, Carson City, NV 89701.	April 30, 2010	320001
New Mexico:					

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.
Dona Ana (FEMA Docket No.: B–1135).	City of Las Cruces (08–06–2997P).	May 7, 2010; May 14, 2010; *Las Cruces Sun-News*.	The Honorable Ken Miyagishima, Mayor, City of Las Cruces, 200 North Church Street, Las Cruces, NM 88001.	September 13, 2010	355332
South Carolina:					
Chester (FEMA Docket No.: B–1156).	Unincorporated areas of Chester County (10–04–4509P).	August 20, 2010; August 27, 2010; *News & Reporter*.	Mr. R. Carlisle Roddey, Chairman, Chester County Council, P.O. Box 580, Chester, SC 29706.	December 27, 2010	450047
Dorchester (FEMA Docket No.: B–1156).	City of North Charleston (10–04–1595P).	August 19, 2010; August 26, 2010; *The Post and Courier*.	The Honorable R. Keith Summey, Mayor, City of North Charleston, 2500 City Hall Lane, North Charleston, SC 29406.	September 10, 2010	450042
Jasper (FEMA Docket No.: B–1135).	City of Hardeeville (09–04–5183P).	May 5, 2010; May 12, 2010; *Jasper County Sun*.	The Honorable A. Brooks Willis, Mayor, City of Hardeeville, 205 East Main Street, Hardeeville, SC 29927.	September 9, 2010	450113
Jasper (FEMA Docket No.: B–1135).	Unincorporated areas of Jasper County (09–04–5183P).	May 5, 2010; May 12, 2010; *Jasper County Sun*.	Dr. George Hood, Chairman, Jasper County Council, P.O. Box 1618, Ridgeland, SC 29936.	September 9, 2010	450112
York (FEMA Docket No.: B–1135).	City of Rock Hill (09–04–3659P).	May 20, 2010; May 27, 2010; *The Herald*.	The Honorable Doug Echols, Mayor, City of Rock Hill, P.O. Box 11706, Rock Hill, SC 29731.	June 14, 2010	450196
York (FEMA Docket No.: B–1135).	Unincorporated areas of York County (09–04–3659P).	May 20, 2010; May 27, 2010; *The Herald*.	Mr. Houston "Buddy" Motz, Chairman, York County Board of Commissioners, 2047 Poinsett Drive, Rock Hill, SC 29732.	June 14, 2010	450193
South Dakota:					
Pennington (FEMA Docket No.: B–1135).	Unincorporated areas of Pennington County (09–08–0639P).	May 13, 2010; May 20, 2010; *Rapid City Journal*.	Mr. Ethan Schmidt, Chairman, Pennington County Board of Commissioners, 315 Saint Joseph Street, Suite 156, Rapid City, SD 57701.	June 2, 2010	460064
Texas:					
Denton (FEMA Docket No.: B–1135).	Unincorporated areas of Denton County (10–06–1747P).	May 13, 2010; May 20, 2010; *Denton Record-Chronicle*.	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	September 17, 2010	480774
Jefferson (FEMA Docket No.: B–1141).	City of Beaumont (09–06–2516P).	June 10, 2010; June 17, 2010; *Beaumont Enterprise*.	The Honorable Becky Ames, Mayor, City of Beaumont, 801 Main Street, Suite 205, Beaumont, TX 77704.	October 15, 2010	485457
Midland (FEMA Docket No.: B–1135).	City of Midland (08–06–2854P).	May 21, 2010; May 28, 2010; *Midland Reporter-Telegram*.	The Honorable Wes Perry, Mayor, City of Midland, 300 North Loraine Street, Midland, TX 79701.	September 27, 2010	480477
Midland (FEMA Docket No.: B–1135).	Unincorporated areas of Midland County (08–06–2854P).	May 21, 2010; May 28, 2010; *Midland Reporter-Telegram*.	The Honorable Michael R. Bradford, Midland County Judge, 200 West Wall Street, Suite 6, Midland, TX 79701.	September 27, 2010	481239
Wichita (FEMA Docket No.: B–1156).	City of Wichita Falls (10–06–1225P).	August 20, 2010; August 27, 2010; *Wichita Falls Times Record News*.	The Honorable Glenn Barham, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, TX 76307.	December 27, 2010	480662
Utah:					
Washington (FEMA Docket No.: B–1156).	City of LaVerkin (10–08–0578P).	August 20, 2010; August 27, 2010; *The Spectrum*.	The Honorable Karl Wilson, Mayor, City of LaVerkin, 111 South Main Street, LaVerkin, UT 84745.	August 11, 2010	490174
Washington (FEMA Docket No.: B–1156).	Town of Toquerville (10–08–0578P).	August 20, 2010; August 27, 2010; *The Spectrum*.	The Honorable Darrin LeFevre, Mayor, Town of Toquerville, P.O. Box 27, Toquerville, UT 84774.	August 11, 2010	490180
Wisconsin:					
Richland (FEMA Docket No.: B–1135).	City of Richland Center (09–05–1012P).	March 11, 2010; March 18, 2010; *The Richland Observer*.	The Honorable Larry D. Fowler, Mayor, City of Richland Center, 450 South Main Street, Richland Center, WI 53581.	July 9, 2010	555576
Richland (FEMA Docket No.: B–1135).	Unincorporated areas of Richland County (09–05–1012P).	March 11, 2010; March 18, 2010; *The Richland Observer*.	Ms. Ann Greenheck, Chairwoman, Richland County Board, 31709 State Highway 130, Lone Rock, WI 53556.	July 9, 2010	550356

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: February 7, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–3511 Filed 2–15–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1177]

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 Deputy Federal Insurance and Mitigation Administrator 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: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

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 either to 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 other Federal, State, or regional entities. The changes in 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.
California:					
Contra Costa	City of Oakley (10–09–3624P).	December 8, 2010; December 15, 2010; *The Contra Costa Times.*	The Honorable Jim Frazier, Mayor, City of Oakley, 3231 Main Street, Oakley, CA 94561.	December 24, 2010	060766
Ventura	Unincorporated areas of Ventura County (10–09–3055P).	December 24, 2010; December 31, 2010; *The Ventura County Star.*	Ms. Kathy Long, Chair, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, CA 93009.	May 2, 2011	060413
Colorado:					
El Paso	Unincorporated areas of El Paso County (10–08–0838P).	December 22, 2010; December 29, 2010; *The El Paso County Advertiser and News.*	Mrs. Amy Lathen, Chair, El Paso County Board of Commissioners, 27 East Vermijo Avenue, 3rd floor, Colorado Springs, CO 80903.	April 28, 2011	080059

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.
Jefferson	City of Lakewood (11–08–0033P).	December 9, 2010; December 16, 2010; *The Golden Transcript*.	The Honorable Bob Murphy, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, CO 80226.	December 6, 2010	085075
Florida:					
Clay	Unincorporated areas of Clay County (10–04–6297P).	December 17, 2010; December 24, 2010; *The Florida Times-Union*.	Mr. Travis Cummings, Chairman, Clay County Board of Commissioners, P.O. Box 1366, Green Cove Springs, FL 32043.	December 9, 2010	120064
Duval	City of Jacksonville (10–04–6297P).	December 17, 2010; December 24, 2010; *The Florida Times-Union*.	The Honorable John Peyton, Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, FL 32202.	December 9, 2010	120077
Lee	City of Sanibel (10–04–5333P).	December 29, 2010; January 5, 2011; *The News-Press*.	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	December 21, 2010	120402
Volusia	City of Daytona Beach (10–04–6547P).	December 27, 2010; January 3, 2011; *The Daytona Beach News-Journal*.	The Honorable Glenn Ritchey, Mayor, City of Daytona Beach, 301 South Ridgewood Avenue, Daytona Beach, FL 32114.	December 20, 2010	125099
Georgia:					
Coweta	City of Senoia (11–04–0184P).	December 16, 2010; December 23, 2010; *The Times-Herald*.	The Honorable Robert K. Belisle, Mayor, City of Senoia, P.O. Box 310, Senoia, GA 30276.	April 22, 2011	130301
Douglas	Unincorporated areas of Douglas County (10–04–4871P).	December 24, 2010; December 31, 2010; *The Douglas County Sentinel*.	Mr. Tom Worthan, Chairman, Douglas County Board of Commissioners, 8700 Hospital Drive, Douglasville, GA 30134.	May 2, 2011	130306
North Carolina: Macon.	Town of Franklin (10–04–8305P).	December 15, 2010; December 22, 2010; *The Franklin Press*.	The Honorable Joe Collins, Mayor, Town of Franklin, P.O. Box 1479, Franklin, NC 28734.	December 8, 2010	375350
Pennsylvania:					
Adams	Township of Latimore (10–03–2196P).	December 23, 2010; December 30, 2010; *The Gettysburg Times*.	Mr. Dan Worley, Chairman, Township of Latimore Board of Supervisors, 559 Old U.S. Route 15, York Springs, PA 17372.	December 15, 2010	421162
Adams	Township of Reading (10–03–2196P).	December 23, 2010; December 30, 2010; *The Gettysburg Times*.	Mr. Bob Zangueneh, Chairman, Township of Reading Board of Supervisors, 50 Church Road, East Berlin, PA 17316.	December 15, 2010	420004
South Carolina: Dorchester.	Unincorporated areas of Dorchester County (10–04–7426P).	November 3, 2010; November 10, 2010; *The Post and Courier*.	Mr. Larry Hargett, Chair, Dorchester County Council, 201 Johnson Street, St. George, SC 29477.	March 10, 2011	450068
Texas: Collin	City of Plano (10–06–1746P).	December 9, 2010; December 16, 2010; *The Plano Star Courier*.	The Honorable Phil Dyer, Mayor, City of Plano, 1520 Avenue K, Plano, TX 75086.	April 15, 2011	480140
Utah: Salt Lake	City of West Jordan (10–08–0678P).	December 16, 2010; December 23, 2010; *The Salt Lake Tribune*.	The Honorable Melissa K. Johnson, Mayor, City of West Jordan, 8000 South Redwood Road West Jordan, UT 84088.	April 22, 2011	490108
Wyoming:					
Laramie	City of Cheyenne (10–08–0553P).	December 8, 2010; December 15, 2010; *The Wyoming Tribune-Eagle*.	The Honorable Richard Kaysen, Mayor, City of Cheyenne, 2101 O'Neil Avenue, Room 310, Cheyenne, WY 82001.	April 14, 2011	560030
Laramie	Unincorporated areas of Laramie County (10–08–0553P).	December 8, 2010; December 15, 2010; *The Wyoming Tribune-Eagle*.	Ms. Diane Humphrey, Chair, Laramie County Board of Commissioners, 310 West 19th Street, Suite 300, Cheyenne, WY 82001.	April 14, 2011	560029

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: February 1, 2011.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–3423 Filed 2–15–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

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 in 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: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

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 Deputy Federal Insurance and Mitigation Administrator 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 ∧ Elevation in meters (MSL) Modified	Communities affected
Chambers County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1085			
Hardley Creek (backwater effects from Chattahoochee River).	From the confluence with the Chattahoochee River to approximately 0.53 mile upstream of Stateline Road.	+579	Unincorporated Areas of Chambers County.
Oseligee Creek	Approximately 1.5 miles downstream of Fredonia Highway	+576	Unincorporated Areas of Chambers County.
	Just downstream of Fredonia Highway	+576	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Chambers County

Maps are available for inspection at 2 South LaFayette Street, LaFayette, AL 36862.

Yuba County, California, and Incorporated Areas Docket No.: FEMA–B–7472			
Bear River	At the confluence with the Feather River	*53	Unincorporated Areas of Yuba County.
	Approximately 1.0 mile upstream of the confluence with Dry Creek.	*69	
Best Slough	At the confluence with Western Pacific Interceptor Channel.	*61	Unincorporated Areas of Yuba County.
	Approximately 1.2 miles upstream of the confluence with Western Pacific Interceptor Channel.	*61	
Dry Creek	At the confluence with the Bear River	*66	Unincorporated Areas of Yuba County.
	Just downstream of Highway 65	*67	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Feather River	Approximately 1.5 miles downstream of the confluence with the Bear River.	*52	Unincorporated Areas of Yuba County.
	Approximately 0.9 mile upstream of Island Avenue	*72	
Western Pacific Interceptor Channel.	At the confluence with the Bear River	*60	Unincorporated Areas of Yuba County.
	Approximately 2.7 miles upstream of the confluence with Best Slough.	*61	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Yuba County

Maps are available for inspection at the Yuba County Government Center, Administrator's Office, 915 8th Street, Suite 115, Marysville, CA 95901.

Whiteside County, Illinois, and Incorporated Areas
Docket No.: FEMA–B–1087

French Creek	Approximately 3,100 feet downstream of Portland Avenue	+623	Unincorporated Areas of Whiteside County.
	Approximately 1,700 feet downstream of Lyndon Road	+659	
Interior Drainage	Approximately at Wares Lake, landward/east of the Fulton Illinois LFPP Levee and north of Melody Hills Street.	+584	Unincorporated Areas of Whiteside County.
	Approximately at Cattail Slough, west of State Route 84 (Waller Road).	+584	
Mississippi River	Approximately 0.6 mile downstream of Meredosia Road extended.	+588	Unincorporated Areas of Whiteside County.
	Approximately 180 feet downstream of Garret Street extended.	+589	
	Approximately 780 feet upstream of Lock and Dam No. 13.	+593	
	Approximately 2.1 miles upstream of Lock and Dam No. 13.	+593	
Mississippi River	Approximately 920 feet upstream of Meredosia Road extended.	+588	Village of Albany.
	Approximately 380 feet downstream of the confluence with Spring Creek.	+589	
Rock Creek	Approximately 1,560 feet upstream of the confluence with French Creek.	+622	Unincorporated Areas of Whiteside County.
	Approximately 750 feet upstream of Damen Road extended.	+636	
Rock River	Approximately 1.6 miles downstream of State Route 78 (Bishop Road).	+601	City of Prophetstown.
	Approximately 1.1 miles downstream of the confluence with Walker Slough.	+605	
Rock River	Approximately 1,820 feet downstream of 12th Avenue/Avenue G.	+630	City of Rock Falls, City of Sterling.
	Approximately 0.46 mile upstream of the Government Dam.	+640	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Prophetstown
Maps are available for inspection at City Hall, 339 Washington Street, Prophetstown, IL 61277.

City of Rock Falls
Maps are available for inspection at City Hall, 603 West 10th Street, Rock Falls, IL 61071.

City of Sterling
Maps are available for inspection at City Hall, 212 3rd Avenue, Sterling, IL 61081.

Unincorporated Areas of Whiteside County

Maps are available for inspection at the Whiteside County Courthouse, 200 East Knox Street, Morrison, IL 61270.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Village of Albany			
Maps are available for inspection at the Village Hall, 101 North Lime Street, Albany, IL 61230.			
Vigo County, Indiana, and Incorporated Areas Docket No.: FEMA–B–1014			
Sugar Creek	Approximately 2,000 feet downstream of Conrail	+469	Town of West Terre Haute, Unincorporated Areas of Vigo County.
	Approximately 1,280 feet downstream of Conrail	+470	
Wabash River	Approximately 1,214 feet upstream of I–70	+470	Town of West Terre Haute, Unincorporated Areas of Vigo County.
	At U.S. Route 40	+472	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of West Terre Haute
Maps are available for inspection at the Town Hall, 500 National Avenue, West Terre Haute, IN 47885.

Unincorporated Areas of Vigo County
Maps are available for inspection at the Vigo County Annex Building, 121 Oak Street, Terre Haute, IN 47807.

Scott County, Iowa, and Incorporated Areas Docket No.: FEMA–B–1078			
Mississippi River	Approximately 13.4 miles downstream of Lock and Dam No. 15.	+561	City of Bettendorf, City of Buffalo, City of Davenport, City of Le Claire, City of Princeton, City of Riverdale, Unincorporated Areas of Scott County.
	Approximately 13.7 miles upstream of Lock and Dam No. 14.	+585	
Mississippi River backwater effect on Moore Creek.	From the confluence with the Mississippi River to approximately 0.4 mile upstream of the confluence with the Mississippi River.	+562	City of Buffalo.
Mississippi River backwater effect on Oak Hill School Creek.	From the confluence with the Mississippi River to approximately 0.5 mile upstream of the confluence with the Mississippi River.	+561	City of Buffalo.
Mississippi River backwater effected area #1 (downstream).	Approximately 0.4 mile downstream of the intersection of Buffalo Road and State Route 22.	+562	City of Buffalo.
	Approximately 0.5 mile upstream of the intersection of Dodge Street and State Route 22.	+562	
Mississippi River backwater effected area #2 (upstream).	Approximately 875 feet downstream of the intersection of 115th Avenue and State Route 22.	+562	City of Buffalo.
	Approximately 250 feet upstream of the intersection of Buffalo Road and State Route 22.	+562	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Bettendorf
Maps are available for inspection at 1609 State Street, Bettendorf, IA 52722.

City of Buffalo
Maps are available for inspection at 329 Dodge Street, Buffalo, IA 52728.

City of Davenport
Maps are available for inspection at 226 West 4th Street, Davenport, IA 52801.

City of Le Claire
Maps are available for inspection at 325 Wisconsin Street, Le Claire, IA 52753.

City of Princeton

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

Maps are available for inspection at 311 3rd Street, Princeton, IA 52768.

City of Riverdale

Maps are available for inspection at 110 Manor Drive, Bettendorf, IA 52722.

Unincorporated Areas of Scott County

Maps are available for inspection at 500 West 4th Street, Davenport, IA 52801.

Hickman County, Kentucky, and Incorporated Areas
Docket No.: FEMA–B–1085

Bayou de Chien (backwater effects from Mississippi River).	From the confluence with Bayou de Chien Tributary 12 to approximately 0.52 mile upstream of the confluence with Bayou de Chien Tributary 12.	+321	Unincorporated Areas of Hickman County.
Bayou de Chien Tributary 12 (backwater effects from Mississippi River).	From the confluence with Bayou de Chien to approximately 1,900 feet upstream of the confluence with Bayou de Chien.	+321	Unincorporated Areas of Hickman County.
Bowles Creek (backwater effects from Mississippi River).	From the confluence with Obion Creek to approximately 1.1 miles upstream of the confluence with Obion Creek.	+322	Unincorporated Areas of Hickman County.
Cane Creek (backwater effects from Mississippi River).	From the confluence with Obion Creek to approximately 3.1 miles upstream of the confluence with Obion Creek.	+322	Unincorporated Areas of Hickman County.
Cane Creek II (backwater effects from Mississippi River).	From the confluence with Bayou de Chien to approximately 0.8 mile upstream of the confluence with Bayou de Chien.	+321	Unincorporated Areas of Hickman County.
Cane Creek II Tributary 1.3 (backwater effects from Mississippi River).	From the confluence with Cane Creek II to approximately 0.6 mile upstream of the confluence with Cane Creek II.	+321	Unincorporated Areas of Hickman County.
Hollingsworth Creek (backwater effects from Mississippi River).	From the confluence with Obion Creek to approximately 1.4 miles upstream of the confluence with Obion Creek.	+322	Unincorporated Areas of Hickman County.
Hurricane Branch (backwater effects from Mississippi River).	From the confluence with Bayou de Chien to approximately 1.1 miles upstream of the confluence with Bayou de Chien.	+321	Unincorporated Areas of Hickman County.
Mississippi River	Approximately 6.3 miles upstream of the confluence of Obion Creek in Fulton County.	+322	Unincorporated Areas of Hickman County.
	Approximately 0.5 mile upstream of the confluence with Sandy Branch.	+325	
Obion Creek (backwater effects from Mississippi River).	Approximately 1.2 miles downstream of the confluence with Whayne Branch.	+322	Unincorporated Areas of Hickman County.
Obion Creek Tributary 18 (backwater effects from Mississippi River).	From the confluence with Obion Creek to approximately 1.9 miles upstream of the confluence with Obion Creek.	+322	Unincorporated Areas of Hickman County.
Whayne Branch (backwater effects from Mississippi River).	From the confluence with Obion Creek to approximately 5.2 miles upstream of the confluence with Obion Creek.	+322	Unincorporated Areas of Hickman County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Hickman County

Maps are available for inspection at 110 East Clay Street, Clinton, KY 42031.

Calcasieu Parish, Louisiana, and Incorporated Areas
Docket Nos.: FEMA–B–7453 and FEMA–B–1004

Bayou Choupique	At U.S. Route 90	+5	Unincorporated Areas of Calcasieu Parish.
	At Southern Pacific Railroad	+6	
Bayou Contraband	At the confluence with the Calcasieu River	*10	City of Lake Charles.
	Approximately 500 feet upstream of Tom Herbert Road	*14	
East Branch Bayou Contraband	At the confluence with Bayou Contraband	*10	City of Lake Charles, Unincorporated Areas of Calcasieu Parish.
	Approximately 750 feet downstream of Fontenot Drive	*14	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Gulf of Mexico	Base Flood Elevation changes ranging from 6 to 17 feet in the form of Coastal AE/VE zones have been made.	+6–17	City of Lake Charles, City of Sulphur, City of Westlake, Unincorporated Areas of Calcasieu Parish.
South Branch Bayou Contraband.	At the confluence with Bayou Contraband	*9	City of Lake Charles.
	At the intersection of Central Parkway and Greenway	*14	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Lake Charles
Maps are available for inspection at 326 Pujo Street, Lake Charles, LA 70761.

City of Sulphur
Maps are available for inspection at 500 North Huntington Street, Sulphur, LA 70664.

City of Westlake
Maps are available for inspection at 1001 Mulberry Street, Westlake, LA 70669.

Unincorporated Areas of Calcasieu Parish
Maps are available for inspection at 1015 Pithon Street, Lake Charles, LA 70601.

Lowndes County, Mississippi, and Incorporated Areas
Docket No.: FEMA–B–1087

Tombigbee River	Approximately 3.3 miles downstream of the confluence with James Creek.	+155	City of Columbus, Unincorporated Areas of Lowndes County.
	Approximately 1.4 miles downstream of State Highway 50	+178	
Tombigbee River Split Flow	Approximately 2.3 miles downstream of the confluence with Moore Creek.	+166	City of Columbus, Unincorporated Areas of Lowndes County.
	Approximately 1.2 miles upstream of the confluence with Moore Creek.	+168	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Columbus
Maps are available for inspection at City Hall, 523 Main Street, Columbus, MS 39701.

Unincorporated Areas of Lowndes County
Maps are available for inspection at the Lowndes County Courthouse, 505 2nd Avenue North, Columbus, MS 39701.

Lancaster County, Nebraska, and Incorporated Areas
Docket No.: FEMA–B–1031

Beal Slough	At the confluence with Salt Creek	+1159	City of Lincoln.
	Approximately 170 feet upstream of South 84th Street	+1376	
Cardwell Branch	Approximately 3,700 feet upstream of Southwest 27th Street.	+1209	City of Lincoln.
	Approximately 2,670 feet upstream of Southwest 40th Street.	+1221	
Cardwell Branch Tributary	Approximately 84 feet upstream of West Cardwell Road	+1203	City of Lincoln, Unincorporated Areas of Lancaster County.
	Approximately 1,890 feet upstream of Saltillo Road	+1313	
Colonial Heights Tributary	At the confluence with Beal Slough	+1230	City of Lincoln.
	Approximately 2,050 feet upstream of the confluence with Beal Slough.	+1245	
End Run	At the confluence with Ash Hollow Ditch	+1119	City of Waverly.
	Approximately 1,062 feet upstream of Amberly Road	+1130	
Little Salt Creek	Approximately 1,040 feet upstream of the confluence with Salt Creek.	+1139	City of Lincoln.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 656 feet upstream of Arbor Road	+1139	
Northeast Tributary to Southeast Upper Salt Creek.	At the confluence with Southeast Upper Salt Creek	+1231	City of Lincoln.
	Approximately 559 feet upstream of Rebel Drive	+1294	
Pine Lake Tributary	At the confluence with Beal Slough	+1276	City of Lincoln.
	Approximately 822 feet upstream of Ashbrook Drive	+1313	
Salt Creek	Approximately 5,010 feet upstream of Warlick Boulevard	+1175	City of Lincoln.
	Approximately 3,709 feet upstream of Saltillo Road	+1199	
South Branch	At the confluence with Beal Slough	+1299	City of Lincoln.
	Approximately 3,900 feet upstream of Yankee Hill Road	+1332	
South Tributary to Southeast Upper Salt Creek.	At the confluence with Southeast Upper Salt Creek	+1195	City of Lincoln.
	Approximately 4,278 feet upstream of South 38th Street	+1257	
Southeast Upper Salt Creek Tributary to Salt Creek.	At the confluence with Salt Creek	+1192	City of Lincoln.
	Approximately 785 feet upstream of South 66th Street	+1321	
Stevens Creek	Approximately 1,400 feet downstream of Yankee Hill Road.	+1289	City of Lincoln.
	Approximately 1,313 feet upstream of State Highway 2	+1363	
Stevens Creek Overflow Tributary 5.	At the confluence with Stevens Creek Overflow	+1138	City of Lincoln.
	Approximately 3,500 feet upstream of the confluence with Stevens Creek Overflow.	+1157	
Stevens Creek Tributary 5	At the confluence with Stevens Creek Main Channel	+1131	City of Lincoln.
	Approximately 1.0 mile upstream of Havelock Avenue	+1208	
Stevens Creek Tributary 7	At the confluence with Stevens Creek	+1141	City of Lincoln.
	Approximately 1,875 feet upstream of the confluence with Stevens Creek.	+1158	
Stevens Creek Tributary 10	At the confluence with Stevens Creek	+1151	City of Lincoln.
	Approximately 2,552 feet upstream of Leighton Avenue	+1224	
Stevens Creek Tributary 15	At the confluence with Stevens Creek	+1152	City of Lincoln.
	Approximately 3,155 feet upstream of North 102nd Street	+1183	
Stevens Creek Tributary 20	At the confluence with Stevens Creek	+1156	City of Lincoln.
	Approximately 4,300 feet upstream of North 112th Street	+1216	
Stevens Creek Tributary 25	At the confluence with Stevens Creek	+1165	City of Lincoln.
	Approximately 2,947 feet upstream of South 112th Street	+1207	
Stevens Creek Tributary 30	Approximately 900 feet upstream of the confluence with Stevens Creek.	+1160	City of Lincoln.
	Approximately 419 feet upstream of Anthony Lane	+1233	
Stevens Creek Tributary 35	At the confluence with Stevens Creek	+1175	City of Lincoln.
	Approximately 1.0 mile upstream of Holdrege Street	+1249	
Stevens Creek Tributary 40	At the confluence with Stevens Creek	+1179	City of Lincoln.
	Approximately 1,491 feet upstream of South 112th Street	+1203	
Stevens Creek Tributary 40A	At the confluence with Stevens Creek Tributary 40	+1178	City of Lincoln.
	At the divergence from Stevens Creek Tributary 40	+1185	
Stevens Creek Tributary 45	Just upstream of Van Dorn Street	+1247	City of Lincoln.
	Approximately 820 feet upstream of South 98th Street	+1286	
Stevens Creek Tributary 50	At the confluence with Stevens Creek	+1185	City of Lincoln, Unincorporated Areas of Lancaster County.
	Approximately 3,700 feet upstream of Holdrege Street	+1295	
Stevens Creek Tributary 55	At the confluence with Stevens Creek	+1194	City of Lincoln.
	Approximately 1,825 feet upstream of South 134th Street	+1234	
Stevens Creek Tributary 60	At the confluence with Stevens Creek	+1196	City of Lincoln.
	Approximately 1.8 miles upstream of Old Cheney Road	+1321	
Stevens Creek Tributary 65	At the confluence with Stevens Creek	+1204	City of Lincoln.
	Approximately 2,075 feet upstream of South 134th Street	+1233	
Stevens Creek Tributary 70	At the confluence with Stevens Creek	+1208	City of Lincoln, Unincorporated Areas of Lancaster County.
	Approximately 1.7 miles upstream of Van Dorn Street	+1300	
Stevens Creek Tributary 75	At the confluence with Stevens Creek	+1217	City of Lincoln, Unincorporated Areas of Lancaster County.
	Approximately 140 feet upstream of Pioneers Boulevard	+1264	
Stevens Creek Tributary 80	At the confluence with Stevens Creek	+1223	City of Lincoln.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 2,750 feet upstream of the confluence with Stevens Creek.	+1261	
Stevens Creek Tributary 85	At the confluence with Stevens Creek	+1226	City of Lincoln, Unincorporated Areas of Lancaster County.
	Approximately 1.0 mile upstream of Old Cheney Road	+1300	
Stevens Creek Tributary 88	At the confluence with Stevens Creek	+1229	City of Lincoln.
	Approximately 50 feet upstream of Old Cheney Road	+1243	
Stevens Creek Tributary 90	At the confluence with Stevens Creek	+1241	City of Lincoln.
	Approximately 3,550 feet upstream of the confluence with Stevens Creek.	+1277	
Stevens Creek Tributary 92	At the confluence with Stevens Creek	+1245	City of Lincoln.
	Approximately 1,400 feet upstream of Pleasant Hill Road	+1273	
Stevens Creek Tributary 94	At the confluence with Stevens Creek	+1264	City of Lincoln.
	Approximately 2,000 feet upstream of Yankee Hill Road ...	+1318	
Stevens Creek Tributary 96	At the confluence with Stevens Creek	+1272	City of Lincoln.
	Approximately 3,150 feet upstream of Yankee Hill Road ...	+1378	
Stevens Creek Tributary 98	At the confluence with Stevens Creek	+1295	City of Lincoln.
	Approximately 3,900 feet upstream of Yankee Hill Road ...	+1333	
Stevens Creek Tributary 105	At the confluence with Stevens Creek Tributary 5	+1140	City of Lincoln.
	Approximately 2,445 feet upstream of Havelock Road	+1191	
Stevens Creek Tributary 110	At the confluence with Stevens Creek Tributary 10	+1162	City of Lincoln.
	Approximately 362 feet upstream of Leighton Avenue	+1192	
Stevens Creek Tributary 130	At the confluence with Stevens Creek Tributary 30	+1201	City of Lincoln.
	Approximately 1,025 feet upstream of North 98th Street ...	+1213	
Stevens Creek Tributary 135	At the confluence with Stevens Creek Tributary 35	+1176	City of Lincoln.
	Approximately 3,325 feet upstream of the confluence with Stevens Creek Tributary 35.	+1220	
Stevens Creek Tributary 145	At the confluence with Stevens Creek Tributary 45	+1188	City of Lincoln.
	Approximately 2,050 feet upstream of the confluence with Stevens Creek Tributary 45.	+1207	
Stevens Creek Tributary 150	At the confluence with Stevens Creek Tributary 50	+1190	Unincorporated Areas of Lancaster County.
	Approximately 1.4 miles upstream of the confluence with Stevens Creek Tributary 2150.	+1293	
Stevens Creek Tributary 160	At the confluence with Stevens Creek Tributary 60	+1224	City of Lincoln.
	Approximately 1,686 feet upstream of South 112th Street	+1286	
Stevens Creek Tributary 170	At the confluence with Stevens Creek Tributary 70	+1217	Unincorporated Areas of Lancaster County.
	Approximately 1,221 feet upstream of Van Dorn Street	+1239	
Stevens Creek Tributary 185	At the confluence with Stevens Creek Tributary 85	+1252	Unincorporated Areas of Lancaster County.
	Approximately 3,100 feet upstream of the confluence with Stevens Creek Tributary 85.	+1282	
Stevens Creek Tributary 196	At the confluence with Stevens Creek Tributary 96	+1278	City of Lincoln.
	Approximately 4,350 feet upstream of the confluence with Stevens Creek Tributary 96.	+1324	
Stevens Creek Tributary 245	At the confluence with Stevens Creek Tributary	+1205	City of Lincoln.
	Approximately 1,486 feet upstream of South 112th Street	+1224	
Stevens Creek Tributary 250	At the confluence with Stevens Creek Tributary 50	+1202	City of Lincoln.
	Approximately 2,077 feet upstream of Holdrege Street	+1272	
Stevens Creek Tributary 260	At the confluence with Stevens Creek Tributary 60	+1241	City of Lincoln.
	Approximately 218 feet upstream of Old Cheney Road	+1288	
Stevens Creek Tributary 270	At the confluence with Stevens Creek Tributary 70	+1233	Unincorporated Areas of Lancaster County.
	Approximately 4,300 feet upstream of the confluence with Stevens Creek Tributary 2270.	+1302	
Stevens Creek Tributary 296	At the confluence with Stevens Creek Tributary 96	+1323	City of Lincoln.
	Approximately 4,000 feet upstream of the confluence with Stevens Creek Tributary 96.	+1343	
Stevens Creek Tributary 345	At the confluence with Stevens Creek Tributary 45	+1216	City of Lincoln.
	Approximately 2,450 feet upstream of the confluence with Stevens Creek Tributary 45.	+1225	
Stevens Creek Tributary 350	At the confluence with Stevens Creek Tributary 50	+1251	Unincorporated Areas of Lancaster County.
	Approximately 2,700 feet upstream of the confluence with Stevens Creek Tributary 50.	+1281	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Stevens Creek Tributary 360	At the confluence with Stevens Creek Tributary 60	+1252	City of Lincoln.
	Approximately 1,893 feet upstream of South 112th Street	+1297	
Stevens Creek Tributary 396	At the confluence with Stevens Creek Tributary 96	+1337	City of Lincoln.
	Approximately 2,000 feet upstream of the confluence with Stevens Creek Tributary 96.	+1362	
Stevens Creek Tributary 445	At the confluence with Stevens Creek Tributary 45	+1220	City of Lincoln.
	Approximately 2,425 feet upstream of 84th Street	+1284	
Stevens Creek Tributary 460	At the confluence with Stevens Creek Tributary 60	+1268	City of Lincoln.
	Approximately 1.0 mile upstream of the confluence with Stevens Creek Tributary 60.	+1322	
Stevens Creek Tributary 545	At the confluence with Stevens Creek Tributary 45	+1236	City of Lincoln.
	Approximately 3,750 feet upstream of South 98th Street ..	+1276	
Stevens Creek Tributary 1150 ..	At the confluence with Stevens Creek Tributary 150	+1219	City of Lincoln.
	Approximately 2,875 feet upstream of the confluence with Stevens Creek Tributary 150.	+1246	
Stevens Creek Tributary 1270 ..	Approximately 2,879 feet upstream of County Road	+1237	Unincorporated Areas of Lancaster County.
	Approximately 2,879 feet upstream of County Road	+1304	
Stevens Creek Tributary 2150 ..	At the confluence with Stevens Creek Tributary 150	+1246	Unincorporated Areas of Lancaster County.
	Approximately 2,625 feet upstream of O Street	+1307	
Stevens Creek Tributary 2270 ..	At the confluence with Stevens Creek Tributary 270	+1263	Unincorporated Areas of Lancaster County.
	Approximately 3,500 feet upstream of the confluence with Stevens Creek Tributary 270.	+1297	
Tierra Branch/Cripple Creek	At the confluence with Beal Slough	+1195	City of Lincoln.
	Approximately 970 feet upstream of Fir Hollow Lane	+1272	
Tributary 1 to Southeast Upper Salt Creek.	At the confluence with Southeast Upper Salt Creek	+1225	City of Lincoln.
	Approximately 500 feet upstream of South 40th Street	+1235	
Tributary 2 to Southeast Upper Salt Creek.	At the confluence with Southeast Upper Salt Creek	+1261	City of Lincoln.
	Approximately 2,180 feet upstream of Newcastle Road	+1283	
Tributary 3 to Southeast Upper Salt Creek.	At the confluence with Southeast Upper Salt Creek	+1290	City of Lincoln.
	Approximately 1,530 feet upstream of Rokeby Road	+1309	
Tributary 4 to South Tributary to Southeast Upper Salt Creek.	At the confluence with South Tributary to Southeast Upper Salt Creek.	+1199	City of Lincoln.
	Approximately 420 feet upstream of South 38th Street	+1225	
Unnamed Tributary 2	At the confluence with Salt Creek	+1110	City of Waverly.
	Approximately 540 feet upstream of North 148th Street	+1118	
Wilderness Hills Tributary to Southeast Upper Salt Creek.	At the confluence with Southeast Upper Salt Creek	+1208	City of Lincoln.
	Approximately 1,010 feet upstream of the confluence with Southeast Upper Salt Creek.	+1219	
Williamsburg Tributary	At the confluence with Tierra Branch	+1219	City of Lincoln.
	Approximately 700 feet upstream of Williamsburg Drive	+1238	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Lincoln
Maps are available for inspection at the Building and Safety Department, 555 South 10th Street, Lincoln, NE 68508.

City of Waverly
Maps are available for inspection at City Hall, 14130 Lancashire Street, Waverly, NE 68462.

Unincorporated Areas of Lancaster County
Maps are available for inspection at the Building and Safety Department, 555 South 10th Street, Lincoln, NE 68508.

Otoe County, Nebraska, and Incorporated Areas
Docket No.: FEMA–B–1087

Missouri River	At easternmost limit of the county boundary	+914	City of Nebraska City, Unincorporated Areas of Otoe County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	At State Highway 2 (Burlington Northern Railroad)	+931	
	At Everett Lane extended	+943	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Nebraska City
Maps are available for inspection at 1409 Central Avenue, Nebraska City, NE 68410.

Unincorporated Areas of Otoe County
Maps are available for inspection at the Otoe County Courthouse, 1021 Central Avenue, Nebraska City, NE 68410.

Sullivan County, New York (All Jurisdictions)
Docket No.: FEMA–B–1087

Beaver Kill	Approximately 1.5 miles downstream of Old State Route 17.	+1257	Town of Rockland.
	At the confluence with Willowemoc Creek	+1274	
Callicoon Creek-East Branch Callicoon Creek.	At the confluence with the Delaware River	+758	Town of Delaware, Village of Jeffersonville.
	Approximately 50 feet upstream of Jefferson Lake Dam	+1066	
Cattail Brook	Just upstream of River Road	+1423	Town of Rockland.
	Approximately 1,324 feet upstream of Shandelee Road	+1522	
Delaware River	At the Delaware County boundary	+490	Town of Cochecton, Town of Delaware, Town of Fremont, Town of Highland, Town of Lumberland, Town of Tusten.
	At the Orange County boundary	+842	
Lake Jefferson	Approximately 1,000 feet upstream of Lake Jefferson Dam.	+1086	Town of Bethel, Town of Callicoon, Town of Delaware.
	Approximately 0.9 mile upstream of Lake Jefferson Dam	+1086	
Middle Mongaup River	At the confluence with the Mongaup River	+1143	Town of Bethel.
	Approximately 1.3 miles upstream of Strong Road	+1223	
Mongaup River (Swinging Bridge Reservoir).	Approximately 0.7 mile downstream of State Route 17B	+1075	Town of Bethel.
	Approximately 1.2 miles upstream of Coopers Corner Road.	+1143	
Neversink River	Approximately 1.5 miles upstream of State Highway 17	+1090	Town of Fallsburg.
	Approximately 3.0 miles upstream of State Highway 17	+1095	
Sprague Brook	At the confluence with Willowemoc Creek	+1511	Town of Rockland.
	Approximately 480 feet upstream of the confluence with Willowemoc Creek.	+1511	
Stewart Brook	At the confluence with Willowemoc Creek	+1288	Town of Rockland.
	Approximately 1.6 miles upstream of Gulf Road	+1392	
Willowemoc Creek	At the confluence with Beaver Kill	+1274	Town of Rockland.
	Approximately 135 feet downstream of Hunter Lake Road	+1647	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Bethel
Maps are available for inspection at the Town Hall, 3454 Route 55, Bethel, NY 12786.

Town of Callicoon
Maps are available for inspection at the Callicoon Town Hall, 19 Legion Street, Jeffersonville, NY 12748.

Town of Cochecton
Maps are available for inspection at the Town Clerk's Office, 111 Bernas Road, Cochecton, NY 12726.

Town of Delaware
Maps are available for inspection at the Delaware Town Hall, 104 Main Street, Hortonville, NY 12745.

Town of Fallsburg
Maps are available for inspection at the Fallsburg Code Enforcement Office, 5250 Main Street, South Fallsburg, NY 12779.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

Town of Fremont
Maps are available for inspection at the Fremont Town Clerk's Office, 895 County Road 94, Hankins, NY 12741.

Town of Highland
Maps are available for inspection at the Highland Town Hall, 4 Proctor Road, Eldred, NY 12732.

Town of Lumberland
Maps are available for inspection at the Lumberland Municipal Offices, 1054 Proctor Road, Glen Spey, NY 12737.

Town of Rockland
Maps are available for inspection at the Rockland Town Hall, 95 Main Street, Livingston Manor, NY 12758.

Town of Tusten
Maps are available for inspection at the Tusten Town Hall, 210 Bridge Street, Narrowsburg, NY 12764.

Village of Jeffersonville
Maps are available for inspection at the Village Hall, 17 Center Street, Jeffersonville, NY 12748.

Fannin County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1083

Bois D'arc Creek	Approximately 1,400 feet upstream of State Highway 56 ..	+553	Unincorporated Areas of Fannin County.
	Approximately 0.75 mile upstream of State Highway 56	+554	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Fannin County
Maps are available for inspection at 101 East Sam Rayburn Drive, Bonham, TX 75418.

Hale County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1083

Running Water Draw	Approximately 1,800 feet downstream of County Road Y	+3337	City of Plainview, Unincorporated Areas of Hale County.
	Approximately 500 feet upstream of U.S. Route 70	+3382	
Tributary A	Approximately 1,400 feet upstream of I–27 (Business Loop).	+3380	City of Plainview, Unincorporated Areas of Hale County.
	Just upstream of County Road 60	+3388	
Tributary to Running Water Draw.	At the confluence with Running Water Draw	+3365	City of Plainview, Unincorporated Areas of Hale County.
	Playa C adjoining I–27	+3381	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Plainview
Maps are available for inspection at 901 Broadway Street, Plainview, TX 79072.

Unincorporated Areas of Hale County
Maps are available for inspection at 500 Broadway Street, Plainview, TX 79072.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: February 8, 2011.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–3418 Filed 2–15–11; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 76, No. 32
Wednesday, February 16, 2011

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–FV–10–0112; FV11–927–1 CR]

Pears Grown in Oregon and Washington; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible Oregon and Washington pear growers to determine whether they favor continuance of the marketing order regulating the handling of pears grown in Oregon and Washington.

DATES: The referendum will be conducted from February 26 through March 11, 2011. To vote in this referendum, growers must have grown pears in Oregon or Washington during the period July 1, 2009, through June 30, 2010.

ADDRESSES: Copies of the marketing order may be obtained from the Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, 805 SW. Broadway, Suite 930, Portland, Oregon 97205, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (503) 326–2724, *Fax:* (503) 326–7440, or *E-mail: Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov,* respectively.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 927 (7 CFR part 927), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted from February 26 through March 11, 2011, among eligible Oregon and Washington pear growers. Only growers that were engaged in the production of pears in Oregon or Washington during the period of July 1, 2009, through June 30, 2010, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor the continuation of marketing order programs. USDA would consider termination of the order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of Oregon and Washington pears represented in the referendum favor continuance of their program. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information regarding operation of the order and relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189. It has been estimated that it will take an average of 20 minutes for each of the approximately 1700 Oregon-Washington pear growers to cast a ballot. Participation is voluntary. Ballots postmarked after March 11, 2011, will not be included in the vote tabulation.

Teresa Hutchinson and Gary D. Olson of the Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR §§ 900.400–900.407).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents or from their appointees.

List of Subjects in 7 CFR Part 927

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

Authority: 7 U.S.C. 601–674.

Dated: February 10, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–3501 Filed 2–15–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM445 Special Conditions No. 25–11–04–SC]

Special Conditions: Gulfstream Model GVI Airplane; Automatic Speed Protection for Design Dive Speed

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Gulfstream GVI airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include a high speed protection system. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by April 4, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, *Attn:* Rules Docket (ANM–113), Docket No. NM445, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM445. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Carl Niedermeyer, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2279; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On March 29, 2005, Gulfstream Aerospace Corporation (hereafter referred to as "Gulfstream") applied for an FAA type certificate for its new Gulfstream Model GVI passenger airplane. Gulfstream later applied for, and was granted, an extension of time for the type certificate, which changed the effective application date to September 28, 2006. The Gulfstream Model GVI airplane will be an all-new, two-engine jet transport airplane with an executive cabin interior. The maximum takeoff weight will be 99,600 pounds, with a maximum passenger count of 19 passengers.

Type Certification Basis

Under provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Gulfstream Model GVI airplane (hereafter referred to as "the GVI") meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–119, 25–122, and 25–124. If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the GVI because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to complying with the applicable airworthiness regulations and special conditions, the GVI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

Novel or Unusual Design Features

The GVI is equipped with a high speed protection system that limits nose down pilot authority at speeds above V_C/M_C, and prevents the airplane from actually performing the maneuver required under § 25.335(b)(1). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions address this design feature. These proposed special conditions are identical or nearly identical to those previously required for type certification of other airplane models.

Discussion of Proposed Special Conditions

Gulfstream proposes to reduce the speed margin between V_C and V_D required by § 25.335(b), based on the incorporation of a high speed protection system in the GVI flight control laws. The GVI is equipped with a high speed protection system that limits nose down pilot authority at speeds above V_C/M_C and prevents the airplane from actually performing the maneuver required under § 25.335(b)(1).

Section 25.335(b)(1) is an analytical envelope condition which was originally adopted in Part 4b of the civil air regulations to provide an acceptable speed margin between design cruise speed and design dive speed. Freedom from flutter and the airframe design loads are affected by the design dive speed. While the initial condition for the upset specified in the rule is 1g level flight, protection is afforded for other inadvertent overspeed conditions as well. Section 25.335(b)(1) is intended as a conservative enveloping condition for all potential overspeed conditions, including non-symmetric ones.

To establish that all potential overspeed conditions are enveloped, the applicant would demonstrate that the dive speed will not be exceeded during pilot-induced or gust-induced upsets in non-symmetric attitudes.

In addition, the high speed protection system in the GVI must have a high level of reliability.

Applicability

As discussed above, these proposed special conditions are applicable to the GVI. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the GVI. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the

following special conditions as part of the type certification basis for the GVI airplanes.

1. In lieu of compliance with § 25.335(b)(1), if the flight control system includes functions that act automatically to initiate recovery before the end of the 20 second period specified in § 25.335(b)(1), V_D/M_D must be determined from the greater of the speeds resulting from conditions (a) and (b) below. The speed increase occurring in these maneuvers may be calculated if reliable or conservative aerodynamic data are used.

(a) From an initial condition of stabilized flight at V_C/M_C, the airplane is upset so as to take up a new flight path 7.5 degrees below the initial path. Control application, up to full authority, is made to try to maintain this new flight path. Twenty seconds after initiating the upset, manual recovery is made at a load factor of 1.5 g (0.5 acceleration increment), or a greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power, as specified in § 25.175(b)(1)(iv), is assumed until recovery is initiated, at which time power reduction and the use of pilot controlled drag devices may be used.

(b) From a speed below V_C/M_C, with power to maintain stabilized level flight at this speed, the airplane is upset so as to accelerate through V_C/M_C at a flight path 15 degrees below the initial path (or at the steepest nose down attitude that the system will permit with full control authority if less than 15 degrees). The pilot's controls may be in the neutral position after reaching V_C/M_C and before recovery is initiated. Recovery may be initiated three seconds after operation of high speed warning system by application of a load factor of 1.5g (0.5 acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power may be reduced simultaneously. All other means of decelerating the airplane, the use of which are authorized up to the highest speed reached in the maneuver, may be used. The interval between successive pilot actions must not be less than one second.

2. The applicant must also demonstrate that the speed margin, established as above, will not be exceeded in inadvertent or gust induced upsets resulting in initiation of the dive from non-symmetric attitudes, unless the airplane is protected by the flight control laws from getting into non-symmetric upset conditions. The upset maneuvers described in Advisory Circular 25–7A, Change 1, section 32, paragraphs c.(3)(i) and (iii) may be used to comply with this requirement.

3. Any failure of the high speed protection system that would affect the speed margin determined by paragraphs 1. and 2. must be improbable (occur at a rate less than 10^{-5} per flight hour).

4. Failures of the system must be annunciated to the pilots, and flight manual instructions must be provided to reduce the maximum operating speeds, V_{MO}/M_{MO}. The operating speed must be reduced to a value that maintains a speed margin between V_{MO}/M_{MO} and V_D/M_D that is consistent with showing compliance with § 25.335(b) without the benefit of the high speed protection system.

5. Master minimum equipment list (MMEL) relief for the high speed protection system may be considered by the FAA Flight Operations Evaluation Board (FOEB) provided that the flight manual instructions indicate reduced maximum operating speeds as described in paragraph 4., and that no additional hazards are introduced with the high speed protection system inoperative. In addition, the cockpit display of the reduced operating speeds, as well as the overspeed warning for exceeding those speeds, must be equivalent to that of the normal airplane with the high speed protection system operative.

Issued in Renton, Washington, on February 3, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–3412 Filed 2–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0042; Directorate Identifier 2010–NM–267–AD]

RIN 2120–AA64

Airworthiness Directives; DASSAULT AVIATION Model MYSTERE-FALCON 50 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 that would supersede an existing AD. 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:

On two occurrences on Mystère-Falcon 50 aeroplanes in service, it was detected that two pipes of the emergency brake system #2 located near the nose landing gear bearing were swapped.

The swapping of these two pipes implies that when the Left Hand (LH) brake pedal is depressed, the Right Hand (RH) brake unit is activated, and conversely, when the RH brake pedal is depressed, the LH brake unit is actuated. This constitutes an unsafe condition, which may go unnoticed as the condition is latent until the emergency brake system #2 is used. This condition, if not corrected, could ultimately lead to a runway excursion of the aeroplane.

* * * * *

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 April 4, 2011.

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.

For service information identified in this proposed AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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: 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.

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–2011–0042; Directorate Identifier 2010–NM–267–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

On November 15, 2010, we issued AD 2010–24–08, Amendment 39–16527 (75 FR 71530, November 24, 2010). That AD required actions intended to address an unsafe condition on Model MYSTERE-FALCON 50 Airplanes.

In AD 2010–24–08, we pointed out that the corresponding EASA AD, AD 2010–0208–E, dated October 12, 2010, requires painting the pipes end of the emergency brake system number 2 and related unions within 7 months after the effective date of that AD. We explained that AD 2010–24–08 did not require that action, and that we might consider additional rulemaking to require this action in the future. We have determined that further rulemaking is indeed necessary to require that action, and this AD follows from that determination.

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

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 248 products of U.S. registry.

The actions that are required by AD 2010–24–08 and retained in this proposed AD take about 2 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $170 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $21,080, or $85 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, Incorporation by reference, 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 removing Amendment 39–16527 (75 FR 71530, November 24, 2010) and adding the following new AD:

Dassault Aviation: Docket No. FAA–2011–0042; Directorate Identifier 2010–NM–267–AD.

Comments Due Date

(a) We must receive comments by April 4, 2011.

Affected ADs

(b) This AD supersedes AD 2010–24–08, Amendment 39–16527.

Applicability

(c) This AD applies to DASSAULT AVIATION Model MYSTERE–FALCON 50 airplanes, certificated in any category, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

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

On two occurrences on Mystère-Falcon 50 aeroplanes in service, it was detected that two pipes of the emergency brake system #2 located near the nose landing gear bearing were swapped.

The swapping of these two pipes implies that when the Left Hand (LH) brake pedal is depressed, the Right Hand (RH) brake unit is activated, and conversely, when the RH brake pedal is depressed, the LH brake unit is actuated. This constitutes an unsafe condition, which may go unnoticed as the condition is latent until the emergency brake system #2 is used. This condition, if not corrected, could ultimately lead to a runway excursion of the aeroplane.

Compliance

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

Restatement of Requirements of AD 2010–24–08

Actions

(g) Within 7 days after December 9, 2010 (the effective date of AD 2010–24–08), do a general visual inspection for correct installation (as defined in Dassault Service Bulletin F50–515, dated October 12, 2010) of the emergency brake system number 2, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F50–515, dated October 12, 2010, except that work required by this AD can only be done by persons prescribed in 14 CFR 43.3 and 43.7.

(h) If the emergency brake system number 2 is found installed incorrectly during the inspection required by paragraph (g) of this AD: Before further flight, install the emergency brake system number 2 correctly, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F50–515, dated October 12, 2010.

New Requirements of This AD

(i) Within 7 months after the effective date of this AD, paint the pipe ends of the emergency brake system #2 and related unions, in accordance with paragraph 2.C. of the Accomplishment Instructions of Dassault Service Bulletin F50–515, dated October 12, 2010.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

(1) European Aviation Safety Agency (EASA) AD 2010–0208–E, dated October 12, 2010, has a compliance time of "before the next flight after the effective date of this AD." This AD requires that the actions be done within 7 days after the effective date of AD 2010–24–08.

(2) EASA AD 2010–0208–E, dated October 12, 2010, allows the flightcrew to inspect the emergency brake system number 2 specified in accordance with Dassault Service Bulletin F50–515, dated October 12, 2010. However, this AD requires the inspection to be performed by certificated maintenance personnel.

Other FAA AD Provisions

(j) 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. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it 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, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(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.

Related Information

(k) Refer to MCAI EASA AD 2010–0208–E, dated October 12, 2010; and Dassault Service Bulletin F50–515, dated October 12, 2010; for related information.

Issued in Renton, Washington, on February 7, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–3532 Filed 2–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0016; Airspace Docket No. 11–ANM–1]

Proposed Modification of Class E Airspace; Poplar, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Poplar Municipal Airport, Poplar, MT. The airport was moved 1.5 nautical miles (NM) to the northeast. Controlled airspace is necessary to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Poplar Municipal Airport, Poplar, MT. The FAA is proposing this action to enhance the safety and management of aircraft operations at Poplar Municipal Airport, Poplar, MT. This will also correct the airport name from Poplar Airport.

DATES: Comments must be received on or before April 4, 2011.

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–2011–0016; Airspace Docket No. 11–ANM–1, 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, Operations Support Group, Western Service Center, 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–2011–0016 and Airspace Docket No. 11–ANM–1) 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–2011–0016 and Airspace Docket No. 11–ANM–1". 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/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

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 Center, Operations 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 modifying Class E airspace extending upward from 700 feet above the surface at Poplar Municipal Airport, Poplar, MT. The airport has been moved 1.5 NM northeast of the original airport site. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at Poplar Municipal Airport. This action would enhance the safety and management of aircraft operations at the Airport. This will also correct the name from Poplar Airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, 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 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 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 additional controlled airspace at Poplar Municipal Airport, Poplar, MT.

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 Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Poplar, MT [Modify]

Poplar Municipal Airport, MT
(Lat. 48°08′04″ N., long. 105°09′44″ W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of the Poplar Municipal Airport, MT, and within 4 miles each side of the 105° bearing extending from the airport to 10.3 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface bounded by a line from lat. 47°53′25″ N., long. 105°52′50″ W.; to lat. 48°18′00″ N., long. 105°52′50″ W.; to lat. 48°18′00″ N., long. 104°30′00″ W.; to lat. 47°53′25″ N., long. 104°30′00″ W.; to the beginning; excluding that airspace within Federal airways and the Wolf Point, MT, Class E airspace area.

Issued in Seattle, Washington, on February 8, 2011.

Christine Mellon,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–3413 Filed 2–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 420

[Docket No. FAA–2011–0105; Notice No. 11–03]

RIN 2120–AJ73

Explosive Siting Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to abandon its separation requirements at launch sites for storing liquid oxygen, nitrogen tetroxide, hydrogen peroxide in concentrations equal to or below 91 percent, and refined petroleum-1 (RP–1) unless they are within an intraline distance of another incompatible energetic liquid, or will be co-located on a launch vehicle. The FAA's current separation requirements for storing these energetic liquids unnecessarily duplicate the requirements of other regulatory regimes. The FAA also proposes to reduce the separation distances required for division 1.1 explosives and liquid propellants with trinitrotoluene (TNT) equivalents of less than or equal to 450 pounds. The revised separation requirements reflect protection against fragment hazards, the main hazard at these quantities. The FAA would impose a new formula for determining distances to public areas containing a member of the public in the open. Finally, the FAA would reduce the separation distances for division 1.3 explosives as well. The proposed rule would increase flexibility for launch site operators in site planning for the storage and handling of explosives.

DATES: Send your comments on or before May 17, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–0105 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:* Take 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 the 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 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 Charles Huet, Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7427; facsimile (202) 267–3686, e-mail *charles.huet@faa.gov.* For legal questions concerning this proposed rule contact Laura Montgomery, AGC 200, Senior Attorney for Commercial Space Transportation, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3150; facsimile (202) 267–7971, e-mail *laura.montgomery@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 the handling of proprietary or confidential business information. We also discuss how you can get a copy of related rulemaking documents.

Authority for This Rulemaking

The Commercial Space Launch Act of 1984, as codified and amended in Title 49 of the United States Code (49 U.S.C.) Subtitle IX—Commercial Space Transportation, chapter 701, Commercial Space Launch Activities, 49 U.S.C. 70101–70121 (the Act), authorizes the Department of Transportation and thus the FAA, through delegations, to oversee, license, and regulate commercial launch and reentry activities, and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 49 U.S.C. 70104, 70105. The Act directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 49 U.S.C. 70105. The FAA is also responsible for encouraging, facilitating, and promoting commercial space launches by the private sector. 49 U.S.C. 70103.

Authority for this particular rulemaking is derived from 49 U.S.C. 70105, which requires that the FAA issue a license to operate a launch site consistent with public health and safety. *See* also 49 U.S.C. 322(a), 49 U.S.C. 70101(a)(7). Section 70101(a)(7) directs the FAA to regulate only to the extent necessary, in relevant part, to protect the public health and safety and safety of property.

Background

In 2000, the FAA issued regulations governing the storing and handling of explosives as part of its regulations governing the licensing and operation of a launch site. *Licensing and Safety Requirements for Operation of a Launch Site; Final Rule,* 65 FR 62812 (Oct. 19, 2000) (Launch Site Rule). The FAA has requirements for obtaining a license to operate a launch site in Title 14, Code of Federal Regulations (14 CFR) part 420. Part of the application for a license requires an applicant to provide the FAA with an explosive site plan that complies with the explosive siting requirements of part 420. The plan must show how a launch site operator will separate explosive hazard facilities from the public. The plan must identify the location of the explosives and how the public is safeguarded. The explosive siting requirements of part 420 mandate how far apart a launch site operator should site its explosive hazard facilities based on the quantities of energetic materials housed in each facility. Distances vary based on the quantities at issue, the storing or handling of the energetic materials at a given facility, and whether or not the distance being calculated is a distance to a public area.

Since the original rulemaking, the FAA's experience with the requirements has led it to propose changes. At the time it promulgated the original requirements, the FAA anticipated that any new launch sites would be devoted to expendable launch vehicles, and, therefore, relied on the siting requirements of the Department of Defense (DOD) Explosive Siting Board's (DDESB) *DOD Ammunition and Explosive Safety Standard,* 6055.9–STD (1997) (1997 DOD Standard).[1] Instead, for the most part, the FAA has issued a number of licenses for the operation of launch sites at existing airports, such as Mojave Air and Space Port. At these airports, the presence of jet fuels regulated under existing requirements creates conditions requiring the FAA to reconcile its launch vehicle liquid propellant requirements with the presence of other industrial chemicals, such as aircraft fuels. Based on experience with these launch sites and on research on other regimes that address explosive materials, the FAA proposes to make changes to its own requirements.

Changes to definitions would be changes of general effect. Additionally, the FAA proposes to increase the flexibility it has in applying its explosive siting requirements by recognizing that approaches other than those mandated by part 420 may provide a level of safety equivalent to part 420. The FAA also proposes to dispense with separation distance requirements for storing liquid oxidizers and Class I, II and III flammable and combustible liquids. When oxidizers are isolated from incompatible energetic liquids and compliant with the design and operational requirements of other regulatory regimes, they do not pose a risk of fire or explosion. Isolating the storing of liquid oxidizers from a fuel source minimizes the risk associated with chemical explosion due to the mixing of the two. In accordance with current DDESB and National Fire Protection Association (NFPA) practice, the FAA proposes to dispense with the hazard groups of tables E–3 through E–6 of appendix E of part 420 as a means of classification because the NFPA classification system is more commonly used. A number of those changes are editorial, but the FAA also proposes to identify the minimum separation distances to public areas and public traffic routes for quantities between less than half a pound and 450 pounds of division 1.1 explosives and liquid propellants with TNT equivalency. The FAA would impose a new formula for determining distances to public areas containing a member of the public in the open. The FAA also proposes to change its separation requirements for division 1.3 explosives.

I. Changes of General Effect

The FAA proposes to clarify an existing definition and to add four new ones. We would clarify the meaning of "explosive hazard facility." We would define "energetic liquid," "liquid propellant," "maximum credible event," and "public traffic route."

The FAA proposes to define "energetic liquids" to mean a liquid, slurry, or gel, consisting of, or containing an explosive, oxidizer, fuel, or combination, that may undergo, contribute to, or cause rapid exothermic decomposition, deflagration, or detonation. "Energetic liquids" would thus include liquid fuels and oxidizers, monopropellant, hybrid, and liquid bipropellant systems.

The FAA would define "liquid propellants" to mean a monopropellant or incompatible energetic liquids co-located for purposes of serving as propellants on a launch vehicle or a related device,[2] such as an attitude control propulsion system. A monopropellant serves as a liquid propellant only if located on a launch vehicle. When not located on a launch vehicle a monopropellant is treated as a fuel or an oxidizer. Part 420 does not define "liquid propellant," but refers to liquid fuel and oxidizers as liquid propellants whether stored in a storage tank and segregated from each other, or co-located as part of a launch vehicle assembly. In applying this term, the FAA has had to address uncertainty and confusion regarding its meaning. When part 420 was issued, most launch operations took place at federal launch ranges. There are now launch sites located at airports that house many of the same energetic liquids. The term "liquid propellant" as it applies to storing liquid fuel and oxidizer, such as kerosene and liquid oxygen, causes confusion. Kerosene has found a use in some new developmental launch vehicles as a liquid fuel, but is traditionally known for its use as a jet fuel. Liquid oxygen is commonly used as the oxidizer for launch vehicles, but is also widely used in the medical field and other industrial purposes. The labeling of these materials as liquid propellants, is, therefore, no longer suitable because of their multiple uses. To remove the confusion, the FAA would classify what it has been generically referring to as liquid propellants as energetic liquids, and would limit the use of the term "liquid propellant" to its more precise usage, namely, incompatible energetic liquids co-located for purposes of propulsion or operating power in rockets and related devices. With this definition, liquid fuels and oxidizers that are not yet part of a vehicle assembly or a propulsion unit would not be referred to as a liquid propellant, thus removing the ambiguity caused by the current characterization of too many energetic liquids as liquid propellants.

Limiting the use of the term would be more consistent with typical uses of the term "liquid propellants." Explosive siting experts typically consider the term to mean incompatible energetic liquids that are co-located for purposes of serving as propellants on a launch vehicle. In other words, the same energetic liquid is a propellant if on a rocket, but not if in a storage tank. This special meaning is not obvious, but is understood by those persons who work on these issues. The FAA proposes to confine use of the term to § 420.69, which governs launch pads where solid explosives and energetic liquids are all within intraline distances of each other because they are used as fuels for a launch vehicle.

The FAA proposes to clarify that an "explosive hazard facility" means not only a facility, as identified in the present definition, but a location at a launch site where solid explosives, energetic liquids, or other explosives are stored or handled. Part 420 currently defines an "explosive hazard facility" as a facility at a launch site where solid propellant, liquid propellant, or other explosives are stored or handled. There are circumstances where it is not always clear what satisfies this definition. For example, under this definition, explosive hazard facility could be misinterpreted to only apply to buildings or storage sites. Clarifying that an explosive hazard facility is not only a facility, but is also any other location, would more clearly include hazardous

[1] The DDESB updated the DOD Standard in 2004. *Notice of Revision of Department of Defense 6055.9–STD Department of Defense Ammunition and Explosives Safety Standards,* 70 FR 24771 (May 11, 2005) (2004 DOD Standard). DOD released a new edition in 2008, but the 2004 changes are the ones relevant to this rulemaking. The new standard bases its separation distances on Occupational Safety and Health Administration (OSHA) and National Fire Protection Association (NFPA) standards for classes I through III flammable and combustible liquids and liquid oxygen, and on NFPA standards for classes 2 and 3 liquid oxidizers. The 2004 DOD Standard contains less restrictive requirements for explosive division 1.1 solid explosives with a net explosive weight of less than 450 pounds, and for energetic liquids with a TNT equivalency of less than 450 pounds.

[2] A related device would include an engine undergoing engine testing or static firing.

areas such as launch pads and static firing areas with explosives or propellant present.

The FAA proposes to define "maximum credible event" to mean a hypothesized worst-case event, including an accident, explosion, fire, or agent release that is likely to occur from a given quantity and disposition of explosives, chemical agents, or reactive material. A "maximum credible event" is one with a reasonable probability of occurring, taking into account the propagation of the predicted explosion, burn rate, and physical protection such as barriers located around the explosive materials.

Although the FAA cites "public traffic route distance" in § 420.65, there is no definition for the term in the current rule. "Public traffic route" means any road or other mode of transportation on a launch site that serves the general public, and the FAA now proposes to codify that working definition. A "public traffic route" is a public area, but one that may permit shorter separation distances than other public areas due to the ability of a launch site operator to close off the public traffic route and the sporadic presence of members of the public.

II. Section 420.63 Map Scale and Equivalent Level of Safety

Section 420.63 contains general requirements applicable to the preparation of an explosive siting plan, the explosive siting requirements for a launch site located on a federal range, and provision for establishing an equivalent level of safety for explosive siting issues not otherwise addressed by part 420. The FAA proposes only editorial changes to its explosive siting requirements at § 420.63, with two exceptions. The first is that the FAA proposes an explosive site map using a scale sufficient to show distance and structural relationships. The other substantive change would be proposed paragraph (d), which would allow a launch site operator to propose a different separation distance if able to clearly and convincingly demonstrate level of safety equivalent to that required by part 420.

The FAA proposes to require an explosive site map using a scale sufficient to show whether distances and structural relationships satisfy the requirements of this part. The FAA has had difficulty reviewing explosive site maps provided by some launch operators because they employed scales where 1 inch equaled 1500 feet or more. As a result, the maps lacked the fidelity necessary to determine compliance with part 420. The FAA intends by this proposal to ensure the scale is appropriate to the site while still being able to determine compliance.

Proposed § 420.63(d) would permit a launch site operator to separate each explosive hazard facility by distances other than those required by part 420 if the launch site operator could clearly and convincingly demonstrate a level of safety equivalent to that required by this part. Section 420.63(c) currently provides that for explosive siting issues not otherwise addressed by the regulations, a launch site operator must clearly and convincingly demonstrate a level of safety equivalent to that otherwise required by part 420. This has meant that there has been confusion over whether the FAA would permit a demonstration of an equivalent level of safety for explosive materials that part 420 already addresses. Proposed paragraph (d) is necessary to clarify that the FAA intended to permit alternative means of demonstrating an equivalent level of safety to what part 420 addressed as well as to what part 420 did not address. In the discussion accompanying the rulemaking promulgating part 420, the FAA noted that it would allow alternatives to the quantity-distance (Q–D) requirements in the form of, for example, hardening of structures or barricades, if the launch site operator demonstrated that such an approach clearly and convincingly provided an equivalent level of safety. *See Launch Site Rule,* 65 FR at 62821; *Licensing and Safety Requirements for Operation of a Launch Site;* Proposed Rule, (Launch Site NPRM), 64 FR 34316, 34322 (Jun. 25, 1999). However, as finally codified, § 420.63(c) states only that it applies to explosive siting issues not otherwise addressed by the requirements of part 420. Thus, allowing a launch site operator, under proposed paragraph (d), to demonstrate an equivalent level of safety for any explosive siting requirement of part 420 would resolve the apparent discrepancies between the explanatory preamble and § 420.63(c).

III. Proposed § 420.66 and Storage of Energetic Liquids That Are Otherwise Regulated and Are Isolated From Each Other

A. Energetic Liquids That Would Not Be Subject to FAA Regulation for Storage

Section 420.67 addresses both storing and handling of energetic liquids. This is confusing and the FAA proposes to separate storing and handling into two separate sections, relying on proposed § 420.66 for storing and § 420.67 for the handling of energetic liquids. The FAA proposes to reduce its requirements for appropriate separation distances to address only the highly hazardous energetic liquids. The FAA would dispense with separation distance requirements for the storing of liquid oxidizers and RP–1 when they are sufficiently isolated from each other that a mishap associated with one material would not affect the other. This means the FAA would no longer impose separation requirements for RP–1 or for the oxidizers, liquid oxygen, nitrogen tetroxide, and hydrogen peroxide in concentrations below 91 percent. These energetic liquids are all currently governed by § 420.67(b) and tables E–3 through E–6 of Appendix E of this part.

The FAA bases this proposal on two factors: first, when isolated from incompatible materials, energetic liquids such as liquid oxygen and RP–1 do not pose a threat of chemical explosion due to accidental mixing, and, second, other federal and local requirements address fire prevention for most industrial chemicals. There are situations where these energetic liquids may contribute to the risks associated with explosions, and the FAA will continue to regulate them in that context under § 420.63(c).

For example, part 420 treats liquid oxygen as an explosive hazard because, when combined with incompatible materials, chemical explosion may occur. However, when stored as required by intraline distance requirements with appropriate mitigation measures to prevent contact with incompatible materials, such an effect should not result. The FAA proposes to reclassify liquid oxygen because current separation requirements always treat liquid oxygen as an explosive hazard, even when stored in the appropriate intraline distance away from the incompatible materials.

When the FAA promulgated part 420, it focused almost entirely on safety measures for expendable launch vehicles, including the safety issues surrounding storing and handling of energetic liquids, such as liquid propellants. The FAA modeled its separation requirements for table E–3's Hazard Groups I through III liquid propellants on the requirements employed at the federal launch ranges, where the majority of FAA licensed launches took place. Accordingly, the FAA followed the 1997 DOD Standard. Consequently, the FAA did not take into account the pervasive use by federal, state and local jurisdictions of requirements that address the storage of these classes of materials. Nor did the commercial space regulations account for the airport requirements governing fuels. *See e.g.,* 14 CFR 139.321

(requiring each certificate holder to establish standards for protecting against fire and explosion in storing, dispensing and otherwise handling fuel on an airport); *Aircraft Fuel Storage, Handling, and Dispensing on Airports, Advisory Circular* (AC) No. 150/5230–4A (Jun. 18, 2004) (2004 AC for Aircraft Fuel). This 2004 AC for Aircraft Fuel accepts NFPA 407, Standard for Aircraft Fuel Servicing, as it pertains to fire safety in the safe storage, handling, and dispensing, of fuels used in aircraft on airports certificated under 14 CFR part 139. The federal Occupational Safety and Health Administration (OSHA) regulates the storing and handling of energetic liquids to provide for worker safety. OSHA provides procedural and design requirements for the materials at issue. *See* 29 CFR 1910.101, 1910.104, 1910.106 and 1910.119. OSHA regulates RP–1 under 29 CFR 1910.106 with separation distance, procedural, and design requirements, as well as with OSHA process safety management requirements for more than 10,000 pounds of RP–1 under 29 CFR 1910.119(a)(1)(ii). OSHA also regulates any quantity of liquid oxygen that is stored in "cylinders, portable tanks, rail tankcars or motor vehicle cargo tanks" by incorporating *Compressed Gas Association (CGA) Pamphlet P–1* (1965) by reference in 29 CFR 1910.101(b). OSHA regulations for liquid oxygen address design, operational, and separation distance requirements. *See* 29 CFR 1910.104. For stationary tanks, OSHA regulates storage of liquid oxygen in quantities in excess of 13,000 cubic feet for a connected system or more than 25,000 cubic feet for an unconnected system at a normal temperature and pressure. 29 CFR 1910.104(b)(1). OSHA process safety management requirements apply to storage of more than 7500 pounds of hydrogen peroxide that is more than 52 percent concentration by weight or more than 250 pounds of nitrogen tetroxide. 29 CFR 1910.119 App A. The process safety management requirements include design and operational procedure requirements, but do not impose explicit separation requirements. The employer must guarantee the mechanical integrity of the system, including the pressure vessels and storage tanks, piping systems, emergency shutdown systems, controls, and pumps. 29 CFR 1910.119(j). In the initial construction, the employer must ensure these systems are adequate for their functions and must maintain the components. 29 CFR 1910.119(j)(6). To some extent, the OSHA requirements protect the public as an ancillary benefit. *See* 29 CFR 1910.5(d) (clarifying that although a standard may on its face protect persons who are not employees, the standard only applies in the employment context).

Additionally, state and local codes use standards devised by organizations, such as the CGA, the International Code Council, the International Fire Code Institute, and NFPA. Several states where launch sites are located implement some form of the requirements recommended by these organizations. The exceptions are California, Florida and Texas.

B. Historical Background

The issue of overlapping requirements was first brought to light by the FAA's experience in regulating the East Kern Airport District (EKAD), the launch site operator of Mojave Air and Space Port. Before Mojave acquired launch customers, it operated as an airport. Consequently, it followed the FAA airport and local fire codes, including the requirements of NFPA. With the advent of reusable launch vehicles, EKAD confronted a host of siting issues, including the storing and handling of liquid oxygen, kerosene, and isopropyl alcohol.

In 2004, the FAA waived EKAD's compliance with § 420.67, which governs the storage and handling of liquid propellants, including liquid oxygen and kerosene, and permitted EKAD to comply with DOD 6055.9–STD instead. *Commercial Space Transportation; Waiver of Liquid Propellant Storage and Handling Requirements for Operation of a Launch Site at the Mojave Airport in California,* 69 FR 41327 (Jul. 8, 2004) (Waiver to Section 420.67 or Waiver Notice). As conditions for granting a waiver, the FAA required EKAD to follow positive measures used by OSHA and the NFPA for spill containment and control for isolated storage of energetic liquids. *Id.* at 41328, par. F. The FAA also required using OSHA or NFPA guidance referenced in the DDESB requirements for storing and handling conventional flammable energetic liquids and liquid oxidizers, where no significant blast and fragment hazards were expected. *Id.* Minimum blast and fragment distances apply, according to DOD 6055.9–STD, C9.5.6.1, to NFPA and OSHA Class I–III flammable and combustible liquids and to conventional oxidizers such as liquid oxygen.

In December 2007, in response to EKAD's request, the FAA again waived explosive siting storage requirements for EKAD by issuing new license terms and conditions. This time, the FAA stated that, for the storage of liquid oxygen, kerosene and isopropyl alcohol, EKAD had to comply with NFPA Standard No. 55 (2005 ed.) and No. 33 (2008 ed.) for separation distances and spill containment. EKAD License Order No. LSO 04–009A (Rev. 1) (Dec. 20, 2007).

Recently, the FAA waived storage requirements of part 420 for liquid oxygen and RP–1 for the Jacksonville Aviation Authority (JAA) for its operation of portions of Cecil Field as a launch site. JAA, License Order No. LSO 09–012 (Jan. 11, 2010). In its evaluation of the request for a waiver, the FAA noted that DDESB adopted NFPA standards for storing conventional liquid fuels and oxidizers such as liquid oxygen and RP–1. DoD 6055.9–STD (2004). A review of the accident and test data of a number of fuels, oxidizers, and monopropellants against NFPA Hazard Instability Rating system defined by *NFPA 704 (1996) Standard System for the Identification of the Hazards of Materials for Emergency Response,* led DDESB to consider alternative standards for storing liquid propellants, such as liquid oxygen and RP–1. DDESB concluded that the main hazard associated with hydrocarbon fuels such as RP–1 is fire. This means that when it is not co-located with an oxidizer, RP–1 does not pose a threat of a chemical explosion due to accidental mixing with that oxidizer. DDESB also considered an NFPA standard for liquid oxygen based on the NFPA 704 Standard for the Identification of the Fire Hazards of Materials for Emergency Response (1996). Although liquid oxygen is a strong oxidizer and may create a serious fire hazard when combined with combustible materials, liquid oxygen is not flammable when separated and on its own. Accordingly, DDESB found that even an unlimited quantity of liquid oxygen need only maintain a distance of 100 feet between the location of its storage and incompatible energetic liquids, and 50 feet to compatible energetic liquids. In this context, liquid oxygen and RP–1, on their own, did not pose an explosive hazard. Hence, JAA's deviation from the separation standards of tables E–4 and E–5 of appendix E, for liquid oxygen and RP–1 did not jeopardize public safety. The FAA granted the waiver.

C. Reasons for Proposed Changes

The FAA has a number of reasons for proposing to dispense with separation distance requirements for storing liquid oxygen, nitrogen tetroxide, hydrogen peroxide in concentrations equal to or below 91 percent and RP–1. These energetic materials do not create explosive hazards when in isolation,

that is, when not co-located on a launch vehicle as liquid propellants. Additionally, the FAA does not want its launch separation requirements to conflict with other federal requirements, which are more comprehensive in that they contain design and operational requirements as well as separation requirements. Achieving safety is more complicated than merely having adequate separation distances. As has long been the case, safety can be achieved by a combination of separation distances, safety design, operational control requirements, hazard communication, or other mechanism, such as process safety management, so that the risk of a catastrophic incident associated with storing and handling of hazardous materials occurring may be kept to a minimum. As discussed above, OSHA and the FAA's own requirements for airports under 14 CFR part 139 address many of the fire hazards of these energetic materials through these means. The states, as well, impose requirements. The FAA's history of issuing waivers demonstrates that its own separation requirements are not necessary for achieving safety.

The FAA's waivers were based on DDESB standards, which are now incorporating the NFPA standards. DDESB standards themselves do not apply to civilian commercial activities. Nonetheless, the federal regulations that do apply adequately address the FAA's concerns.

D. Proposed Change to Classification System

Part 420, Appendix E, table E–3, currently classifies by hazard group, the following energetic liquids: hydrogen peroxide, hydrazine, liquid hydrogen, liquid oxygen, nitrogen tetroxide, RP–1, unsymmetrical dimethylhydrazine (UDMH) and the combination of UDMH and hydrazine. Each group represents different levels of hazard. Group I, which consists of nitrogen tetroxide and RP–1, is a fire hazard. Group II, which consists of hydrogen peroxide and liquid oxygen, is a group of strong oxidizers that may exhibit vigorous oxidation or rapid combustion in contact with materials, such as organic matter, possibly resulting in serious fires. Group III, which consists of hydrazine, liquid hydrogen, UDMH, and the combination of hydrazine and UDMH, presents hazards from the pressure rupture of a storage container resulting in fire, deflagration, or vapor phase explosions. Either pressure rupture of a container or vapor phase explosion can cause a fragment hazard from the container and any protective structure. In accordance with the current DDESB and NFPA practice, the FAA proposes to dispense with these hazard groups because the more commonly used classification system is that of the NFPA. The NFPA classifies energetic liquids based on instability ratings, as noted above in section III B.

IV. Separation Distance Requirements for Handling of Division 1.1 and 1.3 Explosives Under § 420.65

The FAA proposes clarifying changes to its requirements for the separation distances for handling divisions 1.1 and 1.3 explosives under § 420.65 and accompanying tables E–1 through E–4 of appendix E of this part. The FAA proposes to make editorial changes, abandon the use of linear interpolation, provide more increments for the quantities in its tables, and provide formulas for calculating acceptable distances between explosive hazard facilities. The FAA proposes a number of editorial and organizational changes to improve clarity. The FAA would no longer refer to the solid explosives governed by this section as solid propellants because, technically, the provision applies to more than just solid propellants. Currently, § 420.65 states that it applies to solid propellants, which are used in expendable launch vehicles (ELVs) for propulsion. Solid propellants are division 1.3 explosives. Explosives used in an ELV's flight termination system are division 1.1 explosives. Strictly speaking, the latter are not propellants, so the FAA proposes the title and the language of this section more precisely identify what it governs to avoid misunderstanding.

The FAA proposes to no longer permit the use of linear interpolation under § 420.65(d)(4) for any quantities because it was incorrect for divisions 1.1 and 1.3 explosives and, given the requirements of the provision, it is unclear when it applies. The lack of clarity is evident from the fact that, on the one hand, this section allows a launch site operator to use linear interpolation for the net explosive weight (NEW) quantities between entries in table E–1. On the other hand, the table itself either rigidly provides a distance of 1,250 feet for all NEW quantities of 30,000 pounds or less,[3] or it provides exponential formulas to calculate distances for quantities in excess of 30,000 pounds, thus apparently ruling out the use of linear interpolation for quantities of explosives above and below 30,000 pounds. This makes it unclear when to employ linear interpolation. Because the relationship between quantity and distance is, in fact, exponential rather than linear, the use of linear interpolation is incorrect, even if it were clear where it applied.

The FAA would also reorganize the tables that accompany this section for purposes of greater clarity. Currently, appendix E contains a single table, table E–1, for public area and intraline distances for divisions 1.1 and 1.3 explosives. The table identifies quantities in increments starting with zero to 1,000 pounds, and progresses through quantities between 1,000 and 5,000 pounds, and then advances in increments of 10,000 and 100,000 pounds up to 1,000,000 pounds.

The FAA proposes that table E–1 show the minimum separation distances to public areas and public traffic routes for quantities of division 1.1 explosives with a NEW for quantities less than or equal to 450 pounds. Currently, the minimum distance from an explosive hazard facility to a public area for quantities between zero and 30,000 pounds is 1,250 feet, regardless of whether the quantity is, for example, two pounds or 9,000 pounds. This greater level of precision would provide launch site operators greater flexibility while still maintaining appropriate distances to public areas and public traffic routes. The FAA would also provide formulas to calculate distances for quantities that fall between the entries in the table. The formulas would account for NEW of less than 100 pounds and for quantities between 100 and 450 pounds:

NEW ≤ 0.5 lbs:	d = 236.
0.5 lbs < NEW < 100 lbs:	d = 291.3 + [79.2 × ln(NEW)].
100 lbs ≤ NEW ≤ 450 lbs:	d = − 1133.9 + [389 × ln(NEW)].

Where NEW is in pounds; d is distance in feet, and ln is natural logarithm.

The FAA has allowed licensees to demonstrate an equivalent level of safety by using the formulas proposed here. The formulas account for the fact that fragments are the primary hazard associated with division 1.1 explosives for quantities of 450 pounds or less. Air blast can carry or propel fragments, but it is the fragments that cause the damage to persons. The proposed formula in table E–1 would account for the probability that one hazardous fragment would land within a 600 square feet area for a given quantity of division 1.1 explosive. The relationship is a natural logarithmic function when calculating distance based on NEW. When

[3] Table E–1 uses a dotted line rather than repeating the distance of 1,250 feet. The FAA has been applying this to mean that any quantity below 30,000 pounds has a separation distance of 1,250 feet.

calculating permissible NEW from distance, the inverse function of the natural logarithmic function, or the exponential function, is used.

The relationship is based on data obtained from DDESB TP 16, rev. 2, 2005 *Methodologies for Calculating Primary Fragment Characteristics.* DDESB conducted tests that accounted for hazardous debris fragments based on a fragment that would cause a fatality, namely, one with a kinetic energy at impact of 58 foot-pounds. A kinetic energy of 58 foot-pounds equates to a one percent probability of a person approximately six feet tall and one foot wide being struck by that fragment at a given separation distance from a given NEW. For quantities between 450 and 30,000 pounds, the minimum separation distance of 1,250 feet remains unchanged. For quantities of 30,000 pounds or more, the hazards include blast, fragments, and debris. When public areas are protected from blast effect by a separation distance between 40 $NEW^{1/3}$ and 50 $NEW^{1/3}$, persons in the open are not expected to experience serious injuries arising out of blast effects. *DoD Standard 6055.9—STD* C2.2.5.7.3 (2004). The FAA does not propose to change the methodology for calculating separation distances for quantities greater than 30,000 pounds.

Table E–2 would also contain the public traffic route distances for division 1.1 explosives. In § 420.65(d)(3), the FAA already permits a launch site operator to employ the more lenient public traffic route separation distance, but only for division 1.1 explosives. Although a public traffic route is a public area, this section permits a separation distance of 60 percent of the public area distance. Thus, for convenience, proposed table E–2 would show the distance currently permitted by § 420.65(d)(3).

Table E–2 would also contain a formula by which a launch site operator could determine the maximum NEW it could handle in an explosive hazard facility as would be permitted by the proposed § 420.65(e)(3). The proposed formulas reflect the inverse function of the equations provided by current table E–1. Publishing them would allow a launch site operator to calculate the maximum quantities it could have in an existing explosive hazard facility based on distances. This will increase the flexibility of launch site operators who already have constructed sites, but wish to expand their operations into serving as launch sites.

Proposed table E–3 would contain intraline distance formulas currently contained in table E–1 for division 1.1 solid explosives. For division 1.1 explosives, the FAA would decrease the increments between quantities for greater convenience. Also, the proposed table would provide a formula for calculating separation distances for quantities that fall between table entries.

For division 1.3 explosives, proposed table E–4 would contain minimum separation distances to public areas and public traffic routes, and intraline distances. The distances the FAA proposes reflect the exponential relationship, between the quantity of division 1.3 explosives and the necessary separation distances, rather than the inaccurate linear interpolation relationship currently expressed in the rules. Accordingly, the distances would be smaller than those currently required by table E–1.

Proposed § 420.65(d)(3) would require a launch site operator to separate each public area containing any member of the public in the open by a distance equal to $-1133.9 + [389 * \ln(NEW)]$ where the NEW is greater than 450 pounds and less than 600,000 pounds. Under current part 420, the FAA does not distinguish between public areas that are buildings, where people are sheltered, and those where people are out in the open. For a net explosive weight up to 30,000 pounds, fragments rather than blast can injure people in the open. *DoD Standard 6055.9—STD* C2.2.5.7.3 (2004). Even at 1,250 feet, the distance mandated by current § 420.65(c) and (d) and current table E–1, a person may be injured by fragments. *Id.* This proposed formula also applies to liquid propellants where explosive equivalent weights apply so that a launch site operator may employ proposed table E–2. This will result in greater distances for some public areas than are required under current rules, but should not result in increased distances for siting buildings. The proposed requirement would impose a constraint on operations more than on siting facilities.

This new requirement would not affect the siting of facilities in relationship to public traffic routes such as roads. The facility could still be sited at sixty percent of the distance to a public area. However, if there were people in the open on a public road during an operation involving division 1.1 explosives or liquid propellants, the members of the public would have to be kept at the distance mandated by the formula. Depending on the net explosive weight, the distance could be less than or greater than the public area or public traffic route distances. The FAA does not consider persons in moving vehicles to be in the open.

The FAA also proposes to permit launch site operators to determine permissible NEW or TNT equivalent weight for existing facilities under proposed paragraph (e). Not all launch sites are built from the ground up. As experience over the past few years demonstrates, airports may apply for a license to operate a launch site. On occasion, the operator will want to use existing facilities for handling of division 1.1 explosives or liquid propellants. The FAA would provide a formula for the operator to calculate the maximum quantity permitted. The formula provided in table E–1 is based on fragment hazard tests that DDESB conducted, which can be found in DDESB TP 16, rev. 2. The formula provided in table E–2 is based on current table E–1 for blast overpressure equations. The operator would have to measure the distance from the explosive hazard facility using the measuring requirements of proposed § 420.70.

V. Separation Distance Requirements for Storage of Hydrogen Peroxide, Hydrazine, and Liquid Hydrogen and Any Energetic Liquids Incompatible With and Stored Within an Intraline Distance of Any of Them

Through proposed § 420.66, the FAA will continue to impose storage requirements for hydrazine, liquid hydrogen, and hydrogen peroxide in concentrations of greater than 91 percent because of concerns regarding a greater risk for a chemical explosion associated with these energetic liquids, but will not address quantities below 100 pounds for liquid hydrogen and hydrazine. Under current requirements, table E–3 shows that all three of these energetic liquids belong to Hazard Group III, which means that table E–4 applies. Under the proposed requirements, the distances would not change in proposed table E–8. The FAA recognizes that OSHA addresses liquid hydrogen and hydrazine, but the FAA is not going to rely on OSHA for quantities of liquid hydrogen above 100 pounds because OSHA requires no more than 100 feet for outdoor storage of quantities up to 30,000 gallons. Part 420 separation distances vary depending on quantity. Likewise, OSHA addresses hydrazine, but the separation distances for quantities in excess of 100 pounds remain of concern to the FAA for public safety purposes in that they pose a threat of catastrophic consequences. Even in storage, accidents can happen with these materials. NFPA standards, which are incorporated by other regulators as discussed above, address the storage of hydrogen peroxide in high concentrations, but the FAA will keep

its requirements for this energetic liquid. The NFPA standards are silent regarding separation distances for quantities above 10,000 pounds.

The FAA proposes to create a new § 420.66 to govern the storage of these materials for greater clarity. Current § 420.67, which governs the storage and handling of liquid propellants, already contains most of these requirements. The FAA proposes to relocate the rules governing measurement to proposed § 420.70.

Proposed § 420.66 would apply to hydrogen peroxide in concentrations of greater than 91 percent, hydrazine, liquid hydrogen, or any energetic liquid that is incompatible with and is stored within an intraline distance of any of them. As with the current requirements, a launch site operator would first determine the total quantity of energetic liquids it would store on its launch site. As with the current rule, a launch site operator must convert each of the energetic liquid's quantity from gallons to pounds. The formula would remain unchanged, but we propose to add, in proposed table E–6, conversion factors for additional energetic liquids not currently addressed by table E–3 of the current rule. The FAA obtained the conversion factors for ethyl alcohol,[4] and red fuming nitric acid from the 2004 DDESB standard. The FAA will continue to require that a launch site operator determine distances for compatible energetic liquids in the same manner as the current rule, but would increase flexibility in siting with respect to those public areas that are public traffic routes. For co-located incompatible energetic liquids where explosive equivalents apply, under proposed § 420.67(c)(2), the FAA proposes to permit using a public traffic route distance for incompatible energetic liquids that are within an intraline distance of each other. This would provide incompatible energetic liquids the same treatment accorded to division 1.1 solid explosives. Section 420.65(d)(3) permits division 1.1 solid explosives to be separated from public traffic routes by a distance of 60 percent of the public area distance. In light of the fact that the explosion of incompatible energetic liquids can be expressed in an explosive equivalent of division 1.1 explosives, there appears to be no reason not to offer these energetic liquids the same opportunity to employ a shorter distance to public traffic routes.

Currently, table E–5 prescribes separation distances for hydrogen peroxide without specifying the concentration levels to which it applies. Proposed table E–7 would contain separation distances for high concentrations of hydrogen peroxide (greater than 91 percent) in quantities above 10,000 pounds. Because the current distances encompass hydrogen peroxide at lower concentrations, the distances proposed would be greater than those currently required. This reflects the 2004 DOD Standard. As noted in the section discussing storage requirements, OSHA imposes process safety management requirements in quantities greater than 7500 pounds and in concentrations of greater than 52 percent by weight.

Proposed table E–8 would contain the requirements of current table E–6 for hydrazine and liquid hydrogen. The FAA proposes to dispense with separation requirements for quantities of liquid hydrogen and hydrazine of less than 100 pounds because OSHA regulates these materials in quantities below 100 pounds. OSHA's regulation of liquid hydrogen includes separation distance, design, and operational procedure requirements. The requirements apply to storage of all liquid hydrogen *except* portable containers of less than 150 liters (39.63 gallons). 29 CFR 1910.103(a)(2)(ii). Requirements for separation distances may be found at 29 CFR 1910.103(c)(2)(ii)(b). Design requirements may be found at 29 CFR 1910.103(c)(1) and operational constraints at 29 CFR 1910.103(c)(4). OSHA regulates hydrazine with separation distance, design, and operational procedure requirements. OSHA provides separation distance requirements for outdoor containers of hydrazine. 29 CFR 1910.106(a)(27), (d)(6)(i) and (d)(6)(ii)(b). OSHA applies design and testing requirements. 29 CFR 1910.106(b)(7), 1910.106(c)(6), and 1910.106(d)(2)–(5). Operational procedure requirements may be found at 29 CFR 1910.106(b)(1)(iv)(a), 1910.106(b)(1)(v)(a), and 1910.106(b)(5)(vi). The FAA remains concerned about and will continue its regulation of the greater quantities because of their potential for catastrophic events.

Currently, § 420.67(b) requires a launch site operator to determine hazard and compatibility groups and separate liquid propellants from each other and from each public area using the distances identified in tables E–4 though E–7 of Appendix E of this part. The only substantive change the FAA now proposes to this paragraph arises out of the FAA's proposal to dispense with the hazard compatibility groups of table E–3. As noted in the discussion of the storage of liquid propellants, the FAA proposes to dispense with classifying certain liquid propellants as members of Hazard Groups I, II or III. Currently, table E–3 identifies what hazard group a material belongs to, and tables E–4, E–5 and E–6 impose separation distances for each of those hazard groups. These classifications would be unnecessary because the hazard groups only apply to storage distances, and, once we focus only on certain energetic liquids, we no longer would require these broad classifications.

VI. Separation Distances for the Handling of Incompatible Energetic Liquids That Are Co-Located

At times, incompatible energetic liquids must be co-located and even mixed to fulfill their intended functions as liquid propellants. Most obviously, many launch vehicles' performance come from the propulsion power provided by liquid bipropellant systems consisting of a liquid fuel and oxidizer. Engine tests also require the handling of energetic liquids when in close enough proximity to create a hazard of an explosion occurring. Once liquid propellants are co-located for these or other operational purposes, different separation distances to the public apply than for the storage of energetic liquids. If incompatible energetic liquids are co-located, the handling distances of § 420.67 apply for determining intraline and public area distances. The FAA also notes that although it proposes to dispense with requirements for NFPA Class I–III flammable and combustible liquids for storage, it will still require that a launch site operator account for them when determining separation distances for combinations.

Section 420.67 would narrow in scope. Currently, it applies as written to liquid propellants at a launch site. In practice, this has meant that when a launch operator is located at an airport, requirements that were originally intended for launch vehicles and engine testing applied to jet fuels and other energetic liquids for which there were already requirements. Section 420.67(a) would limit its applicability to rocket engines. Specifically, it would apply where incompatible energetic liquids are co-located in a launch or reentry vehicle tank or other vessel, such as a propulsion unit, on the vehicle. This would include such obvious applications as a vehicle on a launch

[4] Although ethyl alcohol and JP–10 are in the family of Class I–III flammable and combustible liquids, which the FAA proposes to stop addressing in part 420, if either are within an intraline distance of the incompatible hydrogen peroxide, separation distances would apply under proposed § 420.66(a)(4).

pad or runway. It would also include engine firing, for test or other purposes. In short, § 420.67 would apply to rocket engines at a launch site because the FAA wishes to confine its launch site regulations to energetic liquids used for space and not aviation applications.

For the reasons provided in the discussion of § 420.65, the FAA proposes to provide tables and formulas for quantities up to 450 pounds rather than requiring a distance of 1,250 feet for all quantities up to 30,000 pounds. As clarified in proposed § 420.67(d)(4), which would clarify and expand upon current § 420.67(b)(5), for explosive hazard facilities of a single customer, a launch site operator must use the greater intraline distance to separate the facilities from each other.[5] For example, a launch site operator may plan to have a customer who will use a launch pad and a runway for horizontal take-off of a launch vehicle. These two explosive hazard facilities need only be separated by an intraline distance, but it must be the distance that reflects the larger quantity. Thus, if an expendable launch vehicle at a launch pad required a distance of 1,250 feet, while a horizontal take-off vehicle required a distance of only 700 feet, the runway and the launch pad would have to be located 1,250 feet from each other.

Proposed § 420.67(d)(4) would also clarify that for explosive hazard facilities used by different customers, a launch site operator must use the greater public area distance to separate the explosive hazard facilities from each other. This is implicit in the current requirements because different launch operators are the public with respect to each other. Section 420.5 defines the public as persons not involved in supporting a launch, and includes any other launch operator and its personnel. Accordingly, under the existing rules, if the public area distance created by launch operator A's vehicle at one launch pad was 1250 feet and 700 feet for launch operator B's launch pad, the launch pads would have to be separated by the greater distance of 1,250 feet. An explicit requirement would increase clarity.

Under proposed § 420.67(c)(2), the FAA would permit a launch site operator to use the shorter distances of table E–1 for liquid propellants with explosive equivalencies in quantities below or equal to 450 pounds. In promulgating part 420, the FAA created table E–1 to show separation distance requirements for solid explosives. Table E–1 requires a separation distance of 1,250 feet to a public area for division 1.1 explosives in quantities between zero and 30,000 pounds. As discussed earlier, the FAA now proposes to achieve a higher level of fidelity so that for a site where liquid propellants are handled or co-located more accurate separation distances to public areas would be available for liquid as well as solid propellants. The FAA recognized the need for greater fidelity when it waived § 420.67 for XCOR Aerospace's operations on a runway at Mojave Air and Space Port, where it was fueling its vehicle with liquid oxygen and kerosene. Although the XCOR Aerospace waiver applied to the handling of liquid propellants, table E–1 applied because energetic liquids are translated into their "explosive equivalent" in TNT to determine their equivalence in explosive yield. As the FAA explained when it first proposed part 420, if fuels and oxidizers are located within close enough distances of each other, the distance to the public must account for the hazardous consequences of their potential combination. *See* Launch Site NPRM, 64 FR 34335. The combination is measured in terms of explosive equivalency, a measure of the blast effects from explosion of a given quantity of a fuel and oxidizer mixture expressed in terms of the weight of TNT that would produce the same blast effects when detonated. *Id.*

VII. Separation Distance Requirements for Co-Location of Divisions 1.1 and 1.3 Explosives and Liquid Propellants

For launch vehicles that require strap-on solid rocket motors and are equipped with flight termination systems, liquid propellants are in close proximity to class 1.1 or class 1.3 explosives. Section 420.69 applies on those occasions.

The FAA proposes to revise its requirements for separation distances for co-located division 1.1 and 1.3 explosives and liquid propellants. The distances to public areas and public traffic routes will be shorter to correct the FAA's error in § 420.69(b). Current § 420.69 requires that a launch site operator determine the separation distances for solid propellant division 1.1 and 1.3 explosives and then determine the separation distances for a liquid propellant combination within an intraline distance. Having determined the separation distance for each, a launch site operator must add the two separation distances together to achieve a minimum distance to a public area. For example, if a launch pad contains 20 pounds of division 1.1 explosives, which generates a public area distance of 529 feet, and liquid oxygen and kerosene with an explosive equivalent of 45,000 pounds, which generates a public area distance of 1,423 feet, the resulting public area distance under current requirements must be the sum of the two distances, which is 1,952 feet.

As the FAA recognized in its discussion of the issue at the time it promulgated this section, a simultaneous explosion of both the solid and liquid propellants, although unlikely, is not improbable. *Launch Site Rule,* 65 FR 62821. Accordingly, the FAA decided the separation distance applicable to the liquid propellants had to be added to the separation distance applicable to the solid propellant under § 420.69(b) and (c). This was a mistake. As with the other approaches to determining correct separation distances, the weights of the various propellants, solid and liquid both, are added before determining the distances. Thus, using the example above, once a launch site operator determines that the total NEW of the solid propellants is 20 pounds and the explosive equivalent of the liquid propellants is 45,000 pounds, the total NEW of 45,020 pounds yields a distance of 1,423 feet rather than the 1,952 feet of current § 420.69. The proposed methodology would apply to both division 1.1 and 1.3 explosives.

VIII. Measuring Requirements

The FAA proposes a new § 420.70 to contain all the measuring requirements for calculating the distances by which explosive hazard facilities must be separated from each other and from the public. Separation distance requirements are currently spread from §§ 420.65 through 420.69. Consolidating those requirements into a single section, § 420.70, would ensure that a launch site operator would need to look in only one place to find the measuring requirements it must meet. The majority of these requirements are already in part 420. They include the requirements for measuring separation distances for solid propellants, currently located in § 420.65(d)(5), and energetic liquids, currently located in § 420.67(b)(1). New measurement requirements would include requiring a launch site operator to employ straight lines, as would be required by proposed § 420.70(b) measuring from taxiways and runways as required by proposed § 420.70(c), and measuring to a public traffic route by using its nearest side as required by proposed § 420.70(c)(2). The FAA is proposing the new requirements because there has been confusion over which points to use as starting points for measurements. These requirements would reduce any such confusion and

[5] This reflects the contents of current § 420.67(a)(2)(iii).

ensure the FAA treats all launch site operators' measurements the same.

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. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

The FAA has determined that there would be no new information collection associated with the proposed requirement to collect data required for performing launch site location analysis. Approval to collect such information previously was approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and was assigned OMB Control Number 2120–0644.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. This is not an aviation rulemaking, and the FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination 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, the 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.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows.

The FAA proposes to dispense with separation distance requirements for storing liquid oxidizers and Class I, II and III flammable and combustible liquids because they are unnecessarily conservative as explained earlier. The FAA proposes to dispense with the hazard groups of tables E–4 through E–6 of appendix E of part 420 as a means of classification. This would allow for closer siting of explosives without degrading safety. Safety would not be degraded because of the operational controls and design requirements of other standards. In addition, the FAA proposes to identify the minimum separation distances to public areas and public traffic routes for quantities between less than half a pound and 450 pounds of division 1.1 explosives and liquid propellants with TNT equivalency.

Because of these changes launch sites might be able to use the infrastructure of existing airport facilities and, therefore, the proposed rule would be cost relieving. The proposed rule would also allow for the development of more launch sites where the more conservative siting requirements of the current regulation might constrain their development.

Certain proposed changes would add clarity to the current regulations and result in reduced ambiguity and confusion. For instance, clarifying the meaning of explosive hazard facility to state that it can be a location as well as a facility avoids the possibility of misinterpreting the current definition to apply only to buildings or storage sites. The proposed rule would remove ambiguities over the labeling of materials to different users of the same material. The rule would also clarify that the FAA intended to permit alternative means of demonstrating an equivalent level of safety to what part 420 addressed as well as to what part 420 did not address. These changes are expected to be cost neutral.

The proposed rule would add a requirement to § 420.63 that the explosive site map be at a scale sufficient to determine compliance with part 420. The FAA is proposing this to avoid a reiterative process to obtain a map at an appropriate scale. Situations have arisen where the FAA has received maps that were difficult to read. As a result, considerable time was expended determining distances between elements on the map. In this respect, the proposal can be cost relieving. The rule could require some operators to redraw existing maps. However, we expect that with programs like AutoCAD and Geographic Information System (GIS) software, the cost to change the scale will be minimal. We don't believe that anyone would be required to redraw an existing map by hand due to this requirement. The FAA calls for comments regarding whether this provision will be cost relieving, and if not, provide sufficient documentation such that we can provide an accurate cost estimate.

Under current part 420, the FAA does not distinguish between public areas that are buildings, where people are sheltered, and those where people are out in the open. This proposal would result in greater distances for some public areas than are required under current rules, but should not result in increased distances for siting buildings. The operational constraints themselves should not increase costs because a launch site operator currently must ensure under § 420.55 that its customers schedule their hazardous operations so as not to harm members of the public. A site operator may incur minimal costs in performing these new calculations and updating its procedures to reflect any changes in distances. The FAA calls for comments on whether this new requirement will impose costs.

By dispensing with the current separation distance requirements for certain energetic liquids and reducing separation distance requirements for divisions 1.1 and 1.3 explosives and liquid propellants the rule would be cost relieving. The FAA proposes this 1) for energetic liquids that are fire hazards rather than explosive hazards because when sufficiently isolated from each other, these liquids do not pose a

chemical explosion hazard; and 2) for liquids that are already addressed by other federal requirements.

Because this proposed rule would relieve launch sites from storage requirements for most energetic liquids and reduce the separation distances requirements for divisions 1.1 and 1.3 explosives and liquid propellants, the expected outcome would be reduced cost. The possible benefits would be the proposal might encourage the development of more launch sites. By encouraging existing launch sites to more effectively use their infrastructure and by allowing colocation of launch sites with some existing airports, the proposed rule would provide benefits and be cost relieving. There might also be cost savings if the FAA issues fewer waivers as a result of this rule.

The FAA has, therefore, determined this proposed rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

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.

The proposed rule does not impose costs on industry because it provides options to launch sites with regards to explosive siting but does not require launch site operators to increase the distances around where they have sited explosives and because other requirements are consistent with industry practice. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This rule would have only a domestic impact.

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 (in 1995 dollars) 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 $143.1 million in lieu of $100 million.

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

Executive Order 13132, Federalism

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

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 310f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (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 DOT's Regulatory Policies and Procedures, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

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.

Proprietary or Confidential Business Information

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

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

Availability of Rulemaking Documents

You can 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. Make sure to identify the docket or notice 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 in 14 CFR Part 420

Environmental protection, Reporting and recordkeeping requirements, Space transportation and exploration.

The Proposed Amendment

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

PART 420—LICENSE TO OPERATE A LAUNCH SITE

1. The authority citation for part 420 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

2. Amend § 420.5 by revising the definition of *Explosive hazard facility* and by adding the definitions of *Energetic liquid, Liquid propellant, Maximum credible event,* and *Public traffic route,* in alphabetical order to read as follows:

§ 420.5 Definitions.

* * * * *

Energetic liquid means a liquid, slurry, or gel, consisting of, or containing an explosive, oxidizer, fuel, or combination of the above, that may undergo, contribute to, or cause rapid exothermic decomposition, deflagration, or detonation.

* * * * *

Explosive hazard facility means a facility or location at a launch site where solid explosives, energetic liquids, or other explosives are stored or handled.

* * * * *

Liquid propellant means a monopropellant or incompatible energetic liquids co-located for purposes of serving as propellants on a launch vehicle or a related device.

Maximum credible event means a hypothesized worst-case accidental explosion, fire, or agent release that is likely to occur from a given quantity and disposition of explosives, chemical agents, or reactive material.

* * * * *

Public traffic route means any public highway or railroad that the general public may use.

* * * * *

3. Revise § 420.63 to read as follows:

§ 420.63 Explosive siting.

(a) Except as otherwise provided by paragraph (b) of this section, a licensee must ensure the configuration of the launch site follows its explosive site plan, and the licensee's explosive site plan complies with the requirements of §§ 420.65 through 420.70. The explosive site plan shall include:

(1) A scaled map that shows the location of all explosive hazard facilities at the launch site and that shows actual and minimal allowable distances between each explosive hazard facility and all other explosive hazard facilities, each public area, including the launch site boundary and any public traffic route;

(2) A list of the maximum quantity of energetic liquids, solid propellants and other explosives to be located at each explosive hazard facility, including the class and division for each solid;

(3) A description of each activity to be conducted in each explosive hazard facility; and

(4) An explosive site map using a scale sufficient to show whether distances and structural relationships satisfy the requirements of this part.

(b) A licensee operating a launch site located on a federal launch range does not have to comply with the requirements in §§ 420.65 through 420.70 if the licensee complies with the federal launch range's explosive safety requirements.

(c) For explosive siting issues not addressed by the requirements of §§ 420.65 through 420.70, a launch site operator must clearly and convincingly demonstrate a level of safety equivalent to that otherwise required by this part.

(d) A launch site operator may separate an explosive hazard facility from another explosive hazard facility or a public area by a distance different from one required by this part only if the launch site operator clearly and convincingly demonstrates a level of safety equivalent to that required by this part.

4. Revise § 420.65 to read as follows:

§ 420.65 Separation distance requirements for handling division 1.1 and 1.3 explosives.

(a) A launch site operator must determine the maximum total quantity of division 1.1 and 1.3 explosives by class and division, in accordance with 49 CFR part 173, Subpart C, to be located in each explosive hazard facility where division 1.1 and 1.3 explosives will be handled.

(b) When division 1.1 and 1.3 explosives are located in the same explosive hazard facility, the total quantity of explosive must be treated as division 1.1 for determining separations distances; or, a launch site operator may add the net explosive equivalent weight of the division 1.3 items to the net weight of division 1.1 items to determine the total quantity of explosives.

(c) A launch site operator must separate each explosive hazard facility where division 1.1 and 1.3 explosives are handled from all other explosive hazard facilities, all public traffic routes, each public area, including the launch site boundary, by a distance no less than that provided for each quantity and explosive division in appendix E of this part as follows:

(1) For division 1.1 explosives, the launch site operator must use tables

E–1, E–2, and E–3 of appendix E of this part to determine the distance to each public area and public traffic route and each intraline distance.

(2) For division 1.3 explosives, the launch site operator must use table E–4 of appendix E of this part to determine the distance to each public area, public traffic route, and intraline distance.

(d) A launch site operator must:

(1) Employ no less than the applicable public area distance to separate an explosive hazard facility from each public area, including the launch site boundary.

(2) Employ no less than an intraline distance to separate an explosive hazard facility from all other explosive hazard facilities used by a single customer.

(3) Separate each public area containing any member of the public in the open by a distance equal to $-1133.9 + [389 * \ln(NEW)]$ where the NEW is greater than 450 pounds and less than 600,000 pounds.

(e) A launch site operator may:

(1) For a division 1.1 explosive only, employ no less than the public traffic route distance of tables E–1 and E–2 of appendix E of this part, to separate an explosive hazard facility from a public area that consists only of a public traffic route.

(2) Use the applicable equation provided by tables E–1, E–2, E–3, and E–4 of appendix E of this part to determine the separation distance for NEW quantities that fall between table entries.

(3) Use a distance to calculate maximum permissible NEW using the applicable equation of tables E–1, E–2, E–3, and E–4 of appendix E of this part.

5. Add § 420.66 to read as follows:

§ 420.66 Separation distance requirements for storage of hydrogen peroxide, hydrazine, and liquid hydrogen and any incompatible energetic liquids stored within an intraline distance.

(a) *Separation of energetic liquids and determination of distances.* A launch site operator must separate each explosive hazard facility from each other explosive hazard facility and each public area in accordance with the minimum separation distance determined under this section for each explosive hazard facility storing:

(1) Hydrogen peroxide in concentrations of greater than 91 percent;

(2) Hydrazine;

(3) Liquid hydrogen; or

(4) Any energetic liquid that is:

(i) Incompatible with any of the energetic liquids of paragraphs (a)(1) through (3) of this section; and

(ii) Stored within an intraline distance of any of them.

(5) A launch site operator must measure each distance as required by § 420.70.

(b) *Quantity.* A launch site operator must determine the minimum separation distance between each explosive hazard facility and all other explosive hazard facilities and each public area and public traffic route as follows:

(1) For each explosive hazard facility, a launch site operator must determine the total quantity of all energetic liquids in paragraphs (a)(1) through (4) of this section. The quantity of energetic liquid in a tank, drum, cylinder, or other container is the net weight in pounds of the energetic liquid in the container. The determination of quantity must include any energetic liquid in associated piping to any point where positive means exist for:

(i) Interrupting the flow through the pipe, or

(ii) Interrupting a reaction in the pipe in the event of a mishap.

(2) A launch site operator must convert the quantity of each energetic liquid from gallons to pounds using the conversion factors provided in table E–6 of appendix E of this part and the following equation:

Pounds of energetic liquid = gallons × density of energetic liquid (pounds per gallon).

(3) Where two or more containers of compatible energetic liquids are stored in the same explosive hazard facility, the total quantity of energetic liquids is the total quantity of energetic liquids in all containers, unless:

(i) The containers are each separated from each other by the distance required by paragraph (c) of this section; or

(ii) The containers are subdivided by intervening barriers that prevent mixing, such as diking. Where two or more containers of incompatible energetic liquids are stored within an intraline distance of each other, paragraph (d) of this section applies.

(c) *Determination of distances for compatible energetic liquids.* A launch site operator must determine separation distances for compatible energetic liquids as follows:

(1) To determine each intraline, public area, and public traffic route distance, a launch site operator must use the following tables in appendix E of this part:

(i) Table E–7 for hydrogen peroxide in concentrations of greater than 91 percent; and

(ii) Table E–8 for hydrazine and liquid hydrogen.

(2) For liquid hydrogen and hydrazine, a launch site operator must use the "intraline distance to compatible energetic liquids" for the energetic liquid that requires the greater distance under table E–8 of appendix E of this part as the minimum separation distance between compatible energetic liquids.

(d) Determination of distances for incompatible energetic liquids. If incompatible energetic liquids are stored within an intraline distance of each other, a launch site operator must determine the explosive equivalent in pounds of the combined liquids as provided by paragraph (d)(2) of this section unless intervening barriers prevent mixing.

(1) If intervening barriers prevent mixing, a launch site operator must separate the incompatible energetic liquids by no less than the intraline distance that tables E–7 and E–8 of appendix E of this part apply to compatible energetic liquids using the quantity or energetic liquid requiring the greater separation distance.

(2) A launch site operator must use the formulas provided in table E–5 of appendix E of this part, to determine the explosive equivalent in pounds of the combined incompatible energetic liquids. A launch site operator must then use the explosive equivalent in pounds requiring the greatest separation distance to determine the minimum separation distance between each explosive hazard facility and all other explosive hazard facilities and each public area and public traffic route as required by tables E–1, E–2 and E–3.

6. Revise § 420.67 to read as follows:

§ 420.67 Separation distance requirements for handling incompatible energetic liquids that are co-located.

(a) *Separation of energetic liquids and determination of distances.* Where incompatible energetic liquids are co-located in a launch or reentry vehicle tank or other vessel, a launch site operator must separate each explosive hazard facility from each other explosive hazard facility and each public area in accordance with the minimum separation distance determined under this section for each explosive hazard facility.

(b) *Quantity.* A launch site operator must determine the minimum separation distance between each explosive hazard facility and all other explosive hazard facilities and each public area and public traffic route as follows:

(1) For each explosive hazard facility, a launch site operator must determine the total quantity of all energetic

liquids. The quantity of energetic liquid in a launch or reentry vehicle tank is the net weight in pounds of the energetic liquid. The determination of quantity must include any energetic liquid in associated piping to any point where positive means exist for:

(i) Interrupting the flow through the pipe, or

(ii) Interrupting a reaction in the pipe in the event of a mishap.

(2) A launch site operator must convert each energetic liquid's quantity from gallons to pounds using the conversion factors provided by table E–6 of appendix E of this part and the following equation:

Pounds of energetic liquid = gallons × density of energetic liquid (pounds per gallon).

(c) Determination of separation distances for incompatible energetic liquids. A launch site operator must determine separation distances for incompatible energetic liquids as follows:

(1) A launch site operator must use the formulas provided in appendix E of this part, table E–5, to determine the explosive equivalent in pounds of the combined incompatible energetic liquids; and

(2) A launch site operator must use the explosive equivalent in pounds to determine the minimum separation distance between each explosive hazard facility and all other explosive hazard facilities and each public area and public traffic route as required by tables E–1, E–2 and E–3 of appendix E of this part.

(d) Separation distance by weight and table. A launch site operator must:

(1) For an explosive equivalent weight from one pound through and including 450 pounds, determine the distance to any public area and public traffic route following table E–1 of appendix E of this part.

(2) For explosive equivalent weight greater than 450 pounds, determine the distance to any public area and public traffic route following table E–2 of appendix E of this part.

(3) A launch site operator must separate each explosive hazard facility from all other explosive hazard facilities of a single customer using the intraline distance provided by table E–3 of appendix E of this part.

(4) For explosive hazard facilities of a single customer, a launch site operator must use the greater intraline distance to separate the facilities from each other. For explosive hazard facilities used by different customers a launch site operator must use the greater public area distance to separate the facilities from each other.

7. Revise § 420.69 to read as follows:

§ 420.69 Separation distance requirements for co-location of division 1.1 and 1.3 explosives with liquid propellants.

(a) A launch site operator must separate each explosive hazard facility from each other explosive hazard facility and each public area in accordance with the minimum separation distance determined under this section for each explosive hazard facility where division 1.1 and 1.3 explosives are co-located with liquid propellants. A launch site operator must determine each minimum separation distance from an explosive hazard facility where division 1.1 and 1.3 explosives and liquid propellants are to be located together, to each other explosive hazard facility and public area as follows:

(b) For liquid propellants and division 1.1 explosives located together, a launch site operator must:

(1) Determine the explosive equivalent weight of the liquid propellants as provided by § 420.67(c);

(2) Add the explosive equivalent weight of the liquid propellants and the NEW of division 1.1 explosives to determine the combined net explosive weight; and

(3) Use the combined NEW to determine the distance to each public area, public traffic route, and each other explosive hazard facility by following tables E–1, E–2, and E–3 of appendix E of this part.

(c) For liquid propellants and division 1.3 explosives located together, a launch site operator must separate each explosive hazard facility where liquid propellants and division 1.3 explosives are located together from other explosive hazard facilities, public area, and public traffic routes using either of the following two methods:

(1) Method 1:

(i) Determine the explosive equivalent weight of the liquid propellants by following § 420.67(c).

(ii) Add to the explosive equivalent weight of the liquid propellants, the net explosive weight of each division 1.3 explosive, treating division 1.3 explosives as division 1.1 explosives.

(iii) Use the combined net explosive weight to determine the distance to public area, public traffic route, and distance to other explosive hazard facilities by following tables E–1, E–2, and E–3 of appendix E of this part.

(2) Method 2:

(i) Determine the explosive equivalent weight of each liquid propellant by following § 420.67(c).

(ii) Add to the explosive equivalent weight of the liquid propellants, the NEW equivalent weight of each division 1.3 explosive to determine the combined net explosive weight.

(iii) Use the combined NEW to determine the minimum separation distance to each public area, public traffic route, and each other explosive hazard facility by following tables E–1, E–2, and E–3 of appendix E of this part.

(d) For liquid propellants, division 1.1 and 1.3 explosives located together, the launch site operator must:

(1) Determine the explosive equivalent weight of the liquid propellants by following § 420.67(c).

(2) Determine the total explosive quantity of each division 1.1 and 1.3 explosive by following § 420.65(b).

(3) Add to the explosive equivalent weight of the liquid propellants to the total explosive quantity of division 1.1 and 1.3 explosives together to determine the combined net explosive weight.

(4) Use the combined net explosive weight to determine the distance to each public area, public traffic route, and each other explosive hazard facility by following tables E–1, E–2, and E–3 of appendix E of this part.

(e) The launch site operator must analyze the maximum credible event (MCE) or the worst case explosion expected to occur. If the MCE shows there will be no simultaneous explosion reaction of the liquid propellant tanks and the solid propellant motors, then the minimum distance between the explosive hazard facility and all other explosive hazard facilities and public areas must be based on the MCE.

8. Add § 420.70 to read as follows:

§ 420.70 Separation distance measurement requirements.

(a) This section applies to all measurements of distances performed under §§ 420.63 through 420.69.

(b) A launch site operator must measure each separation distance along straight lines. For large intervening topographical features such as hills, the launch site operator must measure over or around the feature, whichever is the shorter.

(c) A launch site operator must measure each minimum separation distance from the closest hazard source, such as a container, building, segment, or positive cut-off point in piping, in an explosive hazard facility. When measuring, a launch site operator must:

(1) For a public traffic route distance measure from the nearest side of the public traffic route to the closest point of the hazard source; and

(2) For an intraline distance measure from the nearest point of one hazard source to the nearest point of the next hazard source. The minimum separation

distance must be the distance for the explosive quantity or NEW that requires the greater distance.

9. Revise Appendix E to part 420 to read as follows:

Appendix E to Part 420—Tables for Explosive Site Plan

TABLE E–1—DIVISION 1.1 DISTANCES TO A PUBLIC AREA OR PUBLIC TRAFFIC ROUTE NEW ≤ 450 LBS

NEW (lbs.)	Distance to public area (ft) [1 2]	Distance to public traffic route distance (ft) [2]
≤0.5	236	142
0.7	263	158
1	291	175
2	346	208
3	378	227
5	419	251
7	445	267
10	474	284
15	506	304
20	529	317
30	561	337
31	563	338
50	601	361
70	628	377
100	658	395
150	815	489
200	927	556
300	1,085	651
450	1,243	746

[1] To calculate distance d to a public area from NEW:
NEW ≤ 0.5 lbs: d = 236
0.5 lbs < NEW < 100 lbs: d = 291.3 + [79.2 * ln(NEW)]
100 lbs ≤ NEW ≤ 450 lbs: d = −1133.9 + [389 * ln(NEW)]
NEW is in lbs; d is in ft; ln is natural logarithm.
To calculate maximum NEW given distance d (noting that d can never be less than 236 ft):
0 ≤ d < 236 ft: Not allowed (d cannot be less than 236 ft)
236 ft ≤ d < 658 ft: NEW = exp [(d/79.2) − 3.678]
658 ft ≤ d < 1250 ft: NEW = exp [(d/389) + 2.914]
NEW is in lbs; d is in ft; exp[x] is e^x.
[2] The public traffic route distance is 60 percent of the distance to a public area.

TABLE E–2—DIVISION 1.1 DISTANCE TO PUBLIC AREA AND PUBLIC TRAFFIC ROUTE FOR NEW > 450 LBS

NEW (lbs)	Distance to public area (ft) [1]	Distance to public traffic route (ft)
450 lbs < NEW ≤ 30,000 lbs	1,250	750.
30,000 lbs < NEW ≤ 100,000 lbs	40 * NEW $^{1/3}$	0.60 * (Distance to Public Area).
100,000 lbs < NEW ≤ 250,000 lbs	2.42 * NEW $^{0.577}$	0.60 * (Distance to Public Area).
250,000 lbs < NEW	50 * NEW $^{1/3}$	0.60 * (Distance to Public Area).

[1] To calculate NEW from distance d to a public area:
1,243 ft < d ≤ 1,857 ft: NEW = $d^3/64{,}000$.
1,857 ft < d ≤ 3,150 ft: NEW = 0.2162 * $d^{1.7331}$.
3,150 ft < d: NEW = $d^3/125{,}000$.
NEW is in lbs; d is in ft.

TABLE E–3—DIVISION 1.1 INTRALINE DISTANCES [1 2 3]

NEW (lbs)	Intraline distance (ft)
50	66
70	74
100	84
150	96
200	105
300	120
500	143
700	160
1,000	180
1,500	206
2,000	227
3,000	260
5,000	308
7,000	344
10,000	388
15,000	444
20,000	489

TABLE E–3—DIVISION 1.1 INTRALINE DISTANCES [1] [2] [3]—Continued

NEW (lbs)	Intraline distance (ft)
30,000	559
50,000	663
70,000	742
100,000	835
150,000	956
200,000	1,053
300,000	1,205
500,000 [3]	1,429
700,000	1,508
1,000,000	1,800
1,500,000	2,060
2,000,000	2,268
3,000,000	2,596
5,000,000	3,078

[1] To calculate intraline distance d from NEW:
$d = 18*NEW^{1/3}$
NEW is in pounds; d is in feet
[2] To calculate maximum NEW from given intraline distance d:
$NEW = d^3/5{,}832$
NEW is in pounds; d is in feet
[3] A NEW greater than 500,000 lbs is not allowed for division 1.1 explosives. Therefore, the parts of the table that list NEW values of more than 500,000 lbs are only applicable to liquid propellants with TNT equivalents equal to those NEW values.

TABLE E–4—DIVISION 1.3 SEPARATION DISTANCES

NEW (lbs)	Distance to public area or public traffic route (ft) [1]	Intraline distance (ft) [2]
≤1000	75	50
1,500	82	56
2,000	89	61
3,000	101	68
5,000	117	80
7,000	130	88
10,000	145	98
15,000	164	112
20,000	180	122
30,000	204	138
50,000	240	163
70,000	268	181
100,000	300	204
150,000	346	234
200,000	385	260
300,000	454	303
500,000	569	372
700,000	668	428
1,000,000	800	500
1,500,000	936	577
2,000,000	1,008	630

[1] To calculate distance d to a public area or traffic route from NEW:
NEW ≤1,000 lbs
$d = 75$ ft
1,000 lbs < NEW ≤ 96,000 lbs
$d = \exp [2.47 + 0.2368 * (\ln(NEW)) + 0.00384 * (\ln(NEW))^2]$
96,000 lbs < NEW ≤1,000,000 lbs,
$d = \exp [7.2297 - 0.5984 * (\ln(NEW)) + 0.04046 * (\ln(NEW))^2]$
NEW > 1,000,000 lbs
$d = 8 * NEW^{1/3}$
NEW is in pounds; d is in feet; exp[x] is e^x; ln is natural logarithm
To calculate NEW from distance d to a public area or traffic route (noting that d cannot be less than 75 ft):
0 ≤ d < 75 ft:
Not allowed (d cannot be less than 75 ft)
75 ft ≤ d ≤ 296 ft
$NEW = \exp [-30.833 + (307.465 + 260.417 * (\ln(d)))^{1/2}]$
296 ft < d ≤ 800 ft
$NEW = \exp [7.395 + (-124.002 + 24.716 * (\ln(d)))^{1/2}]$
800 ft < d
$NEW = d^3/512$
NEW is in lbs; d is in ft; exp[x] is e^x; ln is natural logarithm
[2] To calculate intraline distance d from NEW:
NEW ≤ 1,000 lbs
$d = 50$ ft

1,000 lbs < NEW ≤ 84,000 lbs
$d = \exp [2.0325 + 0.2488 * (\ln(NEW)) + 0.00313 * (\ln(NEW))^2]$
84,000 lbs < NEW ≤ 1,000,000 lbs
$d = \exp [4.338 - 0.1695 * (\ln(NEW)) + 0.0221 * (\ln(NEW))^2]$
1,000,000 lbs < NEW
$d = 5*NEW^{1/3}$
NEW is in pounds; d is in feet; exp[x] is e^x; ln is natural logarithm
To calculate NEW from an intraline distance d:
0 ≤ d < 50 ft:
Not allowed (d cannot be less than 50 ft)
50 ft ≤ d ≤ 192 ft
$NEW = \exp[-39.744 + (930.257 + 319.49 * (\ln(d)))^{1/2}]$
192 ft < d ≤ 500 ft
$NEW = \exp[3.834 + (-181.58 + 45.249 * (\ln(d)))^{1/2}]$
500 ft < d
$NEW = d^3/125$
NEW is in pounds; d is in feet; exp[x] is e^x; ln is natural logarithm

TABLE E–5—ENERGETIC LIQUID EXPLOSIVE EQUIVALENTS [1] [2] [3]

Energetic liquids	TNT equivalence Static test stands	TNT equivalence Launch pads
LO_2/LH_2	*See* Note 3	*See* Note 3.
$LO_2/LH_2 + LO_2/RP–1$	Sum of (see Note 3 for LO_2/LH_2) + (10% for $LO_2/RP1$).	Sum of (see Note 3 for LO_2/LH_2) + (20% for $LO_2/RP1$).
$LO_2/RP–1$	10%	20% up to 500,000 lbs Plus 10% over 500,000 lbs.
IRFNA/UDMH	10%	10%.
$N_2O_4/UDMH + N_2H_4$	5%	10%.

[1] A launch site operator must use the percentage factors of table E–5 to determine TNT equivalencies of incompatible energetic liquids that are within an intraline distance of each other.
[2] A launch site operator may substitute the following energetic liquids to determine TNT equivalency under this table as follows:
Alcohols or other hydrocarbon for RP–1
H_2O_2 for LO_2 (only when LO_2 is in combination with RP–1 or equivalent hydrocarbon fuel)
MMH for N_2H_4, UDMH, or combinations of the two.
[3] TNT equivalency for LO_2/LH_2 is the larger of:
(a) TNT equivalency of $8 * W^{2/3}$, where W is the weight of LO_2/LH_2 in lbs; or
(b) 14 percent of the LO_2/LH_2 weight.

TABLE E–6—FACTORS TO USE WHEN CONVERTING ENERGETIC LIQUID DENSITIES

Item	Density (lb/gal)	Temperature (°F)
Ethyl alcohol	6.6	68
Hydrazine	8.4	68
Hydrogen peroxide (90 percent)	11.6	68
Liquid hydrogen	0.59	−423
Liquid oxygen	9.5	−297
Red fuming nitric acid (IRFNA)	12.9	77
RP–1	6.8	68
UDMH	6.6	68
UDMH/Hydrazine	7.5	68

TABLE E–7—SEPARATION DISTANCE CRITERIA FOR STORAGE OF HYDROGEN PEROXIDE IN CONCENTRATIONS OF MORE THAN 91 PERCENT [1, 2, 3,]

Quantity (lbs)	Intraline distance or distance to public area or distance to public traffic route (ft)
10,000	510
15,000	592
20,000	651
30,000	746
50,000	884
70,000	989
100,000	1114
150,000	1275
200,000	1404
300,000	1607

TABLE E–7—SEPARATION DISTANCE CRITERIA FOR STORAGE OF HYDROGEN PEROXIDE IN CONCENTRATIONS OF MORE THAN 91 PERCENT [1, 2, 3,]—Continued

Quantity (lbs)	Intraline distance or distance to public area or distance to public traffic route (ft)
500,000	1905

[1] Multiple tanks containing hydrogen peroxide in concentrations of greater than 91 percent may be located at distances less than those required by table E–7; however, if the tanks are not separated from each other by 10 percent of the distance specified for the largest tank, then the launch site operator must use the total contents of all tanks to calculate each intraline distance and the distance to each public area and each public traffic route.

[2] A launch site operator may use the equations below to determine permissible distance or quantity between the entries of table E–7:

W > 10,000 lbs Distance = 24 * $W^{1/3}$

Where Distance is in ft and W is in lbs.

To calculate weight of hydrogen peroxide from a distance d:

d > 75 ft W = $d^3/13824$

Where distance d is in ft and W is in lbs.

[3] For storage of Class 4 oxidizer inside of a building, the launch site operator must provide sprinkler protection in accordance with NFPA 430.

TABLE E–8—SEPARATION DISTANCE CRITERIA FOR STORAGE OF LIQUID HYDROGEN AND BULK QUANTITIES OF HYDRAZINE

Pounds of energetic liquid	Pounds of energetic liquid	Public area and intraline distance to incompatible energetic liquids	Intraline distance to compatible energetic liquids	Pounds of energetic liquid	Pounds of energetic liquid	Public area and intraline distance to incompatible energetic liquids	Intraline distance to compatible energetic liquids
Over	Not Over	Distance in feet	Distance in feet	Over	Not Over	Distance in feet	Distance in feet
				60,000	70,000	1,200	130
100	200	600	35	70,000	80,000	1,200	130
200	300	600	40	80,000	90,000	1,200	135
300	400	600	45	90,000	100,000	1,200	135
400	500	600	50	100,000	125,000	1,800	140
500	600	600	50	125,000	150,000	1,800	145
600	700	600	55	150,000	175,000	1,800	150
700	800	600	55	175,000	200,000	1,800	155
800	900	600	60	200,000	250,000	1,800	160
900	1,000	600	60	250,000	300,000	1,800	165
1,000	2,000	600	65	300,000	350,000	1,800	170
2,000	3,000	600	70	350,000	400,000	1,800	175
3,000	4,000	600	75	400,000	450,000	1,800	180
4,000	5,000	600	80	450,000	500,000	1,800	180
5,000	6,000	600	80	500,000	600,000	1,800	185
6,000	7,000	600	85	600,000	700,000	1,800	190
7,000	8,000	600	85	700,000	800,000	1,800	195
8,000	9,000	600	90	800,000	900,000	1,800	200
9,000	10,000	600	90	900,000	1,000,000	1,800	205
10,000	15,000	1,200	95	1,000,000	2,000,000	1,800	235
15,000	20,000	1,200	100	2,000,000	3,000,000	1,800	255
20,000	25,000	1,200	105	3,000,000	4,000,000	1,800	265
25,000	30,000	1,200	110	4,000,000	5,000,000	1,800	275
30,000	35,000	1,200	110	5,000,000	6,000,000	1,800	285
35,000	40,000	1,200	115	6,000,000	7,000,000	1,800	295
40,000	45,000	1,200	120	7,000,000	8,000,000	1,800	300
45,000	50,000	1,200	120	8,000,000	9,000,000	1,800	305
50,000	60,000	1,200	125	9,000,000	10,000,000	1,800	310

Issued in Washington, DC, on February 7, 2011.

George Nield,

Associate Administrator for Commercial Space Transportation.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Chapters I, II, III

23 CFR Chapters I, II, III

46 CFR Chapter II

48 CFR Chapter 12

49 CFR Chapters I, II, III and V, VI, VII, VIII, X, XI

[Docket No. DOT–OST–2011–0025]

Regulatory Review of Existing DOT Regulations

AGENCY: Office of the Secretary of Transportation (OST), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," the Department of Transportation (Department or DOT) is conducting a review of its existing regulations to evaluate their continued validity and determine whether they are crafted effectively to solve current problems. As part of this review, the Department invites the public to participate in a comment process designed to help the Department ensure that it has a plan for periodically analyzing existing significant rules to determine whether they should be modified, streamlined, expanded, or repealed and identify specific rules that may be outmoded, ineffective, insufficient, or excessively burdensome. The Department also will hold a public meeting to discuss and consider comments from members of the public.

DATES: Comments should be received on or before April 1, 2011. Late-filed comments will be considered to the extent practicable. In addition, the Department will hold a public meeting beginning at 9:30 a.m. ET on March 14, 2011, at the DOT headquarters, to discuss the regulatory review and take public comments. Commenters wishing to have time allocated to them at the public meeting should submit initial comments by March 3, 2011, and clearly indicate their desire to have time allocated at the public meeting.

ADDRESSES: You may submit comments to Docket DOT–OST–2011–0025 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed envelope or postcard.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. ET., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

To avoid duplication, please use only one of these four methods. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

Docket: To read background documents or comments received, go to *http://www.regulations.gov* and click on the "read comments" box in the upper right hand side of the screen. Then, in the "Keyword" box insert "OST–2011–0025" and click "Search." Next, click the "Open Docket Folder" in the "Actions" column. Finally, in the "Title" column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–4723. *E-mail: neil.eisner@dot.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 13563

On January 18, 2011, President Obama issued Executive Order 13563, which outlined a plan to improve regulation and regulatory review (76 FR 3821, 1/21/11). Executive Order 13563 reaffirms and builds upon governing principles of contemporary regulatory review, including Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, 10/4/1993), by requiring Federal agencies to design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness. The President's plan recognizes that these principles should not only guide the Federal government's approach to new regulation, but to existing ones as well. To that end, Executive Order 13563 requires agencies to review existing significant rules to determine if they are outmoded, ineffective, insufficient, or excessively burdensome.

To facilitate this review, Executive Order 13563 requires each agency to develop and submit to the Office of Management and Budget's Office of Information and Regulatory Affairs a preliminary plan for retrospectively analyzing existing rules. Specifically, the Department must provide a plan for periodically reviewing existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the Department's regulatory program more effective or less burdensome in achieving the Department's regulatory objectives.

As Executive Order 13563 reaffirms, the regulatory process must be transparent and provide opportunities for public participation. The Department particularly believes, given its broad regulatory responsibility, this participation should extend to the Department's obligations under the Executive Order to conduct a retrospective review of existing regulations. This review will be more meaningful if it involves input from those affected by the Department's regulations.

DOT's Regulatory Responsibility

The mission of the Department is to serve the United States by ensuring a safe, fast, efficient, accessible, and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people, today and into the future. The Department carries out its mission through the Office of the Secretary (OST) and the following operating administrations (OAs): Federal Aviation Administration (FAA); Federal Highway Administration (FHWA); Federal Motor Carrier Safety Administration (FMCSA); Federal Railroad Administration (FRA); Federal Transit Administration (FTA); Maritime Administration (MARAD); National Highway Traffic Safety Administration (NHTSA); Pipeline and Hazardous Materials Safety Administration

(PHMSA); Research and Innovative Technology Administration (RITA); and St. Lawrence Seaway Development Corporation (SLSDC). Although the Surface Transportation Board (STB) is a component of DOT, it is organizationally independent and, as a result, the Department does not have responsibility for the STB's regulatory agenda.

DOT has statutory responsibility for a wide range of regulations. For example, DOT regulates safety in the aviation, motor carrier, railroad, motor vehicle, commercial space, and pipeline transportation areas. DOT regulates aviation consumer and economic issues, and provides financial assistance and writes the necessary implementing rules for programs involving highways, airports, mass transit, the maritime industry, railroads, and motor transportation and vehicle safety. It writes regulations carrying out such disparate statutes as the Americans with Disabilities Act and the Uniform Time Act. Finally, DOT has responsibility for developing policies that implement a wide range of regulations that govern programs such as acquisition and grants management, access for people with disabilities, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, security, and the use of aircraft and vehicles.

DOT's Existing Process for Reviewing Rules

The Department has long recognized that there should be no more regulations than necessary and those that are issued should be simple, comprehensible, and impose as little burden as necessary. Likewise, the Department understands that review and revision of existing regulations is essential to ensure that they continue to meet the needs for which they originally were designed and remain cost-effective and cost-justified. The Department regularly makes a conscientious effort to review its rules in accordance with the Department's 1979 Regulatory Policies and Procedures (44 FR 11034, 2/26/1979), Executive Order 12866, and section 610 of the Regulatory Flexibility Act.

The Department follows a repeating 10-year plan for the review of our existing regulations, which is set forth in our semi-annual Regulatory Agenda published in the **Federal Register** (*see* Appendix D to "Department Regulatory Agenda; Semiannual Summary" published on December 20, 2010 (75 FR 79812)). The reviews conducted under this plan comply with section 610 of the Regulatory Flexibility Act. OST and most OAs have also elected to use this repeating 10-year plan to comply with the review requirements of the Department's Regulatory Policies and Procedures and Executive Order 12866. Generally, the agencies have divided their rules into 10 different groups and analyze one group each year, then start over again. We regularly invite public participation in those reviews and seek general suggestions on rules that should be revised or revoked. In the fall Regulatory Agenda, we publish information on the results of the examinations completed during the previous year. We are now engaged in our second 10-year review.

The FAA, in addition to following a 10-year review plan in accordance with section 610 of the Regulatory Flexibility Act, has established a triennial process to comply with other review requirements. The FAA's latest notice was published November 15, 2007 (72 FR 64170). NHTSA conducts an evaluation of both the costs and benefits of each of its significant rules approximately 4 years after the effective date on which 100 percent of the annual production of all types of vehicles subject to the rule must comply with the rule. This interval is necessary to ensure that sufficient crash data are available for the agency to determine whether a statistically significant reduction in crashes, injuries, and fatalities has occurred. Other OAs also conduct periodic public reviews to focus on specific issues or to obtain comments on rulemaking priorities. Moreover, under 49 CFR part 5, anyone may petition the Department for rulemaking or for an amendment or exemption to a rule.

As part of implementing Executive Order 13563, we will assess our current processes for reviewing rules and examine whether our approach should be modified going forward. While the Department may use these existing processes as significant inputs into its preliminary plan, the Department strongly encourages all parties affected by DOT regulations to comment on opportunities to improve our current review processes in a manner that best addresses the principles outlined in Executive Order 13563.

Public Participation and Request for Comments

DOT is an active regulatory agency with broad regulatory responsibilities. A robust regulatory program being essential to our mission, it is all the more important that we maintain a consistent culture of retrospective review and analysis. Thus, to implement Executive Order 13563, the Department solicits the views of the public on the following matters.

The public is first asked to comment on how the Department should devise a preliminary plan, with a defined method and schedule, for identifying certain significant rules that may be obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. Comments might address how best to evaluate and analyze regulations in order to expand on those that work and to modify, improve, or rescind those that do not. Comments might usefully address how the Department can best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations and whether there are existing sources of data that the Department can use to evaluate the post-promulgation effects of regulations over time. The Department is particularly interested in the public's views about how well its current processes for reviewing regulations function and how those processes might be expanded or otherwise adapted to meet the objectives of Executive Order 13563. The Department is further interested in comments about factors that the Department should consider in setting priorities and selecting rules for review. Our initial selection criteria for these rules are currently based on the factors listed below, on which we seek public comment.

The Department intends for its preliminary plan to include an initial list of candidate rules for review. The Department solicits suggestions for specific rules that should be on that list. In nominating candidate rules for this list, commenters might usefully address, among other things, opportunities to use the Department's review process to achieve the following objectives: (1) Promote economic growth, innovation, competitiveness, and job creation; (2) eliminate outdated regulations; (3) lessen the burdens imposed on those directly or indirectly affected by our regulations, increase the benefits provided to the public by our regulations, and improve the cost-benefit balance of our regulations; (4) lessen burdens imposed on small entities; (5) eliminate duplicative or overlapping regulations; (6) reduce paperwork by eliminating duplication, lessening frequency, allowing electronic submission, standardizing forms, exempting small entities, or other means; (7) eliminate conflicts and inconsistencies in the Department's regulations and those of its own agencies or other Federal agencies or state, local, or tribal governmental

bodies; (8) simplify or clarify language in regulations; (9) revise regulations to address changes in technology, economic conditions, or other factors; (10) determine if matters in an existing regulation could be better handled fully by the states without Federal regulations; (11) reduce burdens by incorporating international or industry consensus standards into regulations; (12) reconsider regulations that were based on scientific or other information that has been discredited or superseded; and (13) expand regulations that are insufficient to address their intended objectives or to obtain additional benefits.

Comments should focus on regulations that have demonstrated deficiencies. Comments that rehash debates over recently issued rules will be less useful. Particularly where comments relate to a rule's costs or benefits, comments will be most useful if there are data and experience under the rule available to ascertain the rule's actual impact. For that reason, we encourage the public to emphasize those rules that have been in effect for a sufficient amount of time to warrant a fair evaluation. Furthermore, the public should focus on rule changes that will achieve a broad public impact, rather than an individual personal or corporate benefit. Where feasible, comments should reference a specific regulation, by Code of Federal Regulations (CFR) cite, and provide the Department information on what needs fixing and why. Comments do not necessarily need to address how to fix the perceived problem, though such comments are welcome. Lastly, we also want to stress that this review is for existing rules; the public should not use this process to submit comments on proposed rules.

The public meeting will begin with a discussion of and taking comments on the Department's preliminary plan for regulatory review required by Executive Order 13563. After that, we plan to allow for comments on candidate rules for review. The Department's General Counsel will preside over the meeting. Other senior officials from the Department and its OAs will also attend. It is our intent that the public meeting will provide an opportunity for these officials to interact with individuals or stakeholder representatives. To enable them to effectively participate in the public meeting, they will need some information in advance. As a result, we are establishing the following process.

1. Suggestions for Discussion at Public Meeting:

a. By March 3, 2011, the Department requests that commenters submit their suggestions for discussion at the public meeting and indicate whether they want time allocated to them at the public meeting. Commenters are welcome to indicate how much time they would like to be allocated, but the Department reserves the right to allocate time as necessary to ensure that as many commenters as possible may participate in the public meeting in a meaningful manner.

b. The initial comments from those intending to participate in the public meeting should contain enough details to permit DOT officials to sufficiently prepare and ask questions.

c. The initial comments may be augmented anytime before the end of the full comment period.

d. Anyone who needs auxiliary aids and services, such as sign language interpreters, to effectively participate in the meeting should contact the Department via the "**FOR FURTHER INFORMATION CONTACT**" information provided above.

2. Public Meeting:

a. After receiving this initial round of public comment, the Department will organize those suggestions by topic and OA for discussion during the public meeting.

b. By having the public meeting after receiving initial public comment and by organizing the discussion around topics and OAs, the Department will be better positioned to discuss issues regarding a particular rule, broad category of rules, or affected group or industry, rather than merely recording public comment for later review.

c. The Department will hold its public meeting beginning at 9:30 a.m. ET on March 14, 2011 at the Department of Transportation, West Building, Ground Floor, DOT Conference Center, Oklahoma Room, 1200 New Jersey Avenue, SE., Washington, DC. We will make a meeting outline available on *http://regs.dot.gov* in advance of the meeting. Furthermore, we are exploring the use of technology to enable remote participation in the meeting. We will update *http://regs.dot.gov* with information about opportunities for the public to participate remotely.

3. Other Written Comments:

The Department will continue to accept written comments through April 1, 2011. Those who do not wish to attend the public meeting may, of course, submit comments at any time during the comment period.

4. Follow-up Action by DOT:

a. We will place a transcript or summary of the public meeting in our public docket (*http://www.regulations.gov*) as soon as possible after the end of the meeting. We note that because the docket is Internet accessible, it should allow those with Internet access to review those proceedings as well as other comments. We hope this will further improve the interchange of ideas.

b. This review will provide meaningful and significant input to the Secretary, the General Counsel, OA Administrators, and other DOT senior officials. As soon as possible, depending on the number of comments we receive and the issues raised, the Department will publish a report providing at least a brief response to the comments we have received, including a description of any further action we intend to take.

Regulatory Notices

Privacy Act: Anyone may search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.gpoaccess.gov/fr/browse.html* and browse under 2000 for April 11, looking under Department of Transportation.

Authority: 5 U.S.C. 610; E.O. 13563, 76 FR 3821, Jan. 21 2011; E.O. 12866, 58 FR 51735, Oct. 4, 1993.

Issued on February 10, 2011, in Washington, DC.

Robert S. Rivkin,

General Counsel.

[FR Doc. 2011–3492 Filed 2–11–11; 8:45 am]

BILLING CODE 4910–9X–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

[CPSC Docket No. CPSC–2011–0007]

Poison Prevention Packaging Requirements; Proposed Exemption of Powder Formulations of Colesevelam Hydrochloride and Sevelamer Carbonate

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Consumer Product Safety Commission ("CPSC," "Commission," or "we") is proposing to amend its child-resistant packaging requirements to exempt powder formulations of two oral prescription drugs, colesevelam hydrochloride and sevelamer carbonate. Colesevelam hydrochloride, currently

marketed as Welchol®, is available in a new powder formulation and is indicated to reduce elevated LDL cholesterol levels and improve glycemic control in adults with type 2 diabetes mellitus. Sevelamer carbonate, currently marketed as Renvela®, is available as a new powder formulation and is indicated for the control of elevated serum phosphorus in chronic kidney disease patients on dialysis. The proposed rule would exempt these prescription drug products on the basis that child-resistant packaging is not needed to protect young children from serious injury or illness from powder formulations of colesevelam hydrochloride and sevelamer carbonate because the products are not acutely toxic, lack adverse human experience associated with acute ingestion, and in powder form, are not likely to be ingested in large quantities by children under 5 years of age.

DATES: Comments on the proposal should be submitted no later than May 2, 2011.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2011–0007, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Adrienne Layton, PhD, Division of Health Sciences, Directorate for Health Sciences, Consumer Product Safety Commission, Bethesda, MD 20814–4408; telephone (301) 504–7576; *alayton@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

1. The Poison Prevention Packaging Act of 1970 and Implementing Regulations

The Poison Prevention Packaging Act of 1970 ("PPPA"), 15 U.S.C. 1471–1476, gives the Commission authority to establish standards for the "special packaging" of household substances, such as drugs, when child-resistant ("CR") packaging is necessary to protect children from serious personal injury or illness due to the substance and the special packaging is technically feasible, practicable, and appropriate for such substance. Accordingly, CPSC regulations require that oral prescription drugs be in CR packaging. 16 CFR 1700.14(a)(10). The powder forms of cholestyramine and colestipol, two drugs that are chemically similar to colesevelam hydrochloride and sevelamer carbonate, currently are exempt from CR packaging. *Id.* 1700.14(a)(10)(v) and (xv).

CPSC regulations allow companies to petition the Commission for exemption from CR requirements. 16 CFR part 1702. Among the possible grounds for granting an exemption are that the degree or nature of the hazard that the substance poses to children is such that special packaging is not required to protect children against serious personal injury or serious illness (16 CFR 1702.17).

2. The Products for Which Exemptions Are Sought

a. Welchol® (Colesevelam Hydrochloride)

On February 24, 2009, Daiichi Sankyo, Inc. ("Daiichi") petitioned the Commission to exempt the powdered form of colesevelam hydrochloride, which it markets as Welchol®, from the special packaging requirements for oral prescription drugs. The petitioner stated that the exemption is justified because of lack of toxicity and lack of adverse human experience with the drug. Welchol® has been marketed in tablet form and dispensed in CR packaging. On October 2, 2009, the U.S. Food and Drug Administration ("FDA") approved a new powder formulation of the drug. The petition requested an exemption only for the powder dosage form of Welchol®. Tablets would continue to be in CR packaging.

Welchol® (colesevelam hydrochloride) is a bile acid sequestrant indicated as an adjunct to: (1) Reduce elevated low-density lipoprotein cholesterol (LDL–C) levels; and (2) improve glycemic control in adults with type 2 diabetes mellitus. The new dosage form of Welchol® provides 1.875 g or 3.75 g of the powdered drug in unit dose packages to be mixed with water and taken orally as a suspension. (A unit dose package of Welchol® or Renvela® is a pouch that contains an individual dose.)

b. Renvela® (Sevelamer Carbonate)

On March 6, 2009, Genzyme Corporation ("Genzyme") petitioned the Commission to exempt the powdered form of sevelamer carbonate, which it markets as Renvela®, from the special packaging requirements for oral prescription drugs. The petitioner stated that the exemption is justified because of lack of toxicity and lack of adverse human experience with the drug.

Renvela,® sevelamer carbonate, is a phosphate binder indicated for the control of serum phosphorus in patients with chronic kidney disease on dialysis. The tablets are marketed with a pill crusher for patients who have trouble swallowing the tablets. The company reformulated Renvela® as a powder to be taken as an oral suspension and received approval from FDA for this powder formulation on August 12, 2009. The new dosage form of Renvela® provides either 0.8 g or 2.4 g of Renvela® powder in unit dose packages to be mixed with 2 ounces of water.

B. Toxicity and Human Experience Data

Welchol® and Renvela® have similar chemical structures, biological properties, and powder formulations. Therefore, we are considering the two petitions together, and staff reviewed related toxicity data together. CPSC staff found that colesevelam hydrochloride and sevelamer carbonate are not absorbed from the gastrointestinal tract. This limits the systemic toxicity of the drugs.

No data indicate that either drug is acutely toxic, which is the type of toxicity of concern when considering whether CR packaging is appropriate. Even in patients taking these drugs chronically, the adverse effects are mostly minor, such as diarrhea, nausea, constipation, flatulence, and dyspepsia.

Generally, chronic studies are not useful in determining whether a drug should be in CR packaging (because CR

packaging is intended to protect against the child's access and likely one-time use of the drug). Nevertheless, staff reviewed such data. Animal studies involving 3 to 6 month administration of Welchol® and Renvela,® respectively, resulted in hemorrhage. However, this result was not related directly to the mechanism of action of the drugs, but rather to a side effect involving the inhibition of vitamin K absorption. Chronic administration of Welchol® and Renvela® can cause an alteration in the absorption of vitamins A, D, E, and K. Vitamin K is required by the liver to produce functional blood clotting factors. When vitamin K levels are low, nonfunctional blood clotting factors are produced, which can lead to hemorrhage. This can occur following the chronic administration of a drug that inhibits vitamin K, but not after the acute administration of such a drug. Daiichi Sankyo's submission mentions one 4-year-old girl who was prescribed Welchol® off-label to treat a skin irritation secondary to liver disease. She died from an intracranial hemorrhage. There are confounding factors in this case, and the death occurred after chronic, not acute, exposure. Because of the confounding factors, the death cannot be attributed solely to Welchol®. A trial of Renvela® in a limited number of pediatric patients (18) for eight weeks resulted in primarily minor GI effects. (Pieper A.K., Haffner D., Hoppe B., Dittrich K., Offner G., Bonzel K.E., John U., Frund S., Klaus G., Stubinger A., Duker G. and Querfeld U. (2006).) Other effects, such as metabolic acidosis, can be attributed to the underlying chronic kidney disease in these children. These effects would occur after chronic, but not acute, exposure.

If a child were to ingest accidentally colesevelam hydrochloride (Welchol®) or sevelamer carbonate (Renvela®), the potential for the occurrence of mild to moderate GI discomfort, such as indigestion, constipation, nausea, and vomiting does exist. However, a review of relevant data indicates that an acute ingestion of these drugs would not result in serious toxicity. Any serious toxicity would result only after chronic administration.

As noted, the CPSC's CR packaging regulations exempt cholestyramine and colestipol in powder form, two bile acid sequestrants that are similar chemically to Welchol® and Renvela®. CPSC staff has not found any articles in the medical literature describing toxic effects following the acute ingestion of either cholestyramine or colestipol from 1975 through 2010.

CPSC staff searched the following databases for incidents related to Welchol® and Renvela® occurring between 2000 and 2009: the Injury and Potential Injury Incident database ("IPII"), the National Electronic Injury Surveillance System database ("NEISS"), and the Death Certificates database ("DTHS"). Staff found one incident involving Welchol® in the NEISS database. In that incident, 11-month-old twin boys were taken to the emergency room after they had been playing with their grandmother's prescription medications. It is not clear how many, if any, pills the boys ingested, but the children were treated and released from the hospital. CPSC staff also searched Poisindex®, Pub Med, and Google for Welchol®, Renvela®, Colestipol, and Cholestyramine, and found no incidents of acute poisoning in humans.

CPSC staff also analyzed Medwatch reports obtained from the FDA. Medwatch is the FDA's program for reporting a serious adverse event, product quality problem, product use error, or therapeutic inequivalence/failure that may be associated with the use of an FDA-regulated drug, biologic, medical device, dietary supplement, or cosmetic. (*See http://www.fda.gov/Safety/MedWatch/HowToReport/default.htm*.) There may be adverse events that have occurred and are not reported in the Medwatch database. Also, the existence of a report in the database does not mean necessarily that the product actually caused the adverse event.

The FDA provided CPSC staff with 151 distinct incidents of adverse events associated with colesevelam hydrochloride (Welchol®) reported through the Medwatch system. CPSC staff excluded incidents where other medications may have caused the adverse event reported, resulting in 22 adverse events. Most adverse events reported to Medwatch were gastrointestinal or involved muscle pain, which is to be expected considering the adverse effects reported from clinical trials of Welchol®.

CPSC staff also received reports from the FDA of 40 distinct incidents of adverse events associated with sevelamer carbonate (Renvela®). CPSC staff excluded incidents where other medications may have caused the adverse event reported, resulting in five in-scope incidents. Two of the five incidents were deaths, which most likely were related to the underlying disease and not sevelamer carbonate (Renvela®) treatment. One of the five incidents involved intestinal obstruction and perforation, which the patient's physician thought were related to the patient's treatment with sevelamer carbonate (Renvela®). In the two remaining incidents, one patient experienced gastroenteritis, and the other (who had asthma and chronic obstructive pulmonary disease) suffered severe breathing problems while on Renvela®. Neither of these two results likely was related to sevelamer carbonate (Renvela®).

CPSC staff also evaluated the likelihood of children younger than 5 years old ingesting powdered substances. The powdered form of these substances makes them more difficult to ingest than medicines in other forms and therefore, likely will keep children from ingesting significant quantities. CPSC staff believes that it would be difficult for children under 5 years old to eat large amounts of powder quickly without aspirating or coughing. It would also be difficult for children to mix powder thoroughly in a liquid, and the resulting lumpy quality may be unappealing to children who try to drink it. Although children are likely to be able to tear open the non-child-resistant packets used for Welchol® and Renvela,® they are likely to spill much of the contents; therefore, they would have to open a number of packages to access a significant quantity of the drug. Most unintentional poisonings among children occur during short lapses in direct visual supervision. The difficulty posed by ingestion of powder introduces a delay in the poisoning scenario, and supervision is likely to resume before a child can take in a significant quantity.

The packages used with the powder formulations of Welchol® and Renvela® also reduce the likelihood of child poisoning. Both drugs are provided in small foil-lined packages containing individual doses. The Renvela® package is easy to tear only at the notch. Because the package must be opened at a precise location, it is less accessible, especially to young children. The Welchol® package does not have a notch and has uniform resistance to tearing, which makes it more difficult to open than Renvela®. Although both packages tear easily enough to be opened by children under 5 years of age, the fine motor skills of this age group of children are still developing, and children age 2 and younger are likely to spill most of the powder.

C. Action on the Petition

After considering the information provided by the petitioner and other available toxicity and human experience data, the Commission concluded preliminarily that the degree and nature of the hazard to children presented by the availability of powder formulations of colesevelam hydrochloride (currently

marketed as Welchol®) and sevelamer carbonate (currently marketed as Renvela®) do not require special packaging to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting the substance. Therefore, the Commission voted to grant the petition and begin a rulemaking proceeding to exempt powder formulations of colesevelam hydrochloride containing not more than 3.75 grams per package and sevelamer carbonate containing not more than 2.4 grams per package from the special packaging requirements for oral prescription drugs.

D. Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., an agency that engages in rulemaking generally must prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to exempt powder formulations of colesevelam hydrochloride (currently marketed as Welchol®) and sevelamer carbonate (currently marketed as Renvela®) from special packaging requirements.

Daiichi Sankyo, Inc., a subsidiary of the Japanese firm Daiichi Sankyo Co, Ltd, the company that markets colesevelam hydrochloride under the trade name of Welchol®, employs approximately 1,500 people in the United States. Net sales of Welchol® were approximately $243.1 million in 2008. Genzyme Corporation, the company that markets sevelamer carbonate under the trade name of Renvela®, is a U.S. firm headquartered in Cambridge, Mass., with more than 12,000 employees worldwide. Annual revenue for 2008 was $4.6 billion. Given that both firms that would be affected by a CR packaging exemption for these drugs are large, the exemption would not have a significant economic effect on a substantial number of small entities. Moreover, because the action at issue is an exemption from special packaging requirements, it would allow companies to avoid the costs associated with CR packaging.

Based on this assessment, we preliminarily conclude that the proposed amendment exempting powder formulations of colesevelam hydrochloride (currently marketed as Welchol®) and sevelamer carbonate (currently marketed as Renvela®) from special packaging requirements would not have a significant impact on a substantial number of small businesses or other small entities.

E. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, we have assessed the possible environmental effects associated with the proposed PPPA amendment.

CPSC regulations state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). Nothing in this proposed rule alters that expectation. Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

F. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, "no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard." 15 U.S.C. 1476(a). A state or local standard may be excepted from this preemptive effect if: (1) the state or local standard provides a higher degree of protection from the risk of injury or illness than the PPPA standard; and (2) the state or political subdivision applies to the Commission for an exemption from the PPPA's preemption clause and the Commission grants the exemption through a process specified at 16 CFR Part 1061. 15 U.S.C. 1476(c)(1). In addition, the federal government, or a state or local government, may establish and continue in effect a nonidentical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the federal, state or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, the proposed rule exempting powder formulations of colesevelam hydrochloride (currently marketed as Welchol®) and sevelamer carbonate (currently marketed as Renvela®) from special packaging requirements, if finalized, would preempt nonidentical state or local special packaging standards for the substance.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission proposes to amend 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by adding new paragraphs (a)(10)(xxii) and (xxiii) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging meeting the requirements of § 1700.20(a) is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(10) *Prescription Drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

* * * * *

(xxii) Colesevelam hydrochloride in powder form in packages containing not more than 3.75 grams of the drug.

(xxiii) Sevelamer carbonate in powder form in packages containing not more than 2.4 grams of the drug.

Dated: February 10, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–3437 Filed 2–15–11; 8:45 am]

BILLING CODE 6355–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 229, 230, 232, 239, 240, and 249

[Release No. 33–9186; 34–63874; File No. S7–18–08]

RIN 3235–AK18

Security Ratings

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: This is one of several releases that we will be considering relating to the use of security ratings by credit rating agencies in our rules and forms. In this release, pursuant to the provisions of Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, we propose to replace rule and form requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934 for securities offering or issuer disclosure rules that rely on, or make special accommodations for, security ratings (for example, Forms S–3 and F–3 eligibility criteria) with alternative requirements.

DATES: Comments should be received on or before March 28, 2011.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–18–08 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

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

All submissions should refer to File Number S7–18–08. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Blair Petrillo, Special Counsel in the Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, or with respect to issuers of insurance contracts, Keith E. Carpenter, Senior Special Counsel in the Office of Disclosure and Insurance Product Regulation, Division of Investment Management, at (202) 551–6795, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to rules and forms under the Securities Act of 1933 (Securities Act),[1] and the Securities Exchange Act of 1934 (Exchange Act).[2] Under the Securities Act, we are proposing to amend Rules 134,[3] 138,[4] 139,[5] 168,[6] Form S–3,[7] Form S–4,[8] Form F–3,[9] and Form F–4.[10] We are further proposing to rescind Form F–9[11] and amend the Securities Act and Exchange Act forms and rules that refer to Form F–9 to eliminate those references.[12] We are also proposing to amend Schedule 14A [13] under the Exchange Act.

I. Introduction

We are proposing today to remove references to credit ratings in rules and forms promulgated under the Securities Act and the Exchange Act. We proposed similar changes in 2008 but did not act on those proposals.[14] We are reconsidering the proposals at this time in light of the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act").[15] Section 939A of the Dodd-Frank Act requires that we "review any regulation issued by [us] that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings." Once we have completed that review, the statute provides that we modify any regulations identified in our review to "remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness" as we determine to be appropriate.[16]

The amendments we are proposing today are substantially similar to those proposed in 2008.[17] Through both the 2008 comment period and the 2009 comment period, we received 49 comment letters. As discussed in more detail below, most of the commentators were opposed to the proposal to amend Form S–3 and other related forms and rules.[18] However, because the Dodd-Frank Act now provides that we remove references to credit ratings from our regulations, we are re-proposing these amendments to solicit comment on whether the proposed approach is appropriate, what the impact on issuers

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[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 230.134.

[4] 17 CFR 230.138.

[5] 17 CFR 230.139.

[6] 17 CFR 230.168.

[7] 17 CFR 239.13.

[8] 17 CFR 239.25.

[9] 17 CFR 239.33.

[10] 17 CFR 239.34.

[11] 17 CFR 239.39.

[12] We propose to remove references to Form F–9 in Securities Act Forms F–8 (17 CFR 239.38); F–10 (17 CFR 239.40); F–80 (17 CFR 239.41); and Form F–X (17 CFR 239.42), in Exchange Act Form 40–F (17 CFR 249.240f), and in the following rules: 17 CFR 200.800, 17 CFR 229.10, 17 CFR 230.134, 17 CFR 230.436, 17 CFR 230.467, 17 CFR 230.473, and 17 CFR 232.405.

[13] 17 CFR 240.14a–101.

[14] *See Security Ratings,* Release No. 33–8940 (July 1, 2008) [73 FR 40106] ("2008 Proposing Release"). In 2009, we re-opened the comment period for the release for an additional 60 days. *See References to Ratings of Nationally Recognized Statistical Rating Organizations,* Release No. 33–9069 (Oct. 5, 2009) [74 FR 52374]. Public comments on both of these releases were published under File No. S7–18–08 and are available at *http://www.sec.gov/comments/s7–18–08/s71808.shtml.* Comments also are available for website viewing and printing 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.

[15] Public Law 111–203, 124 Stat. 1376 (2010).

[16] *See* Section 939A of the Dodd-Frank Act.

[17] The 2008 Proposing Release also included proposals related to offerings of asset-backed securities where the requirements contained references to credit ratings, a proposal to amend Rule 436(g) to apply to credit rating agencies that are not NRSROs, and a proposal to remove references to credit ratings in the U.S. GAAP reconciliation requirements. Those proposals are not being addressed in this release. In April 2010 we proposed to remove references to credit ratings as a requirement for shelf eligibility for offerings of asset-backed securities. *See Asset-Backed Securities,* Release No. 33–9117 (Apr. 7, 2010) [75 FR 23328]. Among other things, the proposal would have required risk retention by the sponsor as a condition to shelf eligibility. Section 941 of the Dodd-Frank Act contains a requirement that we issue rules jointly with bank regulators regarding risk retention. In light of that requirement, we are not currently addressing rules related to shelf-eligibility for asset-backed offerings. In addition, Section 939G of the Dodd-Frank Act provides that Rule 436(g) shall have no force or effect. Finally, the proposals adopted in *Foreign Issuer Reporting Enhancements,* Release No. 33–8959 (Sept. 23, 2008)[73 FR 58300], provide that, for fiscal years ending on or after December 15, 2011, all foreign private issuers must provide financial statements in accordance with Item 18 of Form 20–F, which eliminates the reference to credit ratings in that form with respect to reconciliation requirements.

[18] *See* Section II.A.2 below.

and other market participants would be and whether there are alternatives that we should consider. We expect that we may receive additional and different comments now that the modifications to our rules and forms to remove references to credit ratings are set forth pursuant to statute.

We have considered the role of credit ratings in our rules under the Securities Act on several occasions.[19] While we recognize that credit ratings play a significant role in the investment decision of many investors, we want to avoid using credit ratings in a manner that suggests in any way a "seal of approval" on the quality of any particular credit rating or nationally recognized statistical rating organization ("NRSRO"). Similarly, the legislative history indicates that Congress, in adopting Section 939A, intended to "reduce reliance on credit ratings."[20] In today's proposals, we seek to reduce our reliance on credit ratings for regulatory purposes while also preserving the use of Form S–3 (and similar forms) for issuers that we believe are widely followed in the market. Nevertheless, our proposal would cause some issuers that have relied or that could rely upon the investment-grade criteria to lose eligibility for Form S–3 or Form F–3. To the extent the proposals may result in loss of Form S–3 or Form F–3 eligibility for issuers currently eligible to use the form, we are also requesting comment on other or additional eligibility criteria that may be appropriate to retain eligibility for these issuers.

II. Proposed Amendments

A. Primary Offerings of Non-Convertible Securities

1. Background of Form S–3 and Form F–3

Forms S–3 and F–3 are the "short forms" used by eligible issuers to register securities offerings under the Securities Act. These forms allow eligible issuers to rely on reports they have filed under the Exchange Act to satisfy many of the disclosure requirements under the Securities Act. Form S–3 and Form F–3 eligibility for primary offerings also enables form eligible issuers to conduct primary offerings "off the shelf" under Securities Act Rule 415.[21] Rule 415 provides considerable flexibility in accessing the public securities markets in response to changes in the market and other factors. Issuers that are eligible to register these primary "shelf" offerings under Rule 415 are permitted to register securities offerings prior to planning any specific offering and, once the registration statement is effective, offer securities in one or more tranches without waiting for further Commission action. To be eligible to use Form S–3 or F–3, an issuer must meet the form's eligibility requirements as to registrants, which generally pertain to reporting history under the Exchange Act,[22] and at least one of the form's transaction requirements.[23] One such transaction requirement permits registrants to register primary offerings of non-convertible securities if they are rated investment grade by at least one NRSRO.[24] Instruction I.B.2. provides that a security is "investment grade" if, at the time of sale, at least one NRSRO has rated the security in one of its generic rating categories, typically the four highest, which signifies investment grade.

The Form S–3 investment grade requirement was originally proposed in 1981.[25] In 1954, the Commission adopted a short form registration statement on Form S–9, which permitted the registration of issuances of certain high quality debt securities.[26] The criteria for use of Form S–9 related primarily to the quality of the issuer.[27] While these eligibility criteria set forth the type of issuer of high quality debt for which Form S–9 was intended, the Commission believed that certain of its requirements may have overly restricted the availability of the form.[28] At that time, the Commission believed that credit ratings were a more appropriate standard on which to base Form S–3 eligibility than specified quality of the issuer criteria, citing letters from commentators indicating that short form prospectuses are appropriate for investment grade debt because such securities are generally purchased on the basis of interest rates and security ratings.[29]

When the Commission adopted Form S–3, it included a provision that a primary offering of non-convertible debt securities may be eligible for registration on the form if rated investment grade.[30] This provision provided issuers of debt securities whose public float did not reach the required threshold, or that did not have a public float, with an alternate means of becoming eligible to register offerings on Form S–3.[31] Consistent

[19] See the 2008 Proposing Release for a discussion of the history and background of references to credit ratings in rules and regulations under the Securities Act. See also *Credit Ratings Disclosure,* Release No. 33–9070 (Oct. 7, 2009) [74 FR 53086], which includes a proposal to require disclosure regarding credit ratings under certain circumstances.

[20] *See* Report of the House of Representatives Financial Services Committee to Accompany H.R. 4173, H. Rep. No. 111–517 at 871 (2010). The legislative history does not, however, indicate that Congress intended to change the types of issuers and offerings that could rely on the Commission's forms.

[21] 17 CFR 230.415.

[22] *See* General Instruction I.A. to Forms S–3 and F–3. In order to satisfy the issuer eligibility requirements of Form S–3 and Form F–3 for non-ABS offerings, an issuer must be a U.S. company (for Form S–3 only), must have a class of securities registered under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 or be required to file reports pursuant to Section 15(d) of the Exchange Act, must have been a reporting company for at least 12 months, must have filed its reports timely during that 12 month period, and must not have defaulted on any debt or failed to pay a dividend with respect to preferred stock since the end of the last fiscal year.

[23] *See* General Instruction I.B to Forms S–3 and F–3. In addition to permitting offerings of investment grade securities, an issuer who meets the eligibility criteria in Instruction I.A. may use Form S–3 or Form F–3 for primary offerings if the issuer has a public float in excess of $75 million (or for other primary offerings if the issuer does not have the minimum public float as described in note 31 below), transactions involving secondary offerings, and rights offerings, dividend reinvestment plans, warrants and options. In addition, certain subsidiaries are eligible to use Form S–3 or Form F–3 for debt offerings if the parent company satisfies the eligibility requirements in Instruction I.A. and provides the subsidiary a full and unconditional guarantee of the obligations being registered by the subsidiary.

[24] *See* General Instruction I.B.2. to Forms S–3 and F–3.

[25] *See Reproposal of Comprehensive Revision to System for Registration of Securities Offerings,* Release No. 33–6331 (Aug. 6, 1981) [46 FR 41902] ("the S–3 Proposing Release").

[26] Form S–9 was rescinded on December 20, 1976, because it was being used by only a very small number of registrants. The Commission believed the lack of usage was due in part to interest rate increases which made it difficult for many registrants to meet the minimum fixed charges coverage standards required by the form. *Adoption of Amendments to Registration Forms and Guide and Rescission of Registration Form,* Release No. 33–5791 (Dec. 20, 1976) [41 FR 56301].

[27] The criteria included requiring net income during each of the registrant's last five fiscal years, no defaults in the payment of principal, interest, or sinking funds on debt or of rental payments for leases, and various fixed charge coverages. The use of fixed charges coverage ratios, typically 1.5, was common in state statutes defining suitable debt investments for banks and other fiduciaries.

[28] *See* the S–3 Proposing Release, *supra* note 25.

[29] *See Adoption of Integrated Disclosure System,* Release No. 33–6383 (Mar. 3, 1982) [47 FR 11380]. Later, in 1992, the Commission expanded the eligibility requirement to delete references to debt or preferred securities and provide Form S–3 eligibility for other investment grade securities (such as foreign currency or other cash settled derivative securities). *See Simplification of Registration Procedures for Primary Securities Offerings,* Release No. 33–6964 (Oct. 22, 1992) [57 FR 48970].

[30] *See* General Instruction I.B.2. of Form S–3.

[31] Pursuant to the revisions to Form S–3 and Form F–3 adopted in 2007, issuers also may conduct primary securities offerings on these forms without regard to the size of their public float or the rating of debt securities being offered, so long as they satisfy the other eligibility conditions of the respective forms, have a class of common equity securities listed and registered on a national securities exchange, and the issuers do not sell more than the equivalent of one-third of their

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with Form S–3, the Commission adopted a provision in Form F–3 providing for the eligibility of a primary offering of investment grade non-convertible debt securities by eligible foreign private issuers.[32]

Since the adoption of those rules relating to security ratings and Form S–3 and Form F–3, other Commission forms and rules relating to securities offerings or issuer disclosures have included requirements that likewise rely on securities ratings.[33] Among them are Form F–9,[34] Forms S–4 and F–4,[35] and Exchange Act Schedule 14A.[36]

As discussed in more detail below, we are proposing today to revise Instruction I.B.2. of Form S–3 and Form F–3 to provide that an offering of non-convertible securities is eligible to be registered on Form S–3 and Form F–3 if the issuer has issued at least $1 billion of non-convertible securities in transactions registered under the Securities Act, other than equity securities, for cash during the past three years (as measured from a date within 60 days of the filing of the registration statement) and satisfies the other relevant requirements of Form S–3 or Form F–3.

2. Comments Received on the 2008 Proposing Release

In 2008, we proposed to replace the investment grade criterion in Instruction I.B.2. in Form S–3 (and the corresponding provision in Form F–3) with the requirement that the issuer has issued at least $1 billion of non-convertible securities in transactions registered under the Securities Act, other than equity securities, for cash during the past three years (as measured from a date within 60 days of the filing of the registration statement) and satisfied the other relevant requirements of Form S–3 or Form F–3. As noted above, we received 49 comment letters regarding the 2008 Proposing Release. Most commentators opposed the proposal to modify Form S–3 and Form F–3 to remove references to credit ratings.[37] When the 2008 Proposing Release was published (and when we sought additional comment in 2009), however, we were not subject to Section 939A of the Dodd-Frank Act.

In addition to the commentators who were generally opposed to amending Form S–3 and Form F–3, several commentators were opposed to replacing the reference to credit ratings with a requirement that in order to be eligible to use Form S–3 and Form F–3, companies would have to have issued at least $1 billion of non-convertible securities in offerings registered under the Securities Act, other than equity securities, for cash during the previous three years.[38] Two commentators believed the proposal would make Form S–3 less available to high quality investment grade issuers, weakening their ability to efficiently raise funds in the public market while potentially opening up short form registration to non-investment grade issuers.[39] One commentator believed that the amount of its outstanding debt securities is not relevant to its market following and that increasing the amount of debt issued would not increase its market following.[40] Some commentators thought the $1 billion threshold should be lower.[41] One commentator suggested that a range of $300 to $500 million would be more consistent with the threshold for equity issuers.[42] Several commentators objected to the three year look-back period.[43] Some of these commentators thought that the amount of outstanding debt (as opposed to the amount of debt issued over a three-year period) of an issuer provides a more reliable measure of market interest for debt securities than public float provides for investors in equity securities.[44]

Commentators also disputed our preliminary belief that few issuers who are currently eligible to use Form S–3 and Form F–3 would not be eligible to use Form S–3 and Form F–3 if the proposal were adopted.[45] One commentator estimated that 25–30 electric utilities would be adversely affected by the proposal.[46] We received specific comments from utility companies, real estate investment trusts (REITs) and commentators representing issuers of insurance contracts stating that the proposal would no longer allow them to use Form S–3 and the shelf offering process.[47] Some commentators also believed that if the proposal were adopted these companies would conduct more private and offshore offerings.[48] Some of these commentators also believed that if the proposals were adopted raising funds in the private markets would increase the cost of capital.[49]

As discussed in more detail below, the 2008 Proposing Release also included proposed changes to other Securities Act and Exchange Act rules and forms similar to those proposed today, although we did not receive

public float in primary offerings over any period of 12 calendar months. *See Revisions to Eligibility Requirements for Primary Offerings on Forms S–3 and F–3,* Release No. 33–8878 (Dec. 19, 2007) [72 FR 73534].

[32] General Instruction I.B.2. of Form F–3. *See Adoption of Foreign Issuer Integrated Disclosure System,* Release No. 33–6437 (Nov. 19, 1982) [47 FR 54764]. In 1994, the Commission expanded the eligibility requirement to delete references to debt or preferred securities and provide Form F–3 eligibility for other investment grade securities (such as foreign currency or other cash settled derivative securities). *See Simplification of Registration of Reporting Requirements for Foreign Companies,* Release No. 33–7053A (May 12, 1994) [59 FR 25810].

[33] This release addresses rules and forms filed by issuers under the Securities Act and Schedule 14A under the Exchange Act. In separate releases to be considered at a later date, the Commission intends to propose rules to address other rules and forms that rely on an investment grade ratings component.

[34] *See* General Instruction I. of Form F–9.

[35] *See* General Instruction B.1 of Form S–4 and General Instruction B.1(a) of Form F–4.

[36] *See* Note E and Item 13 of Schedule 14A.

[37] *See* letters from American Bar Association dated September 12, 2008 ("ABA I") and October 10, 2008 ("ABA II"); American Electric Power dated September 4, 2008 ("AEP"); Boeing Capital Corporation dated September 24, 2008 ("Boeing"); Charles Scwab & Co., Inc. dated September 5, 2008 ("Schwab"); Constance Curnow dated August 28, 2008 ("Curnow"); Davis Polk & Wardwell dated September 4, 2008 ("Davis Polk"); Debevoise & Plimpton dated September 3, 2008 ("Debevoise"); Dominion Resources, Inc. dated September 5, 2008 ("Dominion"); Edison Electric Institute dated September 5, 2008 ("EEI I") and December 3, 2009 ("EEI II"); Incapital, LLC dated September 5, 2008 ("Incapital"); Manulife Financial Corporation dated September 5, 2008 ("Manulife"); Mayer Brown LLP dated September 4, 2008 ("Mayer Brown"); Mortgage Bankers Association dated September 5, 2008 ("MBA"); PNM Resources, Inc. dated September 5, 2008 ("PNM I") and December 8, 2009 ("PNM II"); Securities Industry and Financial Markets Association dated September 4, 2008 ("SIFMA I") and December 8, 2009 ("SIFMA II"); Southern Company dated September 5, 2008 ("Southern I") and December 8, 2009 ("Southern II"); WGL Holdings, Inc. dated September 10, 2008 ("WGL"); Wisconsin Energy Corporation dated September 5, 2008 ("Wisconsin Energy"); and Xcel Energy Inc. dated December 8, 2009 ("Xcel").

[38] *See* letters from AEP, Boeing, Dominion, EEI I, EEI II, Southern I, Southern II, PNM I, PNM II, WGL, Wisconsin, ABA II, Xcel.

[39] *See* letters from SIFMA and Boeing.

[40] *See* letter from WGL.

[41] *See* letters from National Association of Real Estate Investment Trusts dated September 5, 2008 ("NAREIT"); Xcel, PNM II, Southern II and EEI II.

[42] *See* letter from NAREIT.

[43] *See* letters from Dominion, EEI I, EEI II, PNM II, Southern II and Xcel.

[44] *See* letters from WGL and NAREIT.

[45] In the 2008 Proposing Release, we estimated that six issuers who had filed on Form S–3 in the first half of 2008 would have been required to use Form S–1 if the proposal had been in place. *See* 2008 Proposing Release, *supra* note 14, at 40111. Commentators indicated that they thought a greater number of issuers would be affected if the proposal were adopted. *See* letters from ABA II, EEI II, Southern II and PNM II.

[46] *See* letter from EEI I.

[47] *See* letters from AEP, APS, Dominion, EEI I, EEI II, Manulife, Merrill, PNM I, PNM II, Southern I, Southern II, WGL, Wisconsin Energy, NAVA, Inc., dated September 5, 2008 ("NAVA"), NAREIT, Sutherland dated September 5, 2008 ("Sutherland I"), Sutherland dated December 8, 2009 ("Sutherland II"), and Xcel.

[48] *See* letters from ABA I, ABA II, PNM II, Southern II and Xcel.

[49] *See* letters from Xcel, EEI II and Southern II.

significant feedback on those proposed changes.

3. Proposal

(i) Replace Investment Grade Rating Criterion With Minimum Registered Debt Issuance Threshold

Today we are proposing to revise the transaction eligibility criteria for registering primary offerings of non-convertible securities on Forms S–3 and F–3. Notwithstanding the comments we received on the 2008 Proposing Release, we preliminarily believe that the proposal discussed below is the most workable alternative for determining whether an issuer is widely followed in the marketplace so that Form S–3 and Form F–3 eligibility and access to the shelf offering process is appropriate. Nevertheless, as discussed in section (ii) below, we also recognize that this proposal would cause some issuers that have used or that could rely upon the investment-grade criteria to lose Form S–3 or Form F–3 (and thereby shelf) eligibility. The legislative history does not indicate that Congress intended to change the types of issuers and offerings that could rely on the Commission's forms. Accordingly, we have considered several mechanisms to avoid this consequence, including attempting to replace the investment grade criteria with other criteria intended to replicate key characteristics of investment-grade securities, identifying certain classes or characteristics of issuers that are most likely to rely solely upon the investment grade criteria for Form S–3 or Form F–3 eligibility in order to craft special eligibility criteria for these issuers, or providing for "grandfathering" in the application of new rules removing the investment-grade criteria in order to allow issuers that have recently offered securities on Form S–3 or Form F–3 in reliance on the investment grade criteria to retain Form S–3 or Form F–3 eligibility. Each of these mechanisms is a means to provide consistency in the treatment of these issuers for purposes of establishing eligibility for Form S–3 or Form F–3. We have included extensive requests for comment regarding potential mechanisms that might allow more consistent treatment of these issuers to the greatest extent possible.

As proposed, the instructions to Forms S–3 and F–3 would no longer refer to security ratings by an NRSRO as a transaction requirement to permit issuers to register primary offerings of non-convertible securities for cash. Instead, these forms would be available to register primary offerings of non-convertible securities if the issuer has issued (as of a date within 60 days prior to the filing of the registration statement) for cash at least $1 billion in non-convertible securities in offerings registered under the Securities Act, other than common equity, over the prior three years.[50]

We are proposing to revise the form eligibility criteria using the same method and threshold by which the Commission defined an issuer of non-convertible securities, other than common equity, that does not meet the public equity float test as a "well-known seasoned issuer" (WKSI).[51] Similar to our approach with WKSIs, we believe that having issued $1 billion of registered non-convertible securities over the prior three years would generally correspond with a wide following in the marketplace. These issuers generally have their Exchange Act filings broadly followed and scrutinized by investors and the markets.[52] We believe that a wide following in the marketplace makes Form S–3 and Form F–3 appropriate for these issuers because information about them is generally readily available. As a result, we believe replacing the investment grade criterion with a standard based on the definition of WKSIs is appropriate. This approach is designed to identify those issuers that are followed by the markets such that it is appropriate to allow incorporation by reference of subsequently filed Exchange Act reports into the Securities Act registration statement and delayed offerings off of the shelf. We realize, however, that some offerings by issuers of lower credit quality may be registered for sale on Form S–3 and Form F–3 if our proposal is adopted. We solicit comment on whether our proposal would result in companies for whom Form S–3 and Form F–3 would not be appropriate now being able to register offerings on Form S–3 or Form F–3.[53]

In determining compliance with the proposed $1 billion threshold, we would use the same standards that are used in determining whether an issuer is a WKSI.[54] Specifically:

- Issuers would be permitted to aggregate the amount of non-convertible securities, other than common equity, issued in registered primary offerings during the prior three years;
- Issuers would be permitted to include only such non-convertible securities that were issued in registered primary offerings for cash—they would not be permitted to include registered exchange offers; [55] and
- Parent company issuers only would be permitted to include in their calculation the principal amount of their full and unconditional guarantees, within the meaning of Rule 3–10 of Regulation S–X,[56] of non-convertible securities, other than common equity, of their majority-owned subsidiaries issued in registered primary offerings for cash during the three-year period.

Also consistent with the WKSI standard, the aggregate principal amount of non-convertible securities that would be permitted to be counted toward the $1 billion issuance threshold would be issued in any registered primary offering for cash, on any form (other than Form S–4 or Form F–4). In calculating the $1 billion amount, issuers generally would be permitted to include the principal amount of any debt and the greater of liquidation preference or par value of any non-convertible preferred stock that were issued in primary registered offerings for cash.[57]

Although the proposed standard and the WKSI standard are both based on a $1 billion minimum offering history, issuers seeking to rely on the new standard would not be required to

[50] *See* proposed General Instruction I.B.2. of Forms S–3 and F–3. We are also proposing to delete Instruction 3 to the signature block of Forms S–3 and F–3.

[51] *See Securities Offering Reform,* Release No. 33–8591 (Jul. 19, 2005) [70 FR 44722]. For purposes of debt issuers, an issuer is a well-known seasoned issuer if it satisfies the various requirements for WKSIs in Securities Act Rule 405 (such as not being an "ineligible issuer" or an issuer of asset-backed securities) and it has issued within the last three years at least $1 billion aggregate principal amount of non-convertible securities, other than equity, for cash in primary offerings registered under the Securities Act.

[52] *See Securities Offering Reform,* Release No. 33–8501 (Nov. 3, 2004) [69 FR 67392].

[53] All issuers also would be required to satisfy the other conditions of the Form S–3 and Form F–3 eligibility requirements, including those regarding reporting status.

[54] *See Securities Offering Reform, supra* note 51.

[55] Issuers would not be permitted to include the principal amount of securities that were offered in registered exchange offers by the issuer when determining compliance with the $1 billion non-convertible securities threshold. A substantial portion of these offerings involve registered exchange offers of substantially identical securities for securities that were sold in private offerings. In those cases, the original sale to an "initial purchaser" in a private offering is made in reliance upon, for example, the exemption of Securities Act Section 4(2), and is often immediately followed by a resale by the initial purchasers to investors pursuant to the safe harbor provided by Rule 144A. Such a transaction is not registered and is not carried out under the Securities Act's disclosure or liability standards. Moreover, in the subsequent registered exchange offers, purchasers may not be able, in certain cases, to avail themselves effectively of the remedies otherwise available to purchasers in registered offerings for cash.

[56] 17 CFR 210.3–10.

[57] In determining the dollar amount of securities that have been registered during the preceding three years, issuers would use the same calculation that they use to determine the dollar amount of securities they are registering for purposes of determining fees under Rule 457. 17 CFR 230.457.

qualify as a WKSI. Specifically, unlike WKSIs, the new Form S–3 and Form F–3 eligibility test could be met by issuers that are "ineligible issuers" as defined in Rule 405.

(ii) Impact of Proposals

We preliminarily anticipate that under the proposed threshold some high yield debt issuers that are not currently eligible to use Form S–3 would become eligible. On the other hand, the proposed changes would result in some issuers currently eligible to use Form S–3 and Form F–3 becoming ineligible. Based on a review of non-convertible securities issued in the U.S. from January 1, 2006 through August 15, 2008, we estimate that approximately 45 issuers who were previously eligible to use Form S–3 (and who had made an offering during the review period) would no longer be able to use Form S–3 for offerings of non-convertible securities other than equity securities.[58] As noted below, the data does not measure the effect of the proposed rules on issuers who were previously eligible to use Form S–3 but did not make a public offering during the review period. We further estimate that approximately eight issuers who were previously ineligible to use Form S–3 or Form F–3 would be eligible to use those forms if the proposals are adopted.

Request for Comment

We request comment on all aspects of the proposal. We have included specific questions below in order to facilitate responses from interested parties. In particular, in light of comments received on the 2008 Proposal, we have included requests for comment related to provisions of the proposals that may have a significant effect on utility companies, issuers of insurance contracts and REITs. We also seek comment from other categories of issuers who would be similarly affected by our proposals.

1. We recognize that the proposals, if adopted, could change the number and types of issuers currently eligible to use Form S–3 or Form F–3. Should Section 939A of the Act be read as simply requiring the removal of references to credit ratings but otherwise have no effect on the number and type of issuers eligible to use our forms? If so, should the new eligibility criteria be designed to replicate, as closely as possible, the existing pool of eligible issuers? What would be the advantages and disadvantages of such an approach?

2. Is the cumulative registered offering amount for the most recent three-year period the appropriate threshold at which to differentiate issuers? If so, is $1 billion appropriate? If not, should the threshold be higher (*e.g.,* $1.25 billion) or lower (*e.g.,* $500 or $750 million), and, if so, at what level should it be set? Please explain your reasoning for a different threshold. We estimate, based on our staff's review of non-convertible offerings, that a threshold of $750 million would result in approximately four of the companies excluded under the $1 billion threshold being eligible to use Form S–3, and that a threshold of $500 million would result in approximately 11 of the issuers excluded under the $1 billion threshold being eligible to use Form S–3.

3. Are there any transactions that currently meet the requirements of current General Instruction I.B.2. that would not be eligible to use the form under the proposed revision? Are there any transactions that do not meet the current Form S–3 or Form F–3 eligibility requirements for investment grade securities, but now would be eligible under the proposed revision, that should not be eligible? If practicable, provide information on the frequency with which such offerings are made.

4. We understand based on comments received on the 2008 Proposing Release and our staff's review of offerings of non-convertible securities that wholly owned, state-regulated operating subsidiaries of utility companies currently are eligible to register offerings in reliance on Instruction I.B.2. of Form S–3 and would no longer be eligible to use Form S–3 if the proposals are adopted because they would not be able to satisfy the $1 billion threshold.[59] Should we include a provision in Forms S–3 and F–3 that would allow these companies to continue to register offerings of non-convertible securities on Form S–3 or Form F–3 even if they do not satisfy the $1 billion threshold? Would the regulation by state utility commissions indicate that Form S–3 and Form F–3 are appropriate for these issuers?[60] Should we condition such eligibility on the issuer's parent also being eligible to register a primary offering on Form S–3 or F–3? Are there other conditions we should consider? Are there reasons these companies should not be able to file on Form S–

[58] Our staff used a commercial database to determine offerings of non-convertible debt and preferred securities made during the review period. They then used filters available through other commercial databases to exclude from the sample issuers of unregistered offerings (when identifiable), issuers with a free float capitalization in excess of $75 million and issuers who had guarantees from a parent with a free float capitalization in excess of $75 million. Free float capitalization is the proportion of shares available to ordinary investors (generally excluding employee holdings and holdings of 5% or more of the shares) multiplied by the market capitalization of the company. As a result, free float capitalization excludes shares in its calculation that would be included in the determination of market capitalization for purposes of determining eligibility under Instruction I.B.1. of Form S–3. The staff believes that using the free float definition did not affect the estimate of companies who made offerings during the review period who would no longer be eligible to use Form S–3 because it resulted in additional companies in the review sample. The staff then used additional computer-based filters to estimate the number of issuers who made offerings during the review period who would not have satisfied the eligibility criteria for Form S–3 and F–3 if the proposal was adopted because they had issued less than $1 billion of non-convertible securities over the previous three years. Because the commercial databases used do not unambiguously identify registered offerings and because commercial databases sometimes contain data-entry errors, the staff then reviewed this set of issuers manually by comparing the issuance data from the commercial databases to filings in the EDGAR database. The staff's review resulted in the exclusion of issuers who did not appear in the EDGAR database (and had thus never made a registered offering), issuers who appear in EDGAR but had either never made a registered offering or who had not completed a registered offering within the timeframe for the sample and whose registered offerings were so rare that they likely would not have been included in the data set even if the timeframes had been shifted forward or back, issuers who had filed automatic shelf registration statements, issuers whose debt was guaranteed by a parent who was eligible to use Form S–3 or Form F–3, issuers of asset-backed securities, issuers who had registered offerings on Form N–2 and issuers who had issued in excess of $1 billion of non-convertible securities within the previous three years. This review resulted in an estimate of approximately 40 companies who made offerings during the review period who would no longer be eligible to use Form S–3 or Form F–3 if the proposals are adopted. Based on a review of filings made by issuers of certain insurance company contracts during the review period, the staff estimates that approximately five issuers of certain insurance contracts registered on Form S–3 during this time period would be ineligible to use Form S–3 if the proposals are adopted. Those five issuers have been included in the 45 issuers noted in the text above. See note 61 and related text for a discussion of the insurance contracts.

While the data may be helpful in considering the potential general effect of the proposed amendment, the scope of the data is limited. We note that a survey covering a different time period would have produced different results, particularly in light of market volatility in the time period. In addition, the data reviewed does not take into account issuers who would have been eligible to offer non-convertible securities on Form S–3 solely in reliance on Instruction I.B.2., but chose not to do so.

[59] Our staff review of filings between January 1, 2006 and August 15, 2008 indicates that an estimated 29 utility companies that used Form S–3 during the relevant period would be ineligible under the proposed amendments. One commentator on the 2008 Proposing Release indicated that the proposal would affect 25–30 utility companies. *See* note 46 above.

[60] One commentator on the 2008 Proposing Release indicated that "state regulators, typically through public utility commissions, regulate the operations of many U.S. investor owned electric utilities. Typically, a regulated utility may not issue debt securities without the prior approval of its state utility commission, which premises approval on a determination that the issuance is consistent with the public good." *See* letter from EEI.

3 or F–3? Would such a provision result in issuers who are not currently eligible to use Form S–3 or F–3 becoming eligible? If so, would this result be appropriate? If such a provision would result in issuers who are not currently eligible to use Form S–3 or F–3 becoming eligible, what would be the impact on the substance of information available to investors and its accessibility? If it should be limited, how could the provision be tailored so that it would be limited to issuers currently eligible to file on Form S–3 or F–3? Should a provision for Form S–3 eligibility have different conditions than a provision for Form F–3 eligibility?

5. We understand based on comments received on the 2008 Proposing Release and our staff's review of offerings of non-convertible securities that issuers of certain insurance contracts (*e.g.,* contracts with so-called "market value adjustment" features [61] and contracts that provide guaranteed benefits in connection with assets held in an investor's mutual fund, brokerage, or investment advisory account) currently eligible to register offerings in reliance on Instruction I.B.2. of Form S–3 would no longer be eligible to use Form S–3 if the proposals are adopted because they would not be able to satisfy the $1 billion threshold.[62] Should we include a provision in Forms S–3 and F–3 that would allow these companies to continue to register offerings of such contracts on Form S–3 or Form F–3 even if they do not satisfy the $1 billion threshold? Should such a provision be limited to companies that are subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of a state or territory of the United States or the District of Columbia? Should we also limit eligibility to an issuer that files an annual statement of its financial condition with, and is supervised and its financial condition examined periodically by, the insurance commissioner, bank commissioner, or any agency or officer performing like functions of the issuer's domiciliary jurisdiction? Should we condition eligibility for such a provision on the issuer's capital adequacy as assessed with reference to risk-based capital standards under the insurance laws of the issuer's state of domicile or other relevant jurisdiction? If so, what level of risk-based capital should be required? Should we condition eligibility for such a provision on the issuer's parent being eligible to register a primary offering on Form S–3 or F–3? Should we also require that the securities offered not constitute an equity interest in the issuer and be subject to regulation under the insurance laws of the domiciliary jurisdiction of the issuer? Should we also provide that the value of the securities to be offered does not vary according to the investment experience of a separate account? Are there other conditions we should consider?

6. Would a provision like that described in the preceding question result in issuers of insurance contracts who are not currently eligible to use Form S–3 or F–3 becoming eligible? If so, would this result be appropriate? If such a provision would result in issuers who are not currently eligible to use Form S–3 or F–3 becoming eligible, what would be the impact on the substance of information available to investors and its accessibility? How could the provision be tailored so that it would be limited to issuers of insurance contracts that are currently eligible to file on Form S–3 or F–3? Should a provision for Form S–3 eligibility have different conditions than a provision for Form F–3 eligibility?

7. We understand based on comments received on the 2008 Proposing Release and our staff's review of offerings of non-convertible securities that wholly-owned operating partnerships of exchange-listed REITS currently are eligible to register offerings in reliance on Instruction I.B.2. of Form S–3 and would no longer be eligible to use Form S–3 if the proposals are adopted because they would not be able to satisfy the $1 billion threshold.[63] Should we include a provision in Forms S–3 and F–3 that would allow these companies to continue to register offerings of non-convertible securities on Form S–3 or F–3 even if they do not satisfy the $1 billion threshold? Should we condition such eligibility on the issuer's parent also being eligible to register a primary offering on Form S–3 or F–3? Are there other conditions we should consider? Are there reasons these companies should not be able to file on Form S–3 or F–3? Would such a provision result in issuers who are not currently eligible to use Form S–3 or F–3 to become eligible? If so, would this result be appropriate? If such a provision would result in issuers who are not currently eligible to use Form S–3 or F–3 becoming eligible, what would be the impact on the substance of information available to investors and its accessibility? If it should be limited, how could the provision be tailored so that it would be limited to issuers currently eligible to file on Form S–3 or F–3? Should a provision for Form S–3 eligibility have different conditions than a provision for Form F–3 eligibility?

8. Assuming there are issuers currently eligible to use Form S–3 or Form F–3 that would not be eligible to use those forms if the proposals are adopted, should such issuers be eligible under the new rules? If so, should we provide for their continued eligibility through "grandfathering?" If we were to adopt rules that have the effect of "grandfathering" currently eligible issuers, how should such a provision be crafted? Should issuers' eligibility be measured from the date of the enactment of the Dodd-Frank Act, the date of this proposal, or some other date? Why? How would we determine the population of issuers eligible for any "grandfathering?" Would these issuers have an investment grade "issuer rating," or would ratings typically used to meet the current From S–3 and Form F–3 eligibility requirements be issued for each security on an offering by offering basis? If the ratings are issued in connection with each offering of a security, then how could we determine whether such an issuer is eligible under a "grandfathering provision?" Should we provide that issuers that have relied on the investment grade eligibility criterion in the past may continue to use Form S–3 or Form F–3 for offerings of non-convertible securities if the issuers are otherwise eligible to use the forms? Would that approach be consistent with Section 939A of the Dodd-Frank Act? If so, should there be a timing requirement, such as requiring that an issuer have conducted an offering under current Instruction I.B.2. within the past three years? Should there be other conditions? Should there be a time limit going forward, such as allowing these "grandfathered" issuers to use Form S–3 and Form F–3 for three years from the effective date of the proposed amendments? Are there other ways these issuers could remain eligible to

[61] Market value adjustment ("MVA") features have historically been associated with annuity and life insurance contracts that guarantee a specified rate of return to purchasers. In order to protect the insurer against the risk that a purchaser may take withdrawals from the contract at a time when the market value of the insurer's assets that support the contract has declined due to rising interest rates, insurers sometime impose an MVA upon surrender. Under an MVA feature, the insurer adjusts the proceeds a purchaser receives upon surrender prior to the end of the guarantee period to reflect changes in the market value of its portfolio securities supporting the contract.

[62] As discussed in note 58 above, we estimate that five of these issuers that used Form S–3 during the relevant period would be ineligible to use Form S–3 if the proposal is adopted.

[63] We estimate that approximately six operating partnership subsidiaries of REITs that used Form S–3 or Form F–3 during the relevant period would be ineligible to register offerings on Form S–3 or F–3 if the proposals are adopted.

use Form S–3 or Form F–3? Are there specific characteristics that should be required to be met that would enable these issuers to retain Form S–3 or Form F–3 eligibility? Assuming there are issuers currently ineligible to use Form S–3 and Form F–3 that would become eligible if the proposals are adopted, should we condition their eligibility on any specific characteristics?

9. Is there a reason that this Form S–3 and Form F–3 eligibility requirement should not mirror the registered offering amount requirement for the debt-only WKSI definition?

10. Should the measurement time period for a dollar-volume issuance threshold (whether set at $1 billion, as proposed, or at some other level) be longer or shorter than three years (*e.g.,* four or five years or one or two years)? If so, why? Would it be more appropriate for the threshold to include non-convertible securities, other than common equity, outstanding rather than issued in registered transactions over the prior three years?

11. In determining compliance with the dollar-volume threshold, should issuers be permitted to include only securities issued in registered primary offerings for cash, as proposed? Should issuers be permitted to include registered exchange offers or private offerings?

12. Is there a better alternative for Form S–3 and Form F–3 eligibility for non-convertible securities? By what metrics could one measure the market following for debt issuers? Is there an alternative definition of "investment grade debt securities" that does not rely on NRSRO ratings and adequately meets the objective of relating short-form registration to the existence of widespread following in the marketplace?

13. Does the proposed eligibility based on the amount of prior registered non-convertible securities issued serve as an adequate replacement of the investment grade eligibility condition?

14. Is having a wide following in the market an appropriate basis for determining Form S–3 and Form F–3 eligibility criteria? Are there other criteria on which such eligibility should be based? What characteristics should an issuer eligible to use Form S–3 and Form F–3 have? What standard could we use in Form S–3 and Form F–3 to ensure those characteristics are present? If having a wide following in the market is an appropriate standard, would the alternatives on which we have requested comment (*e.g.,* "grandfathering" certain issuers) result in issuers with a wide following in the market being eligible to use Form S–3 and Form F–3?

15. Should there be an eligibility requirement based on a minimum number of holders of non-convertible securities issued pursuant to registered offerings? If so, should this threshold be limited to securities issued for cash, or should securities issued pursuant to registered exchange offerings also be included? Should the number of holders be 300 or 500, by analogy to our registration and deregistration rules relating to equity securities or some other number?[64] Would linking the eligibility requirement to the number of holders help to assure market following? If the number of holders would be an appropriate alternative, how should that number be determined? For example, if debt securities are registered in the name of the record holder, is there a reliable and workable method for determining the number of beneficial holders?

16. Transactions in most non-asset backed debt securities are currently required to be reported by broker/dealers who are members of the Financial Industry Regulatory Authority (FINRA). Such transactions are reported through the Trade Reporting and Compliance Engine (TRACE) which is administered by FINRA. Instead of, or in addition to, the proposed $1 billion threshold we have proposed, should we base Form S–3 and Form F–3 eligibility on the average daily volume of trading as reported in TRACE over a specified period of time (*e.g.,* six months or 12 months)? Would issuers be able to manipulate such a standard? Would allowing Form S–3 and F–3 eligibility for companies with an average daily volume of trading as reported in TRACE of all of the securities of a non-ABS issuer that were offered and sold pursuant to a registration statement for the six or 12 months prior to the filing of the registration statement be appropriate? Would using such a standard result in companies' Form S–3 and Form F–3 eligibility changing too frequently? Is this volatility problematic, and are there ways we could mitigate it? How would the number and types of issuers eligible to use Form S–3 and Form F–3 under a TRACE volume standard compare to the number and issuers eligible to use Form S–3 and Form F–3 currently? Would using volume of transactions reported in TRACE instead of the $1 billion standard result in a different set of companies being Form S–3 or Form F–3 eligible or would it result in roughly the same companies being Form S–3 or Form F–3 eligible? Are there particular companies who would be eligible to use Form S–3 or Form F–3 under the $1 billion standard but not under a TRACE volume standard? Are there particular companies that would be eligible to use Form S–3 or Form F–3 under the TRACE volume standard but not under the $1 billion standard?

17. Should there be a different standard for eligibility of foreign private issuers to use Form F–3? If so, explain why and what a more appropriate criteria would be.

18. Does the $1 billion threshold of registered offerings in the prior three years present any issues that are unique to foreign private issuers, especially those that may undertake U.S. registered public offerings as only a portion of their overall plan of financing, and how might these problems be addressed? Would it be appropriate to provide a longer time period for measurement, or to include unregistered, public offerings of securities for cash outside the United States?

19. Should we include a Form S–3 eligibility category for any issuer that is subject to substantive state or federal regulation such as broker/dealers that must satisfy net capital requirements? What types of issuers would be able to use Form S–3 under such a provision? Would it result in a significant number of new issuers being eligible to use Form S–3? Is state or federal regulation, or a particular kind of state or federal regulation (*e.g.,* approval of capital transactions), an appropriate measure for determining Form S–3 eligibility? Why or why not? Should such an approach be even broader and allow for Form S–3 eligibility of issuers that control entities subject to substantive state or federal regulation such as bank holding companies that control banks subject to federal or state regulation? Is there a comparable approach that would be appropriate for foreign private issuers?

20. Should we base Form S–3 and Form F–3 eligibility on the metrics used by NRSROs in determining a rating? Are there certain key metrics such as debt, revenue, profit margin, cash flow to debt ratios, interest coverage ratios and return on assets that we should include? How could we account for differences in industry to make the metrics appropriate for all companies without undue complexity? Would these metrics (or other appropriate metrics) be easy for companies to calculate for purposes of determining Form S–3 and Form F–3 eligibility?

21. Should we base Form S–3 and Form F–3 eligibility on the presence of

[64] *See* Exchange Act Rule 12g–4 [17 CFR 240.12g–4].

certain covenants in the indenture? Are there covenants or other provisions that would indicate that an offering was appropriate for Form S–3 and Form F–3 eligibility?[65] What would those covenants be, and how would they serve as an indicator that Form S–3 and Form F–3 eligibility was appropriate?

22. Are there elements from the proposed rules and the alternatives on which we have requested comment that could be combined into an appropriate standard for determining Form S–3 and Form F–3 eligibility? If so, what would such a standard include?

B. Form F–9

Form F–9 allows certain Canadian issuers[66] to register investment grade debt or investment grade preferred securities that are offered for cash or in connection with an exchange offer, and which are either non-convertible or not convertible for a period of at least one year from the date of issuance.[67] Under the form's requirements, a security is rated "investment grade" if it has been rated investment grade by at least one NRSRO, or at least one Approved Rating Organization, as defined in National Policy Statement No. 45 of the Canadian Securities Administrators ("CSA").[68] This eligibility requirement was adopted as part of a 1993 revision to the MJDS originally adopted by the Commission in 1991 in coordination with the CSA.[69]

In the 2008 Proposing Release, we proposed to eliminate the requirement in Form F–9 that allows Canadian issuers to register certain debt securities if they were rated investment grade by an NRSRO. We did not propose to change the eligibility requirement in Form F–9 that allows Canadian issuers to register certain debt securities if they are rated investment grade by an Approved Rating Organization (as defined under Canadian regulations). We did not receive significant comment on this proposal.

We have considered modifying this 2008 proposal to further revise Form F–9 in order to comply with Section 939A of the Dodd-Frank Act. However, after further analysis, rather than further revising the form, we are instead proposing to rescind Form F–9. Due to Canadian regulatory developments since the publishing of the 2008 Proposing Release, we no longer believe that keeping Form F–9 as a distinct form would serve a useful purpose. Under Form F–9, an eligible issuer has been able to register investment grade securities using audited financial statements prepared pursuant to Canadian generally accepted accounting principles (Canadian GAAP) without having to include a U.S. GAAP reconciliation. In contrast, a MJDS filer must reconcile its home jurisdiction financial statements to U.S. GAAP when registering securities on a Form F–10.[70] However, the CSA has recently adopted rules that will require Canadian reporting companies to prepare their financial statements pursuant to International Financial Reporting Standards as issued by the International Accounting Standards Board ("IFRS") beginning in 2011.[71] Foreign private issuers that prepare their financial statements in accordance with IFRS are not required to prepare a U.S. GAAP reconciliation.[72] Since a Canadian issuer will not have to perform a U.S. GAAP reconciliation under IFRS, the primary difference between Form F–9 and Form F–10 will be eliminated. Once the Canadian IFRS-related amendments become effective,[73] the disclosure requirements for an investment grade securities offering registered on Form F–10 will be the same as the disclosure requirements for one registered on Form F–9, resulting in Form F–9 becoming dispensable.

In addition, MJDS filers have infrequently used Form F–9. Since January 1, 2007, only 21 issuers have filed Form F–9 for fewer than 40 registration statements. In light of its infrequent use and dispensability, we propose to eliminate Form F–9 in its entirety.[74]

Request for Comment

23. The Commission requests comment on whether we should rescind Form F–9, as proposed. Is there a reason that we should retain that form despite the pending effectiveness of the CSA IFRS-related amendments and the infrequency of Form F–9's use?

24. Instead of rescinding the form, should we amend Form F–9 to eliminate references to credit ratings by an NRSRO in order to comply with Section 939A of the Dodd-Frank Act by replacing those references with a requirement that an issuer has issued (as of a date within 60 days prior to the filing of the registration statement) for cash at least $1 billion in non-convertible securities, other than equity securities, through registered primary offerings over the prior three years?

25. As noted above, in 2008 the Commission's proposal did not change a Canadian issuer's ability to use Form F–9 to register debt or preferred securities meeting the requirements of current General Instruction I.A. if the securities are rated "investment grade" by at least one Approved Rating Organization (as defined in National Policy Statement No. 45 of the Canadian Securities Administrators). If we retain Form F–9, should we, in addition to eliminating the criterion related to securities rated investment grade by an NRSRO, also eliminate the criterion related to securities rated investment grade by an Approved Rating Organization? In light of Section 939A of the Dodd-Frank Act, would it be appropriate to eliminate the reference to an Approved Rating Organization even though it ultimately refers to Canadian law?

[65] In this regard, we note that the Credit Roundtable has published a white paper setting forth model covenants for investment grade bond deals. The white paper includes model provisions for change of control, step-up coupons, limitation on liens and priority debt, reporting obligations and voting by series. The paper is available at their Web site *http://www.creditroundtable.org.*

[66] Form F–9 is the Multijurisdictional Disclosure System ("MJDS") form used to register investment grade debt or preferred securities under the Securities Act by eligible Canadian issuers.

[67] Securities convertible after a period of at least one year may only be convertible into a security of another class of the issuer.

[68] *See* General Instruction I.A. to Form F–9.

[69] *See Amendments to the Multijurisdictional Disclosure System for Canadian Issuers,* Release No. 33–7025 (Nov. 3, 1993) [58 FR 62028]. See also *Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers,* Securities Act Release No. 33–6902 (Jun. 21, 1991) [56 FR 30036].

[70] *See* Item 2 under Part I of Form F–10 (17 CFR 239.40). Form F–10 is the general MJDS registration statement that may be used to register securities for a variety of offerings, including primary offerings of equity and debt securities, secondary offerings, and exchange offers pursuant to mergers, statutory amalgamations, and business combinations.

[71] See, for example, CSA IFRS-Related Amendments to Securities Rules and Policies (2010), which are available at: *http://www.osc.gov.on.ca/documents/en/Securities-Category5/rule_20101001_52-107_ifrs-amd-3339-supp3.pdf.* Canadian reporting companies that are U.S. registrants may elect to prepare their financial statements in accordance with U.S. GAAP. See Part 3.7 of National Instrument 52–107.

[72] *See* Item 17(c) of Form 20–F.

[73] Canadian reporting issuers and registrants with financial years beginning on or after January 1, 2011, will be required to comply with the new IFRS requirements. For companies with a year-end of December 31, 2011, the initial reporting period under IFRS will be the first quarter ending March 31, 2011. See the "Transition to International Financial Reporting Standards" of the Ontario Securities Commission ("OSC"), which is available at: *http://www.osc.gov.on.ca/en/ifrs_index.htm?wloc=141RHEN&id=21789EN.*

[74] We further propose to eliminate all references to Form F–9 in our rules and forms, including the reference to Form F–9 in Form 40–F. As a result, a Form F–9-eligible Canadian company which currently has an Exchange Act reporting obligation solely with respect to investment grade securities would be required to file its annual report on Form 20–F.

C. Ratings Reliance in Other Forms and Rules

1. Forms S–4 and F–4 and Schedule 14A

Proposals relating to Form S–4, F–4 and Schedule 14A were also included in the 2008 Proposing Release. We did not receive significant separate comment on these proposals and are re-proposing them as they were proposed in the 2008 Proposing Release. Forms S–4 and F–4 essentially include the Form S–3 and Form F–3 eligibility criteria by allowing registrants that meet the registrant eligibility requirements of Form S–3 or F–3 and are offering investment grade securities to incorporate by reference certain information.[75] Similarly, Schedule 14A permits a registrant to incorporate by reference if the Form S–3 registrant requirements in Instruction I.A. are met and action is to be taken as described in Items 11, 12 and 14[76] of Schedule 14A, which concerns non-convertible debt or preferred securities that are "investment grade securities" as defined in General Instruction I.B.2. of Form S–3.[77] In addition, Item 13 of Schedule 14A allows financial information to be incorporated into a proxy statement if the requirements of Form S–3 (as described in Note E to Schedule 14A) are met. Because the Commission proposes to change the eligibility requirements in Forms S–3 and F–3 to remove references to ratings by an NRSRO, the Commission believes the same standard should apply to the disclosure options in Forms S–4 and F–4 based on Form S–3 or F–3 eligibility. That is, a registrant will be eligible to use incorporation by reference in order to satisfy certain disclosure requirements of Forms S–4 and F–4 to register non-convertible debt or preferred securities if the issuer has issued (as of a date within 60 days prior to the filing of the registration statement) for cash at least $1 billion in non-convertible securities, other than common equity, through registered primary offerings over the prior three years. Similarly, we propose to amend Schedule 14A to refer simply to the requirements of General Instruction I.B.2. of Form S–3, rather than to "investment grade securities." As a result, an issuer would be permitted to incorporate by reference into a proxy statement if the issuer satisfied the requirements of Instruction I.A. of Form S–3, the matter to be acted upon related to non-convertible securities and was described in Item 11, 12 or 14 of Schedule 14A and the issuer had issued (as of a date within 60 days of the date the definitive proxy is first sent to security holders) for cash at least $1 billion in non-convertible securities, other than common equity, through registered primary offerings over the prior three years.

Request for Comment

26. Are the amendments we have proposed for Forms S–4 and F–4 appropriate?

27. Are the proposed amendments to Schedule 14A appropriate? Would there be a significant impact on the way proxy filings are made as a result of the new criteria?

2. Securities Act Rules 138, 139 and 168

Other Securities Act rules also rely on credit ratings. Rules 138, 139, and 168 under the Securities Act provide that certain communications are deemed not to be an offer for sale or offer to sell a security within the meaning of Sections 2(a)(10)[78] and 5(c)[79] of the Securities Act when the communications relate to an offering of non-convertible investment grade securities. These communications include the following:

- Under Securities Act Rule 138, a broker's or dealer's publication about securities of a foreign private issuer that meets F–3 eligibility requirements (other than the reporting history requirements) and is issuing non-convertible investment grade securities;
- Under Securities Act Rule 139, a broker's or dealer's publication or distribution of a research report about an issuer or its securities where the issuer meets Form S–3 or F–3 registrant requirements and is or will be offering investment grade securities pursuant to General Instruction I.B.2. of Form S–3 or F–3, or where the issuer meets Form F–3 eligibility requirements (other than the reporting history requirements) and is issuing non-convertible investment grade securities; and
- Under Securities Act Rule 168, the regular release and dissemination by or on behalf of an issuer of communications containing factual business information or forward-looking information where the issuer meets Form F–3 eligibility requirements (other than the reporting history requirements) and is issuing non-convertible investment grade securities.

The Commission proposes to revise Rules 138, 139, and 168 to be consistent with the proposed revisions to the eligibility requirements in Forms S–3 and F–3 since in order to rely on these rules the issuer must either satisfy the public float threshold of Form S–3 or F–3, or issue non-convertible investment grade securities as defined in the instructions to Form S–3 or F–3 as proposed to be revised. We included the same proposal in the 2008 Proposing Release and did not receive significant comment separate from the comment on the revised eligibility in Forms S–3 and F–3.

Request for Comment

28. Should the Commission revise Rules 138, 139, and 168 as proposed?

3. Rule 134(a)(17)

Securities Act Rule 134(a)(17)[80] permits the disclosure of security ratings issued or expected to be issued by NRSROs in certain communications deemed not to be a prospectus or free writing prospectus. In the 2008 Proposing Release, we proposed to revise the rule to allow for disclosure of ratings assigned by any credit rating agency, not just NRSROs. We received little comment on this proposal. One commentator was opposed to the proposal because it would allow unregulated credit rating agencies to publicly disclose ratings "without having published its track record, rating procedures and methodologies" and other information required to be disclosed by NRSROs.[81] We are proposing today to remove Rule 134(a)(17) in order to remove the safe harbor for disclosure of credit ratings assigned by NRSROs, since we believe providing a safe harbor that explicitly permits the presence of a credit rating assigned by an NRSRO is not consistent with the purposes of Section 939A. Although we considered continuing the safe harbor for any disclosure regarding credit ratings, similar to what we proposed in 2008, at this point, we preliminarily believe that such an approach without any limiting principle

[75] *See* General Instruction B.1 of Forms S–4 and Form F–4.

[76] Item 11 of Schedule of 14A provides for solicitations related to the authorization or issuance of securities other than an exchange of securities. Item 12 provides for solicitations related to the modification or exchange of securities. Item 14 provides for solicitations related to mergers, consolidations and acquisitions.

[77] *See* Note E of Schedule 14A.

[78] 15 U.S.C. 77b(a)10.

[79] 15 U.S.C. 77e(c).

[80] 17 CFR 230.134(a)(17). These disclosures generally appear in "tombstone" ads or press releases announcing offerings. A communication is eligible for the safe harbor if the information included is limited to such matters as, among others, factual information about the identity and business address of the issuer, title of the security and amount being offered, the price or a bona fide estimate of the price or price range, the names of the underwriters participating in the offering and the name of the exchange where such securities are to be listed and the proposed ticker symbols.

[81] *See* letter from Realpoint.

would not be consistent with the otherwise limited disclosures covered by Rule 134. We note that removing the safe harbor for this type of information would not necessarily result in a communication that included this information being deemed to be a prospectus or a free writing prospectus. The proposal would simply result in there no longer being a safe harbor for a communication that included this information. Instead, the determination as to whether such information constitutes a prospectus would be made in light of all of the circumstances of the communication.

Request for Comment

29. Should we continue to provide a safe harbor for communications that include disclosure of ratings information? Would it be appropriate to allow such communication regarding a security rating assigned by any credit rating agency and not limit the safe harbor to NRSRO ratings? If the credit rating agency is not an NRSRO, is it appropriate to require additional disclosure to that effect? Do issuers include credit ratings in Rule 134 communications?

III. General Request for Comments

We request and encourage any interested person to submit comments regarding:

- The proposed amendments that are the subject of this release;
- Additional or different changes; or
- Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of companies, investors, and other market participants. With regard to any comments, we note that such comments are of great assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

In addition, we request comment on the following:

30. Should the Commission include a phase-in for issuers beyond the effective date to accommodate pending offerings or effective shelf registration statements on Form S–3 or Form F–3? If so, should a phase-in apply only to particular rules, such as Form S–3 and Form F–3 eligibility? As proposed, compliance with the new standards would begin on the effective date of the new rules. Will a significant number of issuers have their offerings limited by the proposed rules without a phase-in? If a phase-in is appropriate, should it be for a certain period of time (*e.g.,* six months or 12 months) or only for the term of an effective registration statement?

31. What impact on competition should the Commission expect were it to adopt the proposed non-convertible debt eligibility requirements? Would any issuers that currently take advantage, or are eligible to take advantage of the investment grade condition and are planning to do so, be adversely affected? Is the ability to offer debt off the shelf a significant competitive advantage that the Commission should be concerned about limiting only to large debt issuers?

32. How can we balance any competitive issues with limiting shelf eligibility to widely followed issuers?

IV. Paperwork Reduction Act

A. Background

Certain provisions of the proposed rule amendments contain a "collection of information" within the meaning of the Paperwork Reduction Act of 1995 (PRA).[82] The Commission is submitting these proposed amendments and proposed rules to the Office of Management and Budget (OMB) for review in accordance with the PRA.[83] An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. The titles for the collections of information are:

"Form S–1" (OMB Control No. 3235–0065);

"Form S–3" (OMB Control No. 3235–0073);

"Form F–1" (OMB Control No. 3235–0258);

"Form F–3" (OMB Control No. 3235–0256);

"Form F–9" (OMB Control No. 3235–0377); and

"Form F–10" (OMB Control No. 3235–0380).

We adopted all of the existing regulations and forms pursuant to the Securities Act or the Exchange Act. These regulations and forms set forth the disclosure requirements for registration statements and proxy statements that are prepared by issuers to provide investors with information. Our proposed amendments to existing forms and regulations are intended to replace rule and form requirements of the Securities Act and the Exchange Act that rely on security ratings with alternative requirements.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collection of information. There is no mandatory retention period for the information disclosed, and the information disclosed would be made publicly available on the EDGAR filing system.

B. Summary of Collection of Information Requirements

The threshold we are proposing for issuers of non-convertible securities who are otherwise ineligible to use Form S–3 or Form F–3 to conduct primary offerings because they do not meet the aggregate market value requirement is designed to capture those issuers with a wide market following. The Commission expects that under the proposed threshold, the number of companies in a 12-month period eligible to register on Form S–3 or Form F–3 for primary offerings of non-convertible securities for cash will decrease by approximately 14 issuers for Form S–3 and one issuer for Form F–3.[84] We expect that the issuers filing on Form S–1 and F–1 will increase by the same amounts.

In addition, because these proposed amendments relate to eligibility requirements, rather than disclosure requirements, the Commission does not expect that the proposed revisions will impose any new material recordkeeping or information collection requirements. Issuers may be required to ascertain the aggregate principal amount of non-convertible securities issued in registered primary offerings for cash, but the Commission believes that this information should be readily available and easily calculable.

We are also proposing to rescind Form F–9, which is the form used by qualified Canadian issuers to register investment grade securities. Because of recent Canadian regulatory developments, we no longer believe that keeping Form F–9 as a distinct form would serve a useful purpose. In

[82] 44 U.S.C. 3501 *et seq.;* 5 CFR 1320.11.

[83] Although we are proposing amendments to Form S–4, Form F–4 and Schedule 14A, we do not anticipate any changes to the reporting burden or cost burdens associated with these forms, or the number of respondents as a result of the proposed amendments.

[84] In note 58 and the related text, we estimate that for offerings that occurred between January 1, 2006 and August 15, 2008 (approximately 31 months) that a net of 37 issuers would have become ineligible to use Form S–3 if the proposals had been adopted (45 issuers who would become ineligible minus eight issuers who would become newly eligible). Applying that number to a 12-month period would result in approximately 14 companies becoming ineligible to use Form S–3 (thus requiring them to use Form S–1). We have further estimated that a proportional number of Form F–3 filers would be required to file on Form F–1 if the proposals are adopted. These estimates are made solely for purposes of the PRA and are intended to reflect our estimate of the average number of respondents in any given year that may be affected by the proposed rules. The number of actual filers may be higher or lower than our estimates.

addition, Canadian issuers have infrequently used Form F–9. As a result of the proposal to eliminate Form F–9, we believe there would be an additional five filers on Form F–10.[85] We do not believe that the burden of preparing Form F–10 will change because the information required by Form F–10 is the same as that required by Form F–9.

C. Paperwork Reduction Act Burden Estimates

For purposes of the Paperwork Reduction Act, we estimate that there will be no annual incremental increase in the paperwork burden for issuers to comply with our proposed collection of information requirements. We do estimate, however, that the number of respondents on Forms S–1, F–1 and F–10 will increase as a result of the proposals. As a result, the aggregate burden hour and professional cost numbers will increase for those forms due to the additional number of respondents. We also expect that the number of respondents will decrease for Forms S–3 and F–3, which will reduce the aggregate burden hour and professional costs for those forms.[86] These estimates represent the average burden for all companies, both large and small. For each estimate, we calculate that a portion of the burden will be carried by the company internally, and the other portion will be carried by outside professionals retained by the company. The portion of the burden carried by the company internally is reflected in hours, while the portion of the burden carried by outside professionals retained by the company is reflected as a cost. We estimate these costs to be $400 per hour. A summary of the proposed changes is included in the table below.

TABLE 1—CALCULATION OF INCREMENTAL PRA BURDEN ESTIMATES

	Current annual responses (A)	Proposed annual responses (B)	Current burden hours (C)	Increase/ (decrease) in burden hours (D)	Proposed burden hours (E) C+D	Current professional costs (F)	Increase/(decrease) in professional costs (G)	Proposed professional costs F+G
Form S–1	768	782	186,414	3,398	189,812	$223,697,200	$4,077,814	$227,775,014
Form S–3	2,065	2,051	236,959	(1,607)	235,352	284,350,500	(1,927,800)	282,422,700
Form F–1	42	43	18,975	452	19,427	22,757,400	541,843	23,299,243
Form F–3	106	105	4,426	(42)	4,384	5,310,600	(50,100)	5,260,500
Form F–10	75	80	469	31	500	562,500	37,500	600,000
Total				2,232			2,679,257	

D. Solicitation of Comments

We request comments in order to evaluate: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information; (3) whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.[87]

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, *Attention:* Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–18–08. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–18–08, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost-Benefit Analysis

A. Proposed Amendments

As discussed above, we are proposing rule amendments pursuant to Section 939A of the Dodd-Frank Act to eliminate references to credit ratings in our rules in order to reduce reliance on credit ratings.[88] Today's proposals seek to replace rule and form requirements of the Securities Act and the Exchange Act that rely on security ratings by NRSROs with alternative requirements that do not rely on ratings.

The Commission is proposing to revise the transaction eligibility requirements of Forms S–3 and F–3 and other rules and forms that refer to these eligibility requirements. Currently, these forms allow issuers who do not meet the forms' other transaction eligibility requirements to register primary offerings of non-convertible securities for cash if such securities are rated investment grade by an NRSRO. The proposed rules would replace this transaction eligibility requirement with a requirement that, for primary offerings of non-convertible securities for cash, an issuer must have issued in the previous three years (as of a date within 60 days prior to the filing of the registration statement) at least $1 billion aggregate principal amount of non-convertible securities, other than common equity, in registered primary offerings for cash. We are also proposing to remove Rule

[85] Based on a review of Commission filings, since January 1, 2007, only 21 issuers have filed on Form F–9. As a result, we estimate that over a 12-month period, approximately five additional Form F–10s will be filed.

[86] We propose to rescind Form F–9, which will eliminate the PRA burden for that form, but we expect that the number of respondents on Form F–10 will increase as a result.

[87] We request comment pursuant to 44 U.S.C. 3506(c)(2)(B).

[88] *See* note 20 above and related text.

134(a)(17) so that disclosure of credit ratings information is no longer covered by the safe harbor that deems certain communications not to be a prospectus or a free writing prospectus. Finally, we are proposing to rescind Form F–9.

We are sensitive to the costs and benefits imposed by our rules. The discussion below focuses on the costs and benefits of the proposals we are making to implement the Dodd-Frank Act within our discretion under that Act, rather than the costs and benefits of the Dodd-Frank Act itself. The two types of costs and benefits may not be entirely separable to the extent that our discretion is exercised to realize the benefits intended by the Dodd-Frank Act.

B. Benefits

The proposed amendments would prescribe a different standard for determining which issuers are eligible to register offerings on Form S–3 or Form F–3. To the extent that some of these issuers were previously unable to avail themselves of the shelf offering process and forward incorporation by reference, they will now have faster access to capital markets and incur lower transaction costs.[89] In addition, the new Form S–3 and Form F–3 eligibility requirement of at least $1 billion of debt issued in registered offerings over the last three years is easily calculable, which will benefit issuers by facilitating their compliance with the requirement.

We believe the benefits of rescinding Form F–9 would be to reduce redundancy by having multiple forms with the same requirements which would streamline the registration process for Canadian issuers.

C. Costs

To the extent that the $1 billion eligibility threshold results in issuers who were previously eligible to use Forms S–3 and F–3 to register primary offerings of non-convertible securities to register on Form S–1,[90] this would result in increased costs of preparing and filing registration statements.[91] This would result in additional time spent in the offering process, and issuers would incur costs associated with preparing and filing post-effective amendments to the registration statement. In addition, the resulting loss of the ability to conduct a delayed offering "off the shelf" pursuant to Rule 415 under the Securities Act would result in costs due to the uncertainty an issuer might face regarding the ability to conduct offerings quickly at advantageous times.

We believe that the proposed amendments could result in some issuers who are currently required to file on Form S–1 or Form F–1 becoming eligible to use Form S–3 or Form F–3. This could result in a cost to investors as there would be less information present in the prospectuses for these companies than there was previously. As a result, investors would have to seek out the Exchange Act reports (for example, by accessing the SEC Web site) of these issuers for company information which would no longer appear in the prospectus. However, we believe these costs would be mitigated to the extent that the proposed $1 billion eligibility threshold captures issuers with a wide market following for whom incorporation by reference of Exchange Act reports is more appropriate.

We do not expect the elimination of Form F–9 to result in any costs because issuers that would register debt on Form F–9 will be able to register debt on Form F–10. Form F–10's disclosure requirements will be the same as those under Form F–9 once the CSA IFRS-related amendments become effective in 2011.

If the proposed amendment to remove Rule 134(a)(17) is adopted, there could be a cost to investors if ratings information is less available to them, to the extent such ratings information is useful to investors. In addition, to the extent that issuers decide to continue to include ratings information in communications that previously were made in reliance on the Rule 134 safe harbor, they may incur costs in order to ascertain whether including such information would require compliance with prospectus filing requirements.

D. Request for Comments

We request comment on all aspects of this cost-benefit analysis, including identification and assessment of any costs and benefits not discussed herein. We seek comment and data on the value of the benefits identified. We also welcome comments on the accuracy of the cost estimates in each section of this analysis, and request that commentators provide data that may be relevant to these cost estimates. In addition, we seek estimates and views regarding these costs and benefits for particular covered institutions, including small institutions, as well as any other costs or benefits that may result from the adoption of these proposed amendments.

Specifically, we ask the following:

• Would there be any significant transition costs imposed on issuers as a result of the proposals, if adopted? Please be detailed and provide quantitative data or support, as practicable.

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

Section 23(a) of the Exchange Act[92] requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Section 23(a)(2)prohibits the Commission from adopting any rule which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 2(b) of the Securities Act[93] and Section 3(f) of the Exchange Act[94] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.

Our preliminary analysis indicates that the proposed amendments will have two distinct effects. First, some issuers currently eligible to register primary offerings of non-convertible securities on Forms S–3 and F–3 and to use the shelf offering process would lose their eligibility. Second, some issuers will become newly eligible to use Forms S–3 and F–3 and the shelf offering

[89] We estimate that there are approximately eight issuers who will become eligible to use Form S–3 who were not previously eligible. *See* note 58 and related text.

[90] We estimate that approximately 45 issuers who were previously eligible to file on Form S–3 will no longer be eligible if the proposals are adopted. *See* note 58 and related text.

[91] The ability to conduct primary offerings on short form registration statements confers significant advantages on eligible companies in terms of cost savings and capital formation. The time required to prepare and update Form S–3 or F–3 is significantly lower than that required for Forms S–1 and F–1 primarily because registration statements on Forms S–3 and F–3 can be automatically updated. Forms S–3 and F–3 permit registrants to forward incorporate required information by reference to disclosure in their Exchange Act filings. In addition, companies that are eligible to register primary offerings on Form S–3 and Form F–3 generally are able to conduct offerings on a delayed basis "off the shelf" without further staff review and clearance, which results in significant flexibility and efficiency for companies. *See* Section IV, above, for a discussion of the estimates of the paperwork costs of preparing and filing on Form S–1 associated with the proposed amendments that we have prepared for purposes of the PRA.

[92] 15 U.S.C. 78w(a).

[93] 15 U.S.C. 77b(b).

[94] 15 U.S.C. 78c(f).

process. We believe that the proposed rules will likely result in a net decrease in eligible issuers, which is why the proposed rules may reduce efficiency and hamper capital formation. Issuers who are no longer eligible to register offerings on Form S–3 and Form F–3 (*e.g.,* investment grade debt issuers who do not meet the proposed $1 billion eligibility threshold) and avail themselves of the shelf offering process may now face relatively higher issuance costs, which would negatively affect efficiency and capital formation of those issuers. As noted throughout this release, we anticipate that the number of such issuers would be small, and we have requested comment on whether other provisions should be adopted that would further reduce the number of affected issuers.

The Commission believes that the proposal to rescind Form F–9 could reduce confusion regarding the appropriate form to use for the registration of securities by Canadian issuers, which could result in increased market efficiency.

The Commission solicits comment on whether the proposed amendments changing the Forms S–3 and F–3 eligibility requirements for registering primary offerings of non-convertible securities, and rescinding Form F–9 and Rule 134(a)(17), if adopted, would promote or burden efficiency, competition, and capital formation. The Commission also requests comment on whether the proposed amendments would have harmful effects on investors or on issuers who could use Form S–3 and Form F–3 for primary offerings of non-convertible securities, or on issuers of investment grade securities that would otherwise use Form F–9 and what options would best minimize those effects. Finally, the Commission requests comment on the anticipated effect of disclosure requirements on competition in the market for credit rating agencies. The Commission requests commentators to provide empirical data and other factual support for their views, if possible.

VII. Regulatory Flexibility Act Certification

The Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that the amendments contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed amendments would:

- Amend the Securities Act Form S–3 and Form F–3 eligibility requirements for primary offerings of non-convertible securities if the issuer has issued (as of a date within 60 days prior to the filing of the registration statement) for cash at least $1 billion in non-convertible securities, other than common stock, through registered primary offerings, within the prior three years;
- Amend Forms S–4 and F–4 and Schedule 14A to conform with the proposed Form S–3/F–3 eligibility requirements;
- Amend Securities Act Rules 138, 139, and Rules 168 to be consistent with the proposed Form S–3/F–3 eligibility requirements;
- Remove Rule 134(a)(17); and
- Remove Form F–9 and all references to that form in our forms and rules.

We are not aware of any issuers that currently rely on the rules that we propose to change or any issuers that would be eligible to register under the affected rules that is a small entity. In this regard, we note that credit rating agencies rarely, if ever, rate the securities of small entities. We further note most security ratings are obtained and used by the issuer. Issuers are generally required to pay for these security ratings and the cost of these ratings relative to the size of a debt or preferred securities offering by a small entity would generally be prohibitive. Finally, based on an analysis of the language and legislative history of the Regulatory Flexibility Act, we note that Congress did not intend that the Regulatory Flexibility Act apply to foreign issuers. Accordingly, some of the entities directly affected by the proposed rule and form amendments will fall outside the scope of the Regulatory Flexibility Act.

For these reasons, the proposed amendments would not have a significant economic impact on a substantial number of small entities.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[95] a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a "major rule" for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

IX. Statutory Authority and Text of Proposed Rule and Form Amendments

We are proposing the amendments contained in this document under the authority set forth in Sections 6, 7, 10, 19(a) of the Securities Act and Sections 14 and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 200, 229, 230, 232, 239, 240, and 249

Reporting and recordkeeping requirements, Securities.

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

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart N—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

1. The authority citation for part 200, subpart N, continues to read as follows:

Authority: 44 U.S.C. 3506; 44 U.S.C. 3507.

2. Amend § 200.800 by removing from paragraph (b) the entry for "Form F–9".

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

3. The general authority citation for part 229 continues to read as follows:

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

* * * * *

4. Amend § 229.10 by removing the second sentence from paragraph (c) introductory text, and the last sentence from paragraph (c)(1)(i).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation for part 230 continues to read in part as follows:

[95] Public Law 104–121, Title II, 110 Stat. 857 (1996).

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, 80a–37, and Pub. L. 111–203, § 939A, 124 Stat. 1376, (2010) unless otherwise noted.

* * * * *

6. Amend § 230.134 by revising paragraph (a) introductory text, revising paragraph (a)(6), and removing and reserving paragraph (a)(17). The revisions read as follows:

§ 230.134 Communications not deemed a prospectus.

* * * * *

(a) Such communication may include any one or more of the following items of information, which need not follow the numerical sequence of this paragraph, provided that, except as to paragraphs (a)(4), (a)(5), and (a)(6) of this section, the prospectus included in the filed registration statement does not have to include a price range otherwise required by rule:

* * * * *

(6) In the case of a fixed income security with a fixed (non-contingent) interest rate provision, the yield or, if the yield is not known, the probable yield range, as specified by the issuer or the managing underwriter or underwriters and the yield of fixed income securities with comparable maturity and security rating;

* * * * *

(17) [Reserved]

* * * * *

7. Amend § 230.138 by revising paragraph (a)(2)(ii)(B)(*2*) to read as follows:

§ 230.138 Publications or distributions of research reports by brokers or dealers about securities other than those they are distributing.

(a) * * *

(2) * * *

(ii) * * *

(B) * * *

(2) Is issuing non-convertible securities and the registrant meets the provisions of General Instruction I.B.2. of Form F–3 (referenced in § 239.33 of this chapter); and

* * * * *

8. Amend § 230.139 by revising paragraphs (a)(1)(i)(A)(*1*)(*ii*) and (a)(1)(i)(B)(*2*)(*ii*) to read as follows:

§ 230.139 Publications or distributions of research reports by brokers or dealers distributing securities.

(a) * * *

(1) * * *

(i) * * *

(A)(*1*) * * *

(*ii*) At the date of reliance on this section, is, or if a registration statement has not been filed, will be, offering non-convertible securities and meets the requirements for the General Instruction I.B.2. of Form S–3 or Form F–3 (referenced in § 239.13 and 239.33 of this chapter); or

* * * * *

(B) * * *

(2) * * *

(ii) Is issuing non-convertible securities and meets the provisions of General Instruction I.B.2. of Form F–3 (referenced in § 239.33 of this chapter); and

* * * * *

9. Amend § 230.168 by revising paragraph (a)(2)(ii)(B) to read as follows:

§ 230.168 Exemption from sections 2(a)(10) and 5(c) of the Act for certain communications of regularly released factual business information and forward-looking information.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(B) Is issuing non-convertible securities and meets the provisions of General Instruction I.B.2. of Form F–3 (referenced in § 239.33 of this chapter); and

* * * * *

10. Amend § 230.467 by removing:

a. "F–9," from the heading;

b. "Form F–9 or" and "§ 239.39 or" from the second sentence of paragraph (a); and

c. "Form F–9 or" from the first sentence of paragraph (b).

11. Amend § 230.473 by removing "F–9 or" and "§ 239.39 or" from paragraph (d).

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

12. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350.

* * * * *

13. Amend § 232.405 by removing:

a. "both Form F–9 (§ 239.39 of this chapter) and" from the second sentence of Preliminary Note 1;

b. "either Form F–9 or" from paragraphs (a)(2) introductory text, (a)(3) and (a)(4); and

c. "both Form F–9 and" and "Form F–9 and" in the second sentence of Note to § 232.405, and "both Form F–9 and" in the penultimate sentence of Note to § 232.405.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

14. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, 80a–37, and Pub. L. No. 111–203, § 939A, 124 Stat. 1376, (2010) unless otherwise noted.

* * * * *

15. Amend Form S–3 (referenced in § 239.13) by:

a. Revising General Instruction I.B.2.; and

b. Removing Instruction 3 to the signature block.

The revision reads as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–3

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–3

* * * * *

B. Transaction Requirements. * * *

2. *Primary Offerings of Non-convertible Securities.* Non-convertible securities to be offered for cash by or on behalf of a registrant, provided the registrant, as of a date within 60 days prior to the filing of the registration statement on this Form, has issued in the last three years at least $1 billion aggregate principal amount of non-convertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Act.

* * * * *

16. Amend Form S–4 (referenced in § 239.25) by revising General Instruction B.1.a.(ii)(B) to read as follows:

Note: The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–4

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

B. Information With Respect to the Registrant.

1. * * *

a. * * *

(ii) * * *

(B) Non-convertible debt or preferred securities are to be offered pursuant to this registration statement and the requirements of General Instruction I.B.2. of Form S–3 have been met; or

* * * * *

17. Amend Form F–3 (referenced in § 239.33) by:

a. Revising General Instruction I.B.2.; and

b. Deleting Instruction 3 to the signature block.

The revision reads as follows:

Note: The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–3

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–3

* * * * *

B. Transaction Requirements * * *

2. *Primary Offerings of Non-convertible Securities.* Non-convertible securities to be offered for cash provided the issuer, as of a date within 60 days prior to the filing of the registration statement on this Form, has issued in the last three years at least $1 billion aggregate principal amount of non-convertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Act.

* * * * *

18. Amend Form F–4 (referenced in § 239.34) by revising General Instruction B.1(a)(ii)(B).

The revision reads as follows:

Note: The text of Form F–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–4

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

B. Information With Respect to the Registrant

1. * * *

a. * * *

(ii) * * *

(B) Non-convertible debt or preferred securities are to be offered pursuant to this registration statement and the requirements of General Instruction I.B.2. of Form F–3 have been met; or

* * * * *

19. Amend Form F–8 (referenced in § 239.38) by removing "Form F–9," from each of paragraph A.(3) of General Instruction III and paragraph B. of General Instruction V.

Note: The text of Form F–8 does not, and this amendment will not, appear in the Code of Federal Regulations.

§ 239.39 [Removed and reserved]

20. Remove and reserve § 239.39 (referencing Form F–9).

21. Amend Form F–10 (referenced in § 239.40) by removing "Form F–9," from each of paragraph C.(4) of General Instruction I and paragraph B. of General Instruction III.

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

22. Amend Form F–80 (referenced in § 239.41) by removing "Form F–9," from each of paragraph A.(3) of General Instruction III and paragraph B. of General Instruction V.

Note: The text of Form F–80 does not, and this amendment will not, appear in the Code of Federal Regulations.

23. Amend § 239.42 as follows:

a. Remove "F–9," wherever it appears in the heading and in paragraphs (a) and (e).

b. Amend Form F–X (referenced in § 239.42) by removing "F–9," from each of paragraphs (a) and (e) of General Instruction I, and each of paragraphs (a) and (c) of General Instruction II.F.

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

* * * * *

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

24. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* 18 U.S.C. 1350, 12 U.S.C. 5221(e)(3), and Pub. L. 111–203, § 939A, 124 Stat. 1376, (2010) unless otherwise noted.

* * * * *

25. Amend § 240.14a–101 by revising Note E(2)(ii) to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Notes

* * * * *

E. * * *

(2) * * *

(ii) Action is to be taken as described in Items 11, 12, and 14 of this schedule which concerns non-convertible debt or preferred securities issued by a registrant meeting the requirements of General Instruction I.B.2. of Form S–3 (referenced in § 239.13 of this chapter); or

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

26. The authority citation for part 249 continues to read in part as follows:

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

* * * * *

27. Amend § 249.240f by:

a. Removing "F–9," in paragraph (a); and

b. Removing in paragraph (b)(4) the phrase "; provided, however, no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9 (§ 239.39 of this chapter)".

c. In Form 40–F (referenced in § 249.240f) by:

i. Removing "F–9," from paragraph (1) of General Instruction A;

ii. Removing from paragraph (2)(iv) of General Instruction A the phrase "; provided, however, that no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9"; and

iii. Revising paragraph (2) of General Instruction C to read as follows:

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

Form 40–F

* * * * *

General Instructions

* * * * *

C. * * *

(2) Any financial statements, other than interim financial statements, included in this Form by registrants registering securities pursuant to Section 12 of the Exchange Act or reporting pursuant to the provisions of Section 13(a) or 15(d) of the Exchange Act must be reconciled to U.S. GAAP as required by Item 17 of Form 20–F under the Exchange Act, unless this Form is filed with respect to a reporting obligation under Section 15(d) that arose solely as a result of a filing made

on Form F–7, F–8, or F–80, in which case no such reconciliation is required.

Dated: February 9, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–3259 Filed 2–15–11; 8:45 am]

BILLING CODE 8011–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 228

RIN 0412–AA70

Rules on Source, Origin and Nationality for Commodities and Services Financed by USAID

AGENCY: United States Agency for International Development (USAID).

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to solicit comments on whether changes are needed to USAID's rules on Source, Origin, and Nationality (S/O/N). This solicitation is in furtherance of a USAID initiative to review and if necessary, revise these rules in order to reduce the burden of procurement processes for USAID and contractors and grantees implementing USAID-funded development assistance activities and programs. In particular, USAID wishes to simplify Agency S/O/N procedures as implemented in our regulations and align them more closely with statutory procurement authorities.

DATES: Please submit comments no later than April 4, 2011.

ADDRESSES: You may submit comments, identified by RIN number 0412–AA70, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: jniemeyer@usaid.gov.* Include RIN number 0412–AA70 in the subject line of the message.
- *Mail:* U.S. Agency for International Development, Office of the General Counsel, 1300 Pennsylvania Ave., NW., Washington DC 20523, Attention: John Niemeyer, Esq.

Instructions: All submissions received must include the Agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be included in the public docket without change and will be made available online at *http://www.regulations.gov* including any personal information provided. For further instructions on submitting comments, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Public Participation: Because security screening precautions have slowed the delivery and dependability of surface mail and hand delivery to USAID/Washington, USAID recommends sending all comments to the Federal eRulemaking Portal. The e-mail address listed above is provided in the event that submission to the Federal eRulemaking Portal is not convenient (all comments must be in writing to be reviewed). You may submit comments by electronic mail, avoiding the use of any special characters and any form of encryption.

USAID will consider all comments as it determines how to revise its S/O/N regulation and will publish any proposed changes to this regulation for public comment under a separate publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John Niemeyer, Esq. *Telephone:* 202–712–5053, *E-mail: jniemeyer@usaid.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

Currently, USAID implements the statutory procurement directives in Section 604(a) of the Foreign Assistance Act of 1961 (FAA), as amended, through the creation and application of "principal geographic codes" found at 22 CFR 228.03 and the related concepts of "source," "origin" and "nationality" as defined or described in 22 CFR 228. Geographic codes set forth at USAID's Automated Directives System (ADS) Chapter 260 identify geographic entities—countries, territories, organizations, regions, and sub-regions—and program activities associated with geographic entities. They are established and used by USAID for administrative purposes, including determining the source, origin, and nationality of commodities and services financed by USAID. Section 604(a) of the FAA allows for procurement of program-funded goods and services only in the United States, the recipient country, or developing countries (excluding advanced developing countries); however, no single geographic code reflects this statutory directive. USAID employees as well as USAID-funded contractors and grantees, spend a substantial amount of time and resources interpreting, applying, and when necessary and appropriate, seeking waivers from the application of the current codes and related rules. This extensive process results in significant use of resources, and at times, uncertainty across USAID in application of 22 CFR Part 228. In light of these issues, USAID is inquiring whether or not geographic codes developed before the current era of globalized manufacturing processes and which usually limit procurements to one country are still relevant and effective in today's globalized economy. In addition, USAID is concerned with the cost of compliance with the current geographic code requirements. Anecdotal evidence suggests that the current system of authorizing a specific geographic code for particular procurements creates delays in implementation of sometimes urgently needed assistance. In situations where procurement from the one designated geographic code may not be possible, a waiver may be required to implement the project effectively, adding to the cost and detracting from the effectiveness of implementation. For example, one USAID contractor estimates the average time to process a waiver request for its programs at 55 days. Because the cost of the resources expended in these efforts means fewer resources available for project implementation and foreign assistance, USAID is considering revising the S/O/N regulation to simplify it, to be more consistent with the underlying statutory requirements of Section 604(a) of the FAA, and to streamline the related implementation procedures.

Any issues in this rulemaking that relate to cargo preference will be covered by the comprehensive rulemaking that is being developed to govern the Maritime Administration's cargo preference program.

2. Questions

USAID invites comments and suggestions on the existing source, origin, and nationality rules in 22 CFR Part 228. In particular:

■ What, if any, sections of 22 CFR Part 228 lead to inefficiencies and ineffectiveness in implementing USAID development assistance activities and programs? What are the efficiency impacts to contractors and grantees from provisions reflecting the concept of "origin" and "source" (essentially, the country where a commodity is produced and the country from which a commodity is shipped to the cooperating country, respectively, *see* 22 CFR 228.01), given the difficulty of determining with specificity the origin and source of many commodities in an increasingly globalized economy?

■ Should the regulatory guidance concerning "nationality" (the place of incorporation, ownership, citizenship, residence, etc. of suppliers of USAID-funded goods and services) be modified,

and if so, in what manner to improve efficacy of the rule, particularly as applied to suppliers of services and goods in the recipient country?

■ Should USAID modify the "special source rules," FAA 604(b), (c), (e), (f), and (g), and reflected in 22 CFR 228.13, for procurement of agricultural commodities, vehicles or pharmaceuticals within limitations set forth in the FAA; and, if so, in what manner?

■ Should references in 22 CFR part 228 to other statutory requirements, such as the Fly America Act (49 U.S.C 40118) be removed or changed? Specifically is it useful for USAID to include Agency-specific policy and procedures in 22 CFR Part 228, when separate statutes and prevailing regulatory systems are already in place and publicly available from other sources?

■ What difficulties do contractors and grantees encounter when requesting a waiver to procure in any country other than those in the approved geographic code for each USAID-funded agreement (contract or grant?) How can the USAID's waiver guidance be modified or improved for more clear and cost effective application of the statutory and regulatory waiver requirements?

If commenters suggest modification, USAID requests specific proposals for what elements of 22 CFR Part 228 should be modified. USAID requests commenters to provide information and supporting data related to:

• The potential costs of modifying the existing regulatory language noted above.

• The potential quantifiable efficiency benefits of modifying the regulatory language noted above.

Revisions to this regulation will have an impact on related provisions in the 48 CFR 7 Agency for International Development Acquisition Regulation (AIDAR) and various chapters in USAID's Automated Directives System (ADS), including but not limited to ADS chapters 303, 310, and 311 (the ADS is accessible at *http://www.usaid.gov/policy/ads/*).

Dated: February 1, 2011.

John Niemeyer,

Assistant General Counsel, USAID.

[FR Doc. 2011–3401 Filed 2–11–11; 4:15 pm]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

30 CFR Part 285

[Docket ID: BOEM–2010–0045]

RIN 1010–AD71

Renewable Energy Alternate Uses of Existing Facilities on the Outer Continental Shelf—Acquire a Lease Noncompetitively

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Proposed rule.

SUMMARY: BOEMRE proposes to revise the regulations that pertain to noncompetitive acquisition of an Outer Continental Shelf (OCS) renewable energy lease. We are taking this action because the current regulations governing the noncompetitive acquisition of an OCS renewable energy lease initiated by BOEMRE and a request for a noncompetitive OCS renewable energy lease initiated by an unsolicited request are inconsistent. This rulemaking will make the two processes consistent with each other by eliminating a duplicative and unnecessary step in the noncompetitive leasing process, while continuing to provide for adequate public notice and review of leasing proposals as required by law.

DATES: *Comment Due Date:* Submit comments on the proposed rule by March 18, 2011.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD71 as an identifier in your message. *See* also Public Availability of Comments under Procedural Matters.

• *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter BOEM–2010–0045, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. BOEMRE will post all comments.

• Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; *Attention:* Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference "Acquire a Lease Noncompetitively, 1010–AD71" in your comments and include your name and address.

FOR FURTHER INFORMATION CONTACT: Timothy Redding at (703) 787–1219.

SUPPLEMENTARY INFORMATION:

Background

BOEMRE originally published the proposed revision for comment as a direct final rule in the **Federal Register** on November 26, 2010. That document stated that if BOEMRE received a significant adverse comment concerning the rulemaking, it would withdraw the direct final rule and publish a notice of proposed rulemaking. BOEMRE did receive significant adverse comment on the direct final rulemaking and on January 25, 2011, published in the **Federal Register** a notice of withdrawal and statement of intent to reinitiate rulemaking by publishing this proposed rule.

The regulations at 30 CFR part 285 govern renewable energy leasing and alternate uses of existing facilities on the OCS. This proposed rule would revise the regulations at §§ 285.231 and 285.232. The regulations at § 285.231 address unsolicited requests for noncompetitive leases. The regulations at § 285.232 address the acquisition of noncompetitive leases in response to a Request for Interest (RFI) or a Call for Information and Nomination (Call). The process for awarding leases noncompetitively outlined in these two sections is currently inconsistent.

As currently written, § 285.231 allows the award of a noncompetitive lease after BOEMRE receives an unsolicited request for a noncompetitive lease, provided that BOEMRE determines that there is no competitive interest after publishing a single notice of a request for interest relating to the unsolicited request for a noncompetitive lease.

As currently written, § 285.232 provides that, after BOEMRE publishes an RFI or Call, if a respondent indicates interest in leasing an area for which no other party has indicated interest, BOEMRE may offer a lease through a noncompetitive process. However, the regulations require the publication of a second RFI notice to confirm the absence of competition before proceeding with the noncompetitive process. We believe that this requirement for a second notice is redundant and is at odds with the noncompetitive process prescribed for cases in which a party submits an unsolicited request for an OCS renewable energy lease, where BOEMRE is required to publish only a single notice. Eliminating this discrepancy and requiring only one RFI notice would make BOEMRE's leasing processes more streamlined and efficient while maintaining BOEMRE's obligation to

notify the public of areas that may be leased, solicit public input regarding those areas, and determine whether competitive interest exists in acquiring such leases in the proposed area(s).

Accordingly, BOEMRE proposes to revise § 285.231(d)(1) to state that we will publish in the **Federal Register** a notice that there is no competitive interest. We would also revise § 285.232(c) to refer back to § 285.231(d) through (i) instead of referring back to § 285.231(b) through (i).

Comments on the Direct Final Rulemaking

BOEMRE received a total of eight comments in response to the direct final rulemaking published on November 26, 2010. All of the comments objected to the rulemaking, characterizing its effect as improper rushing by BOEMRE to allow offshore renewable energy leasing and development. Four comments took issue specifically with the direct final rulemaking process itself and called for a proposed rule and comment procedure. Five of the comments stated that the current wording of 30 CFR 285.231 and 232 should be retained. A majority of the commenters appeared to misunderstand the effect of the proposed revision, evidencing a belief that it would remove the requirement for public notice to determine competitive interest altogether. However, one comment, which appeared to accurately understand the effect of the rulemaking, recommended retention of the current wording, stating that, "[t]he current regulations provide an added level of protection by ensuring that the public has adequate notice of any requests for interest relating to proposals to construct offshore alternative energy projects, giving competitive interests the chance to participate and submit alternative bids and the public an opportunity to express concerns and make comments."

BOEMRE has determined that it received significant adverse comment on the direct final rule, which was defined in the November 26 notice as "a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach or would be ineffective and unacceptable without a change." It is therefore publishing this proposed rule for public comment.

However, BOEMRE believes that the intent and effect of the proposed regulatory revision were largely misunderstood by most of the commenters. This proposed rule would maintain adequate public notice of leasing proposals and would be sufficient for the purpose of determining whether competitive interest existed, while eliminating unnecessary, inconsistent, and inefficient repetition in the renewable energy leasing process when it is initiated by BOEMRE. BOEMRE will consider the eight comments already received as they relate to this proposed rulemaking unless they are withdrawn by the commenters, and those commenters are welcome to submit additional comments.

Procedural Matters

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

This proposed rule would not be a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866.

(1) This proposed rule would not have an annual effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed rule is intended to eliminate redundancy and inefficiency.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This proposed rule would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Department prepared a regulatory flexibility analysis for 30 CFR part 285, and concluded that the regulations will impact a substantial number of small entities, but will not have a significant economic impact on the small entities in comparison to the impacts on large entities. That analysis was discussed in detail in the Notice of Proposed Rulemaking for 30 CFR part 285 published in the **Federal Register** on July 9, 2008 (73 FR 39376).

The North American Industry Classification System (NAICS) code for the industries affected by this rule is 221119 (Other Electric Power Generation). The definition for this code is:

"This U.S. industry comprises establishments primarily engaged in operating electric power generation facilities (except hydroelectric, fossil fuel, nuclear). These facilities convert other forms of energy, such as solar, wind, or tidal power, into electrical energy. The electric energy produced in these establishments is provided to electric power transmission systems or to electric power distribution systems."

It is possible that this proposed rule could eventually affect entities that produce hydrogen and fall under NAICS Code 325120 (Industrial Gas Manufacturing). The definition for this code is:

"This industry comprises establishments primarily engaged in manufacturing industrial organic and inorganic gases in compressed, liquid, or solid forms."

Given the original findings of the regulatory flexibility analysis done for 30 CFR part 285, as well as the minor adjustment to the renewable energy leasing process that is contemplated, the proposed rule would not have a significant effect on a substantial number of small entities.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each Agency's responsiveness to small business. If you wish to comment on the actions of BOEMRE, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

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

The requirements would apply indiscriminately to entities intending to acquire a renewable energy lease on the OCS pursuant to 30 CFR part 285.

Unfunded Mandate Reform Act of 1995

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State Governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of E.O. 12988. Specifically, this proposed rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no substantial effects on federally recognized Indian tribes.

Paperwork Reduction Act (PRA)

This proposed rulemaking contains no new reporting or recordkeeping requirements; therefore, an OMB submission under the PRA (44 U.S.C. 3501 *et seq.*) is not required. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The revisions in this rulemaking refer to, but would not change, information collection requirements in 30 CFR part 285. The OMB approved the referenced information collection requirements under OMB Control Number 1010–0176 (expiration 3/31/2013).

National Environmental Policy Act of 1969

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. BOEMRE has analyzed this proposed rule under the criteria of the National Environmental Policy Act (NEPA) and the Department's regulations implementing NEPA. This proposed rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental Categorical Exclusion in that this proposed rule is "* * * of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis * * *" Further, BOEMRE has analyzed this proposed rule to determine if it meets any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement as set forth in 43 CFR 46.215 and concluded that this proposed rule, being purely procedural, does not meet any of the criteria for extraordinary circumstances.

Data Quality Act

In developing this proposed rule, BOEMRE did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Proposed Regulation

BOEMRE is required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

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.

List of Subjects in 30 CFR Part 285

Continental shelf, Environmental protection, Public lands.

Dated: February 9, 2011.

Wilma A. Lewis,

Assistant Secretary for Land and Minerals Management.

For the reasons stated in the preamble, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) proposes to amend 30 CFR part 285 as follows:

PART 285—RENEWABLE ENERGY AND ALTERNATE USES OF EXISTING FACILITIES ON THE OUTER CONTINENTAL SHELF

1. The authority citation for part 285 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.,* 43 U.S.C. 1337.

2. Amend § 285.231 by revising paragraph (d)(1) to read as follows:

§ 285.231 How will BOEMRE process my unsolicited request for a noncompetitive lease?

* * * * *

(d) * * *

(1) We will publish in the **Federal Register** a notice that there is no competitive interest; and

* * * * *

3. Amend § 285.232 by revising paragraph (c) to read as follows:

§ 285.232 May I acquire a lease noncompetitively after responding to a Request for Interest or Call for Information and Nominations under § 285.213?

* * * * *

(c) After receiving the acquisition fee, BOEMRE will follow the process outlined in § 285.231(d) through (i).

[FR Doc. 2011–3515 Filed 2–15–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 100

RIN 0907–AA

National Vaccine Injury Compensation Program: Revisions to the Vaccine Injury Table

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: This document announces a public hearing to receive information and views on the Notice of Proposed Rulemaking (NPRM) entitled "National Vaccine Injury Compensation Program: Revisions to the Vaccine Injury Table."

Date and Time: The public hearing will be held on March 4, 2011, from 11:30 a.m. to 1 p.m.

Place: The public hearing will be held in Conference Room G in the Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Dr. Geoffrey Evans, Director, Division of Vaccine Injury Compensation, at 301–443–6593 or by e-mail at *gevans@hrsa.gov*.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986, Title III of Public Law 99–660, as amended (42 U.S.C. 300aa–10 *et seq.*), established the National Vaccine Injury Compensation Program (VICP) for persons found to be injured by vaccines. The Secretary has taken the necessary initial steps to transfer four vaccines covered under the VICP from the provisional category in the Vaccine Injury Table to their own separate categories, with no associated injuries.

These proposed changes would not change the rights of any current or potential VICP petitioners.

The NPRM was published in the **Federal Register**, September 13, 2010: 75 FR 55503. The public comment period closes March 14, 2011.

A public hearing will be held during the 180-day public comment period. This hearing is to provide an open forum for the presentation of information and views concerning all aspects of the NPRM by interested persons.

In preparing a final regulation, the Secretary will consider the administrative record of this hearing along with all other written comments received during the comment period specified in the NPRM. Individuals or representatives of interested organizations are invited to participate in the public hearing in accord with the schedule and procedures set forth below.

The hearing will be held on March 4, 2011, beginning at 11:30 a.m. in Conference Room G in the Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Upon entering the Parklawn Building, persons who wish to attend the hearing will be required to call Mr. Mario Lombre at (301) 443–3196 to be escorted to Conference Room G.

The presiding officer representing the Secretary, HHS will be Dr. Geoffrey Evans, Director, Division of Vaccine Injury Compensation, Healthcare Systems Bureau (HSB), Health Resources and Services Administration.

Persons who wish to participate are requested to file a notice of participation with the Department of Health and Human Services (HHS) on or before March 1, 2011. The notice should be mailed to the Division of Vaccine Injury Compensation, HSB, Room 11C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. To ensure timely handling any outer envelope should be clearly marked "NPRM Hearing." The notice of participation should contain the interested person's name, address, e-mail address, telephone number, any business or organizational affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation. Groups that have similar interests should consolidate their comments as part of one presentation. Time available for the hearing will be allocated among the persons who properly file notices of participation. If time permits, interested parties attending the hearing who did not submit notice of participation in advance will be allowed to make an oral presentation at the conclusion of the hearing.

Persons who find that there is insufficient time to submit the required information in writing may give oral notice of participation by calling Dr. Geoffrey Evans, Director, Division of Vaccine Injury Compensation, at (301) 443–6593 no later than March 1, 2011. Those persons who give oral notice of participation should also submit written notice containing the information described above to HHS by the close of business March 2, 2011.

After reviewing the notices of participation and accompanying information, HHS will schedule each appearance and notify each participant by mail, e-mail or telephone of the time allotted to the person(s) and the approximate time the person's oral presentation is scheduled to begin.

Written comments and transcripts of the hearing will be made available for public inspection as soon as they have been prepared, on weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m. at the Division of Vaccine Injury Compensation Program, Room 11C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: February 10, 2011.

Mary K. Wakefield,

Administrator.

[FR Doc. 2011–3523 Filed 2–15–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–002; Internal Agency Docket No. FEMA–B–1178]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule 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 to 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 May 17, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is 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–1178, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@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 also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those 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.

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:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Santa Cruz County, California, and Incorporated Areas				
Salsipuedes Creek	Approximately 0.7 mile upstream of State Route 129	+46	+45	City of Watsonville, Unincorporated Areas of Santa Cruz County.
	Approximately 1.5 miles upstream of State Route 129	+57	+58	
Struve Slough	At the upstream side of Harkins Slough Road	None	+17	City of Watsonville.
	Approximately 0.4 mile upstream of Pennsylvania Drive.	None	+58	
Watsonville Slough	Approximately 1,460 feet downstream of Harkins Slough Road.	None	+26	City of Watsonville.
	Approximately 1,430 feet upstream of Marin Street	None	+59	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** 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 Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Watsonville

Maps are available for inspection at the Community Development Department, 250 Main Street, Watsonville, CA 95076.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Unincorporated Areas of Santa Cruz County				
Maps are available for inspection at the Santa Cruz County Planning Department, 701 Ocean Street, 4th Floor, Santa Cruz, CA 95060.				
Calvert County, Maryland, and Incorporated Areas				
Hall Creek	Approximately 1.2 miles downstream of Southern Maryland Boulevard.	+8	+7	Unincorporated Areas of Calvert County.
	Approximately 285 feet upstream of Chesapeake Beach Road.	+72	+67	

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+ North American Vertical Datum.
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ADDRESSES

Unincorporated Areas of Calvert County

Maps are available for inspection at the Calvert County Services Plaza, 150 Main Street, Prince Frederick, MD 20678.

Bolivar County, Mississippi, and Incorporated Areas				
Jones Bayou	Approximately 0.5 mile downstream of Tower Road ...	+135	+138	City of Cleveland, Unincorporated Areas of Bolivar County.
	Approximately 1,146 feet upstream of West Rosemary Road.	+137	+139	
Mississippi River	Approximately 5.5 miles upstream of the Arkansas River confluence.	None	+161	City of Rosedale.
	Approximately 8.1 miles upstream of the Arkansas River confluence.	None	+162	
Porter Bayou	Approximately 0.8 mile downstream of State Route 448.	None	+127	City of Shaw.
	Approximately 0.7 mile downstream of State Route 448.	None	+127	

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+ North American Vertical Datum.
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ADDRESSES

City of Cleveland

Maps are available for inspection at the Public Works Department, 1089 Old Highway 61 North, Cleveland, MS 38732.

City of Rosedale

Maps are available for inspection at City Hall, 304 Court Street, Rosedale, MS 38769.

City of Shaw

Maps are available for inspection at City Hall, 101 Faison Street, Shaw, MS 38773.

Unincorporated Areas of Bolivar County

Maps are available for inspection at the Bolivar County Administrator Office, 200 South Court Street, Cleveland, MS 38732.

Platte County, Missouri, and Incorporated Areas				
Bear Creek	Approximately 1,110 feet downstream of Main Street	None	+781	City of Weston, Unincorporated Areas of Platte County.
	Approximately 0.76 mile upstream of Highway 45	None	+804	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Bee Creek	Approximately 0.83 mile downstream of the Bleazard Branch confluence.	None	+863	City of Dearborn, Unincorporated Areas of Platte County.
	Approximately 0.74 mile upstream of Maple Leaf Road.	None	+883	
Bee Creek Tributary	At the Bee Creek confluence	+877	+878	City of Dearborn, Unincorporated Areas of Platte County.
	Approximately 1,325 feet upstream of Interurban Road.	+878	+889	
Benner Branch	At the Bear Creek confluence	+780	+783	City of Weston.
	Approximately 75 feet upstream of Highway 45	+795	+803	
Brills Creek	At the Benner Branch confluence	+782	+791	City of Weston, Unincorporated Areas of Platte County.
	Approximately 150 feet upstream of Highway 45	+803	+814	
Brush Creek	At the downstream side of Northwest 76th Street	None	+792	City of Parkville, Unincorporated Areas of Platte County.
	Approximately 1,500 feet upstream of State Highway 152.	None	+820	
Burlington Creek	At the Missouri River confluence	+762	+759	City of Riverside, Unincorporated Areas of Platte County.
	Approximately 850 feet upstream of North Helena Avenue.	+797	+800	
Burlington Creek Tributary 2	Approximately 950 feet upstream of Northwest Platte Drive.	None	+764	City of Riverside, Unincorporated Areas of Platte County.
	Approximately 1,275 feet upstream of Northeast Platte Drive.	None	+768	
East Creek	At the Line Creek confluence	+764	+768	City of Riverside.
	Approximately 100 feet downstream of Northwest Vivion Road.	+771	+769	
First Creek	At the Clay County boundary	None	+864	Unincorporated Areas of Platte County.
	Approximately 0.82 mile downstream of Northwest 128th Street.	None	+895	
Grove Creek	Approximately 0.74 mile downstream of Platte Avenue.	None	+815	City of Edgerton, Unincorporated Areas of Platte County.
	Approximately 150 feet upstream of State Highway Z	None	+848	
Jumping Branch	At the Line Creek confluence	+760	+756	City of Riverside, Village of Houston Lake.
	Approximately 200 feet upstream of I–635	None	+819	
Line Creek	At the Missouri River confluence	+760	+756	City of Northmoor, City of Riverside.
	Approximately 300 feet downstream of I–29	+769	+772	
Line Creek Tributary 2	Approximately 650 feet downstream of Northwest South Shore Drive.	None	+877	City of Lake Waukomis.
	At the downstream side of Northwest South Shore Drive.	None	+937	
Missouri River	Approximately 850 feet upstream of the Clay County boundary.	+757	+756	City of Iatan, City of Parkville, City of Riverside, City of Weston, Unincorporated Areas of Platte County.
	Approximately 0.53 mile downstream of the Buchanan County boundary.	+788	+791	
Platte River	At the Missouri River confluence	+770	+769	City of Platte City, City of Tracy, Unincorporated Areas of Platte County, Village of Farley.
	Approximately 0.48 mile upstream of I–29	None	+782	
Rush Creek	At the Missouri River confluence	+762	+760	City of Parkville, Unincorporated Areas of Platte County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 0.56 mile upstream of the Walnut Creek confluence.	+764	+771	
Second Creek	Approximately 750 feet downstream of State Highway 92.	None	+822	Unincorporated Areas of Platte County.
	Approximately 3 miles downstream of State Highway 291.	None	+881	
Todd Creek	Approximately 1,600 feet downstream of Water Treatment Plant Road.	None	+822	Unincorporated Areas of Platte County.
	Approximately 1,400 feet downstream of Water Treatment Plant Road.	None	+822	
Walnut Creek	At the Rush Creek Confluence	+764	+768	City of Parkville, Unincorporated Areas of Platte County.
	Approximately 1,600 feet upstream of Northwest Eastside Drive.	None	+876	
Wells Branch	At the Bear Creek confluence	+780	+781	City of Weston, Unincorporated Areas of Platte County.
	Approximately 150 feet upstream of County Road JJ	None	+830	
White Branch	At the Rush Creek confluence	None	+760	City of Parkville.
	Approximately 0.67 mile upstream of East 6th Street	None	+855	
Wildcat Branch	Approximately 950 feet upstream of the Todd Creek confluence.	None	+856	Village of Ferrelview.
	Approximately 0.46 mile upstream of I–435	None	+945	

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ADDRESSES

City of Dearborn
Maps are available for inspection at City Hall, 101 3rd Street, Dearborn, MO 64439.

City of Edgerton
Maps are available for inspection at City Hall, 411 Front Street, Edgerton, MO 64444.

City of Iatan
Maps are available for inspection at City Hall, 130 Main Street, Iatan, MO 64098.

City of Lake Waukomis
Maps are available for inspection at City Hall, 1147 Northwest South Shore Drive, Lake Waukomis, MO 64151.

City of Northmoor
Maps are available for inspection at City Hall, 4907 Northwest Waukomis Drive, Northmoor, MO 64151.

City of Parkville
Maps are available for inspection at City Hall, 8880 Clark Avenue, Parkville, MO 64152.

City of Platte City
Maps are available for inspection at City Hall, 400 Main Street, Platte City, MO 64079.

City of Riverside
Maps are available for inspection at City Hall, 2950 Northwest Vivion Road, Riverside, MO 64150.

City of Tracy
Maps are available for inspection at City Hall, 208 2nd Street, Tracy, MO 64079.

City of Weston
Maps are available for inspection at City Hall, 300 Main Street, Weston, MO 64098.

Unincorporated Areas of Platte County
Maps are available for inspection at the Platte County Courthouse, 415 3rd Street, Suite 115, Platte City, MO 64079.

Village of Farley
Maps are available for inspection at City Hall, 1116 River Road, Farley, MO 64028.

Village of Ferrelview
Maps are available for inspection at City Hall, 205 Northwest Heady Avenue, Ferrelview, MO 64163.

Village of Houston Lake
Maps are available for inspection at City Hall, 5417 Northwest Adrian Street, Houston Lake, MO 64151.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Colfax County, Nebraska, and Incorporated Areas				
East Fork Maple Creek	Approximately 81 feet downstream of State Highway 91.	+1453	+1454	Unincorporated Areas of Colfax County.
	Approximately 1,651 feet upstream of County Road 14.	+1466	+1467	
Platte River	Approximately 0.73 miles upstream of County Road 18.	None	+1310	Unincorporated Areas of Colfax County.
	Approximately 2.93 miles upstream of Wolfe Road	None	+1410	
Shell Creek	Approximately 834 feet upstream of County Road D ..	+1331	+1332	Unincorporated Areas of Colfax County.
	Approximately 1.9 miles upstream of County Road 2	+1445	+1446	
Shell Creek (Right Overbank)	Approximately 0.76 miles downstream of County Road E.	+1347	+1348	City of Schuyler, Unincorporated Areas of Colfax County.
	Approximately 1.5 miles upstream of U.S. Route 30 ...	+1360	+1361	

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ADDRESSES

City of Schuyler

Maps are available for inspection at the City Office, 1103 B Street, Schuyler, NE 68661.

Unincorporated Areas of Colfax County

Maps are available for inspection at the County Courthouse, 411 East 11th Street, Schuyler, NE 68661.

Ottawa County, Ohio, and Incorporated Areas				
Ayers Creek (backwater effects from Crane Creek).	Approximately 0.5 mile downstream of Billman Road	+596	+597	Unincorporated Areas of Ottawa County.
	Approximately 530 feet downstream of Private Drive ..	+596	+597	
Crane Creek Tributary (backwater effects from Crane Creek).	Approximately 0.4 mile downstream of Billman Road	+597	+598	Unincorporated Areas of Ottawa County.
	Approximately 570 feet downstream of Billman Road	+597	+598	
Indian Creek (backwater effects from Little Portage River).	Approximately 0.4 mile downstream of Portage River Road.	+588	+591	Unincorporated Areas of Ottawa County.
	Approximately 0.6 mile downstream of Harris Salem Road.	+588	+591	
Lake Erie	At the east side of Poplar Street	+581	+577	City of Port Clinton, Unincorporated Areas of Ottawa County, Village of Put-In-Bay.
	At the Lucas County boundary	+579	+578	
Little Portage River (backwater effects from Lake Erie).	Approximately 62 feet downstream of Muddy Creek Road.	+576	+577	Unincorporated Areas of Ottawa County.
	Approximately 1.1 miles upstream of Muddy Creek Road.	+576	+577	
Portage River	Approximately 1.3 miles downstream of Locust Street	None	+578	Village of Oak Harbor.
	Approximately 1.2 miles downstream of Locust Street	None	+578	
South Branch Turtle Creek Tributary (backwater effects from South Branch Turtle Creek).	Approximately 0.8 mile downstream of Private Drive ..	+596	+597	Unincorporated Areas of Ottawa County.
	Approximately 0.6 mile downstream of Private Drive ..	+596	+597	

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+ North American Vertical Datum.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Depth in feet above ground.
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** 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.

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ADDRESSES

City of Port Clinton
Maps are available for inspection at 1868 East Perry Street, Port Clinton, OH 43452.

Unincorporated Areas of Ottawa County
Maps are available for inspection at 315 Madison Street, Port Clinton, OH 43452.

Village of Oak Harbor
Maps are available for inspection at 146 Church Street, Oak Harbor, OH 43449.

Village of Put-In-Bay
Maps are available for inspection at 157 Concord Avenue, Put-In-Bay, OH 43456.

Aiken County, South Carolina, and Incorporated Areas

Abrams Branch	At the Dean Creek confluence	None	+255	Unincorporated Areas of Aiken County.
	Approximately 0.7 mile upstream of the Dean Creek confluence.	None	+263	
Beaverdam Branch	At the South Fork Edisto River confluence	None	+297	Unincorporated Areas of Aiken County.
	Approximately 1.3 miles upstream of the South Fork Edisto River confluence.	None	+317	
Beaverdam Creek	At the Shaws Creek confluence	None	+429	Unincorporated Areas of Aiken County.
	Approximately 1,210 feet upstream of the Shaws Creek confluence.	None	+435	
Boggy Gut	At the Upper Three Runs Creek confluence	None	+186	Unincorporated Areas of Aiken County.
	Approximately 1.5 miles upstream of Boggy Gut Road	None	+218	
Bradley Mill Branch	At the Shaws Creek confluence	None	+327	Unincorporated Areas of Aiken County.
	Approximately 0.8 mile upstream of Bradley Mill Road	None	+392	
Bridge Creek North	At the South Fork Edisto River confluence	None	+319	Unincorporated Areas of Aiken County.
	Approximately 0.56 mile upstream of Columbian Highway.	None	+353	
Brogdon Branch	At the Shaws Creek confluence	None	+351	Unincorporated Areas of Aiken County.
	Approximately 1,550 feet upstream of the Shaws Creek confluence.	None	+381	
Bulls Branch	At the South Fork Edisto River confluence	None	+374	Unincorporated Areas of Aiken County.
	Approximately 0.4 mile upstream of the South Fork Edisto River confluence.	None	+379	
Burcalo Creek	At the South Fork Edisto River confluence	None	+252	Unincorporated Areas of Aiken County.
	Approximately 1.0 mile upstream of the South Fork Edisto River confluence.	None	+264	
Cedar Creek	At the South Fork Edisto River confluence	None	+263	Unincorporated Areas of Aiken County.
	Approximately 1.1 miles upstream of Upper Pond Road.	None	+296	
Cedar Creek West	At the Upper Three Runs Creek confluence	None	+202	City of New Ellenton, Unincorporated Areas of Aiken County.
	Approximately 0.7 mile upstream of Oak Meadow Lane.	None	+408	
Cedar Creek West Tributary 1.	At the Cedar Creek West confluence	None	+229	Unincorporated Areas of Aiken County.
	Approximately 0.5 mile upstream of the Cedar Creek West confluence.	None	+261	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
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Cedar Creek West Tributary 2.	At the Cedar Creek West confluence	None	+234	City of New Ellenton, Unincorporated Areas of Aiken County.
	Approximately 670 feet upstream of Paddock Club Parkway.	None	+311	
Cedar Creek West Tributary 3.	At the Cedar Creek West confluence	None	+243	City of New Ellenton, Unincorporated Areas of Aiken County.
	Approximately 0.5 mile upstream of Gamboa Place	None	+349	
Cedar Creek West Tributary 3.2.	At the Cedar Creek West Tributary 3 confluence	None	+288	City of New Ellenton, Unincorporated Areas of Aiken County.
	Approximately 0.38 mile upstream of Club Drive	None	+330	
Cedar Creek West Tributary 4.	At the Cedar Creek West confluence	None	+256	Unincorporated Areas of Aiken County.
	Approximately 950 feet upstream of Belle Mead Road	None	+292	
Cedar Creek West Tributary 5.	At the Cedar Creek West confluence	None	+266	Unincorporated Areas of Aiken County.
	Approximately 1,540 feet upstream of the Cedar Creek West confluence.	None	+308	
Cedar Creek West Tributary 6.	At the Cedar Creek West confluence	None	+273	Unincorporated Areas of Aiken County.
	Approximately 0.4 mile upstream of Talatha Church Road.	None	+309	
Cedar Creek West Tributary 7.	At the Cedar Creek West confluence	None	+314	Unincorporated Areas of Aiken County.
	Approximately 350 feet upstream of Pintail Drive	None	+352	
Chavous Creek	At the Shaws Creek confluence	None	+277	Unincorporated Areas of Aiken County.
	Approximately 0.80 mile upstream of Mill Springs Drive.	None	+312	
Chinquapin Creek	At the North Fork Edisto River confluence	None	+336	Unincorporated Areas of Aiken County.
	Approximately 600 feet upstream of Cocklebur Road	None	+520	
Clearwater Branch	At the Shaws Creek confluence	None	+300	Unincorporated Areas of Aiken County.
	Approximately 1,940 feet upstream of the Shaws Creek confluence.	None	+305	
Dairy Branch Tributary 1	At the Dairy Branch confluence	None	+352	Unincorporated Areas of Aiken County.
	Approximately 1,240 feet upstream of the Dairy Branch confluence.	None	+364	
Dean Creek	Approximately 1.4 miles downstream of No Bridge Road.	None	+233	Unincorporated Areas of Aiken County.
	Approximately 0.9 mile upstream of Wagener Trail Road.	None	+335	
Dry Branch	At the Hollow Creek West confluence	None	+217	Unincorporated Areas of Aiken County.
	Approximately 1,200 feet upstream of Dry Branch Road.	None	+318	
Dry Branch Tributary 1	At the Dry Branch confluence	None	+251	Unincorporated Areas of Aiken County.
	Approximately 400 feet upstream of Gray Mare Hollow Road.	None	+272	
Dry Branch Tributary 2	At the Dry Branch confluence	None	+286	Unincorporated Areas of Aiken County.
	Approximately 1,870 feet upstream of the Dry Branch confluence.	None	+307	
Dry Branch Tributary 3	At the Dry Branch confluence	None	+307	Unincorporated Areas of Aiken County.
	Approximately 1,100 feet upstream of Ann Drive	None	+342	
Franklin Branch	At the Little Horse Creek confluence	None	+200	Unincorporated Areas of Aiken County.
	Approximately 1.7 miles upstream of the Little Horse Creek confluence.	None	+236	
Gopher Branch	At the Horse Creek confluence	None	+356	Unincorporated Areas of Aiken County.

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	Approximately 680 feet upstream of the Horse Creek confluence.	None	+361	
Gully Creek	At the McTier Creek confluence	None	+338	Unincorporated Areas of Aiken County.
	Approximately 1,320 feet upstream of Uncle Duck Road.	None	+410	
Hall Branch	At the Shaws Creek confluence	None	+426	Unincorporated Areas of Aiken County.
	Approximately 950 feet upstream of the Shaws Creek confluence.	None	+426	
Hightower Creek	Approximately 170 feet upstream of the Little Horse Creek confluence.	None	+222	Unincorporated Areas of Aiken County.
	Approximately 1,480 feet upstream of the Little Horse Creek confluence.	None	+234	
Hollow Creek East	At the North Fork Edisto River confluence	None	+241	Unincorporated Areas of Aiken County.
	Approximately 0.4 mile upstream of Brim Road	None	+284	
Hollow Creek West	At the upstream side of Woodfield Road	None	+202	City of Aiken, Unincorporated Areas of Aiken County.
	Approximately 1,000 feet upstream of Woodside Plantation Drive.	None	+364	
Hollow Creek West Tributary 10.	At the Hollow Creek West confluence	None	+269	Unincorporated Areas of Aiken County.
	Approximately 0.5 mile upstream of Anderson Pond Road.	None	+321	
Hollow Creek West Tributary 11.	At the Hollow Creek West confluence	None	+274	City of Aiken, Unincorporated Areas of Aiken County.
	Approximately 200 feet upstream of Private Dam	None	+360	
Hollow Creek West Tributary 12.	At the Hollow Creek West confluence	None	+270	Unincorporated Areas of Aiken County.
	Approximately 600 feet upstream of Private Dam	None	+325	
Hollow Creek West Tributary 12A.	At the Hollow Creek West confluence	None	+298	City of Aiken.
	Approximately 0.5 mile upstream of Private Dam	None	+329	
Hollow Creek West Tributary 13.	At the Hollow Creek West confluence	None	+272	Unincorporated Areas of Aiken County.
	Approximately 1,850 feet upstream of the Hollow Creek confluence.	None	+309	
Hollow Creek West Tributary 15.	At the Hollow Creek West confluence	None	+282	City of Aiken, Unincorporated Areas of Aiken County.
	Approximately 1,850 feet upstream of Private Dam	None	+334	
Hollow Creek West Tributary 3.	Approximately 580 feet upstream of the Hollow Creek West confluence.	None	+174	Unincorporated Areas of Aiken County.
	Approximately 270 feet upstream of Chavous Road	None	+204	
Hollow Creek West Tributary 4.	Approximately 250 feet upstream of the Hollow Creek West confluence.	None	+192	Unincorporated Areas of Aiken County.
	Approximately 870 feet upstream of Woodfield Road	None	+203	
Hollow Creek West Tributary 6.	At the Hollow Creek West confluence	None	+230	Unincorporated Areas of Aiken County.
	Approximately 975 feet upstream of the Hollow Creek West confluence.	None	+253	
Hollow Creek West Tributary 7.	At the Hollow Creek West confluence	None	+240	Unincorporated Areas of Aiken County.
	Approximately 1,260 feet upstream of the Hollow Creek West confluence.	None	+274	
Hollow Creek West Tributary 8.	At the Hollow Creek West confluence	None	+250	Unincorporated Areas of Aiken County.
	Approximately 1,845 feet upstream of the Hollow Creek West confluence.	None	+265	
Hollow Creek West Tributary 9.	At the Hollow Creek West confluence	None	+253	Unincorporated Areas of Aiken County.
	Approximately 1,410 feet upstream of the Hollow Creek West confluence.	None	+293	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Horse Branch	At the Horse Creek confluence	None	+313	Unincorporated Areas of Aiken County.
	Approximately 1,330 feet upstream of the Horse Creek confluence.	None	+314	
Horse Creek	At the upstream side of Augusta Road	None	+145	City of North Augusta, Town of Burnettown, Unincorporated Areas of Aiken County.
	Approximately 2.56 miles upstream of Old Friar Road	None	+440	
Horse Creek Tributary 3	At the Horse Creek confluence	None	+182	Town of Burnettown.
	Approximately 0.5 mile upstream of the Horse Creek confluence.	None	+201	
Horse Creek Tributary 4	At the Horse Creek confluence	None	+187	Unincorporated Areas of Aiken County.
	Approximately 0.6 mile upstream of Jefferson Davis Highway.	None	+252	
Horse Creek Tributary 5	At the Horse Creek confluence	None	+230	Unincorporated Areas of Aiken County.
	Approximately 1,944 feet upstream of the Horse Creek confluence.	None	+238	
Horsepen Creek	At the Little Horse Creek confluence	None	+279	Unincorporated Areas of Aiken County.
	Approximately 0.5 mile upstream of Whaley Pond Road.	None	+307	
Hunter Branch	At the South Fork Edisto River confluence	None	+235	Unincorporated Areas of Aiken County.
	Approximately 0.9 mile upstream of the South Fork Edisto River confluence.	None	+242	
Johnson Fork	At the Upper Three Runs Creek confluence	None	+180	Unincorporated Areas of Aiken County.
	Approximately 0.6 mile upstream of the Johnson Fork Tributary 1 confluence.	None	+313	
Johnson Fork Tributary 1	At the Johnson Fork confluence	None	+283	City of New Ellenton, Unincorporated Areas of Aiken County.
	Approximately 1,600 feet upstream of Forest Circle Road.	None	+408	
Johnson Fork Tributary 1.1	At the Johnson Fork Tributary 1 confluence	None	+285	City of New Ellenton, Unincorporated Areas of Aiken County.
	Approximately 0.8 mile upstream of the Johnson Fork Tributary 1 confluence.	None	+323	
Jordan Creek	At the Dean Creek confluence	None	+261	Unincorporated Areas of Aiken County.
	Approximately 0.5 mile upstream of the Dean Creek confluence.	None	+267	
Joyce Branch	At the Shaws Creek confluence	None	+302	Unincorporated Areas of Aiken County.
	Approximately 0.5 mile upstream of the Shaws Creek confluence.	None	+307	
Little Horse Creek Tributary 1	Approximately 330 feet upstream of the Little Horse Creek confluence.	None	+153	Town of Burnettown.
	Approximately 1,800 feet upstream of the Little Horse Creek confluence.	None	+158	
Little Horse Creek Tributary 4	Approximately 350 feet upstream of the Little Horse Creek confluence.	None	+274	Unincorporated Areas of Aiken County.
	Approximately 1,420 feet upstream of the Little Horse Creek confluence.	None	+302	
Long Branch North	At the Shaws Creek confluence	None	+344	Unincorporated Areas of Aiken County.
	Approximately 0.5 mile upstream of the Shaws Creek confluence.	None	+358	
Lotts Creek	At the South Fork Edisto River confluence	None	+289	Unincorporated Areas of Aiken County.
	Approximately 0.5 mile upstream of Whispering Pine Road.	None	+424	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Lotts Creek Tributary 1	At the Lotts Creek confluence	None	+415	Unincorporated Areas of Aiken County.
	Approximately 1,110 feet upstream of the Lotts Creek confluence.	None	+418	
Marrow Bone Swamp Creek	At the North Fork Edisto River confluence	None	+296	Unincorporated Areas of Aiken County.
	Approximately 0.4 mile upstream of the North Fork Edisto River confluence.	None	+300	
McTier Creek	At the South Fork Edisto River confluence	None	+310	Unincorporated Areas of Aiken County.
	Approximately 150 feet upstream of Old Shoals Road	None	+418	
Mill Creek	At the Tinker Creek confluence	None	+166	Unincorporated Areas of Aiken County.
	Approximately 1,880 feet upstream of the Tinker Creek confluence.	None	+170	
Mims Branch	Approximately 400 feet upstream of the Little Horse Creek confluence.	None	+162	City of North Augusta, Town of Burnettown, Unincorporated Areas of Aiken County.
	Approximately 0.66 mile upstream of the Little Horse Creek confluence.	None	+197	
Muddy Branch	At the South Fork Edisto River confluence	None	+296	Unincorporated Areas of Aiken County.
	Approximately 0.4 mile upstream of the South Fork Edisto River confluence.	None	+303	
North Fork Edisto River	Approximately 1.0 mile downstream of the Hollow Creek East confluence.	None	+235	Unincorporated Areas of Aiken County.
	Approximately 400 feet upstream of U.S. Route 10	None	+336	
Pitman Branch	At the Rocky Springs Creek confluence	None	+341	Unincorporated Areas of Aiken County.
	Approximately 1,020 feet upstream of the Rocky Springs Creek confluence.	None	+343	
Pond Branch	At the South Fork Edisto River confluence	None	+228	Unincorporated Areas of Aiken County.
	Approximately 0.4 mile upstream of Oak Ridge Club Road.	None	+235	
Redds Branch	At the Shaws Creek confluence	None	+300	Unincorporated Areas of Aiken County.
	Approximately 1,820 feet upstream of the Shaws Creek confluence.	None	+307	
Reedy Branch	At the Tinker Creek confluence	None	+172	Unincorporated Areas of Aiken County.
	Approximately 0.4 mile upstream of the Tinker Creek confluence.	None	+177	
Rocky Springs Creek	At the South Fork Edisto River confluence	None	+289	Unincorporated Areas of Aiken County.
	Approximately 1,400 feet upstream of Migrant Camp Road.	None	+373	
Rocky Springs Creek Tributary 5.	At the Rocky Springs Creek confluence	None	+361	Unincorporated Areas of Aiken County.
	Approximately 0.4 mile upstream of the Rocky Springs Creek confluence.	None	+363	
Sand River	At the Horse Creek confluence	None	+190	City of Aiken, Unincorporated Areas of Aiken County.
	At the downstream side of South Boundary Avenue Southwest.	None	+433	
Sand River Tributary 2, Tributary 1.	At the Sand River Tributary 2 confluence	None	+288	City of Aiken, Unincorporated Areas of Aiken County.
	Approximately 1.1 miles upstream of Sand River Tributary 2.	None	+436	
Shaws Creek	At the South Fork Edisto River confluence	None	+261	Unincorporated Areas of Aiken County.
	Approximately 200 feet upstream of Luke Bridge Road.	None	+433	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Shaws Creek Tributary 3	At the Shaws Creek confluence	None	+287	Unincorporated Areas of Aiken County.
	Approximately 0.5 mile upstream of the Shaws Creek confluence.	None	+310	
South Fork Edisto River	Approximately 2.1 miles downstream of the Pond Branch confluence.	None	+222	Unincorporated Areas of Aiken County.
	Approximately 0.8 mile upstream of Mount Calvary Road.	None	+405	
Tinker Creek	At the Upper Three Runs Creek confluence	None	+151	Unincorporated Areas of Aiken County.
	Approximately 5.5 miles upstream of the Reedy Branch confluence.	None	+211	
Town Creek	Approximately 1.1 miles upstream of Richardson's Lake Road.	None	+391	City of Aiken, Unincorporated Areas of Aiken County.
	Approximately 1.3 miles upstream of Richardson's Lake Road.	None	+414	
Town Creek Tributary 1	Approximately 300 feet upstream of the Town Creek confluence.	None	+178	Unincorporated Areas of Aiken County.
	Approximately 0.55 mile upstream of the Town Creek confluence.	None	+216	
Town Creek Tributary 11	Approximately 320 feet upstream of the Town Creek confluence.	None	+253	Unincorporated Areas of Aiken County.
	Approximately 950 feet upstream of the Town Creek confluence.	None	+268	
Town Creek Tributary 12	Approximately 890 feet upstream of the Town Creek confluence.	None	+257	Unincorporated Areas of Aiken County.
	Approximately 0.4 mile upstream of the Town Creek confluence.	None	+270	
Town Creek Tributary 14	Approximately 700 feet upstream of the Town Creek confluence.	None	+280	Unincorporated Areas of Aiken County.
	Approximately 1,580 feet upstream of the Town Creek confluence.	None	+286	
Town Creek Tributary 16	Approximately 120 feet downstream of Blue Roan Court.	None	+287	Unincorporated Areas of Aiken County.
	Approximately 0.5 mile upstream of Blue Roan Court	None	+367	
Town Creek Tributary 18	At the upstream side of Chestnut Brown Court	None	+288	Unincorporated Areas of Aiken County.
	Approximately 0.53 mile upstream of Blue Roan Court	None	+314	
Town Creek Tributary 2.1	Approximately 100 feet upstream of the Town Creek Tributary 2 confluence.	None	+239	Unincorporated Areas of Aiken County.
	Approximately 1,630 feet upstream of the Town Creek Tributary 2 confluence.	None	+298	
Town Creek Tributary 3.1	Approximately 160 feet upstream of the Town Creek Tributary 3 confluence.	None	+260	Unincorporated Areas of Aiken County.
	Approximately 1,270 feet upstream of the Town Creek Tributary 3 confluence.	None	+282	
Town Creek Tributary 3.3	Approximately 200 feet upstream of the Town Creek Tributary 3 confluence.	None	+290	Unincorporated Areas of Aiken County.
	Approximately 1,540 feet upstream of the Town Creek Tributary 3 confluence.	None	+325	
Town Creek Tributary 3.4	Approximately 540 feet upstream of the Town Creek Tributary 3 confluence.	None	+325	Unincorporated Areas of Aiken County.
	Approximately 0.6 mile upstream of the Town Creek Tributary 3 confluence.	None	+376	
Town Creek Tributary 5.1	Approximately 200 feet upstream of the Town Creek confluence.	None	+237	Unincorporated Areas of Aiken County.
	Approximately 550 feet upstream of Boyd Pond Road	None	+252	
Unknown Tributary to Town Creek Tributary 8.	Approximately 400 feet upstream of the Town Creek Tributary 8 confluence.	None	+348	Unincorporated Areas of Aiken County.
	Approximately 1,820 feet upstream of the Town Creek Tributary 8 confluence.	None	+361	
Unnamed Tributary 1 to Cedar Creek West.	At the Cedar Creek West confluence	None	+249	Unincorporated Areas of Aiken County.
	Approximately 0.5 mile upstream of Cedar Meadows Drive.	None	+282	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Unnamed Tributary 1 to Hollow Creek West.	At the Hollow Creek West confluence	None	+160	Unincorporated Areas of Aiken County.
	Approximately 270 feet upstream of Chavous Road	None	+208	
Unnamed Tributary 1 to Little Horse Creek.	Approximately 400 feet upstream of the Little Horse Creek confluence.	None	+274	Unincorporated Areas of Aiken County.
	Approximately 1,900 feet upstream of the Little Horse Creek confluence.	None	+310	
Unnamed Tributary 1 to Town Creek.	Approximately 500 feet upstream of the Town Creek confluence.	None	+179	Unincorporated Areas of Aiken County.
	Approximately 1,620 feet upstream of the Town Creek confluence.	None	+194	
Unnamed Tributary 10 to Town Creek.	At the Town Creek confluence	None	+360	Unincorporated Areas of Aiken County.
	Approximately 1,300 feet upstream of the Town Creek confluence.	None	+396	
Unnamed Tributary 2 to Cedar Creek West.	At the Cedar Creek West confluence	None	+264	Unincorporated Areas of Aiken County.
	Approximately 1,250 feet upstream of Banks Mill Road Southeast.	None	+316	
Unnamed Tributary 2 to Hollow Creek West.	At the Hollow Creek West confluence	None	+162	Unincorporated Areas of Aiken County.
	Approximately 0.4 mile upstream of the Hollow Creek West confluence.	None	+195	
Unnamed Tributary 2 to Town Creek.	Approximately 250 feet upstream of the Town Creek confluence.	None	+182	Unincorporated Areas of Aiken County.
	Approximately 0.4 mile upstream of the Town Creek confluence.	None	+246	
Unnamed Tributary 3 to Town Creek.	Approximately 400 feet upstream of the Town Creek confluence.	None	+183	Unincorporated Areas of Aiken County.
	Approximately 1,615 feet upstream of the Town Creek confluence.	None	+244	
Unnamed Tributary 4 to Town Creek.	Approximately 310 feet upstream of the Town Creek confluence.	None	+236	Unincorporated Areas of Aiken County.
	Approximately 0.4 mile upstream of the Town Creek confluence.	None	+297	
Unnamed Tributary 5 to Town Creek.	Approximately 350 feet upstream of the Town Creek confluence.	None	+251	Unincorporated Areas of Aiken County.
	Approximately 1,500 feet upstream of the Town Creek confluence.	None	+284	
Unnamed Tributary 6 to Town Creek.	At the upstream side of Farmstead Drive	None	+301	Unincorporated Areas of Aiken County.
	Approximately 900 feet upstream of Farmstead Drive	None	+332	
Unnamed Tributary 7 to Town Creek.	Approximately 100 feet upstream of Farmstead Drive	None	+292	Unincorporated Areas of Aiken County.
	Approximately 900 feet upstream of Farmstead Drive	None	+320	
Unnamed Tributary 8 to Town Creek.	Approximately 560 feet upstream of the Town Creek confluence.	None	+295	Unincorporated Areas of Aiken County.
	Approximately 1,150 feet upstream of the Town Creek confluence.	None	+325	
Unnamed Tributary 9 to Town Creek.	Approximately 560 feet upstream of the Town Creek confluence.	None	+301	Unincorporated Areas of Aiken County.
	Approximately 1,840 feet upstream of the Town Creek confluence.	None	+342	
Upper Horse Creek	Approximately 360 feet upstream of the Little Horse Creek confluence.	None	+325	Unincorporated Areas of Aiken County.
	Approximately 1,525 feet upstream of the Little Horse Creek confluence.	None	+344	
Upper Three Runs Creek	Approximately 1.4 miles downstream of the Upper Three Runs Creek Tributary 9 confluence.	None	+144	Unincorporated Areas of Aiken County.
	Approximately 3.0 miles upstream of the Upper Three Runs Creek Tributary 8 confluence.	None	+252	
Upper Three Runs Creek Tributary 8.	At the Upper Three Runs Creek confluence	None	+219	Unincorporated Areas of Aiken County.
	Approximately 1,650 feet upstream of the Upper Three Runs Creek confluence.	None	+233	
Upper Three Runs Creek Tributary 9.	At the Upper Three Runs Creek confluence	None	+151	Unincorporated Areas of Aiken County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 0.5 mile upstream of the Upper Three Runs Creek confluence.	None	+159	
Wise Hollow	At the Cedar Creek West confluence	None	+333	Unincorporated Areas of Aiken County.
	Approximately 1,100 feet upstream of Private Drive	None	+450	
Wise Hollow Tributary 1	At the Wise Hollow confluence	None	+393	City of Aiken, Unincorporated Areas of Aiken County.
	Approximately 200 feet upstream of Pine Log Road	None	+474	
Womrath Creek	Approximately 950 feet downstream of Hamburg Road.	None	+135	City of North Augusta, Unincorporated Areas of Aiken County.
	Approximately 100 feet upstream of Old Aiken Road	None	+208	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** 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 Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Aiken
Maps are available for inspection at 214 Park Avenue Southwest, Room 101, Aiken, SC 29801.

City of Jackson
Maps are available for inspection at 106 Main Street, Jackson, SC 29831.

City of New Ellenton
Maps are available for inspection at 200 Main Street, New Ellenton, SC 29809.

City of North Augusta
Maps are available for inspection at 100 Georgia Avenue, North Augusta, SC 29841.

Town of Burnettown
Maps are available for inspection at 3144 Augusta Road, Warrenville, SC 29851.

Unincorporated Areas of Aiken County
Maps are available for inspection at 1680 Richland Avenue, Suite 130, Aiken, SC 29801.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated February 7, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–3505 Filed 2–15–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1175]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule 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 to 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 May 17, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is 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–1175, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@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 also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those 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.

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 ∧ Elevation in meters (MSL)	
				Existing	Modified
Unincorporated Areas of Yolo County, California					
California	Unincorporated Areas of Yolo County.	Cache Creek Settling Basin.	At the upstream side of the Cache Creek Settling Basin Levee.	None	+40
			Approximately 1.4 miles downstream of County Road 94B.	+95	94

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** 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 Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Yolo County

Maps are available for inspection at the Yolo County Department of Planning and Public Works, 292 West Beamer Street, Woodland, CA 95695.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
LaGrange County, Indiana, and Incorporated Areas				
Basin Lake	Entire shoreline	None	+902	Unincorporated Areas of LaGrange County.
Big Long Lake	Entire shoreline	None	+957	Unincorporated Areas of LaGrange County.
Big Turkey Lake	Entire shoreline within community	None	+932	Unincorporated Areas of LaGrange County.
Cedar Lake	Entire shoreline	None	+974	Unincorporated Areas of LaGrange County.
Dallas Lake	Entire shoreline	None	+901	Unincorporated Areas of LaGrange County.
Fish Lake	Entire shoreline	None	+940	Unincorporated Areas of LaGrange County.
Goose Pond	Entire shoreline	None	+953	Unincorporated Areas of LaGrange County.
Hackenburg Lake	Entire shoreline	None	+901	Unincorporated Areas of LaGrange County.
Lake of the Woods	Entire shoreline within community	None	+953	Unincorporated Areas of LaGrange County.
Little Turkey Lake	Entire shoreline	None	+930	Unincorporated Areas of LaGrange County.
Martin Lake	Entire shoreline	None	+902	Unincorporated Areas of LaGrange County.
McClish Lake	Entire shoreline within community	None	+953	Unincorporated Areas of LaGrange County.
Messick Lake	Entire shoreline	None	+901	Unincorporated Areas of LaGrange County.
North Twin Lake	Entire shoreline	None	+846	Unincorporated Areas of LaGrange County.
Olin Lake	Entire shoreline	None	+902	Unincorporated Areas of LaGrange County.
Oliver Lake	Entire shoreline	None	+902	Unincorporated Areas of LaGrange County.
Pigeon Lake	Entire shoreline	None	+848	Unincorporated Areas of LaGrange County.
Pretty Lake	Entire shoreline	None	+967	Unincorporated Areas of LaGrange County.
Royer Lake	Entire shoreline	None	+940	Unincorporated Areas of LaGrange County.
Smith Hole	Entire shoreline	None	+902	Unincorporated Areas of LaGrange County.
South Twin Lake	Entire shoreline	None	+846	Unincorporated Areas of LaGrange County.
Spectacle Lakes	Entire shoreline	None	+953	Unincorporated Areas of LaGrange County.
Westler Lake	Entire shoreline	None	+901	Unincorporated Areas of LaGrange County.
Witmer Lake	Entire shoreline	None	+901	Town of Wolcottville, Unincorporated Areas of LaGrange County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** 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 Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Wolcottville
Maps are available for inspection at the Town Hall, 104 Race Street, Wolcottville, IN 46795.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Unincorporated Areas of LaGrange County				
Maps are available for inspection at the LaGrange County Annex Building, 114 West Michigan Street, LaGrange, IN 46761.				
Chariton County, Missouri, and Incorporated Areas				
Batts Creek (backwater effects from Missouri River).	From the Doxies Creek confluence to approximately 550 feet upstream of Batts Creek Road.	+633	+631	Unincorporated Areas of Chariton County.
Brush Creek (backwater effects from Missouri River).	From the Salt Creek confluence to approximately 675 feet downstream of Utz Road.	+650	+648	Unincorporated Areas of Chariton County.
Chariton River (backwater effects from Missouri River).	From approximately 1.3 miles upstream of State Highway VV to approximately 225 feet downstream of U.S. Route 24.	+641	+637	Unincorporated Areas of Chariton County.
Doxies Creek (backwater effects from Missouri River).	From approximately 300 feet downstream of Doxie Avenue to the Howard County boundary.	+633	+631	Unincorporated Areas of Chariton County.
Grand River (backwater effects from Missouri River).	At the Missouri River confluence	+646	+645	City of Brunswick, Unincorporated Areas of Chariton County.
	At the downstream side of ATSF Railroad Bridge	+649	+651	
Grand River Tributary (backwater effects from Missouri River).	From approximately 1,450 feet downstream of Grand River Road to approximately 150 feet upstream of Grand River Road.	+651	+649	Unincorporated Areas of Chariton County.
Little Chariton River (backwater effects from Missouri River).	From approximately 0.65 mile downstream of French Road to the downstream side of Chapel Hill Road.	+634	+632	Unincorporated Areas of Chariton County.
Missouri River	At the Howard County boundary	+628	+626	City of Brunswick, Unincorporated Areas of Chariton County, Village of Dalton.
	At the Carroll County boundary	+646	+645	
Mussel Fork (backwater effects from Missouri River).	From the Chariton River confluence to approximately 375 feet downstream of Jackson Street.	+641	+637	City of Keytesville, Unincorporated Areas of Chariton County.
Palmer Creek (backwater effects from Missouri River).	From the Lake Creek confluence to approximately 1,375 feet upstream of Lewis Clark Road.	+645	+644	Unincorporated Areas of Chariton County.
Puzzle Creek (backwater effects from Missouri River).	From the Chariton River confluence to the upstream side of State Highway KK.	+641	+637	Unincorporated Areas of Chariton County.
Salt Creek (backwater effects from Missouri River).	From approximately 1.0 mile downstream of Ohio Road to approximately 825 feet downstream of State Highway M.	+650	+649	Unincorporated Areas of Chariton County.
Young Creek (backwater effects from Missouri River).	From approximately 1,950 feet downstream of Rockford Hills Avenue to approximately 1,550 feet upstream of Rockford Hills Avenue.	+639	+636	Unincorporated Areas of Chariton County.
Young Creek Tributary 7 (backwater effects from Missouri River).	From the Young Creek confluence to approximately 1,250 feet upstream of Asbury Road.	None	+636	Unincorporated Areas of Chariton County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** 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 Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Brunswick
Maps are available for inspection at City Hall, 115 West Broadway Street, Brunswick, MO 65236.

City of Keytesville
Maps are available for inspection at City Hall, 404 West Bridge Street, Keytesville, MO 65261.

Unincorporated Areas of Chariton County
Maps are available for inspection at the Chariton County Courthouse, 306 South Cherry Street, Keytesville, MO 65261.

Village of Dalton

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Maps are available for inspection at City Hall, 109 North Sycamore Street, Dalton, MO 65246.				
Taney County, Missouri, and Incorporated Areas				
Beaver Creek (backwater effects from White River).	From the White River confluence to approximately 685 feet upstream of the White River confluence.	+692	+698	Unincorporated Areas of Taney County.
Bee Creek (backwater effects from White River).	From the White River confluence to approximately 1,700 feet upstream of the White River confluence.	None	+698	Unincorporated Areas of Taney County.
Bull Creek (backwater effects from White River).	From the White River confluence to approximately 0.5 mile upstream of the White River confluence.	None	+716	Town of Rockaway Beach, Unincorporated Areas of Taney County.
Bull Shoals Lake	Entire shoreline	None	+724	Unincorporated Areas of Taney County.
Cooper Creek (backwater effects from White River).	From the White River confluence to approximately 685 feet upstream of the White River confluence.	None	+724	City of Branson, Unincorporated Areas of Taney County.
Silver Creek (backwater effects from White River).	From the White River confluence to approximately 0.8 mile upstream of the White River confluence.	+695	+698	Unincorporated Areas of Taney County.
Swan Creek (backwater effects from White River).	From the White River confluence to approximately 1,290 feet upstream of Strawberry Road.	+694	+698	City of Forsyth, Unincorporated Areas of Taney County.
White River	At the downstream side of Powersite Dam	+695	+698	City of Forsyth, Unincorporated Areas of Taney County.
	At the White County, Arkansas boundary	None	+698	
White River Tributary 16 (backwater effects from White River).	From the White River confluence to approximately 1.5 miles upstream of the White River confluence.	+692	+698	Unincorporated Areas of Taney County.
White River Tributary 24 (backwater effects from White River).	From the White River confluence to approximately 430 feet downstream of Frisco Hills Road.	+693	+698	Unincorporated Areas of Taney County.
White River Tributary 30 (backwater effects from White River).	From the White River confluence to approximately 0.5 mile upstream of the White River confluence.	+693	+698	City of Forsyth, Unincorporated Areas of Taney County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** 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 Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Branson
Maps are available for inspection at City Hall, 110 West Maddux Street, Suite 210, Branson, MO 65616.

City of Forsyth
Maps are available for inspection at City Hall, 15405 U.S. Highway 160, Forsyth, MO 65653.

Town of Rockaway Beach
Maps are available for inspection at Town Hall, 2764 State Highway 176, Rockaway Beach, MO 65740.

Unincorporated Areas of Taney County
Maps are available for inspection at the Taney County Courthouse, 132 David Street, Forsyth, MO 65653.

Montgomery County, Pennsylvania all Jurisdictions				
Blair Mill Run	At the Pennypack Creek confluence	+212	+211	Borough of Hatboro, Township of Horsham, Township of Upper Moreland.
	At the downstream side of County Line Road	+259	+261	
Blair Mill Run Tributary	At the upstream side of West Monument Avenue	+227	+228	Borough of Hatboro.
	At the downstream side of East County Line Road	+247	+252	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Huntingdon Valley Creek	Approximately 800 feet downstream of Red Lion Road.	+119	+120	Borough of Bryn Athyn, Township of Lower Moreland.
	Approximately 0.9 mile upstream of Byberry Road	+264	+267	
Meadow Brook	At the Pennypack Creek confluence	+115	+118	Township of Abington, Township of Lower Moreland.
	Approximately 1,000 feet upstream of the most upstream State Highway 2017 crossing.	None	+287	
Pennypack Creek	Approximately 1,200 feet downstream of Moredon Road.	+99	+100	Borough of Bryn Athyn, Borough of Hatboro, Township of Abington, Township of Horsham, Township of Lower Moreland, Township of Upper Dublin, Township of Upper Moreland.
	Approximately 1.0 mile upstream of Mann Road	None	+359	
Pennypack Creek Branch	Approximately 400 feet downstream of Witmer Road	+299	+298	Township of Horsham.
	Approximately 0.7 mile upstream of Witmer Road	None	+362	
Pennypack Creek Tributary No. 1.	At the Pennypack Creek confluence	+198	+204	Borough of Hatboro, Township of Horsham, Township of Upper Moreland.
	Approximately 0.7 mile upstream of Dresher Road	None	+341	
Pine Run	At the upstream side of State Highway 309	+171	+176	Township of Upper Dublin.
	Approximately 800 feet upstream of Dreshertown Road.	+231	+239	
Rapp Run	At the Pine Run confluence	+177	+183	Township of Upper Dublin.
	Approximately 0.5 mile upstream of the most upstream Lexington Drive crossing.	+351	+355	
Sandy Run	Approximately 300 feet downstream of Bethlehem Pike.	None	+160	Township of Abington, Township of Springfield, Township of Upper Dublin, Township of Whitemarsh.
	Approximately 1,400 feet upstream of Roberta Avenue.	None	+339	
Sandy Run Tributary No. 1 ...	Approximately 150 feet upstream of Johnston Avenue	+237	+238	Township of Abington.
	Approximately 2,000 feet upstream of Johnston Avenue.	None	+258	
Sandy Run Tributary No. 1a (downstream).	Approximately 250 feet upstream of Fernwood Avenue.	+238	+239	Township of Abington.
	Approximately 1,100 feet upstream of Fernwood Avenue.	None	+244	
Sandy Run Tributary No. 1a (upstream).	Approximately 600 feet downstream of Miriam Avenue.	None	+277	Township of Abington.
	Approximately 550 feet upstream of Miriam Avenue ...	None	+296	
Southampton Creek	At the Pennypack Creek confluence	+176	+177	Borough of Bryn Athyn, Township of Lower Moreland, Township of Upper Moreland.
	At the downstream side of County Line Road	+184	+187	
Tributary No. 2 to Pine Run ..	At the Pine Run confluence	None	+202	Township of Upper Dublin.
	Approximately 1.1 miles upstream of the Pine Run confluence.	None	+232	
War Memorial Creek	At the Pennypack Creek confluence	+189	+190	Township of Upper Moreland.
	Approximately 700 feet upstream of Mineral Avenue ..	+265	+267	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

** 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 Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Borough of Bryn Athyn
Maps are available for inspection at the Borough Building, 2835 Buck Road, Bryn Athyn, PA 19009.

Borough of Hatboro
Maps are available for inspection at the Borough Hall, 414 South York Road, Hatboro, PA 19040.

Township of Abington
Maps are available for inspection at the Township Building, Engineer's Office, 1176 Old York Road, Abington, PA 19001.

Township of Horsham
Maps are available for inspection at the Township Municipal Building, 1025 Horsham Road, Horsham, PA 19044.

Township of Lower Moreland
Maps are available for inspection at the Lower Moreland Township Municipal Building, 640 Red Lion Road, Huntingdon Valley, PA 19006.

Township of Springfield
Maps are available for inspection at the Springfield Township Administration Building, 1510 Paper Mill Road, Wyndmoor, PA 19038.

Township of Upper Dublin
Maps are available for inspection at the Upper Dublin Township Building, 801 Loch Alsh Avenue, Fort Washington, PA 19034.

Township of Upper Moreland
Maps are available for inspection at the Upper Moreland Township Building, 117 Park Avenue, Willow Grove, PA 19090.

Township of Whitemarsh
Maps are available for inspection at the Whitemarsh Township Administrative Building, 616 Germantown Pike, Lafayette Hills, PA 19444.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: February 1, 2011.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–3420 Filed 2–15–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1182]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule 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 to 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 May 17, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is 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–1182, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@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 also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those 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.

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:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in feet (MLLW)		Communities affected
		Effective	Modified	
City and Borough of Juneau, Alaska				
Auke Bay	At Smugglers Cove, approximately 640 feet southeast of the intersection of Fox Farm Trail and Fritz Cove Road.	None	∧25	City and Borough of Juneau.
	Approximately 550 feet northeast of the intersection of Point Louisa Road and Glacier Highway.	∧25	∧27	
	At the Auke Bay ferry terminal	∧22	∧29	
Duck Creek	At the downstream side of Radcliffe Road	∧20	∧23	City and Borough of Juneau.
	Approximately 350 feet upstream of Taku Boulevard	∧48	∧52	
East Fork Duck Creek	Approximately 150 feet downstream of Nancy Street	∧31	∧34	City and Borough of Juneau.
	Approximately 200 feet downstream of Trinity Drive	∧31	∧34	
Fritz Cove	At the southern end of Mendenhall Peninsula	None	∧23	City and Borough of Juneau.
	Approximately 870 feet south of the intersection of Fritz Cove Road and Fox Farm Trail.	None	∧26	
Gastineau Channel, Douglas Island Side.	At the north end of Douglas Island, opposite the airport.	None	∧23	City and Borough of Juneau.
	At the west end of Douglas Island, west of North Douglas Road.	None	∧25	
	At the Paris Creek confluence	∧26	∧25	
	At the eastern end of Juneau Island next to Douglas Marina.	∧26	∧29	
Gastineau Channel, Juneau Side.	Approximately 0.3 mile southeast of the intersection of Engineers Cutoff Road and Mendenhall Peninsula Road.	None	∧25	City and Borough of Juneau.
	Approximately 0.5 mile southwest of the intersection of Point Lena Loop Road and Towers Road.	∧31	∧26	
	At the end of Thane Road, at the Little Sheep Creek confluence.	None	∧27	
	Approximately 0.55 mile southeast of the intersection of Mill Street and Thane Road.	None	∧28	
Jordan Creek	Approximately 1,080 feet downstream of Yandukin Drive.	None	∧25	City and Borough of Juneau.
	Approximately 0.23 mile upstream of Egan Drive	∧30	∧31	
Lemon Creek	Approximately 0.27 mile downstream of Glacier Highway.	None	∧23	City and Borough of Juneau.
	Approximately 1.4 miles upstream of Glacier Highway	None	∧106	
Mendenhall River	Approximately 1.14 miles downstream of Glacier Highway.	None	∧23	City and Borough of Juneau.
	At the upstream side of Mendenhall Loop Road	∧55	∧56	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in feet (MLLW)		Communities affected
		Effective	Modified	
Unnamed Tributary to Duck Creek.	At the downstream side of El Camino Street	None	∧42	City and Borough of Juneau.
	At the upstream side of Mendenhall Loop Road	None	∧46	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Lower Low Water.
** 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 Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City and Borough of Juneau
Maps are available for inspection at 155 South Seward Street, Juneau, AK 99801.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: February 7, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–3508 Filed 2–15–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1176]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule 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 to 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 May 17, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is 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–1176, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@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 also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those 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.

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:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Dearborn County, Indiana, and Incorporated Areas				
Great Miami River	Approximately 0.23 mile upstream of the Ohio River confluence.	+489	+490	City of Greendale, Unincorporated Areas of Dearborn County.
	Approximately 5.07 miles upstream of the Ohio River confluence.	+489	+490	
Ohio River	Approximately 0.65 mile upstream of the Laughery Creek confluence.	+487	+486	City of Aurora, City of Lawrenceburg, Unincorporated Areas of Dearborn County.
	Approximately 1.25 miles upstream of the Tanners Creek confluence.	+489	+488	
Tanners Creek	Approximately 0.46 mile downstream of U.S. Route 50.	+488	+489	City of Greendale, City of Lawrenceburg, Unincorporated Areas of Dearborn County.
	Approximately 2.07 miles upstream of Conrail	None	+489	
Wilson Creek	At the Ohio River confluence	+488	+487	City of Aurora, Unincorporated Areas of Dearborn County.
	Approximately 0.35 miles upstream of Wilson Creek Road.	+488	+487	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** 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 Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Aurora
Maps are available for inspection at City Hall, 3rd and Main Streets, Aurora, IN 47001.

City of Greendale
Maps are available for inspection at the Utilities Office, 510 Ridge Avenue, Greendale, IN 47025.

City of Lawrenceburg
Maps are available for inspection at the Administration Building, 230 Walnut Street, Lawrenceburg, IN 47025.

Unincorporated Areas of Dearborn County
Maps are available for inspection at the Dearborn County Administration Building, 215B West High Street, Lawrenceburg, IN 47025.

Greene County, Indiana, and Incorporated Areas				
Beehunter Ditch	Approximately 245 feet downstream of Baseline Road	None	+480	City of Linton, Unincorporated Areas of Greene County.
	Approximately 450 feet upstream of Fairview Road	None	+508	

* 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 ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** 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 Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Linton

Maps are available for inspection at City Hall, 86 South Main Street, Linton, IN 47441.

Unincorporated Areas of Greene County

Maps are available for inspection at the Greene County Courthouse, 1 East Main Street, Bloomfield, IN 47424.

King County, Washington, and Incorporated Areas

Black River	Approximately 330 feet downstream of Oaksdale Avenue Southwest.	+18	+12	City of Renton, City of Tukwila.
	At the Green River confluence	+23	+24	
Cedar River	At the upstream side of North Boeing Bridge	+19	+24	City of Renton, Unincorporated Areas of King County.
	Approximately 350 feet upstream of Landsburg Road Southeast.	None	+528	
Green River	Approximately 250 feet upstream of 42nd Avenue South.	+15	+16	City of Auburn, City of Kent, City of Renton, City of SeaTac, City of Tukwila, Muckleshoot Tribe, Unincorporated Areas of King County.
	Approximately 1.8 miles upstream of Southeast Flaming Geyser Road.	None	+229	
Kelsey Creek	At the upstream side of I–405	+27	+29	City of Bellevue.
	At the upstream side of Northeast 8th Street	+253	+252	
Mill Creek (Auburn)	Approximately 125 feet downstream of West Valley Highway.	+46	+45	City of Auburn, City of Kent, Unincorporated Areas of King County.
	Approximately 1,500 feet upstream of State Route 167.	+46	+47	
Mill Creek (Kent)	At the Springbrook Creek confluence	+21	+26	City of Kent.
	Approximately 133 feet downstream of East Smith Street.	+41	+42	
Richards Creek	At the Kelsey Creek confluence	+27	+33	City of Bellevue.
	Approximately 752 feet upstream of Richards Road	+32	+33	
Southwest 23rd Street Drainage Channel.	At the Springbrook Creek confluence	None	+20	City of Renton.
	Approximately 170 feet upstream of East Valley Road	None	+21	
Springbrook Creek	At the upstream side of Black River Pump Station	+19	+10	City of Kent, City of Renton.
	Approximately 0.32 mile upstream of South 228th Street.	+37	+40	
West Tributary to Kelsey Creek.	At the Kelsey Creek confluence	+30	+33	City of Bellevue.
	Approximately 320 feet downstream of Northeast 1st Street.	+51	+52	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** 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 Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Auburn

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Maps are available for inspection at 25 West Main Street, Auburn, WA 98001.

City of Bellevue

Maps are available for inspection at 450 110th Avenue Northeast, Bellevue, WA 98009.

City of Kent

Maps are available for inspection at 220 4th Avenue South, Kent, WA 98032.

City of Renton

Maps are available for inspection at 1055 South Grady Way, Renton, WA 98057.

City of SeaTac

Maps are available for inspection at 4800 South 188th Street, SeaTac, WA 98188.

City of Tukwila

Maps are available for inspection at 6200 Southcenter Boulevard, Tukwila, WA 98188.

Muckleshoot Tribe

Maps are available for inspection at 39015 172nd Avenue Southeast, Auburn, WA 98092.

Unincorporated Areas of King County

Maps are available for inspection at 900 Oaksdale Avenue Southwest, Renton, WA 98057.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: February 7, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–3509 Filed 2–15–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAR Case 2010–005; Docket 2010–0005; Sequence 1]

RIN 9000–AM00

Federal Acquisition Regulation; Updated Financial Accounting Standards Board Accounting References

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to update references to authoritative accounting standards owing to the Financial Accounting Standards Board's (FASB's) Accounting Standards Codification (ASC) of Generally Accepted Accounting Principles (GAAP) ("Codification of GAAP").

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before April 18, 2011 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2010–005 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2010–005" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2010–005." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2010–005" on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2010–005, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2010–005.

SUPPLEMENTARY INFORMATION:

I. Background

In June of 2009, the FASB announced, in its Statement Number 168, that effective for financial statements issued for interim and annual periods ending after September 15, 2009, the FASB ASC would become the source of authoritative U.S. GAAP recognized by the FASB to be applied by nongovernmental entities. The FASB stated that this codification supersedes existing references in U.S. GAAP. Consequently, DoD, GSA, and NASA are updating the superseded references in three FAR sections with the GAAP Codification references. The revisions to the three FAR sections are intended to have no effect other than to simply replace the superseded references with updated references. The references to the prior GAAP in FAR 31.205–6(o)(2)(iii)(A)(*1*) will be handled in a separate FAR case.

II. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule merely updates references to authoritative accounting standards owing to the FASB's GAAP Accounting Standard Codification.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2010–005), in correspondence.

IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: February 8, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 31 and 52 as set forth below:

1. The authority citation for 48 CFR parts 31 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Amend section 31.205–11 by revising the introductory text of paragraph (h) to read as follows:

31.205–11 Depreciation.

* * * * *

(h) A "capital lease," as defined in Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 840, Leases, is subject to the requirements of this cost principle. (*See* 31.205–36 for Operating Leases.) FASB ASC 840 requires that capital leases be treated as purchased assets, *i.e.,* be capitalized, and the capitalized value of such assets be distributed over their useful lives as depreciation charges or over the leased life as amortization charges, as appropriate, except that—

* * * * *

3. Amend section 31.205–36 by revising paragraph (a) to read as follows:

31.205–36 Rental costs.

(a) This section is applicable to the cost of renting or leasing real or personal property acquired under "operating leases" as defined in Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 840, Leases. (*See* 31.205–11 for Capital Leases.)

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.204–10 by revising the date of the clause and in paragraph (a), in the definition "Total compensation", revising paragraph (2) to read as follows:

52.204–10 Reporting Executive Compensation and First-Tier Subcontract Awards.

* * * * *

Reporting Executive Compensation and First-Tier Subcontract Awards (Date)

(a) * * *

Total compensation * * *

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

* * * * *

5. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(4) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Date)

* * * * *

(b) * * *

____ (4) 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards (Date) (Pub. L. 109–282) (31 U.S.C. 6101 note).

* * * * *

6. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(2)(i) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Date)

(a) * * *

(2) * * *

(i) 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards (Date) (Pub. L. 109–282) (31 U.S.C. 6101 note).

* * * * *

[FR Doc. 2011–3354 Filed 2–15–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 386, 390, and 395

[Docket No. FMCSA–2004–19608]

RIN 2126–AB26

Hours of Service of Drivers; Availability of Supplemental Documents and Corrections to Notice of Proposed Rulemaking

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Proposed Rulemaking; notice of availability of supplemental documents and corrections; extension of comment period.

SUMMARY: This document advises the public that FMCSA has placed in the public docket three additional documents concerning hours of service (HOS) for commercial motor vehicle drivers. This notice also makes clerical corrections to both the preamble and the regulatory text of FMCSA's notice of proposed rulemaking (NPRM) on HOS requirements, which was published in the **Federal Register** on December 29, 2010. Finally, the notice extends the public comment period for the NPRM from February 28, 2011 to March 4, 2011.

DATES: Comments on the NPRM are due by March 4, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–4325.

SUPPLEMENTARY INFORMATION:

Availability of Supplemental Documents

For a full background on this rulemaking, please see the preamble to the December 2010 HOS NPRM (75 FR 82170; December 29, 2010). The docket for this rulemaking (FMCSA–2004–19608) contains all of the background information for this rulemaking, including comments. As explained more fully below, this notice calls attention to three supplemental documents that FMCSA has placed as electronic files in the docket:

- *FMCSA–2004–19608–6147*—Response to January 28, 2011, Request from American Trucking Associations, Inc. for Further Information on the Cumulative Fatigue Function Used in Docket Item Number FMCSA–2004–19608–4116 Titled "2010–2011 Hours of Service Rule Regulatory Impact Analysis for the Proposed Hours of Service (HOS) of Drivers Rule, December 20, 2010".
- *FMCSA–2004–19608–6147.1*—An Excel Spreadsheet presenting the information requested by ATA: Coefficient estimates, an explanation of the coefficient names, and the formulas for the cumulative fatigue function used in Chapter 4 of the Regulatory Evaluation for the HOS NPRM, and displayed graphically in Exhibit 4–14 of that document.
- *FMCSA–2004–19608–6147.2*—An Excel Spreadsheet containing a column of data using the formula in the HOS Regulatory Evaluation to link the hours worked in the previous week to fatigue the following week.

On January 28, 2011, ATA requested further information on "Analyses of Fatigue-Related Large Truck Crashes, The Assignment of Critical Reason, and Other Variables Using the Large Truck Crash Causation Study, May 30, 2008." The study at issue estimated the impact that cumulative hours worked have on driver fatigue, and FMCSA used the study to calculate some of the safety benefits associated with the reduced driver working hours the Agency proposed in the NPRM. FMCSA placed the study, which analyzed Large Truck Crash Causation Study data, in the HOS docket (FMCSA–2004–19608–3481). While the study provides a detailed description of the analysis and methodology, it did not include the actual coefficients estimated for the cumulative fatigue function that linked greater working hours in a week with increased fatigue involvement in the following week. ATA requested those coefficients on January 28, 2011, so it could recreate the safety benefit calculations FMCSA used in the Regulatory Impact Analysis. On February 1, 2011, FMCSA sent ATA the spreadsheets with a cover memo. FMCSA has docketed both the memo and the spreadsheets.

The coefficients for the cumulative fatigue function from the 2008 study are shown in Table 1.

TABLE 1—COEFFICIENTS FOR THE CUMULATIVE FATIGUE FUNCTION FROM "ANALYSES OF FATIGUE-RELATED LARGE TRUCK CRASHES, THE ASSIGNMENT OF CRITICAL REASON, AND OTHER VARIABLES USING THE LARGE TRUCK CRASH CAUSATION STUDY, MAY 30, 2008"

Figure	Variable	DF	Term	Standard error	Chi Square statistic	P-value
5	Intercept	1	−3.70411	0.343315	116.4078	Less than 0.000001.
5	Last	1	0.03717	0.006648	31.2692	Less than 0.000001.

These coefficients relate fatigue involvement to total hours worked the week before the crash. The formula using these coefficients is as follows:

Prob (driver fatigue) = 1/(1+exp(3.70411–0.03717*last), where "last" is the number of hours the driver worked in the last week and "driver fatigue" is the probability that the driver was coded as fatigued at the time of the crash.

There are two accompanying spreadsheets. The first, docketed at FMCSA–2004–19608–6147.1, presents the coefficient estimates, explanation of the coefficient names, and the formulas for the 2008 study for figure 5, which contains the cumulative fatigue formula. The second spreadsheet, docketed at FMCSA–2004–19608–6147.2, contains a column of data using the formula from the 2008 study to link hours worked in the previous week to fatigue involvement percentages the following week. This column includes the raw predicted values from the estimated equation. Because FMCSA used baseline estimates of average work and fatigue involvement in the Regulatory Impact Analysis docketed at FMCSA–2004–19608–4116, the fatigue-involvement predicted values from the equation were scaled so that the average work and fatigue levels predicted by the equation (for all hours) would equal the averages used in the Regulatory Impact Analysis. The second column of fatigue percentages presents these scaled values, which are only slightly different from the raw values estimated directly from the equation. FMCSA used a look-up table for scaling the individual hours of work in the previous week. Look-up tables act like step functions: a reduction of 10.7 hours is treated as though it is a reduction of 11 hours (it goes to the next step), and so forth. The use of this methodology may result in slightly higher estimated benefits for each option, compared to using exact values. The differences in total benefits for the central case, between the lookup function and actual raw values, would have been no more than a few percent; they would not have affected the net benefits of the options relative to one another, or significantly changed their attractiveness from a cost-benefit standpoint.

The spreadsheet containing these values and formulas incorporates two worksheets, one titled "Parameters" and another titled "Driving Hours Data." The formula coefficients are presented in cells B87 through B90 of the "Driving Hours Data" worksheet. The cells in A92 through C137 use the coefficients to link work hours (contained in Column A, cells A93–A137) to fatigue involvement percentages in Column B (contained in cells B93–137). Column C (cells C93–137) presents the values scaled to our average work (52 hours per week of work) and fatigue involvement (13 percent).

FMCSA is extending the comment period for all comments on the NPRM, not just on the issues raised in this notice, so everyone may have an opportunity to review this formula and its data.

Corrections to Notice of Proposed Rulemaking

In addition, FMCSA makes the following clerical corrections to the HOS NPRM published in the **Federal Register** on December 29, 2010 (75 FR 82170):

1. Page 82177. Correct footnote 17 to read as follows:

[17] Balkin, T., Thorne, D., Sing, H., Thomas, M., Redmond, D., Wesensten, N., Williams, J., Hall, S. & Belenky, G.,"Effects of Sleep Schedules on Commercial Vehicle Driver Performance," 2000. FMCSA–2004–19608–2007.

2. Page 82178. Correct footnote 31 to read as follows:

[31] Fu, J.S., Calcagno, J.A., Davis, W.T., Boulet, J.A.M. & Wasserman, J.F., "Improving Heavy-Duty Diesel Truck Ergonomics to Reduce Fatigue and Improve Driver Health and Performance," FMCSA, December 2010.

3. Page 82179. Correct the third sentence in the last paragraph of the third column to read: "An answer would turn on knowing the total number of crashes in each hour and the percentage of driving that takes place in each hour."

4. Page 82182, correct footnote 39 to read as follows:

[39] Van Dongen, H.P.A. & Belenky, G., "Investigation into Motor Carrier Practices to Achieve Optimal Commercial Motor Vehicle Driver Performance: Phase I," December 2010. FMCSA–2004–19608–4120.

5. Page 82182. Correct footnote 45 to read as follows:

[45] Van Dongen, H.P.A., Jackson, M. & Belenky, G., "Duration of Restart Period Needed to Recycle with Optimal Performance: Phase II," FMCSA, December 2010. FMCSA–2004–19608–4440.

6. Page 82183. Correct the sentence that begins on the fourth line from the bottom of the second column to read, "Because one of the team members drives while the other takes his or her break, the result of the rule is that the non-working driver has to take both periods in the sleeper berth because it is not possible to log the shorter time as off duty while he or she is 'in or upon any commercial motor vehicle.' "

7. Page 82187. Correct the sentence that begins on the ninth line of the second column to read, "To analyze the safety impacts of these changes, the Agency has developed a series of functions that relate fatigue-coded crashes to hours of daily driving and hours of weekly work."

8. Page 82188. Remove the comma after "benefits" and before "These" in the thirteenth line of the first full paragraph in the third column and add in its place a period.

9. Page 82189. Remove the period in "Section V." in line five of the paragraph that begins after Table 8 in the second column.

10. Page 82192. Remove "numbers" and add in its place "number" in the eighth line of the third column.

11. Page 82193. Revise the heading of Table 13 to read: "Table 13—First-Year Costs to Affected Firms per Power Unit for Option 3."

12. Page 82193. Revise the last sentence of footnote 63 to read, "When the Agency has looked at the impact on private carriers in relation to their revenue in the past, the percentage impact of costs to private carriers as a share of revenue has generally been an order of magnitude smaller than the impacts on for-hire trucking firms."

13. Page 82195. Remove the abbreviation "EA" in the third line from the bottom of the third column and add in its place "Environmental Assessment."

14. Page 82197. Correct:

a. § 395.1 by revising paragraph (b)(1).

b. § 395.1(d)(2) by removing the period after "§§ 395.8" in the second sentence and adding in its place a comma.

c. § 395.1(g) by revising paragraphs (g)(1)(i)(A)(*4*), (g)(1)(i)(B), and (g)(1)(i)(C).

§ 395.1 Scope of rules in this part.

* * * * *

(b) *Driving conditions*—

(1) *Adverse driving conditions.* Except as provided in paragraph (h)(2) of this section, a driver who encounters adverse driving conditions, as defined in § 395.2, and cannot, because of those conditions, safely complete the run within the maximum driving time permitted by §§ 395.3(a) or 395.5(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo. However, that driver may not drive or be permitted to drive—

(i) For more than 12 hours in the aggregate following 10 consecutive hours off duty for drivers of property-carrying commercial motor vehicles;

(ii) After the end of the 14th or 16th hour since coming on duty following 10 consecutive hours off duty for drivers of property-carrying commercial motor vehicles, pursuant to § 395.3(a)(2);

(iii) For more than 12 hours in the aggregate following 8 consecutive hours off duty for drivers of passenger-carrying commercial motor vehicles; or

(iv) After he/she has been on duty 15 hours following 8 consecutive hours off duty for drivers of passenger-carrying commercial motor vehicles.

* * * * *

(g) * * *

(1) * * *

(i) * * *

(A) * * *

(*4*) The equivalent of at least 10 consecutive hours off duty if the driver does not comply with paragraph (g)(1)(i)(A)(*1*), (*2*), or (*3*) of this section;

(B) May not drive more than 10/11 hours following one of the 10-hour off-duty periods specified in paragraph (g)(1)(i)(A)(*1*) through (*4*) of this section; however, driving is permitted only if 7 hours or less have passed since the driver's last off-duty or sleeper-berth period of at least 30 minutes; and

(C) May not be on duty for more than the 13-hour period in § 395.3(a)(4) or drive beyond the 14- or 16-hour driving window in § 395.3(a)(2) after coming on duty following one of the 10-hour off-duty periods specified in paragraph (g)(1)(i)(A)(*1*) through (*4*) of this section; and

* * * * *

Issued on: February 9, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–3267 Filed 2–15–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1152

[Docket No. EP 702]

National Trails System Act and Railroad Rights-of-Way

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (STB or Board) has instituted a proceeding to clarify, update, and seek public comments on proposed changes to its existing regulations and procedures regarding the use of railroad rights-of-way for railbanking and interim trail use under the National Trails System Act (Trails Act).

DATES: Comments are due by April 12, 2011; replies are due by May 12, 2011.

ADDRESSES: Comments on this proposal may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, *Attn:* Docket No. EP 702, 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room

131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn, (202) 245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board is instituting a proceeding to clarify, update, and seek public comments on proposed changes to its existing regulations and procedures regarding the use of railroad rights-of-way for railbanking and interim trail use under Section 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. 1247(d).

Specifically, the Board proposes to add a new rule to 49 CFR 1152.29, the Board's regulations regarding the Trails Act, that would require the railroad and the trail sponsor jointly to notify the Board when a trail use agreement has been reached, and to notify the Board of the exact location of the right-of-way subject to the interim trail use agreement, by including a map and milepost marker information. The Board's current rules provide no formal means of determining whether an actual interim trail use agreement is reached after the Board issues a Certificate of Interim Trail Use (CITU) or Notice of Interim Trail Use (NITU), and, if so, whether the agreement applies to the entire right-of-way at issue. Therefore, it would be useful to the Board and to the public to require parties to notify the Board when an interim trail use agreement has been reached.

The proposed rules would also require parties to ask the Board to vacate the CITU/NITU when an interim trail use agreement covers only a portion of the right-of-way and request a replacement CITU/NITU to cover the portion of the right-of-way subject to the trail use agreement. Currently, the Board's regulations make CITU/NITUs self-executing, and the rules contemplate that petitions to vacate or modify the CITU/NITU will be filed if rail service is to be reactivated, interim trail use ceases in whole or in part, or there is a change in trail sponsors. When an interim trail use agreement covers only a portion of the right-of-way that was proposed to be abandoned, the Board's regulations are unclear whether the CITU/NITU that was issued for the right-of-way could nonetheless continue in effect indefinitely, precluding the abandonment of the remainder of the right-of-way for which the CITU/NITU was issued. Thus, this proposed rule would clarify that if an interim trail use agreement applies to less of the right-of-way than is covered by the CITU/NITU, the parties must petition the Board to modify or vacate the CITU/NITU.

The proposed rules would clarify that a substitute trail sponsor must acknowledge that interim trail use is subject to restoration and reactivation at any time. The Board's rules at 49 CFR 1152.29(f)(1) currently require that, when a trail sponsor intends to terminate trail use and another person intends to become the trail sponsor, the substitute trail sponsor must acknowledge its willingness to assume financial responsibility for the right-of-way; but the rules are silent with regard to any acknowledgment that continued interim trail use remains subject to possible rail service restoration. Accordingly, the Board clarifies that the substitute trail sponsor (like § 1152.29(a)(3) requires of the original trail sponsor) must affirmatively acknowledge that the continued interim trail use is subject to possible future restoration of the right-of-way and reactivation of rail service.

The Board is also proposing minor modifications to its regulations under 49 CFR 1152.29. This includes the following: clarification that, under § 1152.29(e), parties do not need to file a request to extend the time for filing a notice of abandonment consummation when legal or regulatory conditions (including a CITU/NITU) remain in effect that bar consummation of abandonment until these conditions have been removed; modification of the language in §§ 1152.29(a)(2), (a)(3), (c)(2), and (d)(2), to more closely resemble the language of the Trails Act; modifications of the language of the Statement of Willingness to Assume Financial Responsibility in § 1152.29(a)(3) to more accurately describe the responsibilities of an interim trail sponsor; removal of the reference to "NERSA abandonment proceedings" in 49 CFR 1152.29(c), because NERSA is no longer in effect; modification of the language in 49 CFR 1152.29(c)(1) and (d)(1), to clarify that the Board will issue a CITU/NITU for the portion of the right-of-way on which both parties are willing to negotiate interim trail use, rather than the portion "to be covered by the agreement," as the portion that the agreement may ultimately cover is unknown at that time; and modification of the language in 49 CFR 1152.29(c)(2) to clarify that a trail sponsor may choose to terminate interim trail use over a portion of the right-of-way covered by the trail use agreement, while continuing interim trail use over the remaining portion of the right-of-way covered by the trail use agreement.

In addition, in light of concerns regarding the ability of some states to assume liability and legal and financial responsibility for a right-of-way during the interim trail use period, the Board seeks comments on how to resolve state sovereign immunity issues. Also, the Board seeks comments on whether there are additional means of indirect notification of CITU/NITUs to reversionary landowners that can be used to augment the existing newspaper publication method.

Additional information is contained in the Board's decision served on February 16, 2011. To obtain a copy of this decision, visit the Board's Web site at *http://www.stb.dot.gov.* Copies of the decision may also be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0236.

The Board certifies under 49 U.S.C. 605(b) that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. The proposed notice requirement would require trail sponsors and railroads to file a notice with the Board when they have reached an interim trail use agreement. Some trail sponsors may qualify as a small entity, in that they may be a "small organization" within the meaning of 5 U.S.C. 601(4) or a "small governmental jurisdiction" within the meaning of 5 U.S.C. 601(5). Some railroads may qualify as a "small business" within the meaning of 5 U.S.C. 601(3). However, the proposed notice that would be required here should involve little time and expense to draft and file, and thus should have little economic impact on a small-entity filer. The requirement is limited to only those small entities or small businesses who might be parties to interim trail use agreements. It therefore will not impact a substantial number of small entities.

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3519, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board also seeks comments regarding: (1) Whether the particular collection of information described below is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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, when appropriate. Information pertinent to these issues is included in the Appendix. These proposed rules are being submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d) and 5 CFR 1320.11. Comments on the four questions prescribed above should be submitted to the Board, in accordance with the comment period described below.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

Decided: February 10, 2011.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1152 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

1. The authority citation for part 1152 continues to read as follows:

Authority: 11 U.S.C. 1170; 16 U.S.C 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903–10905, and 11161.

2. Amend § 1152.29 by revising paragraphs (a)(2), (a)(3), (c) heading, (c)(1), (c)(2) introductory text, (c)(2)(iii), (d)(1), (d)(2) introductory text, and (d)(2)(iii) and by adding paragraphs (f)(1)(iii) and (h) to read as follows:

§ 1152.29 Prospective use of rights-of-way for interim trail use and rail banking.

(a) * * *

(2) A statement indicating the trail sponsor's willingness to assume full responsibility for:

(i) Managing the right-of-way;

(ii) Any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability); and

(iii) The payment of any and all taxes that may be levied or assessed against the right-of-way; and

(3) An acknowledgment that interim trail use is subject to the sponsor's continuing to meet its responsibilities described in paragraph (a)(2) of this section, and subject to possible future reconstruction and reactivation of the right-of-way for rail service. The statement must be in the following form:

Statement of Willingness To Assume Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29 with respect to the right-of-way owned by _____ (Railroad) and operated by _____ (Railroad), _____ (Interim Trail Sponsor) is willing to assume full responsibility for: (1) Managing the right-of-way, (2) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (3) the payment of any and all taxes that may be levied or assessed against the right of way. The property, known as _____ (Name of Branch Line), extends from railroad milepost _____ near _____ (Station Name), to railroad milepost _____, near _____ (Station name), a distance of _____ miles in [County(ies), (State(s)]. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB _____ (Sub-No. _____).

A map of the property depicting the right-of-way is attached.

_____ (Interim Trail Sponsor) acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad(s) on the same date it is being served on the Board.

* * * * *

(c) *Regular abandonment proceedings.* (1) If continued rail service does not occur pursuant to 49 U.S.C. 10904 and Sec. 1152.27, and a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a CITU to the railroad and to the interim trail sponsor for that portion of the right-of-way as to which both parties are willing to negotiate. The CITU will: Permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and material consistent with interim trail use and rail banking, as long as it is consistent with any other Board order, 30 days after the date it is issued; and permit the railroad to fully abandon the line if no trail use agreement is reached 180 days after it is issued, subject to appropriate conditions, including labor protection and environmental matters.

(2) The CITU will indicate that any interim trail use is subject to future restoration of rail service and to the sponsor's continuing to meet its responsibilities described in paragraph (a)(2) of this section. The CITU will also provide that, if an interim trail use agreement is reached (and thus interim trail use established), the parties shall file the notice described in paragraph (h) of this section. Additionally, the CITU will provide that if the sponsor intends to terminate interim trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of the CITU and request that it be vacated on a specified date. If a party requests that the CITU be vacated for only a portion of the right-of-way, the Board will issue an appropriate replacement CITU covering the remaining portion of the right-of-way subject to the interim trail use agreement. The Board will reopen the abandonment proceeding, vacate the CITU, and issue a decision permitting immediate abandonment for the involved portion of the right-of-way. Copies of the decision will be sent to:

* * * * *

(iii) The current trail sponsor.

* * * * *

(d) * * *

(1) If continued rail service does not occur under 49 U.S.C. 10904 and Sec. 1152.27 and a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a Notice of Interim Trail Use or Abandonment (NITU) to the railroad and to the interim trail sponsor for the portion of the right-of-way as to which both parties are willing to negotiate. The NITU will: permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and materials, consistent with interim trail use and rail banking, as long as it is consistent with any other Board order, 30 days after the date it is issued; and permit the railroad to fully abandon the line if no agreement is reached 180 days after it is issued, subject to appropriate conditions, including labor protection and environmental matters.

(2) The NITU will indicate that interim trail use is subject to future restoration of rail service and to the sponsor's continuing to meet its responsibilities described in paragraph (a)(2) of this section. The NITU will also provide that, if an interim trail use agreement is reached (and thus interim

trail use established), the parties shall file the notice described in paragraph (h) of this section. Additionally, the NITU will provide that if the sponsor intends to terminate interim trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of the NITU and request that it be vacated on a specific date. If a party requests that the NITU be vacated for only a portion of the right-of-way, the Board will issue an appropriate replacement NITU covering the remaining portion of the right-of-way subject to the interim trail use agreement. The Board will reopen the exemption proceeding, vacate the NITU, and issue a decision reinstating the exemption for that portion of the right-of-way. Copies of the decision will be sent to:

* * * * *

(iii) The current trail sponsor.

* * * * *

(f)(1) * * *

(iii) An acknowledgement that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

* * * * *

(h) When the parties negotiating for railbanking/interim trail use reach an agreement, the trail sponsor and railroad shall jointly notify the Board within 10 days that the agreement has been reached. The notice shall include a map depicting, and an accurate description of, the involved right-of-way or portion thereof (including mileposts) that is subject to the parties' interim trail use agreement and a certification that the interim trail use agreement includes provisions requiring the sponsor to fulfill the responsibilities described in paragraph (a)(2) of this section. Additionally, if the interim trail use agreement establishes interim trail use over less of the right-of-way than is covered by the CITU or NITU, the notice shall also include a request that the Board vacate the CITU or NITU and issue a replacement CITU/NITU for only the portion of the right-of-way covered by the interim trail use agreement. The Board will reopen the abandonment proceeding, vacate the CITU or NITU, issue an appropriate replacement CITU or NITU for only the portion of the right-of-way covered by the interim trail use agreement, and issue a decision permitting immediate abandonment of the portion of the right-of-way not subject to the interim trail use agreement. Copies of the decision will be sent to:

(1) The rail carrier that sought abandonment authorization;

(2) The owner of the right-of-way; and

(3) The current trail sponsor.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Notifications of Trail Use Agreement and Sponsor Substitution

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

Description of Collection

Title: New submissions under the Board's Trails Act regulations.

OMB Control Number: 2140–XXXX.

STB Form Number: None.

Type of Review: New collection.

Respondents: Parties to an interim trail use agreement; substitute trail sponsors.

Number of Respondents: 40 (potentially).

Estimated Time per Response: 1 hour or less.

Frequency: On occasion.

Total Burden Hours (annually including all potential respondents): 40 hours.

Total "*Non-hour Burden*" *Cost:* None identified.

Needs and Uses: The new rule proposes to require parties to notify the Board when a trail use agreement has been reached, and to notify the Board of the exact location of the right-of-way subject to the agreement, including a map and milepost marker information. This submission will ensure that the agency and the public have accurate information on the status of property after interim trail use conditions have been issued. As is already required for an original trail sponsor, the proposed rule would also clarify that a substitute trail sponsor must acknowledge that interim trail use is subject to restoration and reactivation at any time.

Retention Period: These records are retained indefinitely.

[FR Doc. 2011–3397 Filed 2–15–11; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register

Vol. 76, No. 32

Wednesday, February 16, 2011

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

February 10, 2011.

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.

Food and Nutrition Service

Title: Evaluation of the Impact of the Summer Electronic Benefits for Children Household-Based Demonstration on Food Insecurity.

OMB Control Number: 0584–NEW.

Summary of Collection: In the 2010 Agriculture Appropriations Act (Pub. L. 111–80), Section 749(g), Congress authorized demonstration projects to develop and test methods of providing access to food for low-income children in urban and rural areas during the summer months when schools are not in regular session, as well as a rigorous independent evaluation of the projects regarding their effectiveness. The data being collected under this submission are necessary to meet the Congressionally-mandated requirement for an independent evaluation of the Summer Electronic Benefit Transfer (SEBT) for Children Demonstration being conducted by the Food and Nutrition Service (FNS) under this authorizing legislation. The evaluation of these projects is intended to provide policymakers with clear, rigorous and timely findings to make decisions about potential changes to federal summer feeding programs during the next Child Nutrition reauthorization cycle.

Need and Use of the Information: The information gathered in the data collection activities will be used by FNS to determine if SEBT for children reduces the acute prevalence of very low food security among children during the summer months when most children are not in school; and to determine the feasibility and cost of implementing SEBT for children on a national scale. Without the information FNS will not have the data necessary to estimate program impacts on participating children, or to examine how the demonstration sites implemented SEBT for children, which will be used to produce the required report to Congress and inform future program decisions.

Description of Respondents: Individuals or household; State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 15,382.

Frequency of Responses: Reporting: Quarterly; Annually; Biennially.

Total Burden Hours: 15,974.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–3443 Filed 2–15–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 10, 2011.

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.

Animal Plant and Health Inspection Service

Title: Bees and Related Articles.

OMB Control Number: 0579–0207.

Summary of Collection: The Plant Protection Act (APA) (7 U.S.C. 7701 *et seq.*), authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Under the Honeybee Act (7 U.S.C. 281–286), the Secretary is authorized to prohibit or restrict the importation of honeybee semen to prevent the introduction into the United States of diseases and parasites harmful to honeybees and of undesirable species and subspecies of honeybees. The Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ), is responsible for implementing the intent of these Acts, and does so through the enforcement of its pollinator regulations and honeybee regulations.

Need and Use of the Information: APHIS collects information from a variety of individuals who are involved in breeding, exporting, importing, and containing bees and related articles. The information APHIS collects serves as the supporting documentation needed to issue required PPQ forms and documents that allow importation of bees and related articles or authorizes the release of bees. This documentation is vital to helping APHIS ensure that exotic bee diseases and parasites, and undesirable species and subspecies of honeybees, do not spread into or within the United States. Without the information APHIS could not verify that imported bees and related articles do not present a significant risk of introducing exotic bee disease, parasites, and undesirable species and subspecies of honeybees.

Description of Respondents: Business or other-for-profit; Federal Government.

Number of Respondents: 336.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 567.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–3444 Filed 2–15–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0096]

Notice of Decision To Issue Permits for the Importation of Fresh Strawberries From Jordan Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to begin issuing permits for the importation into the continental United States of fresh strawberries from Jordan. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh strawberries from Jordan.

DATES: *Effective Date:* February 16, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, RPM, PHP, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the PRA; (2) the comments on the PRA revealed that no changes to the PRA were necessary; or (3) changes to the PRA were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on October 12, 2010 (75 FR 62500–62501, Docket No. APHIS–2010–0096), in which we announced the availability, for review and comment, of a PRA that evaluates the risks associated with the importation into the continental United States of fresh strawberries (*Fragaria* spp.) from Jordan. We solicited comments on the notice for 60 days ending on December 13, 2010. We received one comment by that date, from a State department of agriculture.

In the PRA, APHIS determined that six plant pests have a high risk potential of being introduced into the United States via the pathway of strawberries from Jordan. The PRA notes that two of these pests, *Eutetranychus orientalis* and *Thrips major,* could potentially avoid detection beneath the calyx of the strawberries due to their small size. The commenter referred to this potential risk and suggested that the national plant protection organization (NPPO) of Jordan be required to notify APHIS in the event of pest detections or changes in pest management practices they recommend to growers and packinghouses.

We acknowledge the risk that these plant pests could potentially evade detection and be introduced into the United States in the manner referred to by the commenter. However, while the pests themselves may potentially evade detection by their small size, their presence can be detected by visible signs of discoloration and damage to fruits and leaves. Moreover, APHIS has permitted the entry of commercial strawberries from several countries in Asia, Europe, and South America where one or both of these pests of concern occur. Over several decades, there have only been a few isolated interceptions of *Eutetranychus orientalis* and *Thrips major* in strawberry consignments.

For these reasons, together with Jordan's use of integrated pest management practices in the production of commercial strawberries, APHIS has concluded that commercial strawberries

[1] To view the notice, the PRA, and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0096.*

for export from Jordan are unlikely to contain the identified quarantine pests. Accordingly, we have determined that no changes to the PRA are necessary based on the comment.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to begin issuing permits for the importation into the continental United States of fresh strawberries from Jordan subject to the following phytosanitary measures:

- Each consignment of strawberry fruit must be accompanied by a Phytosanitary Certificate (PC) issued by Jordan's NPPO stating that the strawberries were grown in Jordan and bearing the following additional declaration: "This consignment has been inspected and found free of *Cacoecimorpha pronubana, Chrysodeixis chalcites, Eutetranychus orientalis, Monilinia fructigena, Spodoptera littoralis,* and *Thrips major*."
- The strawberries are imported as commercial consignments only.
- The strawberries are subject to inspection at the port of entry into the continental United States.

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

Done in Washington, DC, this 10th day of January 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–3445 Filed 2–15–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Dairy Industry Advisory Committee; Public Meeting

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of public meeting.

SUMMARY: As required by the Federal Advisory Committee Act, as amended, the Farm Service Agency (FSA) announces a public meeting of the Dairy Industry Advisory Committee (Dairy Committee) to review and approve the final recommendations to the Secretary of Agriculture. The Dairy Committee is responsible for making recommendations to the Secretary on policy issues impacting the dairy industry. Instructions regarding registering for and listening to the conference call meeting is provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: *Public meeting:* The public meeting will be held via conference call on March 3, 2011, at 1 p.m. EST.

Registration: You must register by March 2, 2011.

Comments: We will accept written comments we receive by March 3, 2011.

ADDRESSES: You may submit comments online: Go to *http://www.fsa.usda.gov/DIAC.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Solomon Whitfield, Designated Federal Official; phone: (202) 720–9886; e-mail: *solomon.whitfield@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: In August 2009, USDA established the Dairy Committee. The Dairy Committee reviews issues of farm milk price volatility and dairy farmer profitability. The Dairy Committee provides recommendations to the Secretary on how USDA can best address these issues to meet the dairy industry's needs.

The Secretary of Agriculture selected a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the dairy industry's needs. Equal opportunity practices were considered in all appointments to the Dairy Committee in accordance with USDA policies. The Secretary announced the members on January 6, 2010. Representatives include: Producers and producer organizations, processors and processor organizations, consumers, academia, a retailer, and a state representative.

The Dairy Committee will hold its final public meeting via conference call on March 3, 2011, at 1 p.m. EST. The dairy industry and public are invited to listen in to the conference call and to provide written comments, but will not be allowed to provide oral comments at the meeting. Although the purpose of the March 3, 2011, meeting is for the Dairy Committee to vote on the final report, as required by the FACA regulation in 41 CFR 102–3.140(c), "any member of the public is permitted to file a written statement with the advisory committee," therefore, written comments will be accepted. The final report will not be changed as a result of comments submitted for this final meeting, but all comments submitted on-line will be available on the Dairy Committee Web site.

Instructions for Attending the Meeting

Available conference call-in lines for the public are limited to the first 100 registered public attendees. All persons wishing to listen to the meeting via conference call must register through *DIAC@wdc.usda.gov* by March 2, 2011. An e-mail confirmation will be sent to each registered public listener providing call-in instructions for the meeting. Due to logistical constraints, registration will close at 11:59 p.m. EST on March 2, 2011.

Additional information about the public meeting, meeting agenda, materials and minutes, and how to provide comments is available at the Dairy Committee Web site: *http://www.fsa.usda.gov/DIAC.*

If you require special accommodations, please use the contact information above.

Notice of these meetings is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act, as amended, (5 U.S.C. Appendix 2).

Signed in Washington, DC, on February 10, 2011.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2011–3496 Filed 2–15–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Amador County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Amador County Resource Advisory Committee will meet in Sutter Creek, California. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The RAC will review, discuss and vote on proposed projects.

DATES: The meeting will be held on March 3, 2011 beginning at 6 p.m.

ADDRESSES: The meeting will be held at 10877 Conductor Blvd., Sutter Creek, CA. Written comments should be sent to Frank Mosbacher; Forest Supervisor's Office; 100 Forni Road; Placerville, CA 95667. Comments may also be sent via e-mail to *fmosbacher@fs.fed.us,* or via facsimile to 530–621–5297.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may

inspect comments received at 100 Forni Road; Placerville, CA 95667. Visitors are encouraged to call ahead to 530–622–5061 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Frank Mosbacher, Public Affairs Officer, Eldorado National Forest Supervisors Office, (530) 621–5268. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public.

The following business will be conducted: The RAC will review, discuss and vote onproposed projects. More information will be posted on the Eldorado National Forest Web site at *http://www.fs.fed.us/r5/eldorado.* A public comment opportunity will be made available following the business activity. Future meetings will have a formal public imput period for those following the yet to be developed public imput process.

Dated: February 11, 2011.

Michael A. Valdes,

Acting Forest Supervisor.

[FR Doc. 2011–3535 Filed 2–15–11; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maryland Advisory Committee to the U.S. Commission on Civil Rights

Date and Time: Wednesday, March 2, 2011; 10:30 a.m. EST.

Place: Via Teleconference. Public Dial in: 1–800–399–0013. Conference ID:#: 43761282.

TDD: Dial 711 for relay services and enter 800–399–0013, followed by Conference ID:#: 43761282.

Notice is hereby given that an orientation meeting and a planning meeting of the Maryland State Advisory Committee to the U.S. Commission on Civil Rights will convene via teleconference. The purpose of the orientation meeting is to review the rules of operation for this federal advisory committee with the newly appointed committee members; the purpose of the planning meeting is to plan the committee's future activities.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days after the meeting date. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Suite 740, Washington, DC 20425. Comments may be faxed to 202–376–7548 or e-mailed to *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office by e-mail at *ero@usccr.gov* or by phone at 202–376–7533.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Eastern Regional Office at the above e-mail or street address.

To ensure that the Commission secures an appropriate number of telephone lines for the public, persons are asked to contact the Eastern Regional Office by February 21, 2011 either by e-mail at *ero@usccr.gov*, or by phone at 202–376–7533.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, February 11, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–3477 Filed 2–15–11; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Kentucky Advisory Committee (Committee) to the Commission will hold three meeting sessions on Wednesday, March 16, 2011. All three meeting sessions will take place at Gardiner Hall, Room 310, University of Louisville, Louisville, KY. The first meeting session will begin at 1:30 p.m. and adjourn at approximately 2 p.m. (EST) for the purpose of member orientation. The second meeting session will begin at approximately 2 p.m. and adjourn at approximately 2:45 p.m. (EST) for the purpose of members receiving a briefing on school integration in the Jefferson County School District. The third meeting session will begin at approximately 3 and adjourn at approximately 4:30 p.m. (EST) for the purpose to discuss the Committee's report on school discipline.

Members of the public are entitled to submit written comments. The comments must be received in the Southern Regional Office by April 15, 2011. The mailing address is Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 18T40, Atlanta, GA 30301. Persons wishing to e-mail their comments may do so to *pminarik@usccr.gov.* Persons that desire additional information should contact Peter Minarik, Regional Director, Southern Regional Office, at (404) 562–7000 (or for hearing impaired TDD 913–551–1414).

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, February 11, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–3485 Filed 2–15–11; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Idaho Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Idaho Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at approximately 4:30 p.m. on Thursday, March 3, at the Boise Public Library, 715 S. Capitol Boulevard, Boise, ID 83702. The purpose of the meeting is for the committee to receive orientation and plan future activities.

Members of the public are entitled to submit written comments; the comments must be received in the Western Regional Office of the Commission by Friday, April 1, 2011.

The address is 300 N. Los Angeles St., Suite 2010, Los Angeles, California 90012. Persons wishing to e-mail their comments or who desire additional information should contact Angelica Trevino, Administrative Assistant, at (213) 894–3437 or (800) 877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by e-mail to: *atrevino@usccr.gov.*

Hearing-impaired persons who wish to submit written comments and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Western Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, February 11, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–3478 Filed 2–15–11; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 9–2011]

Foreign-Trade Zone 29—Louisville, KY, Application for Expansion of Manufacturing Authority, Subzone 29F, Hitachi Automotive Systems Americas, Inc. (Automotive Electronic Components)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Louisville and Jefferson County Riverport Authority (LJCRA), grantee of FTZ 29, on behalf of Hitachi Automotive Systems Americas, Inc. (HIAMS–AM) (formerly Hitachi Automotive Products (USA), Inc.), operator of Subzone 29F, HIAMS–AM plant, Harrodsburg, Kentucky, requesting authority to expand the scope of FTZ manufacturing authority. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and section 400.28(a)(2) of the Board's regulations (15 CFR part 400). It was formally filed on February 10, 2011.

Subzone 29F was approved by the Board in 1990 with authority granted for the manufacture of automotive components at the HIAMS–AM plant located at 955 Warwick Road (Site 1) (50 acres) in Harrodsburg, Kentucky (Board Order 497, 56 FR 674, 1–8–91). Activity at the facility (624 employees) includes machining, assembly, testing, warehousing, and distribution of various automotive components, including mass air sensors, throttle bodies and chambers, starter motors, motor/generator units, alternators, distributors, other static converters, inverter modules, rotors/stators, ignition coils, electronic sensors and modules, fuel injectors, emissions control equipment, valves, pumps, and electronic control units for engines and transmissions (capacity—up to 8.5 million units annually).

LJCRA previously submitted an application in 2010 on behalf of HIAMS–AM requesting authority to expand the subzone to include two new warehouse facilities (adding Site 2 and Site 3) and to expand its scope of FTZ manufacturing authority to add 720,000 units to its authorized annual production capacity (proposed combined output: 9.22 million units per year) and to include the manufacture of high pressure, direct-injection fuel pumps as an additional finished product to be manufactured under FTZ procedures (Docket 38–2010; 75 FR 29723, 5–27–2010).

The applicant now requests that the scope of FTZ manufacturing authority be expanded to include additional production capacity (330,000 units per year) that will be added at the facility in 2011 (new combined output would be 9.55 million units per year). The expanded operations will involve similar finished products and utilization of both foreign-sourced and domestic materials and components under HIAMS–AM's existing scope of FTZ authority.

Components and materials sourced from abroad (representing about 80 percent of the finished automotive components' material value) include: adhesives, plastic fittings, plastic and rubber belts, fasteners, gaskets/seals/o-rings, metal fittings, labels, plastic wedging, springs, brackets, plates, filters, bearings, air pumps/compressors, valves, switches, electric motors, tubes/pipes/profiles, aluminum plugs, transformers, crankshafts, camshafts, gears, pulleys, couplings, clutches, parts of electric motors, pinions, magnets, ignition parts, diodes, transistors, resistors, semiconductors, liquid crystal devices, electrical instruments, navigation apparatuses, capacitors, printed/integrated circuits, fuses, rheostats, connectors, terminals, piezoelectric crystals, regulators, lamps, wires, cables, cylinders, plungers, insulators, brushes, brackets, shafts, and measuring instruments (duty rate range: free—9.0%).

Expanded FTZ procedures could continue to exempt HIAMS–AM from customs duty payments on the foreign-origin components used in production for export (about 30% of shipments). On its domestic shipments, the company would be able to elect the duty rate that applies to finished automotive components (free—6.7%) for the foreign-origin inputs noted above. Subzone status would further allow HIAMS–AM to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. HIAMS–AM would also be exempt from duty payments on foreign inputs that become scrap during the production process.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002. The closing period for receipt of comments is April 18, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 2, 2011.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: February 10, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–3539 Filed 2–15–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on March 2, 2011, 9 a.m., Room 6087B, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session

1. Opening Remarks and Introductions.
2. Presentation of Papers and Comments by the Public.
3. Discussion on Proposals from last and for next Wassenaar Meeting.
4. Report on Proposed changes to the Export Administration Regulation.
5. Other Business.

Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov no* later than February 23, 2011.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 25, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: February 11, 2011.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2011–3503 Filed 2–15–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seat for the Gulf of the Farallones National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Office of National Marine Sanctuaries is seeking applicants for the following vacant seat on the Gulf of the Farallones National Marine Sanctuary Advisory Council (council): Education Alternate. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 2–3 year terms, pursuant to the council's Charter.

DATES: Applications are due by May 1, 2011.

ADDRESSES: Application kits may be obtained from *http://www.farallones.noaa.gov/manage/sac.html,* or Leslie Abramson, 991 Marine Dr., The Presidio, San Francisco, CA 94129. Completed applications should be mailed to the above address or e-mailed to *leslie.abramson@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie Abramson, 991 Marine Dr., The Presidio, San Francisco, CA 94129, 415–561–6622, ext. 306, *leslie.abramson@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Sanctuary Advisory Council provides the Sanctuary Superintendent with advice on the management of the Sanctuary. Members provide advice to the Superintendent on issues affecting resource protection, the Sanctuary's primary purpose. The council, through its members, serves as liaisons to the community regarding Sanctuary issues and acts as a conduit, relaying the community's interests, concerns, and management needs to the Sanctuary. The Sanctuary Advisory Council members represent public interest groups, local industry, commercial and recreational user groups, academia, conservation groups, government agencies, and the general public. Members serve either two-or three-year terms in order to stagger council membership and allow continuity.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: February 7, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–3452 Filed 2–15–11; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA221

Pacific Fishery Management Council (Pacific Council); March 4–10, 2011 Pacific Council Meetings

AGENCY: NMFS, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Council and its advisory entities will hold public meetings.

DATES: The Pacific Council and its advisory entities will meet March 4–10, 2011. The Pacific Council meeting will begin on Saturday, March 5, 2011 at 8 a.m., reconvening each day through Thursday, March 10, 2011. All meetings are open to the public, except a closed session will be held from 8 a.m. until 9 a.m. on Saturday, March 5 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Pacific Council and its advisory entities will be

held at the Hilton Vancouver Hotel, 301 West Sixth Street, Vancouver, Washington 98660; telephone: 360–993–4500. The Pacific Council address is Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, Oregon 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: 503–820–2280 or 866–806–7204 toll free; or access the Pacific Council Web site, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the Pacific Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Open Comment Period

1. Comments on Non-Agenda Items

C. Coastal Pelagic Species Management

1. Exempted Fishing Permits for 2011

D. Marine Protected Areas

1. Olympic Coast National Marine Sanctuary Management Plan Review

E. Habitat

1. Current Habitat Issues

F. Pacific Halibut Management

1. Report on the International Pacific Halibut Commission Meeting
2. Incidental Catch Regulations in the Salmon Troll and Fixed Gear Sablefish Fisheries
3. Preliminary Alternatives for Incidental Catch Retention of Pacific Halibut in the Limited Entry and Open Access Fixed Gear Sablefish Fisheries

G. Salmon Management

1. Review of 2010 Fisheries and Summary of 2011 Stock Abundance Forecasts
2. Identification of Stocks Not Meeting Conservation Objectives
3. Sacramento River Fall Chinook Overfishing Assessment
4. Identification of Management Objectives and Preliminary Definition of 2011 Salmon Management Alternatives
5. Council Recommendations for 2011 Management Alternative Analysis
6. National Marine Fisheries Service Report
7. Further Council Direction for 2011 Management Alternatives
8. Adoption of 2011 Management Alternatives for Public Review
9. Salmon Hearings Officers

H. Groundfish Management

1. National Marine Fisheries Service Report
2. Process for Implementing 2011–2012 Specifications and Management Measures
3. Pacific Whiting Harvest Specifications for 2011
4. Consideration of Inseason Adjustments—Part I
5. Trailing Trawl Rationalization and Allocation Amendments and Actions
6. Consideration of Inseason Adjustments—Part II, If Needed

I. Enforcement Issues

1. Current Enforcement Issues

J. Ecosystem Based Management

1. Ecosystem Fishery Management Plan

K. Administrative Matters

1. Legislative Matters
2. Approval of Council Meeting Minutes
3. Membership Appointments and Council Operating Procedures
4. Future Council Meeting Agenda and Workload Planning

Schedule of Ancillary Meetings

Day 1—Friday, March 4, 2011

Habitat Committee—8 a.m.
Scientific and Statistical Committee—8 a.m.
Legislative Committee—2 p.m.

Day 2—Saturday, March 5, 2011

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Habitat Committee—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Scientific and Statistical Committee—8 a.m.
Enforcement Consultants—4:30 p.m.
Tribal Policy Group—As Needed
Tribal and Washington Technical Group—As Needed

Day 3—Sunday, March 6, 2011

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Enforcement Consultants—As Needed
Tribal Policy Group—As Needed
Tribal and Washington Technical Group—As Needed

Day 4—Monday, March 7, 2011

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Enforcement Consultants—As Needed
Tribal Policy Group—As Needed
Tribal and Washington Technical Group—As Needed

Day 5—Tuesday, March 8, 2011

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Enforcement Consultants—As Needed
Tribal Policy Group—As Needed
Tribal and Washington Technical Group—As Needed

Day 6—Wednesday, March 9, 2011

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Enforcement Consultants—As Needed
Tribal Policy Group—As Needed
Tribal and Washington Technical Group—As Needed

Day 7—Thursday, March 10, 2011

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Enforcement Consultants—As Needed
Tribal Policy Group—As Needed
Tribal and Washington Technical Group—As Needed

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at 503–820–2280 at least five days prior to the meeting date.

Dated: February 11, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–3472 Filed 2–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 18, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 11, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title of Collection: Annual Performance Report of Independent Living for Older Individuals Who are Blind.

OMB Control Number: 1820–0608.

Agency Form Number(s): ED(RSA)-7–OB FORM.

Frequency of Responses: Annually.

Affected Public: Businesses or other for-profit; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 446.

Abstract: This data collection instrument is being submitted to obtain approval for information collection on the Independent Living Services For Older Individuals Who Are Blind program. Through this program, grants are made to states to support services for individuals age 55 or older whose severe visual impairment makes competitive employment difficult to obtain but for whom independent living goals are feasible. This data will be used to evaluate and construct a profile for the program nationwide. The respondents will be the managers of the Independent Living Services For Older Individuals Who Are blind program in each of the 56 states and territories. The revisions to this instrument consist of two additional items in Part I to capture the amount of other federal funds made available to the program, and the carryover for those funds. In Part III, the order of requested information was rearranged to avoid double counting of consumers in the race and ethnicity categories; an item was added to capture the number of consumers served who are homeless; and items were added to capture the number of consumers referred from nursing homes, assisted living facilities, government/social service agencies, and self referrals. In Part IV, section C was revised to omit "assistive technology" and avoid the overlap with section B—specifically B2 and C2 which asked for the same information. The word "regained" was changed to "maintained" or "gained" wherever it appeared in the document as appropriate. Finally, in Part VI, we added language to link the information requested to that already provided in Part IV, and added items to capture the number of consumers who died while receiving services.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4519. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–3488 Filed 2–15–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before March 18, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in

response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: February 10, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: NEW.

Title of Collection: Equitable Distribution of Effective Teachers.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: State, Local, or Tribal Government, State Education Agencies or Local Education Agencies.

Total Estimated Number of Annual Responses: 42.

Total Estimated Annual Burden Hours: 135.

Abstract: The most recent reauthorization of the Elementary and Secondary Education Act in 2002 required that states provide assurances and develop plans to "ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out of field teachers" (Section 1111 (b)(8)(C)). In 2009, American Recovery and Reinvestment Act (ARRA) requirements reinforced the focus on equitable distribution of teachers by requiring states applying for education stimulus funds to provide updated assurances and to publicize their most recent "equity plans." ARRA also establishes competitive grants to help states build their pool of effective teachers and address inequities in the distribution of teachers. In addition to their focus on the equitable distribution of teacher quality, federal programs also have been promoting shifts in how teacher quality is measured, away from teacher qualifications and toward measures of instructional practice and effectiveness at raising student achievement. Federal programs such as the Teacher Incentive Fund and Race to the Top have provided incentives for states and districts to move in this direction, including funds to support some of the technical aspects of development.

Federal policymakers need to know whether the policies and programs they sponsor under these laws contribute to teacher quality for disadvantaged students. Hence, the U.S. Department of Education requires a study documenting the state and local actions to (a) develop new measures of teacher quality, (b) analyze the distribution of teacher quality, and (c) develop and implement plans to ensure teacher quality for disadvantaged students. To inform federal policymakers, the study will examine the implementation of these activities with attention to implementation challenges, the role of state and local context, and the roles of the federal programs designed to foster these activities.

The planned data collections will serve four objectives:

1. To examine how states and districts analyze the distribution of teacher quality, plan actions to address inequities, and monitor progress.

2. To examine how states and districts are changing their measures of teacher quality, and to understand their experiences in doing so.

3. To examine state and local actions to improve teacher quality for disadvantaged students (i.e., students in high-poverty or high-minority schools).

4. To describe the perceived contributions of federal programs to state and local actions aimed at improving the quality of teachers for disadvantaged students, and how state and local contexts mediate these contributions.

To address these objectives, our design includes telephone interviews with state education agencies and local education agencies.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4426. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–3489 Filed 2–15–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Public Comment on Setting Achievement Levels in Writing

AGENCY: U.S. Department of Education, National Assessment Governing Board.

ACTION: Notice, Public Comment on Setting Achievement Levels in Writing.

SUMMARY: The National Assessment Governing Board (Governing Board) is soliciting public comments and recommendations to improve the design proposed for setting achievement levels for NAEP in writing. This notice provides opportunity for public comment and submitting recommendations for improving the design proposed for setting achievement levels for the 2011 National Assessment of Educational Progress (NAEP) in Writing.

The proposed Design Document, available at *http://www.wested.org/cs/naep/print/docs/naep/welcome.html*, describes the process that will produce cutscores to represent the lower boundary of each of three NAEP achievement levels: Basic, Proficient, and Advanced. The Governing Board has contracted with WestEd to assist in gathering feedback on the design document. Additional information on the Governing Board's work and NAEP achievement levels can be found at *http://www.nagb.org*

Public and private individuals and organizations are invited to provide written comments and recommendations. Voluntary participation by all interested parties is urged. This notice sets forth the review schedule, identifies the kinds of information that the Governing Board is seeking to obtain regarding the Design

Document, and provides information for accessing additional materials that will be useful for this review. This document is intended to notify members of the general public of their opportunity to provide comments and/or make recommendations.

Background

Under Public Law 107–279, the Governing Board is authorized to formulate policy guidelines for NAEP. The legislation specifies that the Governing Board is to develop appropriate student achievement levels for each subject and grade tested, as provided in section 303(e). Achievement levels are determined by identifying the knowledge that can be measured and verified objectively using widely accepted professional assessment standards. Achievement levels are to be consistent with relevant widely accepted professional assessment standards, and based on the appropriate level of subject matter knowledge for grade levels to be assessed, or on the age of the students

In preparation for setting achievement levels for the new assessment of writing at grades 4, 8, and 12, the Governing Board seeks comment on the draft Design Document intended to guide this process. This is the first wholly computer-based NAEP, and the design calls for this to be the first computerized NAEP achievement levels-setting process. Comments are invited, particularly on the computerization of the achievement levels setting process. All responses received will be taken into consideration before finalizing the Design Document.

Materials for Review and Comment

Policymakers, teachers, researchers, State and local writing specialists, members of professional writing and teacher organizations, and members of the public are invited to provide feedback. Comments will provide valuable feedback that is designed to improve the first computerized achievement levels setting process.

To assist with the review and comment, the following materials are posted at *http://www.wested.org/cs/naep/print/docs/naep/welcome.html*.

(1) *Design Document:* The draft Design Document presents a preliminary design approach to guide all aspects of the process.

(2) *Focus Questions:* Focus questions related to certain aspects of the Design Document are provided as potential areas of interest for your feedback. While all comments and recommendations are appreciated, specific issues that you might wish to address include the following:

1. The objective of this study is to set achievement levels for the 2011 and 2013 NAEP writing assessments. Does the study design as presented in the Design Document seem reasonable for accomplishing this overall objective?

2. What improvements can be made to the design to more fully accomplish the objectives of this study?

3. The proposed design calls for the computerization of many aspects of the study. Are there aspects of this computerization that will be particularly effective or ineffective in meeting the objective of this study?

4. Is the field trial as described a reasonable method for testing the logistics of the computerized methodology?

5. Is the special study as described a reasonable method for comparing performance relative to the achievement levels on the 2007 writing NAEP assessment with performance relative to the achievement levels for the new writing NAEP assessment?

Timeline

It is anticipated that the finalized Design Document will be presented for approval to the Governing Board on March 4, 2011. Comments must be received by February 22, 2011, and sent to:

WestEd, 730 Harrison Street, San Francisco, CA 94107, Attention: Jennae Bulat: Public Comment, Fax: (415) 615–3200, E-mail: *jbulat@wested.org*.

FOR FURTHER INFORMATION CONTACT: Jennae Bulat, WestEd, 730 Harrison Street, San Francisco, CA 94107, Telephone: (415) 615–3260, FAX: (415) 615–3200, E-mail: *JBulat@Wested.org*.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department 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/index.html*. 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 1–866–512–0000; or in the Washington, DC area at (202) 512–1800.

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Dated: February 10, 2011.

Munira Mwalimu,

Operations Officer, National Assessment Governing Board, U.S. Department of Education.

[FR Doc. 2011–3438 Filed 2–15–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13829–001]

David Creasey; Notice of Application Tendered for Filing With the Commission; Notice of Application Tendered for Filing With the Commission, Accepted for Filing With the Commission, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, Intent To Waive Solicitation of Additional Study Requests, Intent To Waive Scoping, Intent To Waive Three Stage Consultation, Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions, and Establishing an Expedited Schedule for Processing

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 13829–001.

c. *Date filed:* February 4, 2011.

d. *Applicant:* David Creasey.

e. *Name of Project:* Creasey Hydropower Project.

f. *Project Description:* The Creasey Hydropower Project would consist of the following: (1) A 21-foot-wide, 6.5-foot-high concrete check structure which would back up water in Lincoln Creek; (2) a 1,650-foot-long, 21-inch-diamter PVC penstock with an intake structure and trashrack; (3) one turbine/generator unit with a total installed capacity of 14–20 kilowatts; (4) a 12-foot long, 14-foot wide concrete slab on which the turbine/generator unit would sit; (5) an approximately 75-foot-long, 12-inch-diamater PVC pipe which would return flows to the Lincoln Creek Drainage Ditch; and (6) an approximately 900-foot-long buried transmission line from the turbine/generator unit to the Creasey residence. The project would have an annual generation of 122.4 megawatt-hours. All project facilities would be located on private land owned by the applicant. The applicant proposes to operate the project as run-of-river.

g. *Location:* The project is located on Lincoln Creek and the Lincoln Creek Drainage Ditch on the Fort Hall Reservation in Fort Hall, Idaho. The project would be located on entirely on private property owned by the applicant.

h. *Filed Pursuant to:* 18 CFR 4.61 of the Commission's regulations.

i. *Applicant Contact:* Mr. David Creasey, P.O. Box 61, Fort Hall, ID 83202, (208) 785–0164

j. *FERC Contact:* Ryan Hansen, (202) 502–8074, or e-mail at *ryan.hansen@ferc.gov.*

k. 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 (P–13829). For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY (202) 502–8659.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

l. This application has been accepted for filing and is now ready for environmental analysis.

m. The license applicant must file no later than 60 days following the date of issuance of this notice: (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 the water quality certification.

n. *Cooperating Agencies:* We are asking Federal, state, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item p below.

Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

o. Due to the small size and remote location of this project, the applicant's close coordination with tribal, State, and Federal agencies during the preparation of the application, and the lack of any study requests submitted during pre-filing consultation, we intend to waive scoping and shorten the filing and comment date on final terms and conditions, recommendations, and prescriptions. Based on a review of the application, resource agency consultation letters, and comments filed to date, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period for the application, which included a public meeting and site visit, and no new issues are likely to be identified through additional scoping.

p. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions:* Due to the small size and remote location of this project, as well as the applicant's close coordination with the Tribal Fish and Wildlife Department, Bureau of Indian Affairs Irrigation, the Shoshone-Bannock Tribes Cultural Resources/Heritage Tribal Office, the Army Corps of Engineers, the U.S. Fish and Wildlife Service, the Idaho Department of Environmental Quality, Idaho Fish and Game, and the Idaho State Historic Preservation Office in the preparation of the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

All documents 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 (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "eComment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: 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.

q. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

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 a development application. A notice of intent must be served on the applicant(s) named in this public notice.

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, and .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", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "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. 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.

r. *Procedural schedule and final amendments:* We intend to accept the consultation that has occurred on this project during the pre-filing period as satisfying our requirements for the standard 3-stage consultation process under 18 CFR 4.38 and for National Environmental Policy Act scoping. The application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target Date
Comments, recommendations, and terms and conditions due.	March 9, 2011.
Reply comments due	March 24, 2011.
Notice of the availability of the EA.	June 30, 2011.

Dated: February 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3458 Filed 2–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–41–000.

Applicants: Varde Partners, L.P., Varde Management, L.P., Varde Management International, L.P., Granite Ridge Energy, LLC.

Description: Application of Granite Ridge Energy, LLC *et al.* for Order Authorizing Disposition of Jurisdictional Facilities Under Section 203 of the FPA and Request for Waivers and Expedited Action.

Filed Date: 02/08/2011.

Accession Number: 20110208–5031.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–53–000.

Applicants: Avenal Park LLC.

Description: Avenal Park LLC Notice of Self-Certification as an Exempt Wholesale Generator.

Filed Date: 02/08/2011.

Accession Number: 20110208–5086.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: EG11–54–000.

Applicants: Sand Drag LLC.

Description: Sand Drag LLC Notice of Self Certification as an Exempt Wholesale Generator Request.

Filed Date: 02/08/2011.

Accession Number: 20110208–5087.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: EG11–55–000.

Applicants: Sun City Project LLC.

Description: Sun City Project LLC's Notice of Self Certification of Exempt Wholesale Generator Request.

Filed Date: 02/08/2011.

Accession Number: 20110208–5089.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–2259–007.

Applicants: LSP Energy Limited Partnership.

Description: Notice of Change in Status of LSP Energy Limited Partnership.

Filed Date: 02/07/2011.

Accession Number: 20110207–5129.

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Docket Numbers: ER08–1111–008; ER08–1225–010; ER08–1226–007.

Applicants: Cloud County Wind Farm, LLC, Pioneer Prairie Wind Farm I, LLC, Arlington Wind Power Project LLC.

Description: Supplement to Notice of Non-Material Change in Status of Arlington Wind Power Project LLC, *et al.*

Filed Date: 02/07/2011.

Accession Number: 20110207–5134.

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Docket Numbers: ER10–1151–003.

Applicants: AmerenEnergy Resources Generating Company.

Description: AmerenEnergy Resources Generating Company submits tariff filing per 35: Baseline Compliance Filing Schedule 3 Sections 3, 4 and 5 to be effective 5/3/2010.

Filed Date: 02/08/2011.

Accession Number: 20110208–5094.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: ER10–1786–001.

Applicants: Credit Suisse Energy, LLC.

Description: Notice of Non-Material Change in Status of Credit Suisse Energy LLC.

Filed Date: 02/07/2011.

Accession Number: 20110207–5128.

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Docket Numbers: ER10–1809–002.

Applicants: RED-Scotia, LLC.

Description: Notification of Change in Facts Under Market-Based Rate Authority of RED-Scotia, LLC.

Filed Date: 02/04/2011.

Accession Number: 20110204–5154.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2410–001.

Applicants: Hinson Power Company, LLC.

Description: Hinson Power Company, LLC submits tariff filing per 35: Compliance filing to request for Category 1 seller status to be effective 12/21/2010.

Filed Date: 01/20/2011.

Accession Number: 20110120–5103.

Comment Date: 5 p.m. Eastern Time on Thursday, February 10, 2011.

Docket Numbers: ER11–2568–001.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.17(b): Resubmission of Amended LGIA Mountain View IV Project to be effective 2/28/2011.

Filed Date: 02/08/2011.

Accession Number: 20110208–5045.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: ER11–2598–001; ER11–2607–001; ER11–2612–001.

Applicants: Sempra Energy Trading LLC, MxEnergy Electric Inc., Gateway Energy Services Corporation.

Description: Supplemental to Notice of Category 1 Seller Status of Sempra Energy Trading LLC, *et al.*

Filed Date: 02/04/2011.

Accession Number: 20110204–5138.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2735–001.

Applicants: Censtar Energy Corp.

Description: Censtar Energy Corp. submits tariff filing per 35: Compliance filing for MBR Baseline to be effective 3/28/2011.

Filed Date: 02/08/2011.

Accession Number: 20110208–5061.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: ER11–2754–001.

Applicants: AP Gas & Electric (TX), LLC.

Description: AP Gas & Electric (TX), LLC submits tariff filing per 35.17(b): Amendment to Petition to be effective 2/25/2011.

Filed Date: 02/08/2011.

Accession Number: 20110208–5059.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: ER11–2845–000.

Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits tariff filing per 35: Operational Support Program Agreement 02082011 to be effective 2/8/2011.
Filed Date: 02/08/2011.
Accession Number: 20110208–5000.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: ER11–2845–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits tariff filing per 35: Operational Support Program Agreement 02082011 to be effective 2/8/2011.
Filed Date: 02/08/2011.
Accession Number: 20110208–5000.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: ER11–2846–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Timing of Monthly Inv. for Non-Hourly Chges to be effective 5/1/2011.
Filed Date: 02/08/2011.
Accession Number: 20110208–5011.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: ER11–2847–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: Letter Agreement for Solar Partners' DPT1 Network Upgrades to be effective 11/18/2010.
Filed Date: 02/08/2011.
Accession Number: 20110208–5062.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: ER11–2848–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: Amendment to Service Agreement No. 174 to be effective 11/19/2010.
Filed Date: 02/08/2011.
Accession Number: 20110208–5063.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: ER11–2849–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits tariff filing per 35.12: PNM SA No. 365 Gestamp PtP Transmission Service to be effective 1/12/2011.
Filed Date: 02/08/2011.
Accession Number: 20110208–5079.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: ER11–2850–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: WMPA No. 2719, Queue No. V3–005, SEP and JCP&L to be effective 1/11/2011.
Filed Date: 02/08/2011.
Accession Number: 20110208–5091.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: ER11–2851–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits tariff filing per 35.12: OATT Service Agreement No. 366 to be effective 1/12/2011.
Filed Date: 02/08/2011.
Accession Number: 20110208–5105.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: ER11–2852–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits tariff filing per 35.12: OATT Service Agreement No. 367 to be effective 1/12/2011.
Filed Date: 02/08/2011.
Accession Number: 20110208–5115.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

Docket Numbers: ER11–2853–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits tariff filing per 35.13(a)(1): 20110208_PSCoWholesaleRateCase to be effective 4/10/2011.
Filed Date: 02/08/2011.
Accession Number: 20110208–5134.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 01, 2011.

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.

Dated: February 8, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–3453 Filed 2–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

February 3, 2011.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1756–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Pivotal Negotiated Rate Agreement and Amendment to be effective 12/1/2010.
Filed Date: 02/02/2011.
Accession Number: 20110202–5045.
Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: RP11–1757–000.
Applicants: Alliance Pipeline L.P.
Description: Alliance Pipeline L.P. submits tariff filing per 154.204: Fortuna

assignment to Husky to be effective 1/1/2011.

Filed Date: 02/02/2011.

Accession Number: 20110202–5047.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: RP11–1758–000.

Applicants: Ozark Gas Transmission, L.L.C.

Description: Ozark Gas Transmission, L.L.C. submits tariff filing per 154.204: Negotiated Rate—NJR Contract 890052 to be effective 2/1/2011.

Filed Date: 02/02/2011.

Accession Number: 20110202–5061.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: RP11–1759–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Transcontinental Gas Pipe Line Company, LLC submits a request for a waiver of the Commission's capacity release regulations to allow a transaction to occur.

Filed Date: 02/02/2011.

Accession Number: 20110202–5103.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: RP11–1760–000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits tariff filing per 154.204: 2011 Pooling, Poso Creek to be effective 3/8/2011.

Filed Date: 02/03/2011.

Accession Number: 20110203–5036.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: CP11–76–000.

Applicants: NorthWestern Corporation

Description: Application for Blanket Certificate Pursuant to 18 CFR 284.224 and Request for Shortened Comment Period of NorthWestern Corporation.

Filed Date: 02/01/2011.

Accession Number: 20110201–5198.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–3454 Filed 2–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–40–000.

Applicants: Orange and Rockland Utilities, Inc.

Description: Application of Orange and Rockland Utilities, Inc. for an order pursuant to Section 203 of the Federal Power Act.

Filed Date: 02/04/2011.

Accession Number: 20110204–5137.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1809–002.

Applicants: RED–Scotia, LLC.

Description: Notification of Change in Facts Under Market-Based Rate Authority of RED–Scotia, LLC.

Filed Date: 02/04/2011.

Accession Number: 20110204–5154.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER10–3269–001.

Applicants: West Oaks Energy LP.

Description: West Oaks Energy LP submits tariff filing per 35: West Oaks Energy, LP, FERC Electric MBR Tariff No. 1 to be effective 2/4/2011.

Filed Date: 02/07/2011.

Accession Number: 20110207–5002.

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Docket Numbers: ER10–3311–001.

Applicants: BJ Energy, LLC.

Description: BJ Energy, LLC submits tariff filing per 35: BJ Energy, LLC, FERC Electric MBR Tariff No. 1 to be effective 2/4/2011.

Filed Date: 02/07/2011.

Accession Number: 20110207–5000.

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Docket Numbers: ER10–3312–001.

Applicants: Pure Energy Inc.

Description: Pure Energy Inc. submits tariff filing per 35: Pure Energy, Compliance File Baseline LLC to be effective 9/30/2010.

Filed Date: 02/04/2011.

Accession Number: 20110204–5125.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER10–3315–001.

Applicants: Indeck-Oswego Limited Partnership.

Description: Indeck-Oswego Limited Partnership submits tariff filing per 35: Indeck-Oswego, Limited Partnership, FERC Electric MBR Tariff No. 1 to be effective 2/4/2011.

Filed Date: 02/07/2011.

Accession Number: 20110207–5001.

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Docket Numbers: ER10–3316–001.

Applicants: Indeck Energy Services of Silver Springs.

Description: Indeck Energy Services of Silver Springs Inc. submits tariff filing per 35: Indeck Energy Services of Silver Springs, Inc., FERC Electric MBR Tariff No. 1 to be effective 2/4/2011.

Filed Date: 02/04/2011.

Accession Number: 20110204–5135.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER10–3320–001.

Applicants: MAG Energy Solutions Inc.

Description: MAG Energy Solutions Inc. submits tariff filing per 35: MAG Energy Solutions, Inc., FERC Electric MBR Tariff No. 1 to be effective 2/4/2011.

Filed Date: 02/04/2011.

Accession Number: 20110204–5136.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER10–3323–001.

Applicants: Indeck-Olean Limited Partnership.

Description: Indeck-Olean Limited Partnership submits tariff filing per 35: Indeck-Olean Compliance File Baseline FERC Electric MBR Tariff No. 1 to be effective 9/30/2010.

Filed Date: 02/07/2011.

Accession Number: 20110207–5003.

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Docket Numbers: ER10–3324–001.

Applicants: Indeck-Yerkes Limited Partnership.

Description: Indeck-Yerkes Limited Partnership submits tariff filing per 35: Indeck-Yerkes, Compliance File Baseline FERC Electric MBR Tariff No. 1 to be effective 9/30/2010.

Filed Date: 02/04/2011.

Accession Number: 20110204–5123.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER10–3325–001.

Applicants: SESCO CALISO.

Description: SESCO CALISO submits tariff filing per 35: SESCO CALISO, LLC, Comp Filing to Baseline FERC Electric Tariff Schedule No. 1 to be effective 9/30/2010.

Filed Date: 02/04/2011.

Accession Number: 20110204–5128.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER10–3326–001.

Applicants: SESCO Enterprises LLC.

Description: SESCO Enterprises LLC submits tariff filing per 35: SESCO Enterprises, LLC Comp Filing to baseline FERC Elec Tariff Sched No. 1 to be effective 9/30/2010.

Filed Date: 02/04/2011.

Accession Number: 20110204–5129.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER10–3327–001.

Applicants: Jump Power LLC.

Description: Jump Power LLC submits tariff filing per 35: Jump Power Compliance File Baseline FERC Electric MBR Tariff No. 1 to be effective 9/30/2010.

Filed Date: 02/04/2011.

Accession Number: 20110204–5124.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER10–3328–001.

Applicants: SESCO Enterprises Canada Ltd.

Description: SESCO Enterprises Canada Ltd. submits tariff filing per 35: SESCO Enterpr Comp Filing to Baseline FERC Elec Tariff Sched No. 1 to be effective 9/30/2010.

Filed Date: 02/04/2011.

Accession Number: 20110204–5119.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER10–3329–001.

Applicants: Round Rock Energy LP.

Description: Round Rock Energy LP submits tariff filing per 35: Round Rock Energy, LP Comp Filing Baseline FERC Electric Tariff Sched No. 1 to be effective 9/30/2010.

Filed Date: 02/04/2011.

Accession Number: 20110204–5127.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER10–3330–001.

Applicants: Round Rock Energy LLC.

Description: Round Rock Energy LLC submits tariff filing per 35: Round Rock Energy, LLC Comp Filing to Baseline FERC Elec Tariff Sched No. 1 to be effective 9/30/2010.

Filed Date: 02/04/2011.

Accession Number: 20110204–5126.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER10–3331–001.

Applicants: West Oaks Energy NY/NE, LP.

Description: West Oaks Energy NY/NE, LP submits tariff filing per 35: W Oaks Energy LP Comp Filing to Baseline FERC Electric Tariff Sched No. 1 to be effective 9/30/2010.

Filed Date: 02/04/2011.

Accession Number: 20110204–5131.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–5–001.

Applicants: Great Bay Energy, LLC.

Description: Great Bay Energy, LLC submits tariff filing per 35: Great Bay Energy Compliance File Baseline FERC Electric Tariff Schedule No. 1 to be effective 9/30/2010.

Filed Date: 02/04/2011.

Accession Number: 20110204–5121.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–6–001.

Applicants: Great Bay Energy I LLC.

Description: Great Bay Energy I LLC submits tariff filing per 35: Great Bay Energy I Compliance File Baseline FERC Electric Tariff Sched No. 1 to be effective 9/30/2010.

Filed Date: 02/04/2011.

Accession Number: 20110204–5133.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2053–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 02–04–11 Interface Pricing Compliance to be effective 11/9/2010.

Filed Date: 02/04/2011.

Accession Number: 20110204–5120.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2375–001.

Applicants: Consolidated Edison Company of New York.

Description: Consolidated Edison Company of New York, Inc. submits tariff filing per 35: Supplemental Information Order 697 Compliance Filing to be effective 2/4/2011.

Filed Date: 02/04/2011.

Accession Number: 20110204–5039.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2376–001.

Applicants: Orange and Rockland Utilities, Inc.

Description: Orange and Rockland Utilities, Inc. submits tariff filing per 35: Supplemental Information Order 697 Compliance Filing to be effective 1/1/2011.

Filed Date: 02/04/2011.

Accession Number: 20110204–5132.

Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2378–001.

Applicants: Consolidated Edison Energy, Inc.

Description: Consolidated Edison Energy, Inc. submits tariff filing per 35: Supplemental Information Order 697 Compliance Filing to be effective 1/1/2011.

Filed Date: 02/07/2011.

Accession Number: 20110207–5005.

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Docket Numbers: ER11–2379–001.

Applicants: Consolidated Edison Solutions, Inc.

Description: Consolidated Edison Solutions, Inc. submits tariff filing per 35: Supplemental Information Order 697 Compliance Filing to be effective 1/1/2011.

Filed Date: 02/07/2011.

Accession Number: 20110207–5006.

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Docket Numbers: ER11–2607–001; ER11–2598–001; ER11–2612–001.

Applicants: Sempra Energy Trading LLC, MxEnergy Electric Inc., Gateway Energy Services Corporation.

Description: Supplemental to Notice of Category 1 Seller Status of Sempra Energy Trading LLC, *et al.*

Filed Date: 02/04/2011.
Accession Number: 20110204–5138.
Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2607–002.
Applicants: Sempra Energy Trading LLC.
Description: Sempra Energy Trading LLC submits tariff filing per 35: SET Revised Category 1 Status re MBR Tariff to be effective 3/4/2011.
Filed Date: 02/04/2011.
Accession Number: 20110204–5055.
Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2649–001.
Applicants: 3C Solar LLC.
Description: 3C Solar LLC submits tariff filing per 35: 3C Solar LLC Revised MBR Tariff to be effective 3/8/2011.
Filed Date: 02/04/2011.
Accession Number: 20110204–5037.
Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2833–000.
Applicants: California Pacific Electric Company, LLC.
Description: California Pacific Electric Company, LLC submits tariff filing per 35.15: Cancellation of CalPeco Filing to be effective 12/31/9998.
Filed Date: 02/04/2011.
Accession Number: 20110204–5043.
Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2834–000.
Applicants: California Pacific Electric Company, LLC.
Description: California Pacific Electric Company, LLC submits tariff filing per 35.15: Cancellation of Baseline Tariff for DCA and BCA to be effective 12/31/9998.
Filed Date: 02/04/2011.
Accession Number: 20110204–5044.
Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2835–000.
Applicants: California Pacific Electric Company, LLC.
Description: California Pacific Electric Company, LLC submits tariff filing per 35.15: Cancellation of CalPeco Rate Schedule No. 5 to be effective 12/31/9998.
Filed Date: 02/04/2011.
Accession Number: 20110204–5052.
Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2836–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): Small Generator Interconnection Agreement for PG&E's Stroud Solar Station to be effective 2/7/2011.
Filed Date: 02/04/2011.
Accession Number: 20110204–5053.
Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2837–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 2151 TPW Petersburg, LLC GIA to be effective 1/5/2011.
Filed Date: 02/04/2011.
Accession Number: 20110204–5054.
Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2838–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits tariff filing per 35.13(a)(1): Change to Operating Procedure 9 to be effective 6/1/2011.
Filed Date: 02/04/2011.
Accession Number: 20110204–5058.
Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2839–000.
Applicants: California Pacific Electric Company, LLC.
Description: California Pacific Electric Company, LLC submits tariff filing per 35.1: EBSA BCA DCA RSA ESA to be effective 2/4/2011.
Filed Date: 02/04/2011.
Accession Number: 20110204–5099.
Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2840–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): ISA No. 2774, Queue Nos. V1–033 and W1–033, Energy Answers and BG&E to be effective 1/5/2011.
Filed Date: 02/04/2011.
Accession Number: 20110204–5122.
Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2841–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): WMPA No. 2723, Queue No. W2–052, PSE&G and PSE&G to be effective 1/13/2011.
Filed Date: 02/04/2011.
Accession Number: 20110204–5134.
Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Docket Numbers: ER11–2842–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): NYISO 205 Filing—Interconnection Study Cost Allocation to be effective 3/1/2011.
Filed Date: 02/07/2011.
Accession Number: 20110207–5025.
Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Docket Numbers: ER11–2843–000.
Applicants: Oak Creek Wind Power, LLC.
Description: Oak Creek Wind Power, LLC submits tariff filing per 35: Oak Creek Wind Power, LLC First Revised MBR Tariff to be effective 2/8/2011.
Filed Date: 02/07/2011.
Accession Number: 20110207–5055.
Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Docket Numbers: ER11–2844–000.
Applicants: Adagio Energy LLC.
Description: Adagio Energy LLC submits tariff filing per 35.1: Baseline 714 compliance to be effective 4/4/2011.
Filed Date: 02/07/2011.
Accession Number: 20110207–5102.
Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–18–000.
Applicants: Rockland Electric Company.
Description: Application of Rockland Electric Company for an order pursuant to Section 204 of the Federal Power Act.
Filed Date: 02/04/2011.
Accession Number: 20110204–5093.
Comment Date: 5 p.m. Eastern Time on Friday, February 25, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic

service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 7, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–3455 Filed 2–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–85–000]

DCP Intrastate Network, LLC; Notice of Filing

Take notice that on February 1, 2011, DCP Intrastate Network, LLC (DCPIN) filed to provide notice of its withdrawal of rates for transportation service under Section 311 of the Natural Gas Policy Act ("NGPA") and its Statement of Operating Conditions. DCPIN states upon review of its operations, DCPIN has determined that its system is a non-jurisdictional natural gas gathering system under section 1(b) of the Natural Gas Act as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 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 Friday, February 18, 2011.

Dated: February 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3456 Filed 2–15–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6223–002]

Favinger, Thomas G.; Notice of Filing

Take notice that on January 31, 2011 Thomas G. Favinger submitted for filing, an application for authority to hold interlocking positions, pursuant to Section 305(b) of the Federal Power Act and part 45 of Title 18 of the Code of Federal Regulations, 18 CFR 45.7.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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 February 22, 2011.

Dated: February 9, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3457 Filed 2–15–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8864–5]

Access to Confidential Business Information by Electronic Consulting Services, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Electronic Consulting Services, Inc. (ECS) of Fairfax, VA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than February 23, 2011.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Pamela Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8956; fax number: (202) 564–8955; e-mail address: *moseley.pamela@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* 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 electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. What action is the agency taking?

Under EPA contract number GS–35F–0601K, Order Number 1666, contractor Electronic Consulting Services, Inc., 2750 Prosperity Avenue, Suite 510, Fairfax, VA will assist the Office of Pollution Prevention and Toxics (OPPT) by providing help desk support for OPPTS/OPPT end users; supporting installation/maintenance of servers and operating system software (UNIX, Linux, Windows XP/2003/2000/NT); installing, maintaining, and troubleshooting Agency standard hardware and software; performing scheduled backups of servers; develop and maintain Lotus Notes and Oracle databases; perform occasional web and database development for special projects; and maintain hardware and software inventory of workstations. In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number GS–35F–0601K, Order Number 1666 ECS will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. ECS' personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide ECS access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until September 30, 2011. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

ECS' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: February 9, 2011.

Matthew G. Leonard,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2011–3526 Filed 2–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0595; FRL–9267–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Detergent Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on June 30, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 18, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0595 by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2007–0595, Environmental Protection Agency, *Mailcode:* 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0595. 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 www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an

"anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Jaimee Dong, Office of Transportation and Air Quality, *Mailcode:* 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343–9672; *fax number:* (202) 343–2802; *e-mail address: dong.jaimee@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–0595, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m. EST, Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are those who (1) Manufacture gasoline, post-refinery component, or detergent additives, (2) blend detergent additives into gasoline or post-refinery component, or (3) transport or receive a detergent additive, gasoline, or post-refinery component.

Title: Detergent Gasoline: Certification Requirements for Manufacturers of Detergent Additives; Requirements for Transferors and Transferees of Detergent Additives; Requirements for Blenders of Detergents into Gasoline or Post-refinery Component; Requirements for Manufacturers, Transferors, and Transferees of Gasoline or Post-refinery Component (40 CFR 80—Subpart G).

ICR numbers: EPA ICR No. 1655.07, OMB Control No. 2060–0275.

ICR status: This ICR is currently scheduled to expire on June 30, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Gasoline combustion results in the formation of engine deposits that contribute to increased emissions. Detergent additives deter deposit formation. The Clean Air Act requires gasoline to contain a detergent additive. The regulations at 40 CFR part 80 subpart G specify certification requirements for manufacturers of detergent additives, recordkeeping or reporting requirements for blenders of detergents into gasoline or post-refinery component (any gasoline blending stock or any oxygenate which is blended with gasoline subsequent to the gasoline refining process), and reporting or recordkeeping requirements for manufacturers, transferors, or transferees of detergents, gasoline, or post-refinery component (PRC). These requirements ensure that (1) A detergent is effective before it is certified by EPA, (2) a certified detergent, at the minimum concentration necessary to be effective (known as the lowest additive concentration (LAC)), is blended into gasoline, and (3) only gasoline which contains a certified detergent at its LAC is delivered to the consumer. EPA maintains a list of certified gasoline detergents, which is publicly available. As of November 2010, there were 324 certified detergents and 19 detergent manufacturers.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 60 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

EPA estimates that the average burden for detergent certification is 60 hours and $6,889, and that there will be approximately three applications for detergent certification each year for the next three years. Thus, the annual certification burden is estimated at 180 hours and $20,667. Most of the burden is incurred by the blenders of detergent into gasoline or PRC. The regulations require that they generate and maintain records of the amount of detergent blended and the amount of gasoline into which it is blended. These records are known as volumetric additive reconciliation (VAR) records and must demonstrate that the proper amount of a certified detergent has been used. For blenders with automated equipment, the annual burden is estimated at 150 hours and $12,613. There are approximately 1300 blenders that use automated equipment. Thus, the annual burden is 195,000 hours and $16.4 million. For blenders with non-automated equipment, the annual burden is estimated at 500 hours and $42,040. There are about 50 blenders in this category, for an annual burden of 25,000 hours and $2,102,000. There are no capital or start-up costs beyond those incurred by industry at the program's inception in 1995. Operating and maintenance (O&M) costs are in three categories. First, the on-road engine testing to demonstrate that the detergent meets the deposit-control standards is performed at contractor facilities. However, just about all detergent certifications are able to rely on previous testing, so new testing is only performed perhaps once a year at a cost of $200,000. The second O&M cost is for copying and postage for the estimated three submissions annually for detergent certification and one submission annually for research notification. At an estimated $10 per submission, the annual cost is $40. The third O&M cost is for the storage of the VAR records at the 1300 automated detergent blending facilities and 50 non-automated detergent blending facilities. The estimated annual cost per facility is $100, for a total of $135,000. The total annual estimated burden for industry is 220,181 hours and $18.8 million.

Are there changes in the estimates from the last approval?

The previous clearance consisted of 220,608 hours and $15,547,566 in total costs. The changes are primarily due to an update in labor costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 10, 2011.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 2011–3516 Filed 2–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9267–4]

Reschedule—Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee's teleconference originally scheduled on Tuesday, February 22, 2011, 1:30–3 p.m. (ET) (76 FR 6785, published on Tuesday, February 8, 2011) is rescheduled for Wednesday, March 9, 2011, 3:30–4:30 (ET). The Committee will discuss the recommendations of the Gulf Coast Restoration Workgroup on ways EPA can engage local government officials in Gulf Coast Ecosystem restoration efforts and other issues of environmental concern to elected officials. This is an open meeting and all interested persons are invited to participate. The Committee will hear comments from the public between 3:45 p.m.–4:15 p.m. on Wednesday, March 9, 2011. Individuals or organizations wishing to address the Committee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *eargle.frances@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number or e-mail listed below to schedule agenda time. Time will be allotted on a first come first serve basis, and the total period for comments may be extended if the number of requests for appearances requires it.

ADDRESSES: The Local Government Advisory Committee meeting will be held by teleconference on Wednesday, March 9, 2011, at 3:30 p.m.–4:30 p.m. (ET). The Committee's meeting summary will be available after the meeting online at *http://www.epa.gov/ocir/scas* and can be obtained by written request to the DFO.

FOR FURTHER INFORMATION CONTACT: Frances Eargle, the Designated Federal Officer for the Local Government Advisory Committee (LGAC) at (202) 564–3115 or e-mail at *eargle.frances@epa.gov.*

Information On Services for Those with Disabilities: For information on access or services for individuals with disabilities, please contact Frances Eargle at (202) 564–3115 or *eargle.frances@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 8, 2011.

Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 2011–3518 Filed 2–15–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as

amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov.*

Agex Inc (NVO), 3701 Collins Avenue, 5B, San Pablo, CA 94806. Officer: Alexander Golovets, President/Treasurer/Secretary (Qualifying Individual). Application Type: New NVO License.

All States Transport, Inc. (OFF), 1067 East Columbus Avenue, Springfield, MA 01103. Officers: Christopher J. Kingston, Vice President, Intl Division (Qualifying Individual), William J. Kingston, Jr., President/Treasurer/Secretary. Application Type: New OFF License.

American Freight Transport, Inc. (OFF), 4805 Meyer Road, Pendleton, NY 14120. Officers: Mark E. Oehm, Vice President (Qualifying Individual), Mary A. Daley, President. Application Type: New OFF License.

American Global Logistics, LLC (NVO & OFF), 53 Perimeter Center East, Suite 450, Atlanta, GA 30346. Officer: Chad Rosenberg, CEO (Qualifying Individual). Application Type: QI Change.

Americargo Express Inc. (NVO & OFF), 1428 NW 82nd Avenue, Doral, FL 33126. Officers: Natalia Diaz, President (Qualifying Individual), Diego Rivera, Secretary. Application Type: New NVO & OFF License.

Asencomex, LLC (NVO & OFF), 8244 NW 14th Street, Doral, FL 33126. Officers: Juan P. Constain, General Manager (Qualifying Individual), Santiago Pardo, CEO. Application Type: New NVO & OFF License.

C & C Group, Inc. (NVO & OFF), 1928 NW 82nd Avenue, Miami, FL 33126. Officer: Claudia Quintero, President/Treasurer/Director (Qualifying Individual). Application Type: Add NVO Service.

CoscoEx (CGL), Inc. dba Citic Global Logistics dba Chimerica Global Logistics (NVO), 817 W. Beverly Blvd., #204, Montebello, CA 90640. Officers: David Fernandes, Treasurer (Qualifying Individual), John Woo, President. Application Type: Trade Name Change.

Ever Best Logistics USA Inc. (OFF), 135–18 37th Avenue, Flushing, NY 11354. Officers: QiJie Sun, Vice President (Qualifying Individual), Andy Wang, President/Secretary/Treasurer. Application Type: New OFF License.

Exel Transportation Services, Inc. (NVO & OFF), 17330 Preston Road, Dallas, TX 75252. Officers: Michael F. Hampel, Vice President Int'l Operations (Qualifying Individual), James Damman, President/Director. Application Type: QI Change.

Ferm Cargo, Inc. (OFF), 3640 NW 115th Avenue, Miami, FL 33178. Officer: Caroline Jessimy, President (Qualifying Individual). Application Type: New OFF License.

Global Transhipping Inc (OFF), 2801 NW 74th Avenue, #204, Miami, FL 33122. Officer: Gus Mojica, President/Secretary/CEO/Director (Qualifying Individual). Application Type: New OFF License.

Hanseatic Moving Services LLC (NVO), 95 River Street, #206, Hoboken, NJ 07030. Officers: Sven Schuemann, Managing Member (Qualifying Individual), Thorsten Doerr, Member. Application Type: New NVO License.

Harold Smith dba Sunshine International (OFF), 600 Bayview Avenue, Inwood, NY 11096. Officers: Harold Smith, Sole Proprietor (Qualifying Individual). Application Type: New OFF License.

JDB Logistics, Inc. (NVO & OFF), 780–A Apex Road, Sarasota, FL 34240. Officers: Karen L. Ambrosia, President (Qualifying Individual), Richard Glanz, Vice President/Secretary. Application Type: License Transfer.

Kemka USA Limited Liability Company (NVO), 421 Lucy Court, South Plainfield, NJ 07080. Officer: Hsiang (Rita) Y. Hsiao, Member (Qualifying Individual). Application Type: New NVO License.

Kuehne + Nagel, Inc. (OFF), 10 Exchange Place, Jersey City, NJ 07302. Officers: Peter Hofmann, Regional Vice President-Northeast (Qualifying Individual), Rolf Altorfer, President. Application Type: QI Change.

Life Cargo Inc. (NVO & OFF), 8578 NW 56th Street, Doral, FL 33166. Officer: Sergio S. Leao, President/Secretary/Treasurer (Qualifying Individual). Application Type: New NVO & OFF.

Mega Supply Chain Solutions, Inc. (NVO & OFF), 9449 8th Street, Rancho Cucamonga, CA 91730. Officers: Carlos Verduzco, Vice President (Qualifying Individual), Karen A. Pelle, CEO. Application Type: QI Change.

Olubayo O. Bamisaye dba Blue Circle Shipping (NVO & OFF), 5228 Fairlawn Avenue, Baltimore, MD 21215. Officer: Olubayo O. Bamisaye, Sole Proprietor. Application Type: New NVO & OFF License.

Omega Access Services LLC (NVO & OFF), 625 N. Collington Avenue, Baltimore, MD 21205. Officer: Ilionele E. Okojie, Director/CEO (Qualifying Individual). Application Type: New NVO & OFF License.

Omega Relocations, Inc. (NVO), 2741 NW 76th Street, Hialeah, FL 33016. Officers: Eyal Aviani, Vice President (Qualifying Individual), Horacio G. Lacayo, President/Secretary. Application Type: New NVO License.

One Source Logistics, LLC (NVO & OFF), 755 Port America Place, #360, Grapevine, TX 76051. Officers: Michael R. Carr, Vice President (Qualifying Individual), Krissandra Enriquez, CEO. Application Type: New NVO & OFF License.

R.N. Orane USA, Inc. (NVO & OFF), 31823 Ponderosa Way, Evergreen, CO 80439. Officer: David R. Knodle, President/CEO/Secretary/Treasurer (Qualifying Individual), Application Type: New NVO & OFF.

Rounders Logistics, LLC (NVO & OFF), 2374 Old Highway 60, Mulberry, FL 33860. Officers: William J. McCarthy, General Manager (Qualifying Individual), Jeffrey G. Cox, Jr., President. Application Type: New NVO & OFF License.

The Right Move, Inc. (NVO), 14–23 110th Street, College Park, NY 11356. Officers: Michal Franklin, President (Qualifying Individual), Bruce S. Franklin, Secretary. Application Type: New NVO License.

Tulair International Corp. (NVO & OFF), 147–20 181st Street, Jamaica, NY 11413. Officers: Gulay Oguzcan, President/CEO (Qualifying Individual), Kerim A. Tulun. Application Type: New NVO & OFF License.

Unique Logistics International (NYC), LLC (NVO), 154–09 146th Avenue, 3rd Floor, Unit B, Jamaica, NY 11434. Officers: Ri H. Mawhinney, Assistant Secretary, Sunandan Ray, President/CEO (Qualifying Individual). Application Type: QI Change.

Zai Cargo Inc. dba Zai Ocean Services dba Zai Container Line (NVO & OFF), 6324 NW 97th Avenue, Doral, FL 33178. Officer: Horacio Zapata, President/Treasurer/VP/Secretary (Qualifying Individual). Application Type: New NVO & OFF License.

Dated: February 11, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–3507 Filed 2–15–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 2011.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *American National Bankshares Inc.,* Danville, Virginia; to acquire 100 percent of the voting shares of MidCarolina Financial Corporation, and thereby indirectly acquire voting shares of MidCarolina Bank, both in Burlington, North Carolina.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Jorgenson Williston Holding Company,* Kenmare, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank & Trust Company of Williston, Williston, North Dakota.

Board of Governors of the Federal Reserve System, February 11, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–3499 Filed 2–15–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 60-Day Notice]

Agency Information Collection Request 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project: Multi-Component Evaluation of the *BodyWorks* Program—OMB No. 0990–NEW– Office on Women's Health (OWH)

Abstract: Office on Women's Health (OWH) is requesting clearance for a multi-component 3.5 year evaluation of the *BodyWorks* Program. The required forms will support three evaluation tasks: (1) Conducting a one-time follow-up study of trainers and parents previously involved in BodyWorks; (2) Conducting a onetime pilot test of a post-only survey tool to be added to the BodyWorks toolkit/resources; and, (3) conducting a full evaluation of the revised BodyWorks program, including pre, post and follow-up components as well as similar tests of the Spanish BodyWorks program.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Data collection name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
BodyWorks program participants	Parent/Caregiver Follow-Up Study Questionnaire.	450	1	10/60	75
	Parent/Caregiver Follow-Up Study Focus Group.	18	1	60/60	18
	English and Spanish Participant Exit Survey—Post Only Pilot Study.	100	1	10/60	17
	English and Spanish Participant Pretest—Full Evaluation.	408	1	20/60	136
	English and Spanish Participant Posttest—Full Evaluation.	300	1	20/60	100
	English and Spanish Participant Follow-up—Full Evaluation.	256	1	20/60	85
	English and Spanish Participant Session Feedback Forms (up to 10 forms)—Full Evaluation.	300	10	5/60	250
English and Spanish BodyWorks program comparison group participants.	English and Spanish Participant Pretest—Full Evaluation.	408	1	20/60	136
	English and Spanish Participant Posttest—Full Evaluation.	300	1	20/60	100
	English and Spanish Participant Follow-up—Full Evaluation.	256	1	20/60	85
Trainers of the BodyWorks program ...	Trainer Follow-Up Study Questionnaire.	1,250	1	20/60	417
	Trainer Follow-Up Study Interview	15	1	60/60	15

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Type of respondent	Data collection name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
	Trainer Exit Survey Satisfaction Interview—Post only pilot study.	10	1	30/60	5
	Trainer Feedback Forms (up to 10 forms)—Full Evaluation.	30	10	5/60	25
Total Project Burden Hours	.....	.....	.....	.....	1,464

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–3442 Filed 2–15–11; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel (SEP): Annual Estimates of Influenza Vaccine Effectiveness for Preventing Laboratory-Confirmed Influenza in the United States, Funding Opportunity Announcement (FOA), IP11–003, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.–5 p.m., April 7, 2011 (Closed).

Place: Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337, Telephone: (770) 997–1100.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Annual Estimates of Influenza Vaccine Effectiveness for Preventing Laboratory-Confirmed Influenza in the United States, FOA IP11–003."

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 498–2293. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 4, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–3525 Filed 2–15–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Emerging Infections Sentinel Network (EISN) Research, Funding Opportunity Announcement (FOA), CK11–002, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the aforementioned meeting:

Times and Dates: 12 p.m.–2 p.m., March 29, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Emerging Infections Sentinel Network (EISN) Research, FOA CK11–002, initial review."

Contact Person for More Information: Gregory Anderson, MS, MPH, Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 498–2293.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 4, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–3529 Filed 2–15–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, Announces the Following Meeting

Name: ICD–9–CM Coordination and Maintenance Committee meeting.

Times and Dates: 9 a.m.–5:30 p.m., March 9, 2011. 9 a.m.–5:30 p.m., March 10, 2011.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 240 people.

Security Considerations: Due to increased security requirements CMS has instituted stringent procedures for entrance into the building by non-government employees. Attendees will need to present valid government-issued picture identification, and sign-in at the

security desk upon entering the building.

Attendees who wish to attend a specific ICD–9–CM C&M meeting on March 9–10, 2011, must submit their name and organization by March 5, 2011, for inclusion on the visitor list. This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting.

Participants who attended previous ICD–9–CM C&M meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you attend.

Please register to attend the meeting on-line at: *http://www.cms.hhs.gov/apps/events/*.

Please contact Mady Hue (410–786–4510 or *Marilu.hue@cms.hhs.gov*), for questions about the registration process.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters To Be Discussed: Agenda items include:

March 9, 2011

ICD–10 Topics:

Code freeze
Abbreviated titles
V28.0 ICD–10 MS–DRGs
ICD–10–PCS Updates
ICD–10–CM updates

ICD–9–CM Procedure Topics:

AngelMed Guardian
Cerebral tissue oximetry
Coils
Completion angiography
Electromagnetic tip for nodules
Embolization of uterine artery
Excisional debridement
- External ventricular drainage
- Frame with ultrasound of brain and TPA
- Hip bearing surface
- Hydrosurgery/VersaJet
- Implantation of an anti-microbial envelope
- Insertion of aqueous drainage shunt
- Knee resurfacing
- Lead extraction
- Left atrial appendage exclusion femoral/epicardial access
- Neuroflow endovascular dual balloon catheter
- Non-excisional debridement
- Occlusion of left atrial appendage

PTCA/Atherectomy
- Sling operation for male incontinence
- Sleeve gastrectomy
- Spinal cord neurostimulator
- Transcatheter aortic valve replacement
- Addenda (procedures)

ICD–10–PCS Topics:

- Bearing surface of total ankle replacement
- Intra-operative monitoring in ICD–10–PCS

Interspinous process internal fixation; dynamic stabilization vs. Static distraction
Mesh (bioloigcal) in ICD–10–PCS

March 10, 2011

ICD–9–CM Diagnosis Topics:

Acute kidney injury
Acute interstitial pneumonia (re-presentation)
Atrial fibrillation
Highly calcified coronary lesions
Femoroacetabular impingement
Hepatopulmonary syndrome
Hypertrophic cardiomyopathy
Infection following transfusion (re-presentation)
Malnutrition (re-presentation)
Persistent air leak
Postoperative respiratory failure
Postoperative shock
Smoke inhalation
Thalessemia
Vitreomacular adhesion
Wandering
- ICD–9–CM Addenda (diagnoses)

ICD–10–CM Topics:

Acute disseminated encephalitis and encephalomyelitis
Acute necrotizing hemorrhagic encephalopathy
Atrial fibrillation and flutter
Benign shuddering attacks
Developmental venous anomaly
Epilepsy
Glasgow coma scale
Hemorrhoids
Lumbar spinal cord issues
Migraine and headache issues
Muscular dystrophy and related issues
Orthopedic issues
Other chronic pain
Posterior Reversible Encephalopathy Syndrome
Ventral hernias
ICD–10–CM Addenda (diagnoses)

Agenda items are subject to change as priorities dictate.

Note: CMS and NCHS will no longer provide paper copies of handouts for the meeting. Electronic copies of all meeting materials will be posted on the CMS and NCHS Web sites prior to the meeting at *http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes/03_meetings.asp#TopOfPage* and *http://www.cdc.gov/nchs/icd/icd9cm_maintenance.htm.*

Contact Persons for Additional Information: Donna Pickett, Medical Systems Administrator, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Room 2337, Hyattsville, Maryland 20782, e-mail *dfp4@cdc.gov,* telephone 301–458–4434 (diagnosis); Mady Hue, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Boulevard, Baltimore, Maryland 21244, e-mail *marilu.hue@cms.hhs.gov,* telephone 410–786–4510 (procedures).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: February 9, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–3542 Filed 2–15–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS)

Correction: This notice was published in the **Federal Register** on December 29, 2010, Volume 75, Number 249, page 82030. The first day of the meeting was canceled. The time and date of the meeting were as follows:

Time and Date: 8:30 a.m.–2 p.m., January 28, 2011.

There was no change to the matters discussed at the meeting.

Contact Person for More Information: Virginia S. Cain, Ph.D., Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7211, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: February 9, 2011.

Elaine L. Baker,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–3533 Filed 2–15–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel (SEP): Ability of Individual and Integrated Tick Management (ITM) Technologies To Reduce the Entomological Risk of Lyme Disease, Funding Opportunity Announcement (FOA) CK11–005, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 12 p.m.–2 p.m., May 10, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Ability of Individual and Integrated Tick Management (ITM) Technologies To Reduce the Entomological Risk of Lyme Disease, FOA CK11–005."

Contact Person for More Information: Amy Yang, PhD, Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 498–2733.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 4, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–3531 Filed 2–15–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: DRA TANF Final Rule.

OMB No.: 0970–0338.

Description: When the Deficit Reduction Act of 2005 (DRA) reauthorized the Temporary Assistance for Needy Families (TANF) program, it imposed a new data requirement that States prepare and submit data verification procedures and replaced other data requirements with new versions including: the TANF Data Report, the SSP–MOE Data Report, the Caseload Reduction Documentation Process, and the Reasonable Cause/Corrective Compliance Documentation Process. The Claims Resolution Act of 2010 extended the TANF program through September 2011. We are proposing to continue these information collections without change.

Respondents: 54.

ANNUAL BURDEN ESTIMATES

Instrument or requirement	Number of respondents	Yearly submittals	Average burden hours per response	Final rule total annual burden hours
Preparation and Submission of Data Verification Procedures—§§ 261.60–261.63	54	1	640	34,560
Caseload Reduction Documentation Process, ACF–202—§§ 261.41 & 261.44	54	1	120	6,480
Reasonable Cause/Corrective Compliance Documentation Process—§§ 262.4, 262.6, & 262.7; § 261.51	54	2	240	25,920
TANF Data Report—Part 265	54	4	2,201	475,416
SSP–MOE Data Report—Part 265	29	4	714	82,824

Total Burden Hours: 625,200.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–3415 Filed 2–15–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0390] (formerly Docket No. 2004N–0503)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance on Consultation Procedures: Foods Derived From New Plant Varieties

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 March 18, 2011.

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: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–New and title "Guidance on Consultation Procedures: Foods Derived From New Plant Varieties." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

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.

Guidance on Consultation Procedures: Foods Derived From New Plant Varieties—(OMB Control Number 0910–NEW)

I. Background

Since 1992, when FDA issued its Statement of Policy: Foods Derived From New Plant Varieties (the 1992 policy) (57 FR 22984, May 29, 1992), FDA has encouraged developers of new plant varieties, including those varieties that are developed through biotechnology, to consult with FDA during the plant development process to discuss possible scientific and regulatory issues that might arise. In the 1992 policy, FDA explained that, under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), developers of new foods (in this document food refers to both human food and animal feed) have a responsibility to ensure that the foods they offer to consumers are safe and are in compliance with all requirements of the FD&C Act (57 FR 22984 at 22985).

FDA has long regarded it to be a prudent practice for producers who use biotechnology in the manufacture or development of foods and food ingredients to work cooperatively with FDA to ensure that products derived through biotechnology are safe and comply with all applicable legal requirements. Consequently, FDA instituted a voluntary consultation process with industry. The guidance on Consultation Procedures: From New Plant Varieties (originally published in 1996 and revised October 1997; the updated version is available on FDA's Web site at *http://www.fda.gov/FoodGuidances*) fosters communication by encouraging developers to submit to FDA their evaluation of the food safety of their new plant variety. Such communication will help to ensure that any potential food safety issues regarding a new plant variety are resolved during development, and will help to ensure that all market entry decisions by the industry are made consistently and in full compliance with the standards of the FD&C Act.

Description of Respondents: Respondents to this collection of information include developers of new plant varieties intended for food use.

In the **Federal Register** of February 18, 2010 (75 FR 7274), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one letter, containing multiple comments, in response to the notice. One comment expressed strong support for the consultation procedures, generally.

(Comment 1) One comment noted with appreciation that Form FDA 3665 will provide a standardized format and an ability to provide electronic information.

(Response) FDA agrees. As discussed elsewhere in this document, the new form will prompt developers to submit to FDA certain information in a standard format. In addition, the form and attachments can be submitted in an electronic format. FDA believes that use of the form and electronic submission will facilitate both the preparation and review of the submission because it organizes the information necessary to support the safety of the food derived from the new plant variety. FDA also expects that use of the form will decrease the overall paperwork burden on respondents.

(Comment 2) Another comment noted that the use of the new form and electronic submission of data and information for FDA's use should assure the protection of proprietary data and information submitted to FDA.

(Response) The submission to FDA may contain trade secret and commercial confidential information. Only information that is releasable under 21 CFR part 20 would be released to the public. This information is also safeguarded by section 301(j) of the FD&C Act (21 U.S.C. 331(j)) and would be protected from disclosure under sections 552(a) and (b) of the Freedom of Information Act (5 U.S.C. 552(a) and (b)).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	FDA Form No.	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Initial consultation	None	20	2	40	4	160
Final consultation	FDA 3665	12	1	12	150	1,800
Total						1,960

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. Initial Consultations

Initial consultations are generally a one-time burden, although a developer might return more than once to discuss additional issues before submitting a final consultation. As noted in its guidance to industry, FDA encourages developers to consult early in the development phase of their products, and as often as necessary. Historically, firms developing a new bioengineered plant variety intended for food use have generally initiated consultation with FDA early in the process of developing such a variety, even though there is no legal obligation for such consultation. These consultations have served to make FDA aware of foods and food ingredients before these products are distributed commercially, and have provided FDA with the information

necessary to address any potential questions regarding the safety, labeling, or regulatory status of the food or food ingredient. As such, these consultations have provided assistance to both industry and the Agency in exercising their mutual responsibilities under the FD&C Act.

Generally, for an initial consultation, a developer requests a meeting by sending FDA a letter with an agenda. A mutually convenient time is arranged and the developer comes to discuss their product. In preparation for a meeting, a developer might prepare written materials or a slide presentation to discuss their product under development. A meeting between the developer and FDA typically lasts between 1 and 2 hours. As a result of such a meeting, FDA establishes a file called a biotechnology notification file, or BNF, to collect all documentation and communication regarding the bioengineered plant. For example, FDA typically places information such as the developer's letter, agenda, and any written materials (such as copies of a slide presentation) in a BNF, as well as any memorandum FDA prepares as a record of the meeting. FDA has not issued any recommendations as to the format for these types of materials (*e.g.,* there is no form associated with requesting a meeting).

Depending on the introduced trait, the experience the developer has had with the kind of modification being considered, and their familiarity with the consultation procedures, a developer might choose to do a final consultation without an initial consultation.

III. Final Consultations

Final consultations are a one-time burden. At some stage in the process of research and development, a developer will have accumulated the information that the developer believes is adequate to ensure that food derived from the new plant variety is safe and that it demonstrates compliance with the relevant provisions of the FD&C Act. The developer will then be in a position to conclude any ongoing consultation with FDA. The developer submits to FDA a summary of the safety and nutritional assessment that has been conducted about the bioengineered food that is intended to be introduced into commercial distribution. FDA evaluates the submission to ensure that all potential safety and regulatory questions have been addressed. FDA has recently developed a form that prompts a developer to include certain elements in the final consultation in a standard format. New Form FDA 3665 is entitled "Final Consultation for Food Derived From a New Plant Variety (Biotechnology Final Consultation)." The form, and elements that would be prepared as attachments to the form, can be submitted in electronic format.

The summary information of the safety and nutritional assessment for a new plant variety submitted to FDA (on the form and in attachments to the form) includes the following information:

- The name of the bioengineered food and the crop from which it is derived;
- A description of the various applications or uses of the bioengineered food, including animal feed uses;
- Information concerning the sources, identities, and functions of introduced genetic material;
- Information on the purpose or intended technical effect of the modification, and its expected effect on the composition or characteristic properties of the food or feed;
- Information concerning the identity and function of expression products encoded by the introduced genetic material, including an estimate of the concentration of any expression product in the bioengineered crop or food derived therefrom;
- Information regarding any known or suspected allergenicity and toxicity of expression products and the basis for concluding that foods containing the expression products can be safely consumed;
- Information comparing the composition or characteristics of the bioengineered food to that of food derived from the parental variety or other commonly consumed varieties of the same crop with special emphasis on important nutrients, and toxicants that occur naturally in the food;
- A discussion of the available information that addresses whether the potential for the food derived from a bioengineered plant to induce an allergic response has been altered by the genetic modification; and
- Any other information relevant to the safety and nutritional assessment of the bioengineered food.

In 2001, FDA contacted 5 firms that had made one or more biotechnology consultation submissions under the 1996 procedures. FDA asked each of these firms for an estimate of the hourly burden to prepare a submission under the voluntary biotechnology consultation process. Three of these firms subsequently provided the requested information. Based on this information, FDA estimated that the average time to prepare a submission for final consultation under the 1996 procedures is 150 hours (69 FR 68381, November 24, 2004). The availability of the form, and the opportunity to provide the information in electronic format, could reduce this estimate. However, as a conservative approach for the purpose of this analysis, FDA is assuming that the availability of the form and the opportunity to submit the information in electronic format will have no effect on the average time to prepare a submission for final consultation under the 1996 procedures.

Dated: February 11, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–3476 Filed 2–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0248]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Format and Content Requirements for Over-the-Counter Drug Product Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Format and Content Requirements for Over-the-Counter Drug Product Labeling" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 13, 2010 (75 FR 49495), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0340. The approval expires on January 31, 2014. A copy of the supporting statement for this information collection is available on

the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: *February 11, 2011.*

Leslie Kux,

Acting Assistant Commissioner for Policy.

FR Doc. 2011–3475 Filed 2–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0543]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Importer's Entry Notice

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 March 18, 2011.

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: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0046. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *Jonnalynn.Capezutto@fda.hhs.gov.*

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.

Importer's Entry Notice—(OMB Control Number 0910–0046)—Revision

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

Section 801 of the FD&C Act, as amended by the Tobacco Control Act, charges the Secretary of Health and Human Services (HHS), through FDA, with the responsibility of assuring foreign origin FDA regulated foods, drugs, cosmetics, medical devices, radiological health, and tobacco products offered for import into the United States meet the same requirements of the FD&C Act as do domestic products, and for preventing products from entering the country if they are not in compliance. The discharge of this responsibility involves close coordination and cooperation between FDA (headquarters and field inspectional personnel) and the U.S. Customs Service (USCS), as the USCS is responsible for enforcing the revenue laws covering the very same products.

This collection of information was approved by OMB on August 10, 2009, and received an expiration date of August 31, 2012 (ICR Reference Number 200905–0910–006). However, because tobacco products had only recently been added to FDA's listing of regulated products when this collection of information was approved, the approved collection did not reflect information regarding tobacco products offered for import into and for prevention from them from entering the United States if they did not meet the same requirements of the FD&C Act as domestic products. The revision to this collection of information expands the universe of respondents being regulated under the FD&C Act, as amended, to include importers of tobacco products.

In the most recent OMB approval of this information collection package, FDA noted that in order to make an admissibility decision for each entry, the Agency needed four additional pieces of information that were not available from USCS's system. These data elements were the FDA Product Code, FDA country of production, manufacturer/shipper, and ultimate consignee. It was the "automated" collection of these four data elements for which OMB approval was being requested. When this package was sent to OMB for approval, FDA construed this request as an extension of the prior approval of collection of this data via a different media, i.e., paper. FDA noted that there were additional data elements which filers could provide to FDA along with other entry-related information. Doing so could result in their receiving an FDA admissibility decision more expeditiously, *e.g.,* the quantity, value, and Affirmation(s) of Compliance with Qualifier(s).

At each U.S. port of entry (seaport, landport, and airport) where foreign-origin FDA-regulated products are offered for import, FDA is notified, through Custom's Automated Commercial System (ACS) by the importer (or his agent) of the arrival of each entry. Following such notification, FDA reviews relevant data to ensure the imported product meets the standards as are required for domestic products, makes an admissibility decision, and informs the importer and USCS of its decision. A single entry frequently contains multiple lines of different products. FDA may authorize products listed on specific lines to enter the United States unimpeded, while other products in the same entry are to be held pending further FDA review/action.

An important feature developed and programmed into FDA's automated system is that all entry data passes through a screening criteria module, which makes the initial screening decision on every entry of foreign-origin FDA-regulated product. Almost instantaneously after the entry is filed, the filer receives FDA's admissibility decision covering each entry line, i.e., "MAY PROCEED" or "FDA REVIEW."

Examples of FDA's need to further review an entry may result from some products originating from a specific country or manufacturer known to have a history of problems, FDA having no previous knowledge of the foreign manufacturer and/or product, or a product import alert may have been issued, etc. The system assists FDA entry reviewers by notifying them of information, such as the issuance of import alerts, thus averting the chance that such information will be missed in their review.

Since the inception of the interface with ACS, FDA's electronic screening criteria program is applied nationwide. This eliminates problems such as "port shopping," e.g., attempts to intentionally slip products through one FDA port when refused by another, or filing entries at a port known to receive a high volume of entries. Every electronically submitted entry line of foreign-origin FDA-regulated product undergoes automated screening. The screening criteria can be set to be as specific or as broad as applicable; changes are immediately effective. This capability is of tremendous value in protecting the public in the event there is a need to

immediately halt a specific product from entering the United States.

In the **Federal Register** of November 4, 2010 (75 FR 67981), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the revised reporting burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA imported products	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Non-Tobacco (approved by OMB 09/01/2009)	3,406	1,089	3,709,134	.14	519,279
Tobacco (new estimated burden)	200	68	13,600	.14	1,904
Total					521,183

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 9, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–3466 Filed 2–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0076]

Agency Information Collection Activities; Proposed Collection; Comment Request; Electronic Records; Electronic Signatures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection provisions relating to FDA's electronic records and electronic signatures.

DATES: Submit either electronic or written comments on the collection of information by April 18, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Electronic Records; Electronic Signatures—21 CFR Part 11 (OMB Control Number 0910–0303)—Extension

FDA regulations in part 11 (21 CFR part 11) provide criteria for acceptance of electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records. Under these regulations, records and reports may be submitted to FDA electronically provided the Agency has stated its ability to accept the records electronically in an Agency-established public docket and that the other requirements of part 11 are met.

The recordkeeping provisions in part 11 (§§ 11.10, 11.30, 11.50, and 11.300) require the following standard operating procedures to assure appropriate use of, and precautions for, systems using electronic records and signatures: (1) § 11.10 specifies procedures and controls for persons who use closed systems to create, modify, maintain, or transmit electronic records; (2) § 11.30 specifies procedures and controls for persons who use open systems to create, modify, maintain, or transmit electronic records; (3) § 11.50 specifies procedures and controls for persons who use electronic signatures; and (4) § 11.300 specifies controls to ensure the security and integrity of electronic signatures based upon use of identification codes in combination with passwords. The reporting provision (§ 11.100) requires persons to certify in writing to FDA that they will regard electronic signatures used in their systems as the legally binding equivalent of traditional handwritten signatures.

The burden created by the information collection provision of this regulation is a one-time burden associated with the creation of standard operating procedures, validation, and certification. The Agency anticipates the use of electronic media will

substantially reduce the paperwork burden associated with maintaining FDA required records.

The respondents will be businesses and other for-profit organizations, State or local governments, Federal Agencies, and nonprofit institutions.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
11.100	4,500	1	4,500	1	4,500
Total					4,500

[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	Number of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per record	Total hours
11.10	2,500	1	2,500	20	50,000
11.30	2,500	1	2,500	20	50,000
11.50	4,500	1	4,500	20	90,000
11.300	4,500	1	4,500	20	90,000
Total					280,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Governmentwide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

Dated: February 9, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–3465 Filed 2–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0075]

Agency Information Collection Activities; Proposed Collection; Comment Request; Good Laboratory Practice Regulations for Nonclinical Studies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the good laboratory practice (GLP) for nonclinical laboratory studies regulations.

DATES: Submit either electronic or written comments on the collection of information by April 18, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Good Laboratory Practice Regulations for Nonclinical Studies—21 CFR Part 58 (OMB Control Number 0910–0119)—Extension

Sections 409, 505, 512, and 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 355, 360(b), 360(e)) and related statutes require manufacturers of food additives, human drugs and biological products, animal drugs, and medical devices to demonstrate the safety and utility of their product by submitting applications to FDA for research or marketing permits. Such applications contain, among other important items, full reports of all studies done to demonstrate product safety in man and/or other animals. In order to ensure adequate quality control for these studies and to provide an adequate degree of consumer protection, the Agency issued GLP regulations. The regulations specify minimum standards for the proper conduct of safety testing and contain sections on facilities, personnel, equipment, standard operating procedures (SOPs), test and control articles, quality assurance, protocol and conduct of a safety study, records and reports, and laboratory disqualification.

The GLP regulations contain requirements for the reporting of the results of quality assurance unit inspections, test and control article characterization, testing of mixtures of test and control articles with carriers, and an overall interpretation of nonclinical laboratory studies. The GLP regulations also contain recordkeeping requirements relating to the conduct of safety studies. Such records include: (1) Personnel job descriptions and summaries of training and experience; (2) master schedules, protocols and amendments thereto, inspection reports, and SOPs; (3) equipment inspection, maintenance, calibration, and testing records; (4) documentation of feed and water analyses, and animal treatments; (5) test article accountability records; and (6) study documentation and raw data.

The information collected under GLP regulations is generally gathered by testing facilities routinely engaged in conducting toxicological studies and is used as part of an application for a research or marketing permit that is voluntarily submitted to FDA by persons desiring to market new products. The facilities that collect this information are typically operated by large entities, e.g., contract laboratories, sponsors of FDA-regulated products, universities, or government agencies. Failure to include the information in a filing to FDA would mean that Agency scientific experts could not make a valid determination of product safety. FDA receives, reviews, and approves hundreds of new product applications each year based on information received. The recordkeeping requirements are necessary to document the proper conduct of a safety study, to assure the quality and integrity of the resulting final report, and to provide adequate proof of the safety of regulated products. FDA conducts onsite audits of records and reports during its inspections of testing laboratories to verify reliability of results submitted in applications.

The likely respondents collecting this information are contract laboratories, sponsors of FDA-regulated products, universities, or government agencies.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
58.35(b)(7)	300	60.25	18,075	1	18,075
58.185	300	60.25	18,075	27.65	499,774
Total					517,849

[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	Number of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per record	Total hours
58.29(b)	300	20	6,000	0.21	1,260
58.35(b)(1)–(b)(6) and (c)	300	270.76	81,228	3.36	272,926
58.63(b) and (c)	300	60	18,000	0.09	1,620
58.81(a)–(c)	300	301.8	90,540	0.14	12,676
58.90(c) and (g)	300	62.7	18,810	0.13	2,445
58.105(a) and (b)	300	5	1,500	11.8	17,700
58.107(d)	300	1	300	4.25	1,275
58.113(a)	300	15.33	4,599	6.8	31,273
58.120	300	15.38	4,614	32.7	150,878
58.195	300	251.5	75,450	3.9	294,255
Total					786,308

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Governmentwide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

Dated: February 9, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–3464 Filed 2–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0057]

Draft Guidance for Industry and Food and Drug Administration Staff on Best Practices for Conducting and Reporting Pharmacoepidemiologic Safety Studies Using Electronic Healthcare Data Sets; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and FDA staff entitled "Best Practices for Conducting and Reporting Pharmacoepidemiologic Safety Studies Using Electronic Healthcare Data Sets." The draft guidance is intended to describe best practices pertaining to conducting and documenting pharmacoepidemiologic safety studies using electronic healthcare data sets. The Agency includes recommendations for documenting the design, analysis, and results of such studies and submitting pharmacoepidemiologic safety study protocols and reports to FDA.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 18, 2011.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding human drug products:

Judy Staffa, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4447, Silver Spring, MD 20993–0002.

Regarding human biological products:

Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration (HFM–17), 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and FDA staff entitled "Best Practices for Conducting and Reporting Pharmacoepidemiologic Safety Studies Using Electronic Healthcare Data Sets."

The advent of new technologies and the ability to efficiently assemble electronic healthcare data sets for use in drug safety research have provided many new opportunities for conducting pharmacoepidemiologic studies of product safety issues. These technologies provide the possibility to study safety issues quickly (relative to alternative approaches) in real world health care environments involving large populations of patients. In addition, the application of innovative statistical methods to complex drug safety questions has allowed investigators to study issues previously considered too difficult outside of a clinical trial setting.

However, these developments have precipitated a great deal of discussion over the appropriate use of electronic healthcare data and statistical methods in conducting pharmacoepidemiologic safety studies. The primary goals of this draft guidance are to provide the following:

- Consistent guidance for industry to use when submitting to FDA reports and protocols for pharmacoepidemiologic safety studies so that study protocols and study reports submitted to FDA contain sufficient information to permit thorough review;
- A framework for FDA reviewers to use when reviewing and interpreting these submissions; and
- Consistent guidance for FDA to use when conducting these studies.

This draft guidance does not address real-time active safety surveillance studies, as this field is still rapidly evolving, and it is not possible at this time to recommend sound best practices. The draft guidance is not intended to be prescriptive with regard to choice of study design or type of analysis and does not endorse any particular type of data resource or methodology. Finally, it does not provide a framework for determining the appropriate weight of evidence of studies from this data stream in the overall assessment of drug safety, as this represents a separate step in the regulatory decisionmaking process and is best accomplished in the context of the specific safety issue under investigation.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the Agency's current thinking on the conduct and reporting of pharmacoepidemiologic safety studies using electronic healthcare data. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This draft guidance provides best practices for reporting pharmacoepidemiologic safety studies using electronic healthcare data sets. The reports referenced in the draft guidance would be submitted under 21 CFR 314.81, 314.98, and 601.70. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520 and are approved under OMB control numbers 0910–0001 and 0910–0338).

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm,http://www.fda.gov/BiologicsBloodVaccines/*

GuidanceCompliance RegulatoryInformation/Guidances/default.htm, or *http://www.regulations.gov.*

Dated: *February 9, 2011.*

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–3474 Filed 2–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0520]

Guidance for Industry: Potency Tests for Cellular and Gene Therapy Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Potency Tests for Cellular and Gene Therapy Products" dated January 2011. The guidance document provides manufacturers of cellular and gene therapy (CGT) products with recommendations for developing tests to measure potency. The recommendations are intended to clarify the potency information that could support an investigational new drug application (IND) or a biologics license application (BLA). The guidance announced in this notice finalizes the draft guidance of the same title dated October 2008.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Tami Belouin, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Potency Tests for Cellular and Gene Therapy Products" dated January 2011. The guidance document provides manufacturers of cellular and gene therapy products with recommendations for developing tests to measure potency. The recommendations are intended to clarify the potency information needed to support an IND or a BLA. Because potency measurements are designed specifically for a particular product, the guidance does not make recommendations regarding specific types of potency assays, nor does it propose acceptance criteria for product release.

In the **Federal Register** of October 9, 2008 (73 FR 59635), FDA announced the availability of the draft guidance of the same title. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. A summary of changes includes the addition of text related to adjuvant testing and modification of assay parameters for validation studies. In addition, editorial and formatting changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated October 2008.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 211 has been approved under 0910–0139; the collections of information in 21 CFR part 312 has been approved under 0910–0014; the collections of information in 21 CFR part 601 has been approved under 0910–0338.

III. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: *February 10, 2011.*

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–3462 Filed 2–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0069]

Training Program for Regulatory Project Managers; Information Available to Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) Center for Drug Evaluation and Research (CDER) is announcing the continuation of the Regulatory Project Management Site Tours and Regulatory Interaction Program (the Site Tours Program). The purpose of this document is to invite pharmaceutical companies interested in participating in this program to contact CDER.

DATES: Pharmaceutical companies may submit proposed agendas to the Agency by April 18, 2011.

FOR FURTHER INFORMATION CONTACT: Beth Duvall-Miller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6466, Silver Spring, MD 20993–0002, 301–

796–0700, e-mail: *elizabeth.duvallmiller@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

An important part of CDER's commitment to make safe and effective drugs available to all Americans is optimizing the efficiency and quality of the drug review process. To support this primary goal, CDER has initiated various training and development programs to promote high performance in its regulatory project management staff. CDER seeks to significantly enhance review efficiency and review quality by providing the staff with a better understanding of the pharmaceutical industry and its operations. To this end, CDER is continuing its training program to give regulatory project managers the opportunity to tour pharmaceutical facilities. The goals are to provide the following: (1) Firsthand exposure to industry's drug development processes and (2) a venue for sharing information about project management procedures (but not drug-specific information) with industry representatives.

II. The Site Tours Program

In this program, over a 2- to 3-day period, small groups (five or less) of regulatory project managers, including a senior level regulatory project manager, can observe operations of pharmaceutical manufacturing and/or packaging facilities, pathology/toxicology laboratories, and regulatory affairs operations. Neither this tour nor any part of the program is intended as a mechanism to inspect, assess, judge, or perform a regulatory function, but is meant rather to improve mutual understanding and to provide an avenue for open dialogue. During the Site Tours Program, regulatory project managers will also participate in daily workshops with their industry counterparts, focusing on selective regulatory issues important to both CDER staff and industry. The primary objective of the daily workshops is to learn about the team approach to drug development, including drug discovery, preclinical evaluation, tracking mechanisms, and regulatory submission operations. The overall benefit to regulatory project managers will be exposure to project management, team techniques, and processes employed by the pharmaceutical industry. By participating in this program, the regulatory project manager will grow professionally by gaining a better understanding of industry processes and procedures.

III. Site Selection

All travel expenses associated with the site tours will be the responsibility of CDER; therefore, selection will be based on the availability of funds and resources for each fiscal year. Selection will also be based on firms having a favorable facility status as determined by FDA's Office of Regulatory Affairs District Offices in the firms' respective regions. Firms interested in offering a site tour or learning more about this training opportunity should respond by submitting a proposed agenda to Beth Duvall-Miller (*see* **DATES** and **FOR FURTHER INFORMATION CONTACT**).

Dated: *February 9, 2011.*

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–3461 Filed 2–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Ryan White HIV/AIDS Program Core Medical Services Waiver Application Requirements (OMB No. 0915–0307)—Extension

Title XXVI, Section 2671 of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Ryan White HIV/AIDS Program), requires that grantees expend 75 percent of Parts A, B, and C Funds on core medical services, including antiretroviral drugs for individuals with HIV/AIDS, identified and eligible under the legislation. In order for Grantees under Parts A, B, and C to be exempted from the 75 percent core medical services requirement, they must request and receive a waiver from HRSA, as required in the Act.

HRSA utilizes standards for granting waivers of the core medical services requirement for the Ryan White HIV/AIDS Program. These standards meet the intent of the Ryan White HIV/AIDS Program to increase access to core medical services, including antiretroviral drugs for persons with HIV/AIDS, and to ensure that grantees receiving waivers demonstrate the availability of such services for individuals with HIV/AIDS, identified and eligible under Title XXVI of the PHS Act. The core medical services waiver uniform standard and waiver request process will apply to Ryan White HIV/AIDS Program Grant Awards under Parts A, B, and C of Title XXVI of the PHS Act. Core medical services waivers will be effective for a 1-year period that is consistent with the grant award period.

Grantees must submit a waiver request with the annual grant application containing the certifications and documentation which will be utilized by HRSA in making determinations regarding waiver requests. Grantees must provide evidence that all of the core medical services listed in the statute, regardless of whether such services are funded by the Ryan White HIV/AIDS Program, are available to all individuals with HIV/AIDS, identified and eligible under Title XXVI of the PHS Act in the service area within 30 days.

The annual estimate of burden is as follows:

Application	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Waiver Request	10	1	10	6.5	65
Total	10	1	10	6.5	65

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 30 days of this notice.

Dated: February 10, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–3528 Filed 2–15–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date And Time: March 3, 2011, 9 a.m. to 5 p.m. EDT, March 4, 2011, 9 a.m. to 12 p.m. EDT.

Place: Parklawn Building (and via audio conference call), Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Thursday, March 3 from 9 a.m. to 5 p.m. (EDT) and on Friday, March 4 from 9 a.m. to 12 p.m. (EDT). The public can join the meeting via audio conference call by dialing 1–800–369–3104 on March 3 and March 4 and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the March meeting will include, but are not limited to: updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice (DOJ), National Vaccine Program Office, Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health), Center for Biologics, Evaluation and Research (Food and Drug Administration), a discussion on the VICP outreach efforts, and a review of Vaccine Information Statements (VISs). A draft agenda and additional meeting materials will be posted on the ACCV Web site (*http://www.hrsa.gov/vaccinecompensation/accv.htm*) prior to the meeting. Agenda items are subject to change as priorities dictate.

Public Comment: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or e-mail: *aherzog@hrsa.gov.* Requests should contain the name, address, telephone number, e-mail address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by e-mail, mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period. Public participation and ability to comment will be limited to space and time as it permits.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the ACCV should contact Annie Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593 or e-mail: *aherzog@hrsa.gov.*

Dated: February 10, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–3527 Filed 2–15–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Ancillary Studies in Immunomodulation Clinical Trials (R01).

Date: March 10, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: James T. Snyder, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities/NIAID, National Institutes of Health, 6700B Rockledge Drive, MSC 7616, Room #3257, Bethesda, MD 20892–7616, 301–435–1614, *james.snyder@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Genetics of Lupus.

Date: March 11, 2011.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, 3136, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Wendy F. Davidson, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–402–8399, *davidsonw@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856,

Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 10, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–3483 Filed 2–15–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following 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 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 Inherited Disease Research Access Committee.

Date: March 11, 2011.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Camilla E. Day, PhD, Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 301–402–8837, *camilla.day@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 10, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–3482 Filed 2–15–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.

Date: March 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate the Molecular Immunology and Inflammation Branch and the Laboratory of Skin Biology.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 4C32, Bethesda, MD 20892.

Contact Person: John J. O'Shea, MD, PhD, Scientific Director, National Institute of Arthritis & Musculoskeletal and Skin Diseases, Building 10, Room 9N228, MSC 1820, Bethesda, MD 20892, (301) 496–2612, *osheaj@arb.niams.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: *February 9, 2011.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–3481 Filed 2–15–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following 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 the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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: National Library of Medicine Special Emphasis Panel R25.

Date: March 16, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Zoe H. Huang, MD, Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: *February 10, 2011.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–3480 Filed 2–15–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; CDRC Member Conflicts Review.

Date: March 9, 2011.

Time: 10:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Autism Supplements.

Date: March 24, 2011.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Susan L. Sullivan, PhD, Scientific Review Officer, National Institute of Deafness and Other Communication Disorders, 6120 Executive Blvd., Ste. 400C, Rockville, MD 20852, (301) 496–8683, *sullivas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 10, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–3479 Filed 2–15–11; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, through the use of automated collection techniques or other forms of information technology.

Proposed Project: Protection and Advocacy for Individuals With Mental Illness (PAIMI) Annual Program Performance Report (OMB No. 0930–0169)—Revision

The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act at 42 U.S.C. 10801 *et seq.,* authorized funds to the same protection and advocacy (P&A) systems created under the Developmental Disabilities Assistance and Bill of Rights Act of 1975, known as the DD Act (as amended in 2000, 42 U.S.C. 15041 *et seq.*). The DD Act supports the Protection and Advocacy for Developmental Disabilities (PADD) Program administered by the Administration on Developmental Disabilities (ADD) within the Administration on Children and Families. ADD is the lead Federal P&A agency. The PAIMI Program supports the same governor-designated P&A systems established under the DD Act by providing legal-based individual and systemic advocacy services to individuals with significant (severe) mental illness (adults) and significant (severe) emotional impairment (children/youth) who are at risk for abuse, neglect and other rights violations while residing in a care or treatment facility.

In 2000, the PAIMI Act amendments created a 57th P&A system—the American Indian Consortium (the Navajo and Hopi Tribes in the Four Corners region of the Southwest). The Act, at 42 U.S.C. 10804(d) states that a P&A system may use its allotment to provide representation to individuals with mental illness, as defined by s42 U.S.C. 10802 (4)(B)(iii) residing in the community, including their own home, only, if the total allotment under this title for any fiscal year is $30 million or more, and in such cases an eligible P&A system must give priority to representing PAIMI-eligible individuals, as defined by 42 U.S.C. 10802(4)(A) and (B)(i).

The Children's Health Act of 2000 (CHA) also referenced State P&A system authority to obtain information on incidents of seclusion, restraint and related deaths [*see,* CHA, Part H at 42 U.S.C. 290ii–1]. PAIMI Program formula grants awarded by SAMHSA go directly to each of the 57 governor-designated P&A systems. These systems are located in each of the 50 states, the District of Columbia, the American Indian Consortium, and five (5) territories—American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

The PAIMI Act at 42 U.S.C. 10805(7) requires that each P & A system prepare and transmit to the Secretary HHS and to the head of its State mental health agency a report on January 1. This report describes the activities, accomplishments, and expenditures of the system during the most recently completed fiscal year, including a section prepared by the advisory council (the PAIMI Advisory Council or PAC) that describes the activities of the council and its assessment of the operations of the system.

The Substance Abuse Mental Health Services Administration (SAMHSA) proposes to revise the annual PAIMI Program Performance Report (PPR), including the advisory council section of the report for the following reasons: (1) To make it consistent with the r annual reporting requirements under the Act and its Rules [42 CFR part 51], (2) to conform to the GPRA requirements that SAMHSA obtain information that closely measures actual outcomes of programs that are funded by the agency, and (3) to determine if the reporting burden can be reduced by removing any information that does not facilitate evaluation of the programmatic and fiscal effectiveness of a State P&A system.

The SAMHSA revisions to the annual PPR and Advisory Council section reflect the statutory and regulatory requirements of the PAIMI Act. These revisions include, but may not be limited to the following items: (1) Clarifying the instructional guidance in the PPR, e.g., Section 3.—Living Arrangements; Section 4—Complaints/Problems of PAIMI-eligible Individuals, at 4. D.2.—Intervention Strategy Outcome Statement, by using a chart format to capture the most significant outcome achieved per strategy used; eliminating the need for attachments, i.e., in Section 7—Grievance Procedures, a copy of the policies/procedures, in Section 8—Other Services and Activities a copy of agency policies/procedures for obtaining comments from the public (8.A.3.), and a copy of the public comment opportunity notice (8.A.1.); (2) clarifying the Advisory Council section of the PPR, e.g., Section B. PAIMI Advisory Council Membership, secondary identification instructions; and, (3) eliminating the submission of supplemental documents, e.g., PAIMI bylaws, etc. The revised report formats

will be effective for the FY 2011 PPR reports due on January 1, 2012.

The annual burden estimate is as follows:

	Number of respondents	Number of responses per respondent	Hours per response	Total hour burden
Program Performance Report	57	1	26	1,482
Advisory Council Report	57	1	10	570
Total	57			2,052

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, 1 Choke Cherry Road, Rockville, MD 20857 and also send an e-mail copy of your comments to her at *Summer.King@samhsa.hhs.gov.* Written comments are due within 60 days of this notice.

Dated: February 7, 2011.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2011–3486 Filed 2–15–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at 240–276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project—RECOVERY: Increasing Adoption of Patient Centered Behavioral Health Research by Primary and Behavioral Health Providers and Systems—NEW

SAMHSA's Center for Behavioral Health Statistics and Quality (CBHSQ) will conduct a study to evaluate the impact of different strategies for disseminating and promoting the adoption of patient-centered health research results among behavioral health and primary care providers and organizations that are responsible for delivering behavioral health services. Data collected by this study will allow CBHSQ to document and examine the impact of two dissemination strategies on the decision to adopt patient-centered health research; specifically, motivational interviewing and trauma-focused cognitive behavioral therapy. These data will also allow for an examination of contextual factors, both organizational and individual, that influence this decision to adopt an evidence-based behavioral health intervention. Ultimately, data collected by this study will inform those who hope to improve the effectiveness of dissemination strategies aimed at increasing the adoption of patient-centered behavioral health interventions by identifying facilitators and barriers to the adoption process.

Data collection activities involve the administration of five separate surveys (a baseline survey, a followup survey, and three dissemination evaluation surveys) to individuals typically involved in the decisionmaking process pertaining to the adoption of new behavioral interventions at 40 community health organizations and 40 community behavioral health organizations across the United States. Enrolled organizations will submit their responses for all surveys via Qualtrics, a third-party, online Web-based survey platform.

The estimated burden for data collection is 940 hours across a total of 400 participants. Using median hourly wage estimates reported by the Bureau of Labor Statistics, May 2009 National Occupational Employment and Wage Estimates, and a loading rate of 25%, the estimated total cost to respondents is $63,057.04. A breakdown of these estimates is presented in Table 1 below.

TABLE 1—ESTIMATED BURDEN FOR DATA COLLECTION

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total hour burden
Health Center Directors:				
Baseline Survey, Director Version	80	1	0.67	53.6
Followup Survey, Director Version	80	2	0.67	107.2
Dissemination Evaluation Survey of the Packets	80	1	0.17	13.6
Dissemination Evaluation Survey of the Training Webinar	40	1	0.17	6.8
Dissemination Evaluation Survey of the Coaching Webinar	40	1	0.17	6.8
Director Subtotal	80			188
Health Center Administrators:				
Baseline Survey, Staff Version	80	1	0.67	53.6
Followup Survey, Staff Version	80	2	0.67	107.2

TABLE 1—ESTIMATED BURDEN FOR DATA COLLECTION—Continued

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total hour burden
TA Evaluation Survey of the Packets	80	1	0.17	13.6
TA Evaluation Survey of the Training Webinar	40	1	0.17	6.8
TA Evaluation Survey of the Coaching Webinar	40	1	0.17	6.8
Administrator Subtotal	80			188
Practitioners:				
Baseline Survey, Staff Version	240	1	0.67	160.8
Followup Survey, Staff Version	240	2	0.67	321.6
TA Evaluation Survey of the Packets	240	1	0.17	40.8
TA Evaluation Survey of the Training Webinar	120	1	0.17	20.4
TA Evaluation Survey of the Coaching Webinar	120	1	0.17	20.4
Practitioner Subtotal	240			564
Total	400			940

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, One Choke Cherry Road, Rockville, MD 20857, and e-mail a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: February 7, 2011.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2011–3484 Filed 2–15–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0007]

Privacy Act of 1974; Department of Homeland Security United States Citizenship and Immigration Services—DHS/USCIS—013 E-Verify Self Check System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to establish a new Department of Homeland Security system of records titled, "Department of Homeland Security/United States Citizenship and Immigration Services—SORN DHS/USCIS—013 E-Verify Self Check System of Records." The U.S. Citizenship and Immigration Services E-Verify Self Check is voluntary and available to any individual who wants to check his own work authorization status prior to employment and facilitate correction of potential errors in federal databases that provide inputs into the E-Verify process. When an individual uses E-Verify Self Check, he will be notified either that 1. his information matched the information contained in federal databases and he would be deemed work-authorized, or 2. his information was not matched to information contained in federal databases which would be considered a "mismatch." If the information was a mismatch, he will be given instructions on where and how to correct his record(s). This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before March 18, 2011. This new system will be effective March 18, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0007 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Janice M. Jackson, Acting Privacy Branch Chief, Verification Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Citizenship and Immigration Services (USCIS) proposes to establish a new DHS system of records titled, "DHS/USCIS—013 E-Verify Self Check System of Records."

E-Verify was mandated by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law (Pub. L.) 104–208, September 30, 1996. The E-Verify Program is a free and mostly voluntary DHS program implemented by the USCIS Verification Division and operated in collaboration with the Social Security Administration (SSA) to determine work authorization. It compares information provided by employees on the Employment Eligibility Verification, Form I–9, against information in SSA, DHS, and Department of State (DoS) databases in order to verify an employee's work authorization. Section 404(d) requires that the system be designed and operated to maximize the reliability and ease of use. Therefore, DHS has developed E-Verify Self Check.

USCIS developed E-Verify Self Check to enable an individual to check his work authorization status prior to employment and facilitate correction of

potential errors in federal databases that provide inputs into the E-Verify process. Through the E-Verify Self Check secure web portal, an individual will be able to check his work authorization status by first providing information to authenticate his identity, and subsequently providing work authorization information based in part on information normally provided on Form I–9 employment documentation. Prior to E-Verify Self Check, only employers could verify work authorization for newly hired employees. With the introduction of E-Verify Self Check, upon successful identity authentication, an individual will be able to query E-Verify directly. If the information provided by the individual matches the information contained in federal databases (SSA, DHS, DoS) a result of "work authorization confirmed" is displayed to the individual. If the information was a mismatch, E-Verify Self Check will provide the individual a result of "Possible mismatch with SSA" or "Possible mismatch with Immigration Information." E-Verify Self Check will also provide the individual instructions on how to request correction of these potential errors in records contained in these federal databases should the individual choose to do so prior to any formal, employer run E-Verify query process. In rare cases, an individual may still receive a potential mismatch during a normal E-Verify query because the record cannot be changed. The individual is not required to correct the record mismatches that were identified by E-Verify Self Check.

E-Verify Self Check Process Details

E-Verify Self Check involves a two-step process: (1) Identity authentication of the individual; and (2) an E-Verify query to confirm the individual's current work authorization status. The first step, identity authentication, utilizes a third party Identity Proofing (IdP) service to generate knowledge-based questions based on commercial identity verification information, collected by third party companies from financial institutions, public records, and other service providers. The information accessed by the IdP may include information, such as the individual's commercial transaction history, mortgage payments, or past addresses. An individual must correctly answer these knowledge-based questions generated by the IdP in order to authenticate his identity and enable him to use E-Verify Self Check. In order to generate these knowledge-based questions, the IdP service collects basic personally identifiable information (PII) from the individual including name, address of residence, date of birth, and optionally the individual's Social Security number (SSN). Each individual will be asked a minimum of two and a maximum of four knowledge-based questions. If there is not enough commercial identity verification information from financial institutions, public records, and other service providers to generate two questions, the individual's identity cannot be authenticated and he will not be able to continue through E-Verify Self Check. The fact that an individual was unable to use the IdP service will be sent to E-Verify, but no other information. The IdP will send a transaction number, the fact that knowledge based questions could not be generated and the date and time of the transaction, so that USCIS may keep a statistic of how many individuals are unable to use the IdP.

If there is sufficient information to generate two to four questions, the IdP will evaluate the answers to the questions and return a pass/fail indicator to USCIS. If the individual does not successfully answer the questions generated by the IdP, he will not be authenticated and he will not be able to continue through E-Verify Self Check. Neither the questions asked by the IdP service nor the answers provided by the individual are retained by the IdP. The IdP will send a transaction number, the reason for failure, the date and time of the transaction, and an error code to E-Verify, to facilitate troubleshooting and system management and improvement so that USCIS may keep statistics of how many individuals are unable to use the IdP and therefore Self Check. All PII entered by the individual during the IdP session and any questions that might have been generated by the IdP are deleted at the end of the session. Nothing is stored or retained in E-Verify Self Check. This information cannot be linked back to the individual.

If the individual is able to answer the questions; his identity is authenticated, a pass indicator is returned to E-Verify, and the individual will continue through E-Verify Self Check. E-Verify will receive a pass indication and the name, date of birth, and SSN (if provided) will be provided back to E-Verify. Residence address will not be passed to E-Verify.

When there are multiple attempts to authenticate an individual, which indicates possible fraud, the DHS contract authorizes the IdP to notify the provider of the information of potential fraud and to terminate access to E-Verify Self Check.

The Fair Credit Reporting Act (FCRA) requires the IdP to retain the fact of an inquiry. The IdP maintains the time/date stamp and inquiry type (credit check, identity check, etc.) so that the inquiry is noted in the individual's credit record and can be audited at a later date. The E-Verify Self Check inquiry is an identity check, and therefore will not affect an individual's credit score. These types of inquiries are not shown to third parties who may request copies of credit reports.

Under FCRA, an individual has the right to know who has reviewed his credit report and the individual can place a fraud alert on his credit file. If an individual has placed a fraud alert on his credit file, the individual will not be able to authenticate for E-Verify Self Check purposes.

Upon identity authentication, the individual moves to step 2: an E-Verify query to identify current work authorization status. The IdP passes the name, date of birth and SSN (if provided). In order to ensure that the information belongs to the individual who originally passed the identity authentication step, these data elements cannot be altered. The individual will be required to enter additional information based on the documentation he would present to an employer for the Form I–9 process. The additional information collected from an individual depends on his citizenship status and the document chosen to present for work authorization. This could include: citizenship status; Alien Number (if non-citizen); passport number; Form I–94 number; and/or lawful permanent resident card or work authorization document (EAD) number. This represents the same information that is collected for the Form I–9 process and the basic E-Verify query.

E-Verify Self Check will query E-Verify through a web service connection and will present either an indication that an individual's information matched government records and that E-Verify would have found the individual work-authorized or that the information is a possible mismatch to government records. If the individual receives a "possible mismatch with SSA/Immigration Information" response, E-Verify Self Check will provide guidance on how to correct potential errors in the records. The individual will be asked whether they would like to resolve the mismatch or not. If the individual chooses not to resolve the mismatch, E-Verify will close the case. If the individual chooses to resolve the SSA mismatch, a form will be generated that contains the individual's first and last

name, the date and time of the E-Verify query, the E-Verify case number, and detailed instructions on how to resolve the mismatch. If the individual decides to resolve an Immigration Information mismatch, E-Verify Self Check provides instructions to contact E-Verify Customer Contact Office (CCO) to assist in the correction of immigration records 72 hours after the initial query to speak with a status verification representative. If the representative is unable to correct the record, the individual will be advised of actions necessary to correct the error.

The main benefit of E-Verify Self Check is to facilitate the identification and correction of potential errors in federal databases that provide inputs into the E-Verify system thereby improving the E-Verify process for both the employee and the employer. Prior to the introduction of E-Verify Self Check, an individual did not have the ability to identify potential issues associated with his work authorization status until after receiving adverse notification from employers. E-Verify Self Check provides a vehicle for an individual to proactively check work authorization status prior to the employer conducting the E-Verify inquiry.

There may be instances when an individual is unable to authenticate his identity using the IdP service. For example, the IdP may not be able to generate knowledge-based questions if sufficient data pertaining to him cannot be located or if he has placed a lock or alert on his information. In addition, an individual may not receive a passing score because the IdP information maintained is incorrect. If someone is unable to authenticate through the IdP but still wants to determine work authorization status prior to hire, USCIS will provide information on how to visit an SSA field office, access Social Security yearly statements, call USCIS, or submit a Freedom of Information Act/Privacy Act request to access work authorization records. The individual will also be advised to check the information at the various credit bureaus and through a free credit check site.

This newly established system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCIS—013 E-Verify Self Check System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

DHS/USCIS—013 E-Verify Self Check.

SYSTEM NAME:

DHS/USCIS—013 E-Verify Self Check.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Records are maintained at the USCIS Headquarters in Washington, D.C. and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals seeking to check employment eligibility under the Immigration and Naturalization Act (INA). This includes U.S. citizens as well as non-U.S. citizens.

CATEGORIES OF RECORDS IN THE SYSTEM:

E-Verify Self Check is a two-step process: (1) identity authentication and (2) confirmation of work authorization status. The first step of the process is the identity authentication. E-Verify Self Check will use a third party commercial identity assurance service provider (IdP) using commercial identity verification information, collected by third-party companies from financial institutions, public records, and other service providers to verify an individual's identity. The IdP will collect information about the individual who has elected to use E-Verify Self Check.

The IdP will collect the following information from all individuals in order to generate the questions:

- Name (last, first, middle initial, and maiden);
- Date of birth;
- Address of Residence; and
- SSN(if provided).

The questions asked by the IdP and the answers provided by the individual are not provided to USCIS. If an individual fails the identity authentication portion of E-Verify Self Check and therefore is unable to proceed to an actual query in E-Verify, none of the information listed above is provided to or retained by E-Verify Self Check. Only the transaction number, the reason for failure, the date and time of the transaction, and error code are retained by the IdP to facilitate troubleshooting and system management.

In the individual passes identity authentication, he will be redirected to the DHS/USCIS E-Verify Self Check screen to begin the E-Verify Self Check. The individual's name, date of birth, and SSN (if provided) that were entered during identity authentication is automatically pre-populated in E-Verify Self Check (E-Verify will not receive the address of residence). This information will be unchangeable to ensure that the information represents the individual whose identity has been authenticated. To begin the E-Verify Self Check process, the individual will be asked for additional information. This information will be based the on individual's citizenship status and the document chosen to prove work authorization. Documents chosen could include:

- SSN (if not previously provided);
- Document(s) type, associated number, and associated expiration date that demonstrates work authorization. These may include U.S. Passport, employment authorization document, I–495 Lawful Permanent resident card, or other documents and associated numbers as listed as acceptable Form I–9 verification documents.

This process is the same process as the basic E-Verify query and is described in the E-Verify PIA, dated May 4, 2010, and System of Records Notice dated May 19, 2010, 75 FR 28035.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, dated September 30, 1996.

PURPOSE(S):

An individual will use E-Verify Self Check to determine work authorization status. E-Verify Self Check contracts with an IdP in order to provide identity authentication.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The U.S. or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of the E-Verify Program, which includes possible fraud, discrimination, or employment based identity theft and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To an individual utilizing E-Verify Self Check in order to determine his own work authorization in the United States.

I. To a third party commercial identity assurance provider (IdP) under contract with the Department, but only the name, date of birth, address of residence, and Social Security number (if provided), for the purposes of authenticating an individual who is seeking to access the USCIS E-Verify Self Check for employment eligibility.

When there are multiple attempts to authenticate an individual, which indicates possible fraud, the DHS contract authorizes the IdP to notify the provider of the information of potential fraud and to terminate access to E-Verify Self Check. The IdP will share the fact of the inquiry with the appropriate credit bureau and monitor for potential fraudulent access in accordance with the Fair Credit Reporting Act (FCRA).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

DHS is using the services of a third party IdP to authenticate an individual's identity. The third party IdP uses commercial identity verification information which is collected by third party companies from financial institutions, public records, and other service providers to create the knowledge-based questions used to authenticate identity. This information does not belong to DHS nor will information from other sources relied upon by the third party provider be collected and/or retained by DHS. FCRA requires the IdP to retain the fact of an inquiry. The IdP will maintain time/date stamp and inquiry type (credit check, identity check, etc.) so that the inquiry is noted in the individual's credit record and can be audited at a later date. The E-Verify Self Check inquiry is an identity check, and therefore will not affect an individual's credit score. These types of inquiries are not shown to third parties who may request copies of credit reports. Under FCRA, an individual has the right to know who has reviewed his credit report and the individual can place a fraud alert on his credit file. If an individual has placed a fraud alert on his credit file, the individual will not be able to authenticate for E-Verify Self Check purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically, on magnetic disc, tape, digital media, and CD–ROM. All personal information entered by the individual as part of the IdP process and any questions that might have been generated by the third party data IdP are deleted at the end of the session. Nothing is stored or retained in E-Verify Self Check. Only the transaction number, the reason for failure, the date and time of the transaction, and error code are retained to facilitate troubleshooting and system management. Because the IdP accesses an individual's credit history to perform the authentication, it will retain audits of the individual's E-Verify Self Check inquiry to comply with legal obligations, specifically, the FCRA. The FCRA requires that an inquiry be noted in the individual's credit record.

RETRIEVABILITY:

Records related to the IdP portion of the program can be retrieved by the following fields:

- E-Verify Self Check unique transaction ID;
- IdP Unique Transaction ID;
- E-Verify Self Check transaction time/date stamp;
- Failure of the IDP transaction; and
- Reason for Failure (i.e., could not generate questions/answered incorrectly/system error)

For the actual E-Verify Self Check query, the information will be retrieved

by name, Alien Number, I–94 Number, Receipt Number, Passport (U.S. or Foreign) Number, or Social Security number of the individual as discussed in the E-Verify SORN dated May 19, 2010.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

The retention schedule is currently under development with the National Archives and Records Administration (NARA). The proposed retention schedule for the query and response to the query is for one (1) year in order to allow time for management analysis and proper reporting.

SYSTEM MANAGER AND ADDRESS:

Chief, Verification Division, U.S. Citizenship and Immigration Services, Washington, DC 20529.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the USCIS FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Records are obtained from several sources including: (A) Information collected from individuals requesting their work authorization status; (B) information collected from federal databases for work authorization, (C) information created by E-Verify, including its monitoring and compliance activities; and (D) pass notification from the IdP when an individual has successfully completed identity authentication.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: February 10, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–3490 Filed 2–15–11; 8:45 am]

BILLING CODE 9117–97–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3317–EM; Docket ID FEMA–2011–0001]

Missouri; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Missouri (FEMA–3317–EM), dated February 3, 2011, and related determinations.

DATES: *Effective Date:* February 3, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 3, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Missouri resulting from a severe winter storm beginning on January 31, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* ("the Stafford Act"). Therefore, I declare that such an emergency exists in the State of Missouri.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Elizabeth Turner, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Missouri have been designated as adversely affected by this declared emergency:

Emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program for all 114 counties and the Independent City of St. Louis in the State of Missouri.

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 Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–3431 Filed 2–15–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3317–EM; Docket ID FEMA–2011–0001]

Missouri; 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 Missouri (FEMA–3317–EM), dated February 3, 2011, and related determinations.

DATES: *Effective Date:* February 5, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective February 5, 2011.

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 Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–3429 Filed 2–15–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0014]

Emergency Responder Field Operations Guide

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency is requesting public comments on the Emergency Responder Field Operations Guide (ER FOG). The ER FOG was drafted to assist emergency response personnel in the use of the National Incident Management System Incident Command System during incident operations.

DATES: Comments must be received by March 18, 2011.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2009–0014, by one of the following methods:

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

E-mail: FEMA-POLICY@dhs.gov. Include Docket ID FEMA–2009–0014 in the subject line of the message.

Fax: 703–483–2999.

Mail/Hand Delivery/Courier: Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the Privacy Notice link in the footer of *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Mark Kurisko, Program Specialist, 999 E Street, NW., Washington, DC 20463, 202–646–2840.

SUPPLEMENTARY INFORMATION: The Emergency Responder Field Operations Guide (ER FOG) is intended for use when implementing the Incident Command System (ICS) in response to an incident, regardless of type, size, or location. It does not replace emergency operations plans, laws, regulations, and ordinances. Rather, this document provides guidance for assigned incident personnel by describing ICS and the operational planning cycle, explaining responsibilities, and providing position checklists.

To properly use and understand this guide, personnel should have a basic understanding of NIMS and ICS. The contents of this document are not intended as a substitute for required training and good judgment. All agencies and jurisdictions should ensure that responders receive adequate and appropriate training to perform their assigned duties and tasks.

The ER FOG is available on *http://www.regulations.gov,* under Docket ID FEMA–2009–0014. Follow the instructions above, in the **ADDRESSES** section, to submit comments.

Authority: Homeland Security Act of 2002, as amended, 6 U.S.C. 101, *et seq.,* and Homeland Security Presidential Directive (HSPD) 5—Management of Domestic Incidents.

Dated: February 9, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–3419 Filed 2–15–11; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1953–DR; Docket ID FEMA–2011–0001]

Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1953–DR), dated February 1, 2011, and related determinations.

DATES: *Effective Date:* February 1, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 1, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Maine resulting from severe storms and flooding during the period of December 12–19, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maine have been designated as adversely affected by this major disaster:

Aroostook, Piscataquis and Washington Counties, and the Tribal lands of the Passamaquoddy Tribe located entirely within Washington County for Public Assistance.

All counties and Tribes in the State of Maine are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 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 Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–3425 Filed 2–15–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3316–EM; Docket ID FEMA–2011–0001]

Oklahoma; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Oklahoma (FEMA–3316–EM), dated February 2, 2011, and related determinations.

DATES: *Effective Date:* February 2, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 2, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Oklahoma resulting from a severe winter storm beginning on January 31, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* ("the Stafford Act"). Therefore, I declare that such an emergency exists in the State of Oklahoma.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Kevin L. Hannes, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Oklahoma have been designated as adversely affected by this declared emergency:

Emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program for all 77 counties in the State of Oklahoma.

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 Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–3428 Filed 2–15–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1954–DR; Docket ID FEMA–2011–0001]

New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1954–DR), dated February 4, 2011, and related determinations.

DATES: *Effective Date:* February 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 4, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from a severe winter storm and snowstorm during the period of December 26–27, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act").

Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William L. Vogel, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Jersey have been designated as adversely affected by this major disaster:

Bergen, Burlington, Cape May, Essex, Hudson, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, and Union Counties for Public Assistance.

Bergen, Burlington, Cape May, Essex, Hudson, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, and Union Counties for emergency protective measures, (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties within the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 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 Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–3426 Filed 2–15–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Approval From OMB of One New Public Collection of Information: Security Program for Hazardous Materials Motor Carriers & Shippers

AGENCY: Transportation Security Administration, DHS.

ACTION: 60 Day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on a new information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act. The collection involves the submission of security training program evaluation forms by hazardous materials (hazmat) motor carriers and shippers after participants have received the training.

DATES: Send your comments by April 18, 2011.

ADDRESSES: Comments may be mailed or delivered to Joanna Johnson, Communications Branch, Business Management Office, Operational Process and Technology, TSA–32, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651 or facsimile (571) 227–3588.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

TSA's Highway & Motor Carrier Division will be producing a voluntary security-related training course for the hazmat motor carrier and shipper industry. Participants will be able to choose to attend instructor-led training sessions that TSA will conduct at multiple sites in the United States, and TSA will advise the industry of the availability of the training through trade associations, conferences, and stakeholder meetings. Hazmat motor carriers and shippers that are registered with the U.S. Department of Transportation (DOT) will automatically receive the training via CD–ROM and DVD. Companies may also complete the training on-line at the TSA public Web site, *http://www.tsa.gov.* The Web site training is available to the public and does not require a log-in or password. After completion of the training program, participants will have the option to complete a course evaluation form to comment on the effectiveness of the training program. The participants who choose to complete the training evaluation form will submit the form via e-mail to a secure Web surveyor tool that is managed by TSA. Participants who attend the classroom training sessions will also be asked to complete an evaluation form on-site, which will later be entered into the Web surveyor tool by TSA personnel. TSA will use this data to measure the program's effectiveness at achieving its goal of heightened security awareness levels throughout the hazmat motor carrier and shipper industry.

Hazmat motor carriers and shippers that are registered with the DOT are eligible to receive the training; there are approximately seventy-five thousand (75,000) shippers registered.

Currently, DOT requires awareness and in-depth security training for hazmat employees of persons required to have a security plan in accordance with subpart I of 49 CFR part 172 concerning the security plan and its implementation. *See* 49 CFR 172.704(a)(4)(5).[1] The training CD–ROM and DVD will provide the necessary training curriculum and tools to be incorporated into the companies' annual security training program. The approximate number of hazmat employees who potentially could participate in the training program via instructor-led sessions, CD–ROM, DVD, or the TSA public Web site could approach approximately one hundred thousand (100,000) employees, depending on the level of participation. The training will be produced and delivered in a format that will allow companies that choose to complete the evaluation to have their employees take the training program individually or in a classroom setting and receive a certificate for completion of the training program. This will allow companies to keep a copy of the employee's training certificate in their personnel training files in accordance with 49 CFR 172.704. Since security training is already a Federal requirement for the hazmat motor carrier and shipper industry, the subject motor carrier or shipper companies should only incur small incremental costs associated with taking the voluntary training program produced by TSA.

Purpose of Data Collection

As prescribed by the President in Homeland Security Presidential Directive 7 (HSPD–7), the Department of Homeland Security (DHS) is tasked with protecting our nation's critical infrastructure and key resources (CI/KR). Through the National Infrastructure Protection Plan (NIPP), DHS gives guidance and direction as to how the Nation will secure its infrastructure. Furthermore, HSPD–7 and the NIPP assigned the responsibility for infrastructure security in the transportation sector to TSA. To this effect, the NIPP further tasks each sector to build security partnerships, set security goals, and measure their effectiveness. Through its voluntary Corporate Security Review (CSR) Program, TSA's Highway and Motor Carrier Division has conducted security reviews of numerous hazmat motor carriers and shippers in order to analyze various aspects of each company's security program. Through this review process, TSA has determined that improved security awareness and in-depth training for hazmat motor carrier and shipper company employees would enhance security. To increase the security awareness levels across the hazmat motor carrier and shipper industries, TSA plans to develop and distribute a security awareness/in-depth training program and will request voluntary feedback from hazmat motor carrier and shipper companies that elect to receive the training.

Hazmat motor carrier and shipper companies can take the training via CD–ROM and DVD, during classroom training sessions, or via the TSA public Web site. For those taking the classroom training sessions, TSA will hand out an evaluation form to collect feedback regarding the security training program. Participants can also complete the evaluation form on-line after completing the training. TSA will collect the forms and evaluate the results. TSA will use the survey results to guide TSA on future hazmat motor carrier and shipper transportation security initiatives. TSA plans to conduct the data collection over a two to three year period in order to allow for maximum distribution and use of the training program throughout the industry, and for participating companies to complete full training cycles.

Description of Data Collection

TSA will ask participating companies that voluntarily complete the Security Awareness Training program via the CD–ROM to log on to a TSA-managed secure Web site to provide feedback on the effectiveness of the training. Participants that complete the training program via the classroom sessions will be asked to complete an evaluation form on-site after the training is completed. TSA's Highway & Motor Carrier Division staff will manually input the data into the Web surveyor tool system.

As part of the evaluation form, TSA will collect information such as employee position, type of company, knowledge of material before and after the training, and overall training satisfaction. TSA will not collect the respondent's personal information as part of the course evaluation form. TSA will use this data to measure the program's effectiveness at achieving its goal of heightened security awareness levels throughout the hazmat motor carrier and shipper industry.

Use of Results

The primary use of this information is to allow TSA to assess the effectiveness of the training program and training CD–ROM within the hazmat motor carrier and shipper industries. The secondary purpose of this information is for TSA to obtain, based on individual company input, an indication of participation levels throughout the hazmat motor carrier and shipper industries. This data will be kept for at least one year or long enough to collect a significant sample size (percentage) of the hazmat motor carrier and shipper industries to be used in identifying additional training needs to enhance the industry's security posture.

[1] This security training must include company security objectives, specific security procedures, employee responsibilities, actions to take in the event of a security breach, and the organizational security structure.

Frequency

Most companies administer their security awareness training curriculum on an annual or bi-annual cycle. Typically, companies will generate quarterly or annual reports on employee training progress. At other companies, employees may receive training periodically as needed and submit feedback via the evaluation form between one and four times per year, which TSA equates to an average frequency for this collection of two times per year. Thus, company employees would provide TSA feedback approximately once every two years.

Out of the approximately 75,000 individual hazmat motor carrier and shipper companies, TSA estimates that approximately 75 percent of the companies that receive the CD–ROM training will incorporate it into their training plans. This number can be assumed due to the current DOT requirement (49 CFR 172.704) for certain hazmat motor carriers and shippers to conduct security awareness and in-depth training for their hazmat employees. TSA assumes that 50 percent of those who take the training will provide feedback on the training program. TSA estimates the average hour burden per response per shipper/carrier company employee will be approximately 20 minutes. TSA estimates the total annual hour burden will be dependent on the number of company employees that participate per motor carrier/shipper company. Therefore, TSA estimates that the maximum total annual hour burden will be approximately 16,667 hours per year for all motor carrier/shipper industry participants [50,000 employees × 20 minutes = 16,667 hours].

Issued in Arlington, Virginia, on February 10, 2011.

Joanna Johnson,

Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–3543 Filed 2–15–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5484–N–03]

Notice of Proposed Information Collection: Comment Request; Application for HUD/FHA Insured Mortgage "HOPE for Homeowners"

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 18, 2011.

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: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Karin Hill, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

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 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 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: HUD/FHA Insured Mortgage "HOPE" for Homeowners.

OMB Control Number, if applicable: 2502–0579.

Description of the need for the information and proposed use: This information is collected on new mortgages offered by FHA approved mortgagees to mortgagors who are at risk of losing their homes to foreclosure through the HOPE for Homeowners Program, and to those who owe more than the value of their homes through the FHA Refinance of Borrowers in Negative Equity Positions. The new FHA insured mortgages refinance the borrower's existing mortgage at a significant writedown. Under the HOPE for Homeowners program the mortgagors share the new equity with FHA.

Agency form numbers, if applicable: HUD92900–H4H, HUD92915–H4H, HUD92916–H4H and HUD92917–H4H, and HUD–92918.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 146,096. The number of respondents is 11,000, the number of responses is 882,242, the frequency of response is once per loan, and the burden hour per response is 4.05.

Status of the proposed information collection: This is a revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 11, 2011.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2011–3510 Filed 2–15–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 5484–N–04]

Notice of Proposed Information Collection: Comment Request; Request for Prepayment of Section 202 or 202/8 Project

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 18, 2011.

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: Reports Liaison Officer, Department of Housing and Urban Development, 451

7th Street, SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Marilyn Edge, Acting Director, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 402–2078 (this is not a toll-free number).

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 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 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: Request for Prepayment of Section 202 or 202/8 Project.

OMB Control Number, if applicable: 2502–0554.

Description of the need for the information and proposed use: Request from owner to prepay a multifamily housing project mortgage financed by the Department under Section 202.

Agency form numbers, if applicable: HUD–9808, Request for Prepayment of Section 202 or 202/8 Project.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 380; the number of respondents is estimated to be 190 generating approximately 190 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 2 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 11, 2011.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2011–3512 Filed 2–15–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 5481–N–03]

Notice of Extension of Information Collection for Public Comment; Consolidated Plan and Annual Performance Report

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Extension of Information Collection for Public Comment.

SUMMARY: The proposed extension of information collection requirements for Consolidated Planning for Community Planning and Development (CPD) programs 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:* April 18, 2011.

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 Colette Pollard, Paperwork Reduction Act Officer, Office of Chief Information Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Salvatore Sclafani, Office of Community Planning & Development, telephone (202) 402–4364 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended). As required under 5 CFR 1320.8(d)(1), HUD and OMB are seeking comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed extension of 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 submission of responses.

Title of Proposal: Consolidated Plan & Annual Performance Report.

OMB Control Number: OMB 2506–0117.

Description of the Need for the Information and Proposed Uses: The Department's collection of this information is in compliance with statutory provisions of the Cranston-Gonzalez National Affordable Housing Act of 1990 that requires participating jurisdictions submit a Comprehensive Housing Affordability Strategy (Section 105(b)); the 1974 Housing and Community Development Act, as amended, that requires states and localities to submit a Community Development Plan (Section 104(b)(4) and Section 104(m); and statutory provisions of these Acts that require states and localities to submit applications and reports for these formula grant programs. The information is needed to provide HUD with preliminary assessment as to the statutory and regulatory eligibility of proposed grantee projects and for informing citizens of intended uses of program funds.

Members of the Affected Public: State and local governments participating in the Community Development Block Grant Program (CDBG), the HOME Investment Partnerships (HOME) program, the Emergency Shelter Grants (ESG) program, or the Housing Opportunities for Persons with AIDS/HIV (HOPWA) program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response and hours of response: Under a previous submission, OMB Control Number 2506–0117, the burden of meeting the regulatory requirements of Title I of the National Affordable Housing Act (NAHA) and the Housing and Community Development Act (HCDA) were assessed. That submission was approved until April 30, 2011.

The paperwork estimates are as follows:

Task	Number of respondents	Frequency of response	Total U.S. burden hours
Consolidated Plan:			
Localities:			
• Strategic Plan Development	1,000	1	220,000
• Action Plan Development	1,000	.....	112,000
States:			
• Strategic Plan Development	50	1	30,200
• Action Plan Development	50	1	18,700
Performance Report:			
Localities	1,000	1	162,000
States	50	1	12,600
*Abbreviated Strategy	100	.....	8,200
Total	.....	.....	563,700

Status of the proposed information collection: Extension of previously approved collection for which approval is near expiration and request for OMB's approval for three years. The current OMB approval expires April 30, 2011.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 26, 2011.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2011–3519 Filed 2–15–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5482–N–03]

Notice of Proposed Information Collection Comment Request; Certification and Funding of State and Local Fair Housing Enforcement Agencies

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning the certification and funding of State and local fair housing enforcement agencies 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:* April 18, 2011.

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: Collette Pollard, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410, telephone (202) 402–3400 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Carroll, Director, Fair Housing Assistance Program, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 5208, Washington, DC 20410, telephone (202) 402–7044. (This is not a toll-free number.) Hearing or speech-impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

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 34, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Enhance the certification and funding of State and local fair housing enforcement agencies; (2) Enhance the quality, utility, and clarity of the information to be collected; and (3) Minimize the burden of the collection of information on those who respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title of Proposal: Certification and Funding of State and Local Fair Housing Enforcement Agencies.

Office: Fair Housing and Equal Opportunity.

OMB Control Number: 2529–0005.

Description of the need for the information and proposed use:

A. Request for Substantial Equivalence

For a state or local law to be certified as "substantially equivalent" and therefore be eligible to participate in the Fair Housing Assistance Program (FHAP), the Assistant Secretary for Fair Housing and Equal Opportunity must determine that the state or local law provides substantive rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to the federal Fair Housing Act (the Act). State and local fair housing enforcement agencies that are seeking certification in accordance with Section 810(f) of the Act submit a request to the Assistant Secretary for Fair Housing and Equal Opportunity. The request must be supported by the text of the jurisdiction's fair housing law, the law creating and empowering the agency, all laws referenced in the jurisdiction's fair housing law, any regulations and directives issued under the law, and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the jurisdiction's fair housing law.

B. Information Related to Agency Performance

Once agencies are deemed substantially equivalent and are participating in the FHAP, HUD collects sufficient information to monitor agency performance in accordance with 24 CFR 115.206, which sets forth the performance standards for agencies participating in the FHAP. These standards are meant to ensure that the state or local law, both "on its face" and "in operation," provides substantive rights, procedures, remedies, and judicial review procedures for alleged discriminatory housing practices that are substantially equivalent to those provided in the FHA. In addition, HUD collects sufficient information to monitor agency compliance with 24 CFR 115.307 and 24 CFR 115.308, which set forth requirements for FHAP participation and reporting and record keeping requirements including, but not limited to, the requirement that FHAP agencies use HUD's official complaint

data information system, and input complaint processing information into that system in a timely manner.

Frequency of Submission: The Department estimates that requests for substantial equivalence will have the following reporting burdens:

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	10		6		15		900

The Department estimates that reporting information related to agency performance will have the following reporting burdens:

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	100		33		20		66,000

Total Estimated Burden Hours: 69,900.

Status: Extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 9, 2011.

Lynn M. Grosso,

Director, Office of Enforcement, Office of Fair Housing and Equal Opportunity.

[FR Doc. 2011–3517 Filed 2–15–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Non-Use Valuation Survey, Klamath Basin; Thirty-Day Notice Requesting Additional Public Comments

AGENCY: U.S. Department of the Interior.

ACTION: Thirty-day notice requesting additional public comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary of the Department of the Interior announces the revision of an information collection "Klamath Non-use Valuation Survey," Office of Management and Budget (OMB) Control No. 1090–0010, and that it is seeking comments on the revised information collection. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this information collection.

ADDRESSES: You may submit your comments directly to the Desk Officer for the Department of the Interior (OMB 1090–0010), Office of Information and Regulatory Affairs, OMB, by electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax at 202–395–5806. Please also send a copy of your comments to the Department of the Interior; Office of Policy Analysis, *Attention:* Don Bieniewicz, Mail Stop 3530; 1849 C Street, NW., Washington, DC 20240. If you wish to e-mail comments, the e-mail address is *Donald_Bieniewicz@ios.doi.gov*. Reference "Klamath Non use valuation survey" in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

DATES: OMB has 60 days to review this request but may act after 30 days, therefore you should submit your comments on or before March 18, 2011.

FOR FURTHER INFORMATION CONTACT: Benjamin Simon, Economics Staff Director, Office of Policy Analysis, U.S. Department of the Interior telephone at 202–208–5978 or by e-mail at *Benjamin_Simon@ios.doi.gov.* To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

I. Abstract

This Notice supplements the Notices that were published on August 30, 2010 and September 8, 2010.

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of the Secretary has revised and resubmitted to OMB.

This Notice is being published in order to provide the public with an opportunity to comment on revisions to the Klamath Non-use Valuation survey. On August 30, 2010, the Agency published a 30-day notice requesting comments and received one general comment on the overall design of the project, but no comments on the survey instrument. The pilot test was approved by OMB on December 14, 2010. However, the Agency received additional comments on the survey instrument subsequent to the approval of the information collection by OMB. These comments focused on the background material and description of the no action and action alternatives. Revisions were made in response to these comments.

While the revised survey is being tested using cognitive interviews, individuals can submit comments to OMB on the revised survey at the address above.

The Klamath River provides habitat for fall and spring run Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*Oncorhynchus kisutch*), steelhead trout (*Oncorhynchus mykiss*), green sturgeon (Acipenser medirostris), Pacific lamprey (*Lampetra tridentate*), and Pacific eulachon (*Thaleichthys pacificus*). Some of these species are important components of non-tribal harvest (*e.g.,* fall Chinook, steelhead), some have important subsistence and cultural value to Klamath Basin tribes (*e.g.,* salmon, sturgeon, lamprey, eulachon), and some are at low levels of abundance or Endangered Species Act-listed (*e.g.,* spring Chinook, lamprey, coho, eulachon).

Studies on the potential removal of four dams on the Klamath River owned by PacifiCorp are being conducted as a result of the Klamath Hydroelectic Settlement Agreement (KHSA) executed February 18, 2010. Under the KHSA, the Secretary of the Interior is to determine by March 31, 2012, whether the potential removal of these dams will advance restoration of the salmonid fisheries of the Klamath Basin and is in

the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and Tribes. The determination will be based on a number of factors, including an economic analysis. One part of the economic analysis is a non-use valuation survey that is designed to determine the potential benefits of dam removal that may accrue to members of the U.S. public who value such improvements regardless of whether they consume Klamath Basin fish or visit the Klamath Basin. Non-use valuation surveys, such as the one discussed herein, are routinely included as a part of the economic analysis for large-scale water development projects.

II. Data

Title: Klamath Non-Use Valuation Survey.

OMB Control Number: 1090–0010.

Type of Review: Revision of an approved collection.

Affected Entities: Households.

Respondent's Obligation: Voluntary.

Frequency of Response: One time.

Estimated Annual Number of Respondents: 10,400 households who will receive the survey (3200 respondents and 7,200 non-respondents).

Estimated Total Annual Responses: 3200.

Estimated Time per Response: The base for this survey is 10,400 households. The households will be divided into two mailing groups, at a 10/90 split. The first wave of mailings will be to 10% of the households. Each household will receive a prenotification postcard notification, which will take 30 seconds to read, followed by the first mailing of the survey. 17% of households are estimated to respond, which will take 30 minutes. Non-respondents will take 3 minutes. The second mailing will be sent to the remaining 83% of non-respondent households. 10% of the households are estimated to respond to the second mailing, taking 30 minutes. The second group of non-respondents are estimated to spend 3 minutes. The Department will then conduct preliminary analysis.

The second wave of mailings will be to the remaining 90% of the households. Each household will receive a prenotification postcard notification, which will take 30 seconds to read, followed by the first mailing of the survey. 17% of households are estimated to respond, which will take 30 minutes. Non-respondents will take 3 minutes. The second phase will be sent to the remaining 83% of non-respondent households. 10% of the households are estimated to respond to the second mailing, taking 30 minutes. The second group of non-respondents are estimated to spend 3 minutes.

The second group of non-respondents will be sent a reminder letter, taking 30 seconds. The letter will provide the web address of the survey and a toll-free number and email for the respondent to call or write to get another copy of the survey. 5% of the households are estimated to complete the survey, taking 30 minutes.

After the reminder mailing, 20% of the nonrespondents will be sent a letter by Federal Express or Priority Mail with a letter and a much shorter version of the survey, taking approximately 30 seconds to read. It is assumed that 65% of the non-respondent households will have a phone number. For respondents with telephone numbers, the letter and survey will be followed by a phone call from a live operator who will either talk to the household or leave a message reiterating the higher incentive and offering to mail another copy of the survey if the household needs one. DOI expects that 20% of nonrespondents will complete the shorter survey after the phone call reminder, taking 10 minutes. The phone call without the completing the shorter survey is estimated to take 5 minutes. For the 35% of households without telephone numbers, DOI expects that 10% of nonrespondents will complete the survey after receiving the Federal Express letter. DOI estimates that 10% of nonrespondants will spend 5 minutes on the shorter survey and letter. DOI estimates 90% nonrespondents will spend 3 minutes on the survey and letter.

Estimated Total Annual Burden Hours: 2,571 hours.

III. Request for Comments

On August 30, 2010, we published in the **Federal Register** a request for public comments on this proposed survey. Revisions were subsequently made to the survey in response to comments that were received. This notice provides the public with an additional opportunity to comment on the revised survey. The Department of the Interior invites comments on:

(1) Whether or not 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) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: February 11, 2011.

Benjamin M. Simon,

Economics Staff Director, Office of Policy Analysis.

[FR Doc. 2011–3506 Filed 2–15–11; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2010–N220; 1265–0000–10137–S3]

Ridgefield National Wildlife Refuge, Clark County, WA; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment (EA) for the Ridgefield National Wildlife Refuge (Refuge). In this final CCP, we describe how we will manage this Refuge for the next 15 years.

ADDRESSES: You may view or obtain copies of the final CCP and FONSI by any of the following methods. You may request a hard copy or CD–ROM.

Agency Web Site: Download the CCP/FONSI at *http://www.fws.gov/pacific/planning.*

E-mail: FW1PlanningComments@fws.gov. Include "Ridgefield Refuge final CCP" in the subject line of the message.

Mail: Ridgefield National Wildlife Refuge, P.O. Box 457, Ridgefield, WA 98642.

In-Person Viewing or Pickup: Ridgefield National Wildlife Refuge, 28908 NW. Main Avenue, Ridgefield, WA 98642.

FOR FURTHER INFORMATION CONTACT: Bob Flores, Project Leader, (360) 887–4109.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we complete the CCP process for the Refuge. The Service started this process through a notice of intent in the **Federal Register** (71 FR 43787; August 2, 2006). We released the Draft CCP/EA to the public, announcing and requesting comments in a notice of availability in the **Federal Register** (75 FR 34154; June 16, 2010).

The Refuge is located in Washington along the Columbia River. It was established to secure vital winter habitat for dusky Canada geese and other waterfowl. The Refuge encompasses 5,218 acres of marshes, grasslands, and woodlands on 5 units. We preserve the natural Columbia River floodplain on the Carty, Roth, and Ridgeport Dairy units. We manage the River 'S' and Bachelor Island units to provide habitat for waterfowl and other wildlife. Sandhill cranes, shorebirds, and a variety of songbirds stop at the Refuge during spring and fall migrations. Some bird species, such as mallards, great blue herons, and red-tailed hawks, nest and reside on the Refuge year-round.

We announce our decision and the availability of the FONSI for the final CCP in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft CCP/EA.

The CCP will guide us in managing and administering the Refuge for the next 15 years. Alternative 2, as we described in the draft CCP, is the foundation for the CCP.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

CCP Alternatives, Including Selected Alternative

During our CCP planning process we identified several issues. To address the issues, we developed and evaluated the following alternatives in our Draft CCP/EA.

Alternative 1 (No Action)

Under Alternative 1, we would have continued to manage and where feasible restore habitat for dusky Canada geese, other Canada geese subspecies, cackling geese, other waterfowl, and imperiled Federal and State listed species. Hunting would continue on the River 'S' Unit's 760-acre hunt area. The current 4.3-mile auto tour route would remain open year round. The Refuge would continue to coordinate with its Friends groups, local educators, and Tribes to conduct environmental and cultural education and interpretation programs.

Alternative 2 (Preferred Alternative)

Under Alternative 2, our preferred alternative, we would continue to protect, maintain, and, where feasible, restore habitat for priority species, including dusky Canada geese, other waterfowl, and imperiled Federal and State listed species. We would maintain high-quality green forage for geese in improved pastures and wet meadows, and increase cropland and wet meadow acreage. Wetlands would be managed to increase productivity and reduce water pumping costs. Invasive species and State- and county-listed noxious weeds would continue to be a primary management concern. Enhancing and restoring bottomland forest and oak woodland habitats would increase. We would complete habitat assessments to guide stream and tidally influenced wetland restorations. We would conduct feasibility studies for reintroducing native species such as Columbian white-tailed deer and western pond turtle, and inventory and monitoring efforts would increase.

Under Alternative 2, current public use areas and closures would continue, the waterfowl hunt area would remain unchanged, and changes in wetland management would improve the hunt program over time. A new access point to the River 'S' Unit, including a 2-lane bridge and 1-mile entrance road, would be developed. The current auto tour route would be open year round, and shortened slightly to provide habitat for dusky Canada geese and cranes. A new 1.5-mile dike-top walking trail would be constructed. Environmental and cultural resources education and interpretation would increase.

Alternative 3

Under Alternative 3, actions to protect, maintain, and restore habitat for priority species are the same as those under Alternative 2. Current public use areas and closures would continue. The waterfowl hunt area/location would remain the same; however, core dusky habitat on the south end of the River 'S' Unit (207 acres) would be closed to goose hunting. The existing access point to the River 'S' Unit would be retained; a new 2-lane bridge would be constructed to eliminate the at-grade railroad crossing; and the entrance road would be widened, requiring either land acquisition or easement modification. The existing auto tour route would not change. A new 1.5-mile dike-top walking trail would be constructed. Environmental and cultural education and interpretation would increase.

Alternative 4

Under Alternative 4, actions to protect, maintain, and restore habitat for priority species would be the same as those under Alternatives 2 and 3, except that slightly more crops would be grown, and the total wildlife sanctuary area closed to public use would be reduced slightly. This alternative would, however, provide the largest contiguous sanctuary for dusky Canada geese and sandhill cranes on the Refuge's south end. A new access point to the River 'S' Unit, including a 2-lane bridge and 1-mile entrance road, would be developed. The south end of the River 'S' Unit would be closed to public use during waterfowl and crane migration, to benefit dusky Canada geese and sandhill cranes. The south end of the River 'S' Unit (207 acres) would be closed to hunting, and the south end of the auto tour route would be closed during waterfowl season (October 1–March 15), reducing its length from 4.3 miles to 2.6 miles during that time. To offset the loss of these hunting opportunities, 250 acres of Bachelor Island would be opened to waterfowl hunting. The northern portion of this area would be closed early to hunting (January 15) to prevent disturbance to a great blue heron nesting colony. A new 1.5-mile dike-top walking trail would be constructed. Environmental and cultural education and interpretation would increase.

Comments

We solicited comments on the Draft CCP/EA from June 16, 2010, to July 16, 2010 (75 FR 34154; June 16, 2010). We received 16 comment letters, forms, or emails on the Draft CCP/EA. To address public comments, minor changes and

clarifications were made to the final CCP where we determined it would be appropriate.

Selected Alternative

After considering the comments we received, we have selected Alternative 2 for implementation. By implementing Alternative 2, we will protect, maintain, and, where feasible, restore habitat for dusky Canada geese, other waterfowl, and imperiled species. We will maintain high-quality green forage in pastures and wet meadows, and increase cropland and wet meadow acreage. Wetlands will be managed to increase productivity and reduce pumping costs. Invasive species and noxious weeds will continue to be a primary management concern. Enhancing and restoring bottomland forest and oak woodland habitats will increase. We will complete habitat assessments to guide stream and tidally influenced wetland restorations. We will conduct feasibility studies for reintroducing native species such as Columbian white-tailed deer and western pond turtle, and inventory and monitoring efforts will increase.

Current public use areas and closures will continue, the waterfowl hunt area will remain unchanged, and changes in wetland management will improve the hunt program over time. A new access point to the River 'S' Unit will be developed. The existing auto tour route will be open year round, and shortened slightly, to provide habitat for dusky Canada geese and cranes. A new dike-top walking trail will be constructed. Environmental and cultural education and interpretation programs will increase.

Dated: December 20, 2010.

Richard R. Hannan,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2011–3540 Filed 2–15–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–11–L14200000–BJ0000]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on March 18, 2011.

DATES: Protests of the survey must be filed before March 18, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Josh Alexander, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5123 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Land Management, Dillon Field Office, and was necessary to determine federal interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 2 S., R. 3 W.

The plat, in one sheet, representing the dependent resurvey of Mineral Survey No. 5856B, Charity Mill Site and Supplemental Plat, Township 2 South, Range 3 West, Principal Meridian, Montana, was accepted January 27, 2011.

We will place a copy of the plat, in one sheet, in the open files. It will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Dated: February 9, 2011.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–3544 Filed 2–15–11; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC 00900.L16100000.DP0000]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Montana, Billings and Miles City Field Offices.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The next regular meeting of the Eastern Montana Resource Advisory Council will be held on Mar. 24, 2011 in Miles City, Montana. The meeting will start at 8:00 a.m. and adjourn at approximately 3:30 p.m.

ADDRESSES: When determined, the meeting location will be announced in a news release.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, Montana 59301. Telephone: (406) 233–2831.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior through the Bureau of Land Management on a variety of planning and management issues associated with public land management in Montana. At these meetings, topics will include: Miles City and Billings Field Office manager updates, subcommittee briefings, work sessions and other issues that the council may raise. All meetings are open to the public and the public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as provided above.

Dated: February 8, 2011.

M. Elaine Raper,

Manager, Eastern Montana—Dakotas District.

[FR Doc. 2011–3545 Filed 2–15–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–65]

Notice of Intent To Repatriate Cultural Items: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA, that meet the definitions of sacred objects and/or objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In this notice there are eight Tlingit objects that were purchased by Louis Shotridge, a Tlingit curator employed by the University of Pennsylvania Museum to conduct research and make museum collections. Tlingit objects affiliated with the Tlingit Kaagwaantaan Clan of Sitka, AK, are two helmets (catalog numbers NA8507 and 29–1–1) and three hats (catalog numbers NA6864, NA11741, and NA11742). The remaining three objects affiliated with the Tlingit L'ooknax.ádi Clan of Sitka, AK, are one helmet (catalog number NA8502) and two hats (catalog numbers NA10512 and NA10511).

The following five cultural objects are affiliated with the Tlingit Kaagwaantaan Clan of Sitka, AK, as indicated through museum records, and through evidence presented by the Central Council of Tlingit and Haida Indian Tribes of Alaska, a Federally-recognized Indian tribe, acting on behalf of the Kaagwaantaan Clan of Sitka, AK.

The first cultural item is a helmet called Wolf (NA8507). It is carved of wood and represents a wolf, and is painted with green, red, black, and white pigment. Natural wolf fur, ears and teeth make the helmet more realistic. Red cloth is added to the mouth to represent a tongue, and a white ermine skin is attached to the back of the helmet. The helmet measures approximately 38.5 cm long, 16.5 cm wide, and 16 cm high. In 1918, Louis Shotridge purchased the Wolf Helmet (NA8507) as part of a collection of five objects referred to as the "Eagle's Nest House Collection," for $40.00 in Sitka, AK, for the collections of the University of Pennsylvania Museum.

The second cultural item is a hat called Ganook (NA6864). It is made of maple wood in the shape of a bird's face and beak, and painted with blue, red, and black pigment. Opercula shell is inlaid for teeth, and the helmet is also decorated with red and white hair. Four potlatch rings woven of split spruce roots are mounted on the top. The hat measures approximately 28 cm long, 27 cm wide, and 37 cm high. The old hat represents Ganook, a petrel, also known as the most ancient being in Tlingit mythology. In 1925, Louis Shotridge purchased the Ganook Hat (NA6864) for $450.00 from a Tlingit individual, Augustus Bean (Ke.t-xut'.tc), a housemaster of one of the three Wolf Houses of the Kaagwaantaan Clan of Sitka, AK, for the collections of the University of Pennsylvania Museum.

The third cultural item is a hat called Noble Killer (NA11741). It represents a whale and is carved from one piece of spruce wood, ornamented with abalone shell. The hat is intricately carved and painted with greenish-blue, red, and black pigment. A wooden piece projecting from the back represents the dorsal fin of the animal. Human hair is used as ornamentation on the fin. The hat measures approximately 36 cm long, 34 cm wide, and 27.5 cm high. Museum documentation indicates the Noble Killer Hat (NA11741) represents the maritime power of the Kaagwaantaan clan.

The fourth cultural item is a hat called Eagle (NA11742). It is carved, in one piece, from the root of the red cedar, and is painted with greenish-blue, red, black, and white pigment. The hat is decorated with coarse, grayish-brown human hair. Designs carved on the sides, some of which are inlaid with abalone shell, represent the wings. Designs on the front part of the hat represent the eagle's legs and talons. The hat measures approximately 33 cm long, 25.5 cm wide, and 26 cm high. The Eagle Hat represents the Eagle moiety of the Tlingit nation.

In 1926, Louis Shotridge purchased the Noble Killer (or Noble Killerwhale) Hat (NA11741) and the Eagle Hat (NA11742) from a Tlingit individual, Augustus Bean (Ke.t-xut'.tc), a housemaster for one of the three Wolf Houses of the Kaagwaantaan Clan of Sitka, AK. These two hats, together with a third hat, were acquired by Louis Shotridge for $800.00.

The fifth cultural item is a helmet called Shark (29–1–1). It is made of walrus hide, and has visible interior supports made of wood. The helmet is carved and painted with greenish-blue, red, and black pigment, and includes abalone shell eyes and mouth, and opercula shell teeth. The nose of the shark is covered by an arched frame made of carved and painted walrus hide, decorated with hair. The helmet measures approximately 38 cm long, 40.5 cm wide, and 48.5 cm high. According to museum documentation, it is an old object that is associated with the founding of the Kaagwaantaan clan. In 1929, Louis Shotridge purchased the Shark Helmet (29–1–1) for $350.00 from a Tlingit individual of the Kaagwaantaan clan for the collections of the University of Pennsylvania Museum.

Based on consultation, museum documentation, anthropological literature, and expert opinion, one cultural item is considered to be a sacred object (Wolf Helmet, NA8507), one is considered to be an object of cultural patrimony (Shark Helmet, 29–1–1), and three are considered to be both sacred objects and objects of cultural patrimony (Ganook Hat, NA6864; Noble Killer Hat, NA11741; Eagle Hat, NA11742).

The remaining three cultural objects are affiliated with the Tlingit L'ooknax.ádi Clan of Sitka, AK, as indicated through museum records, and through evidence presented by the Central Council of Tlingit and Haida Indian Tribes of Alaska, a Federally-recognized Indian tribe, acting on behalf of the Tlingit L'ooknax.ádi Clan of Sitka, AK.

The first cultural item affiliated with the L'ooknax.ádi Clan of Sitka, AK, is a helmet called Barbecuing Raven (NA8502). It is carved out of wood in the shape of a large raven with a wide flat tail, talons, and a second face underneath the raven's beak at the front. The wings are made of painted hide. The helmet is painted with blue-green, red, and black pigment and it is decorated with copper, and a few remaining remnants of puffin beaks. Two potlatch rings woven of split spruce roots are mounted on the top, decorated with a single ermine skin. The helmet measures approximately 49 cm long, 38 cm wide, and 30 cm high. In 1918, Louis Shotridge purchased the Barbecuing Raven Helmet (NA8502) as part of a collection of five objects, referred to as the "Sealion House Collection," for $360.00, in Sitka, AK, for the collections of the University of Pennsylvania Museum.

The second cultural item is a hat called Whale (catalog number NA10512). It is a basketry hat, woven of spruce tree roots, which has been painted white. A design representing a whale with an open mouth is painted in black pigment. A carved wooden element secured to the top of the hat represents the whale's dorsal fin, and includes a face painted with blue-green, red, black and white pigment, abalone

shell teeth and eyes, and human hair. The helmet measures approximately 39 cm long, 35 cm wide, and 36 cm high.

The third cultural item is a hat called Raven of the Roof (NA10511). It is carved and painted with blue-green, red, black and white pigment, and decorated with copper eyebrows, ears, and nose and human hair. Seven potlatch rings woven of split spruce roots are mounted on the top of the hat, with an ermine skin for decoration. The hat measures approximately 34 cm long, 31 cm wide, and 35 cm high.

In 1925, Louis Shotridge purchased the Whale Hat (NA10512) and the Raven of the Roof Hat (NA10511) as part of a collection of six objects, referred to as the "Sitka Whale House Collection," for $640.00, in Sitka, AK, for the collections of the University of Pennsylvania Museum.

Based on consultation, museum documentation, anthropological literature, and expert opinion, two cultural items are considered to be objects of cultural patrimony (Barbecuing Raven Helmet, NA8502; Whale Hat, NA10512), and one is considered to be both a sacred object and object of cultural patrimony (Raven of the Roof Hat, NA10511). Therefore, of the eight Tlingit objects, one is a sacred object, three are objects of cultural patrimony, and four are both sacred objects and objects of cultural patrimony.

Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined, pursuant to 25 U.S.C. 3001(3)(C), that five cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have also determined, pursuant to 25 U.S.C. 3001(3)(D), that seven cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the sacred object, objects of cultural patrimony, and sacred objects/objects of cultural patrimony and the Central Council of Tlingit and Haida Indian Tribes of Alaska, a Federally-recognized Indian tribe, and the Tlingit Kaagwaantaan Clan of Sitka, AK, and the Tlingit L'ooknax.ádi Clan of Sitka, AK.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object, objects of cultural patrimony, and/or sacred objects/objects of cultural patrimony should contact Dr. Richard Hodges, Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South St., Philadelphia, PA 19104–6324, telephone (215) 898–4050, before March 18, 2011. Repatriation of the cultural items to the Central Council of Tlingit and Haida Indian Tribes of Alaska, a Federally-recognized Indian tribe, on behalf of the Tlingit Kaagwaantaan Clan of Sitka, AK, and L'ooknax.ádi Clan of Sitka, AK, may proceed after that date if no additional claimants come forward.

The University of Pennsylvania Museum of Archaeology and Anthropology is responsible for notifying the Central Council of Tlingit and Haida Indian Tribes of Alaska, a Federally-recognized Indian tribe, that this notice has been published.

Dated: February 11, 2011.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2011–3520 Filed 2–15–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–65]

Notice of Inventory Completion: Washington State Department of Natural Resources, Olympia, WA and University of Washington, Department of Anthropology, Seattle, WA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the Washington State Department of Natural Resources, Olympia, WA, and in the physical custody of the University of Washington, Department of Anthropology, Seattle, WA. The human remains were removed from Huckleberry Island, Skagit County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the controlling agency and adds two additional Indian tribes found to have a shared group relationship to a Notice of Inventory Completion published in the **Federal Register** (75 FR 14463, March 25, 2010). Since the time of publication, an additional two Indian tribes have been found to have a cultural affiliation with the Native American human remains. In addition, in the original Notice, the University of Washington, Department of Anthropology, had believed it was in control of the Native American human remains, however, the land was under the control of the Washington State Department of Natural Resources at the time of removal, and as such the Washington State Department of Natural Resources is in control of the Native American human remains. This Notice replaces the Notice of March 25, 2010, with the following:

A detailed assessment of the human remains was made by the University of Washington, Department of Anthropology, and Burke Museum staff in consultation with representatives of the Lummi Tribe of the Lummi Reservation, Washington; Samish Indian Tribe, Washington; and the Swinomish Indians of the Swinomish Reservation, Washington.

At an unknown date, human remains representing a minimum of one individual were removed from Huckleberry Island, Skagit County, WA. No known individual was identified. No associated funerary objects are present.

The human remains were determined to be consistent with Native American morphology, as evidenced through cranial deformation and presence of wormian bones.

Huckleberry Island is a small island located approximately ¼ mile southeast of Guemes Island, in Skagit County, WA. This area falls within the Central Coast Salish cultural group (Suttles 1990). Historical documentation indicates that the aboriginal Samish people traditionally occupied Guemes Island (Amoss 1978, Roberts 1975, Ruby and Brown 1986, Smith 1941, Suttles 1951, Swanton 1952) and Huckleberry Island (Barg 2008, unpublished report) both before and after contact. The Treaty of Point Elliot in 1855 stated that the Samish were to be relocated to the Lummi Reservation. After the Treaty of Point Elliot, many Samish individuals relocated to either the Lummi Reservation or the Swinomish

Reservation (Ruby and Brown 1986:179). However, many Samish chose to remain in their old village sites. In 1996, the Samish Indian Tribe was re-recognized by the Federal Government.

Officials of the University of Washington, Department of Anthropology, have determined, pursuant to 25 U.S.C. 3001(9), that the human remains described above represent the physical remains of one individual of Native American ancestry. Lastly, officials of the Washington State Department of Natural Resources and the University of Washington, Department of Anthropology, have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Lummi Tribe of the Lummi Reservation, Washington; Samish Indian Tribe, Washington; and the Swinomish Indians of the Swinomish Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Maurice Major, Cultural Resource Specialist, Washington State Department of Natural Resources; PO Box 47000, 1111 Washington St. SE., Olympia, WA 98504–7000, telephone (360) 902–1298, before March 18, 2011. Repatriation of the human remains to the Samish Indian Tribe, Washington, may proceed after that date if no additional claimants come forward.

The Washington State Department of Natural Resources is responsible for notifying the Lummi Tribe of the Lummi Reservation, Washington; Samish Indian Tribe, Washington; and the Swinomish Indians of the Swinomish Reservation, Washington, that this notice has been published.

Dated: February 11, 2011.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2011–3522 Filed 2–15–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on February 10, 2011 a proposed Consent Decree ("proposed Decree") in *United States* v. *CEMEX, Inc. and CEMEX Construction Materials Atlantic, LLC,* Civil Action No. 3:11–cv–00037, was lodged with the United States District Court for the Southern District of Ohio.

In this action under Sections 113(b) and 167 of the Clean Air Act, 42 U.S.C. 7413(b) and 7477, the United States seeks injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Clean Air Act, 42 U.S.C. 7470–7492, and the PSD regulation incorporated into the federally enforceable Ohio State Implementation Plan ("Ohio SIP"), and Title V of the Clean Air Act, 42 U.S.C. 7661–7661f, and Title V's implementing federal and Ohio regulations, at a portland cement manufacturing plant located in Greene County, Ohio.

The proposed Decree resolves the United States' claims against CEMEX, Inc. and CEMEX Construction Materials Atlantic, LLC ("Defendants") by requiring Defendants to install and operate appropriate emission controls at their kiln, and requires Defendants to pay a civil penalty of $1,400,000, two-thirds of which will go to the United States and one-third of which will go to the Plaintiff Intervener, the State of Ohio.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *CEMEX, Inc. and CEMEX Construction Materials Atlantic, LLC,* D.J. Ref. No. 90–5–2–1–08990.

The proposed Decree may be examined at the office of the United States Attorney for the Southern District of Ohio, Room 602, Federal Building, 200 West Second Street, Dayton, Ohio 45402, and at the United States Environmental Protection Agency (Region 5) Records Center, Room 714, 77 West Jackson Boulevard, Chicago, Illinois 60604. During the public comment period, the proposed Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/ConsentDecrees.html.* A copy of the proposed Decree may also be obtained via U.S. mail by making a written request to the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097 (phone confirmation number (202) 514–1547). In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $17.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by e-mail or fax, please forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–3473 Filed 2–15–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Comment Request for Information Collection for the Unemployment Insurance (UI) Facilitation of Claimant Reemployment Employment and Training Administration 9047 Report, Extension Without Revision

AGENCY: Employment and Training Administration (ETA).

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that the requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data about the proposed extension of the UI Facilitation of Claimant Reemployment (current expiration date is July 31, 2011).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before April 18, 2011.

ADDRESSES: Submit comments to Andrew W. Spisak, Office of Workforce Security, Employment and Training Administration, U. S. Department of Labor, Room S–4519, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* 202–693–3196 (this is not a toll-free number); *fax:* 202–693–3975; *e-mail: spisak.andrew@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Required by Congress under the Government Performance and Results Act of 1993 (GPRA), the Department's Strategic Plan is an integral part of the budget process. Among the purposes of the GPRA are to improve Federal program effectiveness and public accountability by focusing on program results, service quality, and customer satisfaction.

Outcome Goal 1.3 in the Department's fiscal year (FY) 2011—2016 Strategic Plan—Help workers who are in low-wage jobs or out of the labor market find a path into middle-class jobs—focuses on improving the operational performance and effectiveness of the federal/state UI program. This goal is supported in part by the performance measure:

Percent of UI claimants reemployed by the end of the first quarter after the quarter in which they received their first payment.

ETA collects the data to measure the facilitation of reemployment of UI benefit recipients through the ETA 9047 report. OMB approved the Department's request to begin collecting UI reemployment data through the ETA 9047 report on July 26, 2005. This data collection was renewed in 2008 through July 31, 2011.

ETA has also included UI reemployment as a performance measure for UI Performs, the Department of Labor's performance management system. Per UI Program Letter (UIPL) No. 17–08 (May 14, 2008), Acceptable Levels of Performance (ALP)—the minimum performance criteria for UI Performs Core Measures—are set annually for each state. The ALPs take into account the state's total unemployment rate and the percentage of UI claimants who are exempt from active work search or Employment Service registration requirements because they are job attached. Analyses of the data indicate that UI reemployment is strongly related to these two factors.

Data Collection

Each calendar quarter, states report on the ETA 9047 report separate counts for individuals receiving their first UI payments who are exempt from work search/employment service registration ("exempt"), in most cases because they are job-attached with definite recall dates, and those who must conduct work search or register with the employment service ("nonexempt"). States also report on the ETA 9047 report the number of those first payment recipients for whom intrastate or out-of-state employers reported wages in the subsequent quarter. States obtain these counts by running computer crossmatches of the Social Security Numbers (SSNs) of the claimants who received a first UI payment with the UI wage records for the subsequent calendar quarter. ETA issued instructions on obtaining out-of-state reemployment data through matching the SSNs of UI first payment recipients with UI wage records in the National Directory of New Hires in UIPL No. 1–06, Change 1 (August 2, 2006).

UI Reemployment GPRA and UI Performs Measures

The UI reemployment GPRA and UI Performs measures are defined as the percentage of all UI claimants receiving a first payment in a calendar quarter who were paid wages in the following calendar quarter that appear in UI wage records.

ETA believes that this measure encourages the agencies that administer UI–which share responsibility with all Workforce Investment partners in facilitating the reemployment of UI beneficiaries—to be innovative in the steps they take to facilitate these individuals' reemployment.

The following table summarizes GPRA targets and performance for the UI reemployment measure.

GPRA Targets and Performance

Goal and indicator	FY 2010 target	FY 2010 actual	FY 2011 target	FY 2012 target
Facilitate Reemployment: Percent of UI claimants who were reemployed by the end of the first quarter after the quarter in which they received their first payment.	58.6%	53.1%*	54.4%	56.40%

* Based on UI reemployment for the period July 2009 to June 2010, which is the most recent data available.

ETA's analyses of the UI reemployment data show that state performance in reemployment of UI benefit recipients is influenced by forces outside the control of the agency administering the state UI law, most notably by the economic conditions in the state, as measured by the total unemployment rate, and the percent of UI benefit recipients that are on temporary layoff, as measured by the percent of claimants who are not required to search for work or register with the state employment service. State ALPs for the UI Performs Core Measure reflect state-specific data for these two factors. State ALPs and performance for the performance period January to December 2009 are available at *http://www.oui.doleta.gov/unemploy/pdf/alp.pdf.*

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

Type of Review: Extension without change.

Title: Unemployment Insurance Facilitation of Claimant Reemployment.

OMB Number: 1205–0452.

Affected Public: State Workforce Agencies (SWAs).

Form: ETA 9047 Reemployment of UI Benefit Recipients.

Total Annual Respondents: 53 SWAs.

Annual Frequency: Quarterly.

Total Annual Responses: 212 per year (53 SWAs × 4 quarterly reports per year).

Average Time per Response: 10 hours.

Estimated Total Annual Burden Hours: 2,120 hours.

Total Annual Burden Cost for Respondents: $86,517 (approximately $1,633 per SWA). This is an established data collection for which no changes are proposed; there are no startup costs.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 10, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–3469 Filed 2–15–11; 8:45 am]

BILLING CODE 4510–FT–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Impromptu Notice of Change (Addition of Agenda Item)

The National Science Board's (NSB) Audit & Oversight (A&O) Committee, pursuant to NSF regulations (45 CFR part 614), the NSF Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of an *Impromptu Change* in regard to the addition of an agenda item that will be discussed during the closed session of the A&O Committee meeting scheduled for February 16, 2011, at 9:15 a.m., as follows:

ORIGINAL DATE AND TIME: No change.

SUBJECT MATTER (AGENDA ITEM ADDED): 5 minute update on Cyber issues at NSF.

STATUS: No change.

LOCATION: No change.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.* Point of contact for this meeting is: Jennie Moehlmann, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. *Telephone:* (703) 292–7000.

Daniel A. Lauretano,

Counsel to the National Science Board.

[FR Doc. 2011–3585 Filed 2–14–11; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0187]

Notice of Availability of Final Environmental Impact Statement for the AREVA Enrichment Services LLC Proposed Eagle Rock Enrichment Facility in Bonneville County, ID

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Final Environmental Impact Statement.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published the Final Environmental Impact Statement (EIS) for the AREVA Enrichment Services LLC (AES) Proposed Eagle Rock Enrichment Facility (EREF). On December 30, 2008, AES submitted a license application to the NRC that proposes the construction, operation, and decommissioning of a gas centrifuge-based uranium enrichment facility on a presently undeveloped site near Idaho Falls in Bonneville County, Idaho (the "proposed action"). This application is for a license to possess and use byproduct material, source material, and special nuclear material at the proposed uranium enrichment facility. The application included an Environmental Report (ER) regarding the proposed action.

AES subsequently submitted revisions to the license application on April 23, 2009 (Revision 1), and April 30, 2010 (Revision 2), which included ER Revision 1 and ER Revision 2, respectively. License application Revision 1 addresses the expansion of the proposed EREF to increase its production capacity from 3.3 million Separative Work Units (SWUs) per year to 6.6 million SWUs per year; and ER Revision 1 includes information on the environmental impacts of the proposed 6.6-million-SWU-per-year EREF. Revision 2 to the license application and the ER incorporates into Revision 1 additional information that AES previously provided the NRC in response to NRC staff requests for additional information for its safety and environmental reviews, as well as supplemental information on a proposed electrical transmission line required to power the proposed EREF.

On June 17, 2009, AES submitted a request for an exemption from certain NRC regulations so that it could commence certain preconstruction activities (e.g., site preparation) on the proposed EREF site prior to the NRC's decision on whether to grant or deny a license. On March 17, 2010, the NRC granted an exemption authorizing AES to conduct the requested preconstruction activities.

The Final EIS is being issued as part of the NRC's process to decide whether to issue a license to AES, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) parts 30, 40, and 70, to construct and operate the proposed uranium enrichment facility. Specifically, AES proposes to use gas centrifuge technology to enrich the uranium-235 isotope found in natural uranium to concentrations up to 5 percent by weight. The enriched uranium would be used to manufacture nuclear fuel for commercial nuclear power reactors. In the Final EIS, the NRC staff assessed the potential environmental impacts from the preconstruction, construction, operation, and decommissioning of the proposed EREF project.

The Final EIS was prepared in compliance with the *National Environmental Policy Act of 1969,* as amended (NEPA), and the NRC's regulations for implementing NEPA in 10 CFR part 51. The NRC staff assessed the impacts of the proposed action on land use, historic and cultural resources, visual and scenic resources, air quality, geology and soils, water resources, ecological resources, noise, transportation, public and occupational health, waste management, socioeconomics, and environmental justice. Additionally, the NRC staff analyzed and compared the benefits and costs of the proposed action. In preparing this Final EIS, the NRC staff also reviewed, considered, evaluated, and addressed the public comments received on the Draft EIS.

In addition to the proposed action, the NRC staff considered the no-action alternative and other alternatives. Under the no-action alternative, the NRC would deny AES's request to construct and operate a uranium enrichment facility at the EREF site. The no-action alternative serves as a baseline for comparison of the potential environmental impacts of the proposed action. Other alternatives the NRC staff considered but eliminated from further analysis include: (1) Alternative sites for the EREF; (2) alternative sources of enriched uranium; and (3) alternative technologies for uranium enrichment. These alternatives were eliminated from further analysis due to economic, environmental, national security, technological maturity, or other reasons. The Final EIS also discusses alternatives for the disposition of depleted uranium hexafluoride (UF_6) resulting from enrichment operations over the lifetime of the proposed EREF.

After weighing the impacts, costs, and benefits of the proposed action and comparing alternatives, the NRC staff, in accordance with 10 CFR 51.91(d), sets forth its recommendation regarding the proposed action. The NRC staff recommends that, unless safety issues mandate otherwise, the proposed action should be approved (i.e., NRC should issue a license). In this regard, the NRC staff has concluded that the environmental impacts of the proposed action are generally small, and that implementation of the proposed AES environmental monitoring program and AES mitigation measures discussed in the Final EIS would eliminate or substantially lessen any adverse environmental impacts associated with the proposed action.

Document Availability: The Final EIS and other publicly available documents related to this notice can be accessed using any of the methods described in this section. Because one appendix of the Final EIS contains Sensitive Unclassified Non-Safeguards Information (SUNSI), this appendix has been withheld from public inspection in accordance with 10 CFR 2.390, "Availability of Public Records." This appendix contains proprietary business information as well as security-related information. The NRC staff has considered the information in this appendix in forming the conclusions presented in the EIS. Procedures for obtaining access to SUNSI were previously published in the NRC's Notice of Hearing and Commission Order related to AES's application for the EREF. *Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation; In the Matter of Areva Enrichment Services, LLC (Eagle Rock Enrichment Facility),* 74 FR. 38052 (July 30, 2009).

NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents related to the EREF project at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Members of the public can contact the NRC's PDR reference staff by calling 1–800–397–4209, by faxing a request to 301–415–3548, or by e-mail to *pdr.resource@nrc.gov.*

NRC Web sites: Documents related to this notice are available on the NRC's AREVA Enrichment Services, LLC Gas Centrifuge Facility website at *http://www.nrc.gov/materials/fuel-cycle-fac/arevanc.html.* The Final EIS for the proposed EREF may also be accessed on the internet at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/* by selecting "NUREG–1945."

NRC's Agencywide Documents Access and Management System (ADAMS): Members of the public can access the NRC's ADAMS at *http://www.nrc.gov/reading-rm/adams.html.* From this Web site, enter the ADAMS Accession Numbers included here for AES's license application and ER Revision 2 (ADAMS Accession Number: ML101610549), the exemption authorizing certain preconstruction activities (ADAMS Accession Number: ML093220446), and NRC's Final EIS (ADAMS Accession Numbers: ML11014A005 [Volume 1] and ML11014A006 [Volume 2]).

Federal rulemaking Web site: Materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0187.

Public Library: A copy of the Final EIS will be available at the Idaho Falls Public Library, 457 West Broadway, Idaho Falls, ID 83402, 208–612–8460.

FOR FURTHER INFORMATION CONTACT: For information about the Final EIS or the environmental review process, please contact Stephen Lemont at 301–415–5163 or *Stephen.Lemont@nrc.gov.* For general or technical information associated with the licensing process as it relates to the EREF application, please contact Breeda Reilly at 301–492–3110 or *Breeda.Reilly@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of February, 2011.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–3495 Filed 2–15–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2011–20; Order No. 668]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request concerning a classification change to the Reply Rides Free program.

DATES: *Comments are due:* February 18, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: On February 8, 2011, the Postal Service filed a notice of classification change pursuant to 39 CFR 3020.90 and 3020.91 concerning the Reply Rides Free program.[1] The classification change relaxes the minimum qualification requirement for First-Class Mail letters participating in the program from a requirement to mail under the full-service Intelligent Mail option to a requirement to mail under the basic Intelligent Mail option. In Docket No. R2011–1, the Postal Service stated a May 1, 2011 effective date for the original requirement. This effective date also is applicable to the new requirement.

The Commission establishes Docket No. MC2011–20 for consideration of matters related to the proposed classification change identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's request is consistent with the policies of 39 U.S.C. 3642 and generally with the provisions of title 39. Comments are due no later than February 18, 2011. The Postal Service's Notice can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Diane K. Monaco to serve as Public Representative in the captioned proceeding.

It is ordered:

1. The Commission establishes Docket No. MC2011–20 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons are due no later than February 18, 2011.

[1] Notice of the United States Postal Service of Classification Change Related to Reply Rides Free Program, February 8, 2011 (Notice).

3. Pursuant to 39 U.S.C. 505, Diane K. Monaco is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2011–3468 Filed 2–15–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–7; Order No. 669]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Lincoln Branch Post Office in Mansfield, Ohio, has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* February 23, 2011; *deadline for notices to intervene:* March 7, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on February 8, 2011, the Commission received a petition for review of the closing of the Lincoln Branch Post Office in Mansfield, Ohio. The petition, which was filed by the Board of Madison Township Trustees (Petitioner), is postmarked February 7, 2011, and was posted on the Commission's Web site February 8, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011–7 to consider the Petitioner's appeal. If the Petitioner would like to further explain its position with supplemental information or facts, the Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than March 15, 2011.

Categories of issues apparently raised. The category of issues raised includes: Failure to observe procedures required by law. *See* 39 U.S.C. 404(d)(5)(B).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the administrative record with the Commission is February 23, 2011. 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is February 23, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. 39 CFR 3001.9(a) and .10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

All documents filed will be posted on the Commission's Web site. The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Those, other than the Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before March 7, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and .10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the administrative record regarding this appeal no later than February 23, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than February 23, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Cassandra L. Hicks is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this Notice and Order and Procedural Schedule in the **Federal Register.**

PROCEDURAL SCHEDULE

February 8, 2011	Filing of Appeal.
February 23, 2011	Deadline for Postal Service to file administrative record in this appeal.
March 7, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
March 15, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
April 4, 2011	Deadline for answering brief in support of Postal Service (*see* 39 CFR 3001.115(c)).
April 19, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
April 26, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
June 7, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2011–3414 Filed 2–15–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29577; 813–353]

Capital International, Inc., *et al.;* Notice of Application

February 10, 2011.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") granting an exemption from all provisions of the Act, except section 9, and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited partnerships and other entities ("Partnerships") formed for the benefit of eligible employees of Capital International, Inc. ("Capital") and its affiliates from certain provisions of the Act. Each Partnership will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act.

APPLICANTS: CGPE IV, L.P. ("CGPE IV"), CGPE V, L.P. ("CGPE V"), Capital International Investments IV, LLC ("CII IV"), Capital International Investments V, LLC ("CII V"), and Capital.

DATES: *Filing Dates:* The application was filed on October 1, 2003 and amended on September 30, 2004, April 6, 2007, April 16, 2010, and February 1, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 7, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: Capital, 11100 Santa Monica Blvd., 15th Floor, Los Angeles, CA 90025–3384; CGPE IV, CGPE V, CII IV, and CII V, 6455 Irvine Center Drive, Irvine, CA 92618–4518.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Capital, a California corporation, is an indirect wholly-owned subsidiary of The Capital Group Companies, Inc., a holding company and one of the largest investment management firms in the world. Capital and its "affiliates," as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the "Exchange Act"), are referred to collectively as the "Capital Group" and each, a "Capital Group entity." Investment management and related financial services are Capital International, Inc.'s only businesses.

2. A Partnership will be structured as a limited partnership, limited liability company, business trust or other entity organized under the laws of the state of Delaware, another state, or of a jurisdiction outside the United States. Capital Group may also form parallel Partnerships organized under the laws of various jurisdictions in order to create the same investment opportunities for Eligible Employees (as defined below) in other jurisdictions. Interests in a Partnership ("Interests") may be issued in one or more series, each of which corresponds to particular Partnership investments (each, a "Series"). Each Series will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act. Each Partnership will operate as a closed-end management investment company, and a particular Partnership may operate as a diversified or non-diversified vehicle within the meaning of the Act. The Partnerships are intended to provide investment opportunities for Eligible Employees (defined below) that are competitive with those at other investment management and financial services firms and to facilitate the recruitment and retention of high caliber professionals. Capital Group will control each Partnership within the meaning of section 2(a)(9) of the Act.

3. Capital Group formed CGPE IV under the laws of the state of Delaware. CGPE IV invests concurrently with Capital International Private Equity Fund IV, L.P. ("Fund IV") and other investors organized or managed by Capital Group or its designees that generally co-invest with Fund IV (the "Fund IV Co-Investors") in various investment opportunities, described in the application. Capital Group formed CGPE V under the laws of the Cayman Islands. CGPE V invests concurrently with Capital International Private Equity Fund V, L.P. ("Fund V") and other investors organized or managed by Capital Group or its designees that generally co-invest with Fund V (the "Fund V Co-Investors") in various

investment opportunities, described in the application. CGPE IV and CGPE V (collectively, the "Initial Partnerships") may also co-invest with each other as well as with Fund IV, Fund V, the Fund IV Co-Investors and the Fund V Co-Investors. The Initial Partnerships are organized as limited partnerships.

4. Each Partnership will have a general partner, managing member or other such similar entity (a "General Partner"). All potential investors in a Partnership will be "Limited Partners." The General Partner will manage, operate, and control each Partnership and will have the authority to make all decisions regarding the acquisition, management and disposition of Partnership investments. A Capital Group entity will be a General Partner of each Partnership. The General Partner may be permitted to delegate certain of its responsibilities regarding the acquisition, management and disposition of Partnership investments to an Investment Adviser (as defined below).

5. The General Partner or another entity will serve as investment adviser to a Partnership (the "Investment Adviser"). The Investment Adviser will be (i) Registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"), (ii) exempt from Advisers Act registration requirements by virtue of section 203(b)(3) of the Advisers Act, or (iii) excluded from the definition of investment adviser under the Advisers Act because it is a bank or bank holding company, as defined in the Bank Holding Company Act of 1056, as amended, and does not serve or act as an investment adviser to a registered investment company. Any entity serving as Investment Adviser to any Partnership will be a Capital Group entity.

6. If the Investment Adviser elects to recommend that a Partnership enter into any side-by-side investment with an unaffiliated entity, the Investment Adviser will be permitted to engage as sub-investment adviser the unaffiliated entity (an "Unaffiliated Subadviser"), which will be responsible for the management of such side-by-side investment. An Investment Adviser may be paid a management fee, which will generally be determined as a percentage of the capital commitments of the Limited Partners. A General Partner or Investment Adviser may receive a performance-based fee (a "Carried Interest") based on the net gains of the Partnership's investments in addition to any amount allocable to the General Partner's or Investment Adviser's capital contribution.[1]

7. Interests in a Partnership will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act"), or Regulation D or Regulation S under the Securities Act, and will be sold only to "Qualified Participants" (as defined below). Prior to offering Interests to an Eligible Individual (as defined below), a General Partner must reasonably believe that the Eligible Employee or Eligible Family Member will be capable of understanding and evaluating the merits and risks of participation in a Partnership and that each such individual is able to bear the economic risk of such participation and afford a complete loss of his or her investment.

8. "Qualified Participants" are (a) current and former employees, officers, directors and current Consultants[2] of Capital Group (collectively, "Eligible Employees"), (b) spouses, parents, children, spouses of children, brothers, sisters and grandchildren of Eligible Employees ("Eligible Family Members" and, together with Eligible Employees who are natural persons, "Eligible Individuals"), (c) trusts or other investment vehicles established solely for the benefit of Eligible Individuals ("Eligible Investment Vehicles"), and (d) Capital Group. Each Eligible Individual will be an "accredited investor" under rule 501(a)(5) or rule 501(a)(6) of Regulation D ("Accredited Investor"), except that a maximum of 35 Eligible Employees who are sophisticated investors but who are not Accredited Investors may become Limited Partners if each of them falls into one of the following two categories: (A) Eligible Employees who (i) have a graduate degree in business, law or accounting, (ii) have a minimum of five years of consulting, investment management, investment banking, legal or similar business experience, and (iii) had reportable income from all sources (including any profit shares or bonus) of $100,000 in each of the two most recent years immediately preceding the Eligible Employee's admission as a Limited Partner and have a reasonable expectation of income from all sources of at least $140,000 in each year in which the Eligible Employee will be committed to make investments in a Partnership; or (B) Eligible Employees who are "knowledgeable employees," as defined in rule 3c–5 of the Act, of the Partnership (with the Partnership treated as though it were a "covered company" for purposes of the rule). An Eligible Employee who is described in category (A) above will not be permitted to invest in any year more than 10% of his or her income from all sources for the immediately preceding year in the aggregate in a Partnership and in all other Partnerships in which that investor has previously invested.

9. An Eligible Individual may purchase an Interest through an Eligible Investment Vehicle only if either (i) the investment vehicle is an "accredited investor," as defined in rule 501(a) of Regulation D under the 1933 Act, or (ii) the Eligible Individual is a settlor[3] and principal investment decision-maker with respect to the investment vehicle. Eligible Investment Vehicles that are not accredited investors will be included in the 35 non-accredited investor limit discussed above. Any Capital Group entity or a Consultant entity will be an "accredited investor" as defined in rule 501(a) of Regulation D under the 1933 Act.

10. The terms of a Partnership will be disclosed to the Eligible Employees at the time they are offered the right to subscribe for Interests, and they will be furnished with a copy of the partnership agreement. A Partnership will send its Limited Partners an annual financial statement audited by independent accountants as soon as practicable after the end of its fiscal year.[4] In addition, as soon as practicable after the end of each fiscal year of a Partnership, a report will be sent to each Limited Partner setting forth the information with respect to his or her share of income, gains, losses, credits, and other items for federal and state income tax purposes.

11. Interests in the Partnerships will not be transferable except with the express consent of the General Partner, and then only to a Qualified Participant. All of the Partnerships will have only Qualified Participants as Limited

[1] If a General Partner or Investment Adviser is registered under the Advisers Act, the Carried Interest payable to it by a Partnership will be pursuant to an arrangement that complies with rule 205–3 under the Advisers Act. If the General Partner or Investment Adviser is not required to register under the Advisers Act, the Carried Interest payable to it will comply with section 205(b)(3) of the Advisers Act, with the Partnership treated as a business development company solely for the purpose of that section.

[2] A "Consultant" is a person or entity whom Capital Group has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser and who shares a community of interest with Capital Group and its employees.

[3] If such investment vehicle is an entity other than a trust, the term "settlor" will be read to mean a person who created such vehicle, alone or together with other Eligible Individuals, and contributed funds to such vehicle.

[4] "Audit" will have the meaning defined in rule 1–02(d) of Regulation S–X.

Partners. No sales load will be charged in connection with the sale of Interests.

12. The General Partner may have the right to repurchase or cancel the Interest of an Eligible Employee who ceases to be an employee, officer, director, or current Consultant of any member of Capital Group for any reason. In the case of Interests held by a Consultant whose retainer has been terminated or has expired, such Interests will be subject to mandatory redemption or repurchase by Capital Group, or Capital Group may require the former Consultant to sell such Interests to an Eligible Investor. A Limited Partner, other than the Initial Partnerships for which no right to repurchase or cancellation exists, would receive upon repurchase or cancellation of its Interest, the lesser of (a) the amount actually paid by the Limited Partner to acquire the Interest plus interest, less any distributions, and (b) the fair market value of the Interest determined at the time of the repurchase or cancellation as determined in good faith by the General Partner.

13. A Partnership may make investments side-by-side with Capital Group entities and through investment pools sponsored by or managed by a Capital Group entity or an unaffiliated entity. A Partnership may also co-invest directly in a company with Capital Group or an investment fund or separate account organized for the benefit of investors who are not affiliated with Capital Group over which a Capital Group entity or an Unaffiliated Subadviser exercises investment discretion ("Third Party Funds").

14. If Capital Group makes loans to any Partnership, the lender will be entitled to receive interest at a rate no less favorable to the borrower than the rate that could be obtained on an arm's length basis. A Partnership will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Partnership (other than short-term paper). Any indebtedness of a Partnership will be without recourse to the Limited Partners of the Partnership.

15. A Partnership will not acquire any security issued by a registered investment company if, immediately after the acquisition, the Partnership will own, in the aggregate, more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) of the Act provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Partnerships from all provisions of the Act, except section 9 and sections 36 through 53 of the Act, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit: (a) A Capital Group entity or a Third Party Fund (or any affiliated person of such Third Party Fund), acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by such Partnership; (b) a Partnership to invest in or engage in any transaction with any entity, acting as principal, (i) in which such Partnership, any company controlled by such Partnership, or any Capital Group entity or Third Party Fund has invested or will invest, or (ii) with which such Partnership, any company controlled by such Partnership, or any Capital Group entity or Third Party Fund is or will otherwise become affiliated; and (c) a Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by such Partnership. The term "Third Party Investor" refers to any person or entity that is not a Capital Group entity or affiliated with Capital Group and is a partner or other investor in a Third Party Fund.

4. Applicants submit that an exemption from section 17(a) is consistent with the purposes of the Partnerships and the protection of investors. Applicants state that the Limited Partners will be informed of the possible extent of the Partnership's dealings with Capital Group and of the potential conflicts of interest that may exist. Applicants also state that, as professionals engaged in financial services businesses, the Limited Partners will be able to evaluate the risks associated with those dealings. Applicants assert that the community of interest among the Limited Partners and Capital Group will serve to reduce the risk of abuse. Applicants represent that the requested relief will not extend to any transactions between a Partnership and an Unaffiliated Subadviser or an affiliated person of an Unaffiliated Subadviser, or between a Partnership and any person who is not an employee, officer or director of the Capital Group or is an entity outside of the Capital Group and is an affiliated person of the Partnership as defined in section 2(a)(3)(E) of the Act ("Advisory Person") or any affiliated person of such a person.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the Partnership or a company controlled by the Partnership is a participant. Applicants acknowledge that the requested relief will not extend to any transaction in which an Unaffiliated Subadviser or an Advisory Person, or an affiliated person of either such person, has an interest, except in

connection with a Third Party Fund sponsored by an Unaffiliated Subadviser.

6. Applicants assert that compliance with section 17(d) would cause the Partnership to forego attractive investment opportunities simply because a Limited Partner, the General Partner or any other affiliated person of the Partnership (or any affiliate of the affiliated person) made a similar investment. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may be able to make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

7. Co-investments with Third Party Funds, or by a Capital Group entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3 below. Applicants note that it is common for a Third Party Fund to require that Capital Group invest its own capital in Third Party Fund investments, and that Capital Group investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to Capital Group. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by Capital Group in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships vis-a-vis a Third Party Fund.

8. Section 17(e) of the Act and rule 17e–1 under the Act limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a Capital Group entity (including the General Partner) that acts as an agent or broker to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation are deemed "usual and customary." Applicants state that for purposes of the application, fees or other compensation that are charged or received by a Capital Group entity will be deemed "usual and customary" only if (a) The Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. Applicants assert that, because Capital Group does not wish to appear to be favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to a Capital Group entity will be the same as those negotiated at arm's length with unaffiliated third parties.

9. Rule 17e–1(b) under the Act requires that a majority of directors who are not "interested persons" (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Rule 17e–1(c) under the Act requires each investment company relying on the rule to satisfy the fund governance standards defined in rule 0–1(a)(7) under the Act (the "Fund Governance Standards"). Applicants request an exemption from rule 17e–1 to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in paragraph (b) of the rule, and without having to satisfy the standards set forth in paragraph (c) of the rule. Applicants state that because all the directors of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1. Applicants state that each Partnership will comply with rule 17e–1 by having a majority of the directors of the General Partner take actions and make approvals as set forth in the rule. Applicants state that each Partnership will otherwise comply with rule 17e–1.

10. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–1 under the Act imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to permit a Capital Group entity to act as custodian of Partnership assets without a written contract. Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants state that, because of the community of interest between Capital Group and the Partnerships and the existing requirement for an independent audit, compliance with this requirement would be unnecessary. Applicants will comply with all other requirements of rule 17f–1.

11. Applicants also request an exemption from rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Partnership's investments may be kept in the locked files of the General Partner; (b) for purposes of paragraph (d) of the rule, (i) Employees of the General Partner (or Capital Group) will be deemed to be employees of the Partnerships, (ii) officers or managers of the General Partner of a Partnership (or Capital Group) will be deemed to be officers of the Partnership and (iii) the General Partner of a Partnership or its board of directors will be deemed to be the board of directors of a Partnership and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of the General Partner (or Capital Group). Applicants expect that with respect to certain Partnerships, some of their investments may be evidenced only by partnership agreements, participation agreements or similar documents, rather than by negotiable certificates that could be misappropriated. Applicants assert that for such a Partnership, these instruments are most suitably kept in the files of the General Partner, where they can be referred to as necessary.

12. Section 17(g) of the Act and rule 17g–1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. The rule also requires that the board of directors of an investment company

relying on the rule satisfy the Fund Governance Standards. Applicants request relief to permit the General Partner's board of directors, who may be deemed interested persons, to take actions and make determinations as set forth in the rule. Applicants state that, because all directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the General Partner's directors take actions and make determinations as set forth in rule 17g–1. Applicants also request an exemption from the requirements of paragraph (g) of rule 17g–1 relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors, paragraph (h) of rule 17g–1 relating to the appointment of a person to make the filings and provide the notices required by paragraph (g), and paragraph (j)(3) of rule 17g–1 relating to compliance with the Fund Governance Standards. Applicants state that the Partnerships will comply with all other requirements of rule 17g–1.

13. Section 17(j) of the Act and paragraph (b) of rule 17j–1 under the Act make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Partnerships. The relief requested will only extend to Capital Group entities and is not requested with respect to any Unaffiliated Subadviser or Advisory Person.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e) of the Act, and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Limited Partners. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Limited Partners. Applicants also request an exemption from section 30(h) of the Act to the extent necessary to exempt the General Partner of each Partnership, members of the General Partner or any board of managers or directors or committee of Capital Group employees to whom the General Partner may delegate its functions, and any other persons who may be deemed to be members of an advisory board of a Partnership, from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

15. Rule 38a–1 requires investment companies to adopt, implement and periodically review written policies reasonably designed to prevent violation of the federal securities law and to appoint a chief compliance officer. Each Partnership will comply will rule 38a–1(a), (c) and (d), except that (a) since the Partnership does not have a board of directors, the board of directors of the General Partner will fulfill the responsibilities assigned to the Partnership's board of directors under the rule, (b) since the board of directors of the General Partner does not have any disinterested members, approval by a majority of the disinterested board members required by rule 38a–1 will not be obtained, and (c) since the board of directors of the General Partner does not have any disinterested members, the Partnerships will comply with the requirement in rule 38a–1(a)(4)(iv) that the chief compliance officer meet with the independent directors by having the chief compliance officer meet with the board of directors of the General Partner as constituted.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction involving a Partnership otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 under the Act to which a Partnership is a party (the "Section 17 Transactions") will be effected only if the General Partner determines that:

(a) the terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Limited Partners of the Partnership and do not involve overreaching of the Partnership or its Limited Partners on the part of any person concerned; and

(b) the Section 17 Transaction is consistent with the interests of the Limited Partners, the Partnership's organizational documents and the Partnership's reports to its Limited Partners.

In addition, the General Partner of the Partnership will record and preserve a description of all Section 17 Transactions, the General Partner's findings, the information or materials upon which the findings are based and the basis for the findings. All such records will be maintained for the life of the Partnership and at least six years thereafter and will be subject to examination by the Commission and its staff.[5]

2. The General Partner of each Partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership or any affiliated person of such person, promoter or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of the Partnership in any investment in which an "Affiliated Co-Investor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer and where the investment transaction involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and an Affiliated Co-Investor are participants, unless any such Affiliated Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and *pro rata* with the Affiliated Co-Investor. The term "Affiliated Co-Investor" with respect to any Partnership means any person who is: (a) An "affiliated person" (as such term is defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (b) Capital Group; (c) an officer or director of Capital Group; or

[5] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

(d) an entity (other than a Third Party Fund) in which a Capital Group entity acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor (a) To its direct or indirect wholly-owned subsidiary, to any company (a "Parent") of which the Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary or to a direct or indirect wholly-owned subsidiary of its Parent, (b) to immediate family members of the Affiliated Co-Investor or a trust or other investment vehicle established for any Affiliated Co-Investor or any such immediate family member, or (c) when the investment is comprised of securities that are (i) listed on a national securities exchange registered under section 6 of the Exchange Act, (ii) NMS stocks pursuant to section 11A(a)(2) of the Exchange Act and rule 600(a) of Regulation NMS thereunder, (iii) government securities as defined in section 2(a)(16) of the Act or other securities that meet the definition of "Eligible Security" in rule 2a–7 under the Act, or (iv) listed or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and its General Partner will maintain and preserve, for the life of each Series of the Partnership and at least six years thereafter, such accounts, books and other documents constituting the record forming the basis for the audited financial statements that are to be provided to the Limited Partners in the Partnership, and each annual report of the Partnership required to be sent to the Limited Partners, and agree that all such records will be subject to examination by the Commission and its staff.[6]

5. The General Partner of each Partnership will send to each Limited Partner having an Interest in the Partnership at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants with respect to those Series in which the Limited Partner had an Interest. At the end of each fiscal year, the General Partner will make or cause to be made a valuation of all of the assets of the Partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, as soon as practicable after the end of each fiscal year of the Partnership, the General Partner will send a report to each person who was a Limited Partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Limited Partner of that partner's federal and state income tax returns and a report of the investment activities of the Partnership during that fiscal year.

6. If a Partnership makes purchases or sales from or to an entity affiliated with the Partnership by reason of an officer, director or employee of a Capital Group entity (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Cathy H. Ahn,

Deputy Secretary.

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[6] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63885; File No. SR–FINRA–2010–055]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Disapproving Proposed Rule Change To Amend FINRA Rule 6140 (Other Trading Practices)

February 10, 2011.

I. Introduction

On October 29, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 6140, Other Trading Practices. The proposed rule change was published for comment in the **Federal Register** on November 12, 2010.[3] The Commission received two comments on the proposal.[4] On December 21, 2010, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to February 10, 2011.[5] On January 24, 2011, FINRA submitted a response letter to the comments.[6] This order disapproves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

FINRA Rule 6140 provides that FINRA members may, but are not obligated to, accept stop orders in NMS stocks, as that term is defined in Rule 600(b)(47) of Regulation NMS.[7] In addition, FINRA Rule 6140 provides that a stop order becomes a market order, or a stop limit order becomes a limit order, when a transaction takes place at or above the stop price (in the case of a buy stop order) or at or below the stop price (in the case of a sell stop order).[8] Thus, under FINRA Rule 6140, a stop order cannot be triggered by the publication of a quotation at the stop price, but only by a transaction.[9] FINRA proposes to eliminate these provisions governing the handling of stop orders in their entirety.

In support of its proposal to eliminate entirely from its rules those provisions governing the handling of stop orders, FINRA states that its members believe quotations may be a better indicator of the current price of a security than transactions, and have requested that FINRA provide members the flexibility to determine whether the trigger of a stop order will be based on transactions or quotations at the stop price. FINRA represents that its rules do not typically define the parameters of the various order types that members may accept and that FINRA believes that members should have the ability to define the triggering event for stop orders as well as to design their systems consistent with such determination. In addition,

[3] *See* Securities Exchange Act Release No. 63256 (November 5, 2010), 75 FR 69503 ("Notice").

[4] *See* Letters from Gary S. Sheller, CFP, Sheller Financial Services, dated November 24, 2010 ("Sheller Letter"); and Michael S. Nichols, PhD, Principal/Financial Advisor, Cutter Advisors Group, dated November 29, 2010 ("Cutter Letter").

[5] *See* Securities Exchange Act Release No. 63582 (December 21, 2010), 75 FR 81704 (December 28, 2010).

[6] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Stephanie M. Dumont, Senior Vice President and Director of Capital Markets Policy, FINRA, dated January 24, 2011 ("FINRA Response Letter").

[7] *See* FINRA Rule 6140(h) and (i).

[8] *See* FINRA Rule 6140(h).

[9] *See* FINRA Rule 6140(h) and (i).

FINRA notes that it expects that, irrespective of whether a transaction or quotation is used as the trigger for a customer stop order, each member will apply the approach consistently firm-wide to all customer orders and fully disclose its practice to its customers.

Finally, FINRA proposes to relocate the definition of "initial public offering" from Rule 6220 (Definitions) to Rule 6130 (Transactions Related to Initial Public Offerings). FINRA proposes no substantive changes to this definition.

III. Summary of Comment Letters and FINRA's Response

The Commission received two comment letters objecting to the proposed rule change. The commenters generally were concerned with the use of quotations as a trigger for stop orders.[10] One commenter believed that the triggering event for a stop order should be a transaction, and expressed concern that activating a stop order "based solely upon a bid opens the process to manipulation by those inclined to do so by flashing bids during market turbulence."[11] In response, FINRA notes that FINRA Rule 5210 already prohibits the publication of a quotation that is not bona fide, and therefore the practice of flashing quotations for the sole purpose of activating a stop order, without the intention of trading at the price and volume quoted, is impermissible.[12]

The other commenter expressed concern that investors and financial advisors would not know whether the triggering event was a quote or a trade, and believed that investors would have a legitimate complaint if their stop order was triggered by a quote and there was no evidence it ever traded at that price.[13] FINRA responds that it does not believe that it is appropriate at this time for FINRA to dictate the definitions for the order types offered by a member to its customers, and notes that numerous member firms have concluded that quotes are the more appropriate triggering event for stop orders. FINRA believes that each member should be permitted to determine whether it will use quotes or transactions to trigger stop orders, provided that the member's approach is disclosed to its customers and is consistently applied.

IV. Discussion

Under section 19(b)(2)(C) of the Act, the Commission shall 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 that are applicable to such organization.[14] The Commission shall disapprove a proposed rule change if it does not make such a finding.[15]

After careful consideration, the Commission does not find that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[16] In particular, the Commission does not find that the proposed rule change is consistent with Section 15A(b)(6) of the Act, which requires that the rules of a national securities association be designed, among other things, "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."[17]

FINRA proposes to delete in its entirety the provisions of Rule 6140 relating to the handling of stop orders in NMS stocks by member firms. Those provisions currently require that stop orders offered by member firms be triggered (*i.e.,* become a market order or limit order) by a transaction in the security. Accordingly, this requirement should be providing customers certainty with respect to the operation of a key element of their stop orders.

By proposing to eliminate this provision, FINRA effectively would allow member firms to offer stop orders to customers that are triggered by a transaction, a quote or another mechanism altogether. While FINRA, in its "Statement of the Purpose" of the proposed rule change, notes that it "expects" each member to apply its approach to stop orders consistently and fully disclose its practice to its customers, FINRA has not clearly made this expectation enforceable by requiring consistency and customer disclosure in its rules.

The Commission acknowledges that some may believe a quotation is a better trigger mechanism for stop orders than a transaction, and there may be good reasons for allowing FINRA to provide flexibility for this in its rules. FINRA, however, has not articulated any such reasons. In addition, the Commission believes that, if FINRA rules were to permit members flexibility in the types of stop orders they offer, those rules should clearly require, at a minimum, that the member disclose to customers the type of stop order it offers. The Commission believes the regulatory framework should promote the ability of investors to understand the key attributes of order types offered by their brokers so that they can make an informed choice as to whether to use a particular type of order. This is especially true with more complex order types, such as stop loss orders, and particularly if FINRA rules permit a variety of stop loss orders to be offered.

Because of this potential investor confusion, and resulting investor harm, that could result from FINRA's proposed rule change, the Commission is concerned the proposal is not designed, among other things, to protect investors and the public interest, and promote just and equitable principles of trade, as required by Section 15A(b)(6) of the Exchange Act. The proposed rule change filed by FINRA, and its subsequent response to comments, does not adequately address these concerns. FINRA's proposal simply states that "FINRA believes that adopting the proposed rule change will provide members with the flexibility to determine whether the execution of stop orders will be triggered by transactions or quotations in the subject security without compromising investor protection."[18] Neither the proposed rule change, nor FINRA's subsequent response to comments, offers any substantive explanation as to why providing flexibility in the types of stop orders offered by members—particularly without a clearly enforceable disclosure requirement—is consistent with the provisions of Section 15A(b)(6) referenced above. The Commission notes that Rule 700(b)(3) of its Rules of Practice reiterates that "[t]he burden to demonstrate that a proposed rule change

[10] *See* Cutter Letter and Sheller Letter, *supra* note 4.

[11] *See* Sheller Letter, *supra* note 4.

[12] *See* FINRA Letter, *supra* note 6, at p. 2.

[13] *See* Cutter Letter, *supra* note 4.

[14] *See* 15 U.S.C. 78s(b)(2)(C)(i).

[15] *See* 15 U.S.C. 78s(b)(2)(C)(ii); *see also* 17 CFR 201.700(b)(3) ("The burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder * * * is on the self-regulatory organization that proposed the rule change * * * A mere assertion that the proposed rule change is consistent with those requirements * * * is not sufficient.") The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. *See* 17 CFR 201.700(b)(3). Any failure of a self-regulatory organization to provide the information elicited by Form 19b–4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization. *Id.*

[16] In disapproving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78*o*–3(b)(6).

[18] *See* Notice, *supra* note 3.

is consistent with the Exchange Act * * * is on the self-regulatory organization that proposed the rule change" and that a "mere assertion that the proposed rule change is consistent with those requirements * * * is not sufficient."[19] For the reasons articulated above, the Commission does not believe that FINRA has met that burden in this case.

IV. Conclusion

For the foregoing reasons, the Commission does not find that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, with Section 15A(b)(6) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–FINRA–2010–055) be, and hereby is, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3416 Filed 2–15–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63876; File No. SR–CBOE–2011–013]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees Schedule and Circular Regarding Trading Permit Holder Application and Other Related Fees

February 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2011, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule and circular regarding Trading Permit Holder application and other related fees ("Trading Permit Fee Circular"). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 2.20 grants the Exchange the authority to, from time to time, fix the fees and charges payable by Trading Permit Holders. CBOE is proposing to amend its Fees Schedule and Trading Permit Fee Circular effective February 1, 2011 to: (i) Clarify that the tier appointment fees will be assessed, as applicable, for open outcry transactions and not electronic transactions for those Market-Maker Trading Permit Holders that do not already have a tier appointment; (ii) establish a minimum open outcry contract level for assessment of a tier appointment fee to those Market-Maker Trading Permit Holders that do not maintain a tier appointment in VIX; and (iii) clarify that written notification to terminate a tier appointment should be provided to the Market Quality Assurance & DPM Administration Department.

CBOE Rule 8.3(e) provides that the Exchange may establish one or more types of tier appointments. In accordance with CBOE Rule 8.3(e), a tier appointment is an appointment to trade one or more options classes that must be held by a Market-Maker to be eligible to act as a Market-Maker in the options class or options classes subject to that appointment. CBOE currently maintains tier appointments for Market-Maker Trading Permit Holders trading in SPX and VIX.

Section 10(A) of the current Fees Schedule provides that the SPX Tier Appointment fee will be assessed to any Market-Maker Trading Permit Holder that either (a) has an SPX Tier Appointment at any time during a calendar month; or (b) conducts any open outcry transactions in SPX or any open outcry or electronic transaction in SPX Weeklys at any time during a calendar month. CBOE amended this provision in January 2011 to reflect the addition of SPX Weeklys and to incorporate any electronic transactions that occur in SPX Weeklys.[3] However, since the only Trading Permit Holders that are able to submit quotes electronically in SPX Weeklys are those Market-Maker Trading Permit Holders that have an appointment in SPX Weeklys, CBOE is proposing to clarify this provision by removing the language that would assess the tier appointment fee to any Market-Maker Trading Permit Holder that conducts any electronic transactions in SPX Weeklys. CBOE has never intended to assess the tier appointment fee to a Trading Permit Holder that submits an occasional order electronically in SPX Weeklys.

Similarly, Section 10(A) of the current Fees Schedule provides that the VIX Tier Appointment fee will be assessed to any Market-Maker Trading Permit Holder that either (a) has a VIX Tier Appointment at any time during a calendar month; or (b) conducts any transactions in VIX at any time during a calendar month. However, since the only Market-Maker Trading Permit Holders that are able to submit quotes electronically in VIX are those Market-Maker Trading Permit Holders that have an appointment in VIX, CBOE is proposing to clarify this provision by removing the language that would assess the tier appointment fee to any Market-Maker Trading Permit Holder that conducts any electronic transactions in VIX. CBOE has never intended to assess the tier appointment fee to a Trading Permit Holder that submits an occasional order electronically in VIX. CBOE is also proposing to add language to the Fees Schedule to provide that the VIX Tier Appointment fee will be assessed to a Market-Maker Trading Permit Holder that trades at least 1,000 VIX options contracts per month in open outcry. In addition, because Market-Maker Trading

[19] 17 CFR 201.700(b)(3).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63706 (January 12, 2011), 76 FR 3184 (January 19, 2011) (SR–CBOE–2011–004).

Permit Holders have an appointment to trade in open outcry in all options classes traded on the Hybrid Trading System (including VIX) pursuant to Exchange Rule 8.3(c)(ii), CBOE is proposing establish a 1,000 contract per month minimum to allow for minimum activity in VIX without having to pay a VIX Tier Appointment fee.[4]

In addition to the proposed changes to the Fees Schedule described above, CBOE is proposing to revise its regulatory circular that sets forth the existing Trading Permit Holder application and other related fees. The Exchange proposes to revise this circular to incorporate the changes to Section 10 of the CBOE Fees Schedule that are described above. The proposed changes to the circular are included as Exhibit 2 to the Form 19b–4.

2. Statutory Basis

The proposed rule change will treat similarly situated Trading Permit Holders in the same manner. Specifically, CBOE shall assess the same base tier appointment fees to all Trading Permit Holders based on the type of tier appointment requested and based on objective standards with respect to open outcry trading in the applicable class. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities for the reasons described above.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[4] This may be distinguished from SPX as all Market-Maker Trading Permit Holders trading in open outcry in SPX, a Hybrid 3.0 class, are required to maintain a separate appointment in SPX in accordance with Rule 8.3(c)(iii).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail *to rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–013 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2011–013. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2011–013 and should be submitted on or before March 9, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3417 Filed 2–15–11; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63881; File No. SR–NYSEArca–2010–120]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the SPDR Nuveen S&P High Yield Municipal Bond ETF

February 9, 2011.

I. Introduction

On December 21, 2010, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the SPDR Nuveen S&P High Yield Municipal Bond ETF ("ETF" or "Fund") under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02. The proposed rule change was published for comment in the **Federal Register** on January 6, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade shares ("Shares") under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units ("Units"), of the following series of the SPDR Series

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63624 (December 30, 2010), 76 FR 805 ("Notice").

Trust ("Trust") based on the S&P Municipal Yield Index ("Index"): SPDR Nuveen S&P HighYield Municipal Bond ETF ("Fund" or "ETF").

The SPDR Nuveen S&P High Yield Municipal Bond ETF[4] seeks to provide investment results that, before fees and expenses, correspond generally to the price and yield performance of the Index, which tracks the U.S. municipal bond market, and to provide income that is exempt from regular Federal income taxes.[5]

The Index consists of categories of bonds in the following proportions: (i) 70% of the Index constituents are components of the Standard & Poor's/Investortools High Yield Bond Index,[6] which are non-rated or are rated below investment grade; (ii) 20% of the Index constituents are components of the Standard & Poor's/Investortools Bond Index that are rated Baa3, Baa2, or Baa1 by Moody's Investors Service, or BBB−, BBB, or BBB+ by Standard and Poor's or Fitch; and (iii) 10% of the Index constituents are components of the Standard & Poor's/Investortools Bond Index that are rated A3, A2, or A1 by Moody's Investor Services, or A−, A, or A+ by Standard & Poor's or Fitch.[7] As of December 20, 2010, there were approximately 21,141 issues included in the Index.

The Exchange submitted this proposed rule change because the Index underlying the Fund does not meet all of the "generic" listing requirements of Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of Units based on US indexes. Specifically, the Index does not meet the requirement set forth in Commentary .02(a)(2):[8] As of December 20, 2010, 26.47% of the weight of the Index components have a minimum principal amount outstanding of $100 million or more. The Exchange represents that: (1) Except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A–3[9] under the Exchange Act for the initial and continued listing of the Shares. In addition, the *Exchange represents that* the Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the Index and *Intraday Indicative Value,* rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the Information Bulletin to ETP Holders, as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.[10]

Detailed descriptions of the Fund, the Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (*http://www.spdr.com*), as applicable.

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Although NYSE Arca Equities Rule 5.2(j)(3) permits the Exchange to list Units based on U.S. indexes pursuant to Rule 19b–4(e) under the Act,[13] the Index for the Fund does not meet all of the generic listing requirements applicable to the listing of Units based on U.S. indexes. Specifically, the Index does not satisfy Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), which requires that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum principal amount outstanding of $100 million or more. According to the Exchange, as of December 20, 2010, 26.47% of the weight of the Index components had a minimum principal amount outstanding of $100 million or more.

The Commission believes that the listing and trading of the Shares is consistent with the Act. The Commission believes that the Index is not susceptible to manipulation. As of December 20, 2010, there were approximately 21,141 issues included in the Index and the total dollar amount outstanding of issues in the Index was approximately $532.82 billion. Further, the most heavily weighted component represents 0.86% of the weight of the Index and the five most heavily weighted components represent 2.52% of the weight of the Index.

The Commission also notes that, based on the Exchange's representations: (1) The Shares currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3), except for the requirement under Commentary .02(a)(2); (2) the Shares will be subject to all of the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units; and (3) the Trust is required to comply with Rule 10A–3 under the Act for the initial and continued listing of Shares.[14] The Commission also notes that Shares of

[4] Standard & Poor's Financial Services LLC is the Index Sponsor with respect to the Index. The Exchange has represented that the Index Sponsor is not affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

[5] *See* the Trust's registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and the Investment Company Act of 1940 (15 U.S.C. 80a), dated February 22, 2010 (File No. 333–57793 and 811–08839) ("Registration Statement").

[6] The Standard & Poor's/Investortools Municipal Bond Index is composed of bonds held by managed municipal bond fund customers of Standard & Poor's Securities Pricing, Inc. that are priced daily. Only bonds with total outstanding amounts of $2,000,000 or more qualify for inclusion. The Standard and Poor's/Investortools Municipal Bond High Yield Index is comprised of all bonds in the Standard and Poor's/Investortools Municipal Bond Index that are non-rated or whose ratings are BB+ S&P and/or BA–1 Moody's or lower. This index does not contain bonds that are prerefunded or are escrowed to maturity.

[7] Where the ratings assigned by the agencies are not consistent, the Index will use the middle rating if three ratings are available, and the lower of two ratings if only two ratings are available.

[8] Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum principal amount outstanding of $100 million or more.

[9] 17 CFR 240.10A–3.

[10] *See, e.g.,* Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca–2007–36) (order approving NYSE Arca generic listing standards for Units based on a fixed income index); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for Units and Portfolio Depositary Receipts); 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of Units).

[11] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* 17 CFR 240.19b–4(e). *See also* Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).

[14] *See* 17 CFR 240.10A–3.

the Fund will comply with all other requirements of NYSE Arca Equities Rule 5.2(j)(3), applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletins to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [15] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSEArca–2010–120), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3441 Filed 2–15–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63880; File No. SR–Phlx–2011–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Fees for Complex Orders

February 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 7, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 its Complex Order [3] Fees in Section I of its Fee Schedule titled Rebates and Fees for Adding and Removing Liquidity in Select Symbols.

This filing is effective on February 7, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify the Exchange's Fee Schedule to support the enhanced Complex Order System.[4]

Changes to the Fees in Part B, Complex Orders. Specifically, the Exchange is proposing to amend the Rebates for Adding Liquidity, create Fees for Adding Liquidity and amend Fees for Removing Liquidity. With respect to the Rebate for Adding Liquidity, the Exchange proposes to increase the Customer rebate to $0.24 and not pay other market participants a rebate. With respect to the Fees for Adding Liquidity, the Exchange proposes to not assess Customers any fees and assess market makers $0.10 per contract and Firms, Broker-Dealers and Professionals $0.20 per contract. With respect to the Fees for Removing Liquidity, the Exchange proposes to increase Firms and Professionals to $0.28 per contract (a $0.01 increase).

A table displaying the proposed fees follows as well as a description of each proposed amendment.

	Customer	Directed participant	Specialist, ROT, SQT and RSQT	Firm	Broker-dealer	Professional
Rebate for Adding Liquidity	$0.24	$0.00	$0.00	$0.00	$0.00	$0.00
Fee for Adding Liquidity	0.00	0.10	0.10	0.20	0.20	0.20
Fee for Removing Liquidity	0.25	0.25	0.27	0.28	0.35	0.28

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[4] *See* Securities Exchange Act Release No. 63777 (January 26, 2011), 76 FR 2733 (January 14, 2011) (SR–Phlx-2010–157).

First, the Exchange is proposing to amend the Rebates for Adding Liquidity applicable to Section I, Part B, Complex Orders. The Exchange currently pays the following Rebates for Adding Liquidity for Complex Orders: $0.22 per contract for Customers; $0.25 per contract for Directed Participants; [5] $0.23 per contract for Specialists,[6] Registered Options Traders,[7] SQT,[8] and Remote Streaming Quote Traders; [9] $0.10 per contract for Firms and Broker-Dealers; and $0.20 per contract for Professionals.[10] The Exchange is proposing to increase the Rebate for Adding Liquidity for Customers to $0.24 per contract and not pay a Rebate for Adding Liquidity to Directed Participants, Specialists, ROTs, SQTs, RSQTs, Firms, Broker-Dealers and Professionals, thereby reducing such rebate to $0.00. The Exchange believes that it is necessary to continue to pay a rebate solely for Customer complex orders that add liquidity in order to continue to attract Customer complex order flow to the Exchange.

Second, the Exchange is proposing to assess new Fees for Adding Liquidity to Section I, Part B, Complex Orders. Specifically, the Exchange proposes to amend the fees in Part B to assess a Fee for Adding Liquidity for complex orders to all market participants, except for Customers. Customers would not pay a Fee for Adding Liquidity in complex orders. Directed Participants, Specialists, ROTs, SQTs, and RSQTs would be assessed a Fee for Adding Liquidity of $0.10 per contract. Firms, Broker-Dealers, and Professionals would be assessed a Fee for Adding Liquidity of $0.20 per contract. The Exchange believes that the increased Customer volume, from the proposed favorable Customer pricing, should benefit market makers [11] and other market participants engaged in proprietary trading.

Third, the Exchange proposes to amend the Fees for Removing Liquidity in Section I, Part B, Complex Orders. The Exchange currently assesses the following Fees for Removing Liquidity: $0.25 per contract for Customers and Directed Participants; $0.27 per contract for Specialists, ROTs, SQTs, RSQTs, Firms, and Professionals; and $0.35 per contract for Broker-Dealers. The Exchange is now proposing to amend the Fees for Removing Liquidity to assess Firms and Professionals a fee of $0.28 per contract. All other Fees for Removing Liquidity would remain the same.

Changes to the Applicability of Fees in Part B, Complex Orders. Fourth, the Exchange proposes to amend the applicability of the fees in Section I, Part B, Complex Orders by removing limitations relating to the contra-side of a transaction. The individual components of such a Complex Order would continue to be assessed the fees in Part B.

The Exchange currently only pays a Rebate for Adding Liquidity to Customer complex orders when those orders are electronically executed against a non-Customer contra-side order with the same Complex Order Strategy.[12] The Exchange is proposing to delete this text from the Fee Schedule. The Exchange proposes to pay this rebate regardless of the contra-party, except for orders executed as part of the Complex Order Live Auction ("COLA"), the Exchange's opening process, and other electronic auctions [13] when such Customer order is contra to another Customer order.[14] Accordingly, the rebate would be available to more complex orders executions, although as described above rebates would only be available to Customers.

The Exchange currently does not assess a Fee for Removing Liquidity on Customer complex orders that are electronically executed against a Customer contra-side order with the same Complex Order Strategy. The Exchange is proposing to delete this text from the Fee Schedule. The Exchange would now assess a Fee for Removing Liquidity to all Customers regardless of the contra-party, except in an electronic auction and during the Exchange's opening process.[15] Accordingly, this fee would become applicable to more complex orders executions.

The Exchange currently assesses Fees for Removing Liquidity to Directed Participants, Specialists, ROTs, SQTs, RSQTs, Firms, Broker-Dealers, and Professionals when those orders are electronically executed against a contra-side order with the same Complex Order Strategy. The Exchange is proposing to delete this text from the Fee Schedule. Directed Participants, Specialists, ROTs, SQTs, RSQTs, Firms, Broker-Dealers, and Professionals would be assessed a fee under Section I, Part B.[16]

Changes to Part C of Section I. Fifth, the Exchange is proposing to amend Section I, Part C of the Fee Schedule [17] regarding electronic auctions and opening process. Currently, a Customer receives a Rebate for Adding Liquidity (as set forth in Part B) in an electronic auction and during the Exchange's opening process, except when such Customer order is contra to another Customer order. This would remain the same for Customer complex orders that are executed as part of an electronic auction [18] and during the Exchange's opening process. The Exchange is proposing to add language to Part C to provide that for Customer orders that are not complex orders, the Rebate for Adding Liquidity would instead remain at the current rate of $0.22 per contract, except when such Customer order is contra to another Customer order.

The Exchange is not amending the applicability of the fees in Section I, Part A, Single Contra-Side Order. Single contra-side orders that are executed against the individual components of complex orders will continue to be assessed the fees in Part A.

[5] The term "Directed Participant" applies to transactions for the account of a Specialist, Streaming Quote Trader or Remote Streaming Quote Trader resulting from a Customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

[6] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[7] A Registered Options Trader ("ROT") includes a Streaming Quote Trader ("SQT"), a RSQT and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014 (b)(i) and (ii).

[8] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[9] A Remote Streaming Quote Trader ("RSQT") is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[10] The term "professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[11] The Exchange market maker category includes Specialists (*see* Rule 1020) and ROTs (Rule 1014(b)(i) and (ii)), which includes SQTs (*see* Rule 1014(b)(ii)(A)) and RSQTs (*see* Rule 1014(b)(ii)(B)).

[12] A Complex Order Strategy means any complex order involving any option series which is priced at a net debit or credit (based on the relative prices of each component). *See* Exchange Rule 1080, Commentary .08(a)(ii).

[13] Electronic auctions include, without limitation, COLA and the Quote and Market Exhaust auctions. *See* Exchange Rule 1017. This does not include Exchange's price improvement mechanism known as Price Improvement XL or (PIXL[SM]) as described in Exchange Rule 1080(n).

[14] *See* Part C of the Exchange's Fee Schedule.

[15] *See* Part C of the Exchange's Fee Schedule.

[16] This includes orders transacted in an electronic auction and the Exchange's opening process.

[17] Part C applies to the fees in Parts A, single contra-side order, and B, complex orders.

[18] In a Complex Order auction, the Customer would receive the proposed $0.24 per contract Rebate for Adding Liquidity.

The Exchange also proposes to make minor, non-substantive, technical amendments to Section I of the Fee Schedule to amend the titles of the sections in Parts A and B.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [19] in general, and furthers the objectives of Section 6(b)(4) of the Act [20] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange also believes that there is an equitable allocation of reasonable rebates among Exchange members.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the Complex Order Fees it assesses must be competitive with fees charged by other exchanges. The Exchange further believes that this competitive marketplace impacts the fees assessed by the Exchange today and influences the proposals set forth below. The Exchange believes that the proposed fees and rebates are reasonable and equitably allocated to those members that opt to direct complex orders to the Exchange rather than competing venues.

The Exchange believes that it is reasonable to only pay a Rebate for Adding Liquidity to Customers and pay no rebate to all other market participants because this Customer rebate would attract Customer order flow to the Exchange for the benefit of all market participants. The Exchange believes that the proposal is equitable because by paying a Rebate for Adding Liquidity only to Customers, all market participants would benefit from the increased liquidity which increased Customer order flow would bring to the Exchange. In addition, the Exchange believes that by not assessing such a Fee for Adding Liquidity on Customers and providing Customers a $0.24 per contract Rebate for Adding Liquidity further incentivizes Customer order flow to the Exchange for the benefit of all market participants.

The Exchange believes that creating a Fee for Adding Liquidity of $0.10 for market makers and $0.20 for all other market participants, except for Customers, is reasonable because the Exchange believes that the price differentiation between Firms and Brokers-Dealers and Specialists, ROTs, SQTs and RSQTs is justified in that the Specialists, ROTs, SQTs and RSQTs have obligations to the market, which do not apply to Firms and Broker-Dealers.[21] Therefore, assessing market makers a lower fee to add liquidity as opposed to Firms, Broker-Dealers and Professionals is reasonable because of these obligations which only apply to market makers. Similarly, the Exchange believes that it is reasonable to assess a $0.28 per contract Fee for Removing Liquidity on Firms, and by extension Professionals, who have no such quoting requirements as do market makers because market makers have quoting obligations that do not apply to Firms and Professionals. The concept of incentivizing market makers, who have quoting obligations, by assessing a lower fee as compared with other market participants is not novel.[22]

Moreover, the Exchange believes that the proposed Fees for Adding Liquidity and Removing Liquidity are equitable because the fees are consistent with price differentiation that exists today at all option exchanges. Specifically, the Exchange believes that the proposed fee amendments to Part B for complex orders are equitable, because, other than Customers, all market participants would be assessed Fees for Adding Liquidity that are similar to fees assessed by other exchanges for complex order executions.[23] In addition, the Fees for Removing Liquidity rates are similar to those assessed by ISE.[24]

In addition, the Exchange also believes that these fees are equitable because the net differential between the proposed fees, for either adding or removing liquidity, is similar to the differential which exists on the NASDAQ Options Market ("NOM") between Customers and Firms for adding liquidity. NOM currently has a differential of $0.65 per contract between the Firm Fee for Adding Liquidity of $0.45 per contract as compared to the Customer Rebate to Add Liquidity of $0.20 per contract in the section titled "All Other Options".[25]

As stated above, the Exchange proposes to amend the applicability of the fees in Section I, Part B, Complex Orders by removing limitations relating to the contra-side of a transaction. The Exchange believes that this proposal related to the applicability of fees is reasonable, because it seeks to pay rebates and assess fees regardless of the contra-party. Additionally, the Exchange believes these amendments are equitable, because the proposal is consistent with the fees and rebates assessed pursuant to Section I, Part A of the current Fee Schedule and general industry fee assessments of members that allow for different rates to be charged for different order types originated by dissimilarly classified market participants. Further, the fee differentials between market participants are within existing industry standards.[26]

Finally, as stated above, the Exchange is proposing to pay Customer orders that are not complex orders, a Rebate for Adding Liquidity of $0.22 per contract, except when such Customer order is contra to another Customer order. The Exchange believes that its proposal to pay different rebates as between complex and non-complex orders transacted during certain auctions and the Exchange's opening process is reasonable because the Exchange is continuing to pay rebates to Customers depending on the transaction type as a means to compete for Customer order flow. The Exchange believes that the proposal is equitable because by paying a Rebate for Adding Liquidity only to Customers, the Exchange believes that all market participants would benefit from the increased liquidity which increased Customer order flow would bring to the Exchange.

The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, including its monthly volumes, the order types it uses, and the prices of its quotes and orders (*i.e.,* its propensity to add or remove liquidity).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4).

[21] *See* Exchange Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

[22] *See* Securities Exchange Act Release No. 62048 (May 6, 2010) 75 FR 26830 (May 12, 2010) (SR–ISE–2010–43) (a rule change to incentivize market makers with rebates in order to promote and encourage liquidity in options classes that were subject to the fees proposed).

[23] *See* The International Securities Exchange, LLC's ("ISE") Schedule of Fees, specifically ISE's Select Symbols and the rates assessed on market makers, broker-dealers, firms and professionals.

[24] *See* ISE's Schedule of Fees, specifically ISE's Select Symbols and the rates assessed on market makers, broker-dealers, firms and professionals.

[25] *See* NOM Rule 7050.

[26] *See* ISE's Schedule of Fees.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[27] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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–Phlx–2011–12 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2011–12. 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 Web site viewing and printing 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–Phlx–2011–12 and should be submitted on or before March 9, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3422 Filed 2–15–11; 8:45 am]

BILLING CODE 8011–01–P

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63886; File No. SR–DTC–2011–02]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a New Standard To Communicate Corporate Action Events to Participants

February 10, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 28, 2011, The Depository Trust Company ("DTC") 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 primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was 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

Under the proposed rule change, a group of DTC Participants has volunteered to participate in a pilot test whereby on or about April 25, 2011, DTC will publish corporate actions pursuant to the International Standard Organization ("ISO") 20022 format.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

DTC handles essential aspects of corporate action[4] processing by routinely receiving and distributing information to its Participants using its proprietary computer to computer facility ("CCF") files. In order to reduce risk and to improve transparency in the announcement and processing of corporate actions, DTC is updating its standards for announcing these events by publishing corporate action data pursuant to the International Standards Organization ("ISO") 20022 format for the entire lifecycle of the event.

A group of DTC Participants has volunteered to participate in a pilot test on or about April 25, 2011, whereby corporate actions will be published in the ISO 20022 format. The pilot data will be created in a test environment with the data systemically generated from the prior day's production and will include event types, payout types, and other key corporate action information. Participants have been advised that they should not rely on the data from this pilot to run their production processes.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] A corporate action is an event that produces a corporate restructuring. Some of the most common corporate actions include dividend payments, interest payments, voluntary tender offers, and redemption of municipal and corporate bonds.

[5] The Participants participating in the pilot will continue to receive corporate action information by CCF files in order to run their production processes.

DTC expects to make ISO 20022 messages available to all Participants beginning on or about June 30, 2011. DTC will continue to support its legacy proprietary CCF files until 2015.[6]

DTC states that this rule filing is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder because it modifies a DTC service in order to make the process for notifying Participants of corporate action events more efficient.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(4)[9] because the proposed rule change effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in DTC's custody or control or for which it is responsible and (ii) does not significantly affect the respective rights of DTC or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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–DTC–2011–02 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–DTC–2011–02. 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 Web site viewing and printing 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 filings also will be available for inspection and copying at DTC's principal office and DTC's Web site at *http://www.dtc.org/impNtc/mor/index.html.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–DTC–2011–02 and should be submitted on or before March 9, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3471 Filed 2–15–11; 8:45 am]

BILLING CODE 8011–01–P

[6] DTC notified its participants of this initiative to communicate corporate actions messages based on ISO 20022 through several Important Notices. *See, e.g.*, DTC Important Notice B7024–10 (July 26, 2010), *http://www.dtcc.com/downloads/legal/imp_notices/2010/dtc/ope/7024–10.pdf,* and DTC Important Notice 6620–10 (Apr. 20, 2010), *http://www.dtcc.com/downloads/legal/imp_notices/2010/dtc/reo/6620-10.pdf.*

[7] 15 U.S.C. 78q–1.

[8] *Supra* note 2.

[9] *Supra* note 3.

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7100]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet on March 7 and March 8 at the Department of State, 2201 "C" Street, NW., Washington, DC. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Nick Sheldon, Office of the Historian (202–663–1123) no later than March 3, 2011 to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Nick Sheldon for acceptable alternative forms of picture identification. In addition, any requests for reasonable accommodation should be made no later than March 1, 2011. Requests for reasonable accommodation received after that time will be considered, but might be impossible to fulfill.

The Committee will meet in open session from 11 a.m. until 12 Noon on Monday, March 7, 2011, in the Department of State, 2201 "C" Street, NW., Washington, DC, in Conference Room 1205, to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions in the afternoon on Monday, March 7, 2011 and in the morning on Tuesday, March 8, 2011, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other

declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure. Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf,* for additional information.

Questions concerning the meeting should be directed to Ambassador Edward Brynn, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: February 9, 2011.

Edward Brynn,

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State.

[FR Doc. 2011–3521 Filed 2–15–11; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice: 7322]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Jurisdiction and the Recognition and Enforcement of Judgments

The Department of State, Office of Legal Adviser, Office of Private International Law would like to give notice of a public meeting to discuss issues relating to jurisdiction and the recognition and enforcement of judgments. The European Commission released on December 14, 2010 its proposal, COM(2010) 748 final, for amendments to Council Regulation (EC) No. 44/2001 of 22 December 2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (known as "Brussels I"). See *http://ec.europa.eu/justice/policies/civil/docs/com_2010_748_en.pdf.*

Under the current text of Brussels I, most of the rules apply only to defendants domiciled in a EU member state. When the defendant is not a domiciliary of a EU member state, jurisdiction in civil actions is governed by the national law of the relevant member state, rather than by the jurisdictional rules set forth in Brussels I. The proposed amendments would, *inter alia,* do away with that distinction, making the Brussels I rules applicable in all cases, regardless of the domicile of the defendant. These changes have potentially significant implications for U.S. citizens and residents who are involved in civil actions in EU member states. The Commission's proposal will now be considered by the European Council and by the European Parliament.

In addition, last year the Council on General Affairs and Policy of the Hague Conference on Private International Law considered a proposal to continue work in the judgments area. Work in that forum had previously led to the conclusion in 2005 of the Convention on Choice of Court Agreements, which is not yet in force. The State and Justice Departments are currently engaged in discussions with various domestic stakeholders regarding implementing legislation for that Convention. The scope of that Convention is limited to situations in which the parties have expressly designated the court or courts in which disputes will be resolved; it does not address many other situations, including non-contract actions, in which no such choice has been made. At the Hague Conference, it has been proposed that an experts' group be convened to consider possible options for a broader instrument. In April 2011, the Conference's Council on General Affairs and Policy will hold its annual meeting and will revisit this topic.

The purpose of the public meeting, to be held under the auspices of the State Department's Advisory Committee on Private International Law, is to consider these developments and possible responses by the U.S. Government.

Time and Place: The public meeting will take place on Wednesday, March 23, 2011 from 8:30 to 11:30 am EST at Covington & Burling LLP, 1201 Pennsylvania Avenue, NW., Washington, DC. Participants should appear at the guards' desk at Covington & Burling by 8:15 am to be directed to the meeting location.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Because of space limitations, those wishing to attend are required to pre-register. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Persons wishing to attend in person or telephonically should contact Trisha Smeltzer (*SmeltzerTK@state.gov*) or Niesha Toms (*TomsNN@state.gov*) of the Office of Private International Law and provide your name, affiliation, e-mail address, and mailing address.

Dated: February 7, 2011.

Michael S. Coffee,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2011–3524 Filed 2–15–11; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

[Meeting No. 11–01]

Sunshine Act Meeting Notice; February 18, 2011

The TVA Board of Directors will hold a public meeting on February 18, 2011, at the Tri-County Community College, 21 Campus Circle, Murphy, North Carolina, to consider the matters listed below. The public may comment on any agenda item or subject at a *public listening session* which begins at 8:30 a.m. (EST). Immediately following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. **Please Note:** Speakers must pre-register online at TVA.gov or sign in before the meeting begins at 8:30 a.m. (EST) on the day of the meeting. The Board will answer questions from the news media following the Board meeting.

STATUS: Open.

Agenda

Old Business

Approval of minutes of November 4, 2010, Board Meeting

New Business

1. Chairman's Welcome
2. President's Report
3. Governance Item—Nuclear Oversight Committee Charter Amendment
4. Report of the Audit, Risk, and Regulation Committee
5. Report of the People and Performance Committee
6. Report of the Finance, Rates, and Portfolio Committee
   - A. Contract with American Centrifuge Enrichment, LLC, for uranium enrichment services
   - B. Contract with Cameco, Inc., for uranium hexafluoride
   - C. Construction of a new gypsum dewatering facility at Kingston Fossil Plant
   - D. Adjustment Addendum (Fuel Cost Adjustment) and other rate change implementation matters

E. Contract(s) for operations materials and industrial equipment
F. Power contracts—(i) Extension of an existing power supply agreement and (ii) authorization of service to new firm load
7. Report of the Customer and External Relations Committee
A. Demand Response Program delegation
8. Report of the Nuclear Oversight Committee

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: February 11, 2011.

Ralph E. Rodgers,

Acting General Counsel and Secretary.

[FR Doc. 2011–3657 Filed 2–14–11; 4:15 pm]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–05]

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 February 28, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–1129 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: Keira Jones, 202–267–4025, or Tyneka L. Thomas, 202–267–7626, Office of Rulemaking, 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 February 11, 2011.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–1129.

Petitioner: Alan Penzias.

Section of 14 CFR Affected: § 91.146.

Description of Relief Sought: The proposed exemption, if granted, would allow Alan Penzias to offer passenger carrying flights for the benefit of the American Fertility Association, a charitable, non-profit organization.

[FR Doc. 2011–3463 Filed 2–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Mayer Brown LLP as outside counsel for BNSF Railway Company (WB461–17—01/25/11) for permission to use certain data from the Board's 1999 through 2009 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–3411 Filed 2–15–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Two Individuals Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of two newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The designations by the Director of OFAC of the two individuals identified in this notice, pursuant to Executive Order 13224, are effective on February 9, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are

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

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On February 9, 2011 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, two individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The designees are as follows:

1. 'ABD AL-SALAM, Said Jan (a.k.a. 'ABDALLAH, Qazi; a.k.a. 'ABD-AL-SALAM, Sa'id Jan; a.k.a. ABDULLAH, Qazi; a.k.a. CAIRO, Aziz; a.k.a. JHAN, Said; a.k.a. KHAN, Farhan; a.k.a. SA'ID JAN, Qasi; a.k.a. WALID, Ibrahim; a.k.a. ZAIN KHAN, Dilawar Khan; a.k.a. "NANGIALI"); DOB 5 Feb 1981; alt. DOB 1 Jan 1972; nationality Afghanistan; National ID No. 281020505755 (Kuwait); Passport OR801168 (Afghanistan) issued 28 Feb 2006 expires 27 Feb 2011; alt. Passport 4117921 (Pakistan) issued 9 Sep 2008 expires 9 Sep 2013; Passport OR801168 and Kuwaiti National ID No. 281020505755 issued under the name Said Jan 'Abd al-Salam; Passport 4117921 issued under the name Dilawar Khan Zain Khan (individual) [SDGT].

2. HAQQANI, Khalil Al-Rahman (a.k.a. HAQQANI, Khaleel; a.k.a. HAQQANI, Khalil Ahmad; a.k.a. HAQQANI, Khalil ur Rahman), Sarana Zadran Village, Paktia, Afghanistan; Peshawar, Pakistan; Near Dirgha Mundei Madrassa, in Dirgha Mundei Village, near Miram Shah, North Waziristan Agency (NWA), Federally Administered Tribal Areas (FATA), Pakistan; Kayla Village, near Miram Shah, NWA, FATA, Pakistan; DOB 1 Jan 1966; alt. DOB 1964; alt. DOB 1963; alt. DOB 1962; alt. DOB 1961; alt. DOB 1960; alt. DOB 1959; alt. DOB 1958; nationality Afghanistan; Haji (individual) [SDGT].

Dated: February 9, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–3498 Filed 2–15–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5884–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5884–B, New Hire Retention Credit.

DATES: Written comments should be received on or before April 18, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, (202) 927–9364, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: New Hire Retention Credit.

OMB Number: 1545–2202.

Form Number: Form 5884–B.

Abstract: Form 5884–B, New Hire Retention Credit, was developed to carry out the provisions of section 102 of the Hiring Incentives to Restore Employment (HIRE) Act (Public Law (Pub. L.) 111–147). The new form provides a means for employers to calculate and claim the credit. This credit is a new non-Code general business credit and the form is required to be attached to the tax return.

Current Actions: There are no changes being made to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit groups, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Governments.

Estimated Number of Respondents: 1,125,000.

Estimated Time per Respondent: 12 hours 17 minutes.

Estimated Total Annual Burden Hours: 13,815,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 31, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–3430 Filed 2–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8944 and Form 8948

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8944, Preparer Hardship Waiver Request, and Form 8948, Preparer Explanation for Not Filing Electronically.

DATES: Written comments should be received on or before April 18, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger at (202) 927–9368, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 8944, Preparer Hardship Waiver Request.

Title: Form 8948, Preparer Explanation for Not Filing Electronically.

OMB Number: 1545–2200.

Abstract, Form 8944: A tax preparer uses Form 8944 to request a waiver from the requirement to file tax returns on magnetic media when the filing of tax returns on magnetic media would cause a hardship.

Abstract, Form 8948: A specified tax return preparer uses Form 8948 to explain which exception applies when a covered return is prepared and filed on paper.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 8,910,000.

Estimated Total Annual Burden Hours: 18,270,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 31, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–3432 Filed 2–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[T.D. 9052 as amended by T.D. 9472]

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, T.D. 9052, Notice of Significant Reduction in the Rate of Future Benefit Accrual, as amended by T.D. 9472, Notice Requirements for Certain Pension Plan Amendments Significantly Reducing the Rate of Future Benefit Accrual.

DATES: Written comments should be received on or before April 18, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue

Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: T.D. 9052: Notice of Significant Reduction in the Rate of Future Benefit Accrual.

Title: T.D. 9472: Notice Requirements for Certain Pension Plan Amendments Significantly Reducing the Rate of Future Benefit Accrual.

OMB Number: 1545–1780.

Abstract: T.D. 9052: This document contains final regulations providing guidance on the notification requirements under section 4980F of the Internal Revenue Code (Code) and section 204(h) of the Employee Retirement Income Security Act of 1974 (ERISA). Under these final regulations, a plan administrator must give notice of a plan amendment to certain plan participants and beneficiaries when the plan amendment provides for a significant reduction in the rate of future benefit accrual or the elimination or significant reduction in an early retirement benefit or retirement-type subsidy. These final regulations affect retirement plan sponsors and administrators, participants in and beneficiaries of retirement plans, and employee organizations representing retirement plan participants.

Abstract: T.D. 9472: This document contains final regulations providing guidance relating to the application of the section 204(h) notice requirements to a pension plan amendment that is permitted to reduce benefits accrued before the plan amendment's applicable amendment date. These regulations also reflect certain amendments made to the section 204(h) notice requirements by the Pension Protection Act of 2006. These final regulations generally affect sponsors, administrators, participants, and beneficiaries of pension plans.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 4,000.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 40,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 20, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–3433 Filed 2–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–120168–97. T.D. 8798]

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–120168–97 (TD 8798), Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility.

DATES: Written comments should be received on or before April 18, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests copies of the regulation should be directed to Joel Goldberger at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility.

OMB Number: 1545–1570.

Regulation Project Number: REG–120168–97 (T.D. 8798).

Abstract: Income tax return prepares who satisfy the due diligence requirements in this regulation will avoid the imposition of the penalty section 6695(g) of the Internal Revenue Code for returns or claims for refund due after December 31, 1997. The due diligence requirements include soliciting the information necessary to determine a taxpayer's eligibility for, and amount of, the Earned Income Tax Credit and the retention of this information.

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.

Estimated Number of Respondents: 100,000.

Estimated Time per Respondent: 5 hours, 4 minutes.

Estimated Total Annual Burden Hours: 507,136.

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: January 31, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–3434 Filed 2–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–262–82; T.D. 8600]

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, PS–262–82 (T.D. 8600), Definition of an S Corporation (§ 1.1361–3).

DATES: Written comments should be received on or before April 18, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Definition of an S Corporation.

OMB Number: 1545–0731.

Regulation Project Number: PS–262–82 (T.D. 8600).

Abstract: This regulation provides the procedures and the statements to be filed by certain individuals for making the election under Internal Revenue Code section 136(d)(2), the refusal to consent to the election, or the revocation of that election. The statements required to be filed are used to verify that taxpayers are complying with requirements imposed by Congress under subchapter S.

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 and individuals.

Estimated Number of Respondents: 1,005.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,005.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 20, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–3435 Filed 2–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2553

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2553, Election by a Small Business Corporation.

DATES: Written comments should be received on or before April 18, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Election by a Small Business Corporation.

OMB Number: 1545–0146.

Form Number: 2553.

Abstract: Form 2553 is filed by a qualifying corporation to elect to be an S Corporation as defined in Internal Revenue Code section 1361. The information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation is classified as an S Corporation and the

corporation's income is taxed to the shareholders of the corporation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and Farms.

Estimated Number of Respondents: 500,000.

Estimated Total Annual Burden Hours: 8,190,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–3436 Filed 2–15–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 76 Wednesday,
No. 32 February 16, 2011

Part II

Department of the Treasury

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 1, 17, 19, et al.
Revision of Distilled Spirits Plant Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 1, 17, 19, 24, 26, 28, 30, and 31

[Docket No. TTB–2008–0004; T.D. TTB–92; Re: ATF Notice No. 870 and TTB Notice Nos. 83, 86, and 92]

RIN 1513–AA23

Revision of Distilled Spirits Plant Regulations

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: In this document, the Alcohol and Tobacco Tax and Trade Bureau adopts as a final rule, with some changes, a proposed revision of its distilled spirits plant regulations. The revision modernizes the requirements for operating distilled spirits plants and includes a number of organizational changes to improve the layout of the regulatory texts. These changes make the regulations easier to apply, thereby facilitating compliance by distilled spirits plant proprietors and allowing those proprietors to operate in a more efficient manner. The revision also incorporates plain language principles in order to improve the clarity and readability of the regulatory texts.

DATES: *Effective Date:* This final rule is effective on April 18, 2011.

FOR FURTHER INFORMATION CONTACT: Christopher M. Thiemann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200E, Washington, DC 20220; telephone 202–453–2265.

SUPPLEMENTARY INFORMATION:

Distilled Spirits Plants in General

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, and how taxes on distilled spirits are collected, under Federal law.

Basic Definitions

Distilled spirits. The term "distilled spirits" refers to those products that contain ethyl alcohol and are generally the result of distillation of fermented materials. This term does not apply to wine and beer, which generally are products of fermentation alone. Examples of distilled spirits products are vodka, whiskey, gin, brandy, cordials, liqueurs, and flavored brandies.

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, for either 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 for which a permit has been issued by the Alcohol and Tobacco Tax and Trade Bureau (TTB). While Federal law allows for the limited home production of wine and beer, no such provision exists for distilled spirits.

DSPs are regulated under the provisions of two laws, the Internal Revenue Code of 1986 (the IRC, codified as title 26 of the United States Code (26 U.S.C.)) and the Federal Alcohol Administration Act (the FAA Act, codified in title 27 of the United States Code (27 U.S.C.)). The IRC imposes an excise tax on distilled spirits, requires the registration of DSPs, mandates DSP proprietors 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 prohibits various types of trade practices within the alcohol industry, including DSPs.

Both the IRC and the FAA Act authorize the Secretary of the Treasury to prescribe regulations to carry out and enforce their provisions regarding the establishment and operation of DSPs. Those regulations are administered by TTB. The TTB regulations that concern DSPs, which are the subject of this document, are contained in part 19 of title 27 of the Code of Federal Regulations (27 CFR part 19).

Major Regulatory Provisions

A DSP consists of one or more of the following: Production, storage, processing, denaturation, and bottling facilities for beverage and industrial use distilled spirits. A DSP may be a large and complex plant having all of those facilities or may be a simple storage facility consisting of only one building or a small bottling facility with storage facilities. Production facilities are usually accompanied by storage facilities. Bottling facilities are often accompanied by storage facilities, and in fact must by law be accompanied by either a production facility or a storage facility. However, large storage facilities are often not accompanied by bottling or production facilities.

Registration. Before commencing any of the operations discussed in the previous paragraph, the IRC requires that the DSP proprietor must first obtain approval of a notice of registration. This application for registration includes documents to set up distilling apparatus, environmental impact forms, personnel questionnaires, authorized signatories, and a statement of security.

Permits. Under the FAA Act, all persons must file for, and obtain, a basic permit before engaging in the business of:

- Distilling spirits;
- Rectifying, blending, or bottling (processing) distilled spirits; or
- Warehousing and bottling distilled spirits.

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 of spirits for industrial use;
- Bonded warehousing of spirits for industrial use;
- Denaturation of spirits;
- Bonded warehousing of spirits (without bottling) for nonindustrial use;
- Bottling or packaging of spirits for industrial use; or
- 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 "general premises." All activities relating to the distilling, storing, and processing (blending and mixing) of distilled spirits must be conducted on bonded premises. Most 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 who is qualified to carry on such operations under 27 CFR part 19 and who has obtained the FAA Act 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 (SDA), may be carried on outside DSPs.

The physical 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 from the bonded premises of a DSP 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, the surety is then obliged to pay the tax, up to the face amount (limit) of the bond.

Other requirements. In addition to registering, obtaining a permit, and providing a bond, DSP proprietors are required to comply with a number of regulatory provisions relating to: Plant security; production, storage, and processing of spirits; recordkeeping; inspection and audit; and filing of reports. These requirements are reflected in the part 19 regulations.

Recordkeeping accounts. All operations at a DSP are accounted for within four recordkeeping accounts—production, storage, denaturation, and processing. Since the facilities (tanks and rooms) of a DSP may be used for multiple purposes, the accountability for spirits must be maintained of necessity by appropriate records within the four accounts instead of by 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 bonded premises. The amount of Federal excise tax that a distilled spirits plant proprietor must pay is based on 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 is paid pursuant to a semimonthly tax return 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 at 60 degrees Fahrenheit that contains 50 percent ethyl alcohol by volume.

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 added wine and/or flavors, and the IRC at 26 U.S.C. 5010 provides a tax 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 or flavors.

Nontaxable transactions. Under the IRC, certain types of shipments to and from a distilled spirits plant are permitted without payment of tax. Examples include:

- 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).

Rulemaking History

ATF Notice No. 870

On November 30, 1998, TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), published in the **Federal Register** (63 FR 65720) a notice of proposed rulemaking, Notice No. 870, 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 into the regulations a provision of an ATF Industry Circular regarding alcohol fuel.

In addition to these proposed changes, ATF invited 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 requesting the initiation of a complete revision of that part. In support of its request, DISCUS provided ATF with sample regulations that consisted of a "markup" version of the part 19 texts, along with numerous copies of variances (alternate methods or procedures) that ATF approved for members of the distilled spirits industry over the years. The amendments requested by DISCUS covered a broad range of issues and included 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 inclusion of alternative method or procedure approvals in the regulations for universal applicability.

ATF also received comments from Equistar Chemicals, LP in response to Notice No. 870. 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 Notice No. 870, ATF concluded that the amendments proposed in that notice were not extensive enough to address the changes

that had taken place in the industry since the last major revision of the distilled spirits plant regulations, which took place when ATF implemented the Distilled Spirits Tax Revision Act of 1979, commonly referred to as "All in Bond." No further action was taken by ATF in regard to this matter.

TTB Notice No. 83

As the successor to ATF, TTB undertook a comprehensive review of the distilled spirits plant regulations in part 19, taking into account the comments received in response to Notice No. 870, intervening statutory changes, and other issues that had come to the attention of TTB that appeared to warrant changes to the part 19 regulations. As a result of this review, on May 8, 2008, TTB published in the **Federal Register** (73 FR 26200) Notice No. 83, a notice of proposed rulemaking that set forth a complete revision of part 19 and superseded Notice No. 870.

The preamble of Notice No. 83 contained a detailed discussion of the proposed changes reflected in the revised part 19 texts. The following points are noted regarding the proposed changes:

1. Each section of the regulations was examined for clarity and rewritten as necessary, with application of plain language principles (use of active voice and shorter sentences and paragraphs, elimination of jargon and unnecessary technical terms, and use of gender-neutral language) where practicable. Many lengthy sections of the regulations were split into multiple sections to make them more understandable and readable. In addition, in some cases textual information was converted to a table format for easier reference.

2. The individual sections within part 19 were rearranged into a more logical order. In some cases this involved the reordering of sections within a subpart, and in other cases this involved the creation of a new subpart to set forth regulations involving the same general subject matter that previously was dealt with in more than one subpart. For example, prior to this revision, information regarding distilled spirits taxes was found in two separate subparts, subpart C (containing basic information about distilled spirits taxes) and subpart P (containing information regarding determination of taxes and the filing of tax returns); the revision combines these provisions in one new Subpart I, Distilled Spirits Taxes. In addition, duplicative sections were eliminated.

3. Amendments to the IRC made by the Taxpayer Relief Act of 1997 were incorporated into the regulations, including provisions whereby: (a) Imported bottled spirits that were taxpaid through Customs may be returned to bond at a DSP and a claim for a credit, refund, or abatement may be filed for the return, (b) beer to be used in the production of spirits can be received at a DSP without payment of tax, and (c) taxpaid beer can be removed from a brewery and shipped to a DSP with refund or credit of tax.

4. The revised regulations allow for expanded use of letterhead applications and letterhead notices for purposes of amending a registration or permit in lieu of filing an entire new registration or permit application.

5. The regulations were revised to allow for the use of mass flow meters that meet certain volumetric tolerances for tax determination, as well as the use of other bulk gauges for general gauging, without prior approval from TTB.

6. In view of the increased number of limited liability companies (LLCs) and limited liability partnerships (LLPs) that own and operate DSPs, references to these types of business entities were included in the provisions that govern the qualification of DSPs.

7. The revised regulations include the addition of a provision that would permit the alternation of DSP premises with adjacent brewery premises.

8. The revised regulations require alcohol fuel plants (AFPs) to file an application in order to receive spirits in bond. This corrected an oversight in the regulations because 26 U.S.C. 5005(c)(1) establishes tax liability during a transfer in bond based on an application filed by the consignee. Under this change, AFPs would be required to file the same applications as regular DSPs.

9. The revised regulations eliminate the requirement that proprietors file form TTB F 5110.34, Change in Plant Status, when DSP premises are curtailed or extended. Under the revised regulations, the proprietor would document curtailment or extension with a record kept at the plant or by commercial records.

10. The revised regulations retained the requirement that the closure on each container requires breaking to gain access to the contents of the container. However, the requirement that a portion of the closure remain on the container after its breakage was eliminated, because that particular feature is not a requirement of the underlying IRC provision at 26 U.S.C. 5301(d).

11. The revised regulations clarify that required records may consist of documents created in the ordinary course of business rather than records created to expressly meet the requirements of part 19, if those documents contain the information that the regulations require. However, the revised regulations do not include a DISCUS recommendation that we eliminate most of the internal records of activities within a DSP, such as the production account, the storage account, and the processing/denaturation account, because the internal accounts are specifically called for in the IRC and they are discussed in the legislative history relating to "all-in-bond."

Notice No. 83 invited the public to make comments on the proposed regulations by August 6, 2008. The comment period for Notice No. 83 was extended twice. On May 8, 2008, after a request from an industry member, TTB published in the **Federal Register** Notice No. 86 (73 FR 44952), which extended the comment period by 90 days. On October 29, 2008, after a request from DISCUS, TTB published in the **Federal Register** Notice No. 92 (73 FR 64287), which extended the comment period by an additional 90 days. The comment period for Notice No. 83 therefore closed on February 3, 2009.

Comments Received in Response to Notice No. 83

In response to Notice No. 83, TTB received 7 comments. Six of the comments expressed strong support for the revisions to part 19 and commented on specific areas of agreement and recommendations for further changes. One commenter asked a specific question regarding a particular regulatory requirement. Descriptions of the comments and TTB responses follow.

Comment 1

A comment from a manufacturer of nonbeverage products was supportive of TTB's efforts to modernize the DSP requirements. The commenter specifically addressed the application of part 19 to cosmetic and topical over-the-counter drug products such as instant hand sanitizers and skin cleansers. The commenter noted that its products are subject to several Federal laws and to regulation by the FDA as well as TTB.

The commenter stated that due to growth in the hand sanitizer product category, TTB should create category-specific regulations, similar to the regulations for vinegar plants and alcohol fuel plants.

TTB Response: TTB notes that vinegar plants and alcohol fuel plants differ from cosmetics containing alcohol because vinegar as an end product does not contain alcohol, and alcohol fuel plants are created as a category by statute. The commenter is correct that

TTB does not have specialty categories for denatured alcohol products in its regulations. Denatured alcohol products include cosmetics, flavors, fuel, over-the-counter products, medical products, laboratory products, industrial products such as solvents and cleaners, and food ingredients, just to name a few. Creating category-specific regulations would create an increased regulatory burden on those entities that manufacture multiple types of denatured products. Also, adding new nonbeverage product categories within part 19 is outside the scope of Notice No. 83, and it would be inconsistent with the Administrative Procedure Act to make such substantive changes not proposed in Notice No. 83 in this final rule document without notice and comment. However, we agree that hand sanitizer products have grown as a market segment since their introduction in 1988. We currently are undertaking a rulemaking project relating to 27 CFR Part 20, Distribution and Use of Denatured Alcohol and Rum, and we will retain these comments for consideration in that project.

The commenter also noted that it has several production and recordkeeping processes in place that have been validated by the FDA, but that are not recognized as meeting TTB requirements without other TTB mandated records and reports.

TTB Response: TTB has a unique responsibility to protect the revenue while FDA regulations are designed to ensure safe products, not to protect the revenue. Thus, TTB's reporting and recordkeeping requirements are different from those of FDA.

The commenter listed several proposed changes that it suggests apply specifically to cosmetic and over-the-counter producers:

- "Exempt companies from monthly reporting if they are only purchasing and using [specially denatured alcohol (SDA)] * * *. Document the yearly usage of SDA alcohol on the User's Report of Denatured Spirits (TTB Form 5150.18)."

TTB Response: Companies that only purchase and use SDA may operate under the provisions of 27 CFR part 20. Under § 20.264(b), SDA users are required to file an annual report as opposed to a monthly report. However, monthly reporting is a requirement for DSPs because it provides information to TTB to ensure that the revenue is protected. TTB would not know what operations were occurring at a DSP if reports were not filed on a more frequent basis.

- "Allow denaturants other than the specified SDA formulations based on pre-approval of the TTB through submission of formulas on form 5150.19."

TTB Response: This process is already permitted under 27 CFR 21.91.

- "Maintain Special Tax Stamp (form 5630.6A)."

TTB Response: The requirement to maintain a special tax stamp was repealed by the American Jobs Creation Act of 2004. Therefore, we have no authority to require this.

The commenter also stated that the quarterly physical inventory of denatured spirits required in proposed § 19.394 is unnecessary due to the records and systems maintained to coordinate inventory of raw materials and cosmetic and over-the-counter (OTC) products. The commenter recommended that manufacturers of topical OTC drugs and cosmetics be required to allow TTB to access inventory records and perform a physical inventory annually without a date stipulation. We note that DISCUS made a similar recommendation in its comments to ATF Notice No. 870, but we did not adopt this recommendation in Notice No. 83.

TTB Response: The shorter time period between quarterly versus annual inventories makes it easier for both TTB and a proprietor to reconcile discrepancies and thereby protect the revenue. A proprietor may continue to apply for approval of an alternate procedure pursuant to § 19.26, and TTB may grant such an alternate procedure if appropriate.

The commenter stated that the serial number for records required in various subparts should not include the requirement that the serial number commence with "1" at the beginning of each calendar or fiscal year. The commenter proposed that as long as the serial or identifying number meets the requirements of § 19.572, concerning the format of records, it should be considered satisfactory.

TTB Response: We agree that a unique identifier is sufficient to identify a particular record, and we have amended §§ 19.618 and 19.620 in this final rule document to allow unique identifiers that do not necessarily begin with the number "1" each year.

Finally, the commenter recommended amending the regulations to allow for letterhead or single form notification of changes to the permit regarding an address change that does not involve a physical move.

TTB Response: We agree that a letterhead notice is sufficient to notify TTB of a change of address that does not involve a physical move or any change in physical area or layout of a DSP. We have added a new section, § 19.691, to address changes of address not involving a change in location.

Comment 2

A manufacturer of nonbeverage products stated that the changes proposed by TTB would indeed help streamline the many processes involved in the operations of a distilled spirits plant. The commenter listed eight specific areas of the part 19 revision that it particularly supported:

- The use of plain language while minimizing the use of jargon and technical terms;
- The restructuring of information to consolidate major topics and bring like information together;
- The expanded use of letterhead notices for reporting certain changes such as changes in officers and directors;
- The use of a single area operations bond to cover all of the proprietor's plants in the United States;
- The use of mass flow meters for all required bulk gauges at a DSP;
- The allowance for a unified process for denaturation and article manufacture;
- The allowance for a single gauge measurement when filling containers from tanks; and
- The ability to file computer-generated reports and forms.

In addition, the commenter noted three areas of regulation where it suggested further changes.

First, the commenter requested that TTB allow an average tare (that is, the weight of an empty package) to be used for gauging individual packages (drum, barrel, or similar container of spirits (see the definition of "package" in § 19.1). The commenter noted that the variance for package tare is often less than 0.25 lb.

TTB Response: We believe that the degree of variance can be significant. In the preamble to Notice No. 83, we addressed a similar recommendation made in comments to ATF Notice No. 870 and we explained that we did not adopt this recommendation in the proposed rule because TTB requires an accurate gauge of spirits that are withdrawn from bonded premises. Accordingly, we are not adopting the commenter's proposal in this final rule. The requirement that the proprietor establish the actual tare of each package to be withdrawn from bond appears at § 19.288.

Second, the commenter suggested that TTB allow minimum amounts of denaturants rather than specific amounts of denaturants.

TTB Response: Part 21 of the TTB regulations sets forth specific formulas

for denatured spirits, not part 19, and therefore such a change is not appropriate in this rulemaking action. We have noted this comment for possible future rulemaking involving part 21.

Third, the commenter suggested that temporary permit delivery addresses be allowed through a letterhead notification process. The commenter noted that temporary situations, such as road construction or utilities maintenance, occasionally require deliveries to alternate addresses such as a side entrance, but that the current regulations require permittees to amend their permits for each address change.

TTB Response: We agree that there should be provisions for temporary changes to a delivery address, without a change in the location or street address of the plant, and that a letterhead notice provides sufficient notice to TTB. Accordingly, for the final rule we have incorporated this change in the language of § 19.118

Comments 3 and 4

TTB received two comments from a large ethanol producer that holds a number of DSP and Alcohol Fuel Plant (AFP) permits. The commenter noted that it supports the streamlining of procedures and the overall organizational improvements proposed in the revisions to part 19.

In its first comment, the commenter referred to two areas of the Notice No. 83 preamble with which it disagrees. Both areas relate to TTB's interpretation of 26 U.S.C. 5181, which relates to AFPs. First, the commenter stated that it believes "the interpretation that an AFP permit may be granted to a facility that will solely receive and not produce spirits is inconsistent with the law that established the AFP." Similarly, the commenter suggested that TTB should not allow the establishment of an AFP for the purpose of receiving imported alcohol.

TTB Response: As noted in Notice No. 83, while the Bureau had formerly interpreted 26 U.S.C. 5181(a)(1) to mean that all alcohol fuel plants must produce distilled spirits, it is now the position of the Bureau that a person may establish an AFP solely for the receipt and processing of distilled spirits for fuel use. We also noted that we had already set the precedent that receipt of distilled spirits counts as "production" at an AFP (see former § 19.956, which treated receipts as production.) Section 5181 of the IRC was established to generally encourage and promote (through regulation or otherwise) the production of alcohol for fuel purposes. As fuel needs have changed dramatically, the goal of the Bureau's AFP regulations is to ensure adequate supplies of fuel ethanol. We find that it is appropriate to read the applicable law, 26 U.S.C. 5181, as permitting facilities to qualify as AFPs even when their production operations consist solely of blending ethanol with authorized denaturants for the purpose of producing alcohol fuels. Consistent with the goal stated above, as well as 26 U.S.C. 5232 which provides for the receipt of imported spirits by DSPs, TTB does not distinguish, in this case, between domestically produced and imported ethanol.

In its second comment, the commenter raised specific issues that it believed should be addressed in the revision of part 19, and provided markups of the various regulatory sections involved in its recommendations. Specifically, the commenter's suggestions and TTB's responses to those suggestions are as follows:

- In addition to the performance limits for use of mass flow meters provided in the proposed regulation, suggested providing specific performance limits for volumetric flow meters and other equipment such as seals and density meters.

TTB Response: The new part 19 regulations, at § 19.284, allow the use of mass flow meters for tax determination purposes, as well as volumetric determinations, and establish specifications for their performance. In regard to such equipment as seals and density meters, the Bureau does not receive a significant number of requests for the use of these types of equipment and evaluates them, when necessary, on a case-by-case basis.

- Suggested that gauging by accurate flow meter and by accurate density meter, as proposed in Notice No. 83, be reflected in part 30 of the TTB regulations. The commenter recommended a direct final rule for part 30 to harmonize with the updated part 19.

TTB Response: The new part 19 regulations, at § 19.188, allow either the use of the gauging methods specified in part 30 or the use of accurate meters, so further changes to this part are unnecessary in regard to distilled spirits. We do not believe it is appropriate to amend part 30 because part 30 applies to other products in addition to distilled spirits. Additionally, any such amendment would be beyond the scope of this rulemaking action.

- Made several suggestions about receipt of denatured spirits at a DSP and return to bonded premises. One such suggestion was that denatured spirits should be permitted on bonded premises for comingling, storage, or withdrawal even after they had been previously removed.

TTB Response: The IRC in section 5215 permits distilled spirits on which tax has been determined to be returned to bonded premises only for destruction, denaturation, redistillation, reconditioning or rebottling. Further, IRC section 5612(a) states that, with some exceptions not applicable here, no distilled spirits on which tax has been paid or determined shall be stored or allowed to remain on the bonded premises of any distilled spirits plant, under the penalty of forfeiture of all spirits found. The TTB regulations in part 19 provide alternatives, such as transfers in bond and alternations of premises.

- Suggested that fuel alcohol produced at an AFP be considered completely denatured alcohol.

TTB Response: Section 5181 of the IRC, which provides authority for TTB to permit AFPs, requires that distilled spirits withdrawn must be rendered "unfit for beverage use." Section 5214(a)(1) of the IRC authorizes the withdrawal of distilled spirits from a DSP after denaturation for specific purposes, and section 5214(a)(12) separately authorizes the withdrawal free of tax for distilled spirits produced under section 5181. The IRC does not refer to alcohol produced at an AFP as "denatured" and clearly intends to distinguish the term "denatured " as used for DSPs in general and "unfit for beverage use" as used for alcohol produced for fuel use under the authority of section 5181.

- Suggested the proposal of a direct final rule for part 21 of the TTB regulations dealing with completely denatured alcohol to harmonize the regulations for fuel produced by an AFP and CDA 20 produced by a DSP.

TTB Response: This final rule, which covers proposed substantive changes to part 19, is not an appropriate venue for making changes to other parts of the TTB regulations. We may consider this proposal in future rulemaking.

- Suggested allowing AFPs to send samples of undenatured spirits to a lab off the bonded premises similar to the procedures for DSPs.

TTB Response: TTB is considering making a number of substantive changes to the regulations governing AFPs in a separate rulemaking initiative. We will consider this proposal in that rulemaking action.

- Suggested removing the requirement for TTB approval for sending samples to a recognized commercial laboratory.

TTB Response: The Bureau is not adopting this suggestion as TTB needs to approve a DSP's transfer activities on a case-by-case basis. We look at a number of facts, including risk to the revenue and compliance history of the DSP.

• Suggested that TTB remove mark requirements found in proposed § 19.495 for bulk conveyances.

TTB Response: Section 1263 of title 18 of the U.S.C. (18 U.S.C. 1263) provides criminal sanctions for shipping distilled spirits without certain information: The name of the consignee, the nature of its contents, and the quantity contained therein. The requirements of § 19.495 are consistent with this statute. We note that both the statute and § 19.495(b) allow shippers to supply the information on a document as opposed to marks on the conveyance.

• Suggested changing proposed § 19.11 to allow time for verification of credentials in order to comply with potential site security and Homeland Security issues.

TTB Response: We do not adopt the suggestion because 26 U.S.C. 5203(b) prescribes the requirement for the right of immediate entry and examination, and TTB officers must be able to access facilities whenever necessary to protect the revenue or to determine if internal revenue laws have been violated. TTB is also concerned with site security issues and is willing to work with proprietors on site security and Homeland Security issues as they arise.

• Suggested changing the alternate method or procedure process to include approval for all permit holders.

TTB Response: We do not adopt this suggestion because not all alternate method or procedures are appropriate for industry-wide approval. Alternate methods and procedures must be evaluated and approved on a case-by-case basis. If a member of the public wishes to suggest changes to the methods or procedures contained in the regulations for use by all permittees, that person may submit a petition for rulemaking to TTB.

• Suggested adding the phrase "on the bonded premises" after "All pipelines" in § 19.187.

TTB Response: We do not accept this proposal because § 19.187 is intended to apply to all pipelines at a DSP, whether or not they are on bonded premises. The purposes of this section are to protect the revenue and to permit ready access by the appropriate TTB officers to conduct examinations.

Comments 5 and 6

TTB received a comment from DISCUS written on behalf of a coalition of DISCUS members and another industry member. TTB received an additional comment from the industry member which expressed support for DISCUS's comments and provided further details on how the proposed changes to part 19 would affect its operations.

Much of DISCUS's comment related to its suggestion that TTB adopt its concept of "constructive segregation" for various types of products (wine, beer, spirits, or flavors) or tax status (taxpaid, nontaxpaid, or in customs custody).

TTB Response: While we might agree that in certain circumstances, constructive segregation provides adequate protection to the revenue, we note that the majority of DSPs do not have the sophisticated equipment necessary to maintain segregation through records alone. Accordingly, an across-the-board regulatory constructive segregation provision would not be appropriate. However, proprietors may submit a request for approval of the use of constructive segregation as an alternate method or procedure under new § 19.27 and we will evaluate such a request on a case-by-case basis, taking into account all relevant factors, including the adequacy of the protection of the revenue and the proprietor's compliance history.

DISCUS also proposed that TTB eliminate the requirements to submit diagrams showing extended and curtailed premises, and that TTB not adopt the proposal to require submission of an application and/or letterhead notice for alternations and extensions of premises.

TTB Response: We are not adopting these suggestions because, in order to ensure compliance with statutory requirements related to revenue protection, we must receive specific information about the layout of a DSP. However, proprietors may continue to submit a request for approval of an alternate method or procedure to vary from the regulatory requirements, and we will consider approving such requests on a case-by-case basis.

DISCUS repeated the comment it made to Notice No. 870 that suggested a 200-mile rule for continuity of premises.

TTB Response: In the preamble to Notice No. 83, we explained that we would not adopt a 200-mile rule and the current comment does not provide sufficient justification for any change of our position. We will continue to evaluate requests for alternate methods or procedures concerning plant continuity on a case-by-case basis, each analysis to be based upon multiple factors. Generally, 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.

DISCUS also commented on TTB's proposed changes to alcohol fill tolerances. It suggested that the Bureau eliminate the requirement that there be approximately the same number of overfills and underfills for each lot bottled.

TTB Response: We are not adopting this suggestion because this regulatory requirement ensures that the proprietor accurately fills bottles, which supports proper collection of the revenue and protects consumers from deception. It is the responsibility of proprietors to ensure that their bottling equipment accurately fills bottles of spirits.

In order to assist proprietors in determining the standards for fill tolerances, we proposed a specific standard of plus or minus 2 percent for fill. DISCUS and the industry member state that this tolerance is too small for small bottle sizes.

TTB Response: We agree and have adopted a stepped approach to tolerances similar to fill tolerances used for wine found in 27 CFR 24.255(b). In evaluating DISCUS's and the industry member's slightly different proposals for using a stepped approach similar to that used in wine regulations, we found a 9 percent tolerance, as proposed for the smallest bottle sizes, to be too large. The revised tolerances are found in § 19.356 and range from 1.5 percent for bottles 1.0 liter and above to 4.5 percent for bottles 100 mL and below.

Comment 7

An individual commented on the provisions of § 19.387, "Ensuring the quality of denaturants." The commenter suggested that TTB reapply an exception that appeared in the ATF regulations prior to 1979 for certain denaturants that were deposited in storage under direct supervision of the assigned ATF officer. The commenter noted that the prior regulation stated, in part, "Synthetic oils approved by the Director, essential oils as defined in Part 212 of this chapter, pure chemicals (liquid or solid), or U.S.P. or N.F. substances used as denaturing materials, deposited in storage under direct supervision of the assigned officer in the original sealed package of a reputable manufacturer of chemicals, bearing a label descriptive of the contents placed thereon by the manufacturer, need not

be tested except when required by the Director."

TTB Response: The responsibility for security and purity of denaturants lies with the proprietor of the plant. Because denaturants could be adulterated by various sources, or otherwise be of nonconforming quality, it is the responsibility of the proprietor to ensure that denaturants conform to the specifications prescribed in part 21 of the TTB regulations. The exception that applied prior to 1979 was applicable to denaturants deposited in storage under direct supervision of an ATF officer. Because TTB does not have officers assigned to each DSP, it would be inappropriate to retain that exception. However, it is not the intention of TTB that the proprietor be required to test every lot of every denaturant. We have modified § 19.387 to more clearly state when testing is required and that the testing standards of that section apply only if a proprietor tests any given lot.

Changes to the Proposed Regulations in This Final Rule

After careful consideration of the comments received in response to Notice No. 83, as discussed above, TTB has made several changes to the proposed part 19 regulatory texts contained in that notice of proposed rulemaking. As discussed below, TTB is also making other changes to the proposed part 19 regulatory texts. These changes are technical in nature; they provide additional mailing options for industry members and reflect changes made to part 19 by final or temporary rulemakings issued after the publication of Notice No. 83. TTB also has updated cross-references to part 19 contained in other parts of its regulations in 27 CFR chapter I. In addition, TTB has made technical corrections or other nonsubstantive changes to the proposed part 19 regulatory texts to correct errors or inconsistencies in format, style, grammar, or spelling. None of these corrections or other nonsubstantive changes affects any regulatory or recordkeeping requirement contained in the proposed part 19 regulatory texts as published in Notice No. 83.

Private Delivery Services

In light of the wide-spread use of private courier and delivery services by the public and government agencies, and in accordance with the IRC at 26 U.S.C. 7502(f), TTB is adding the option to send tax returns and remittances by private courier and delivery services to the requirements found in § 19.238, Payment by mail or courier. While this change to part 19 was not included in Notice No. 83, we believe this change will afford industry members, the general public, and TTB greater flexibility in choosing delivery methods for documents and other items while continuing to provide documented sending and delivery dates.

TTB will use the date of tender to the delivery service as the date of delivery if a proprietor sends a return or remittance to TTB by the use of traceable delivery services, provided those services are available to the general public and are at least as timely and reliable as the U.S. mail and provided the date on which items are given to the service for delivery are recorded by the service. These changes to § 19.238 follow the language used in 26 U.S.C. 7502(f) regarding timely mailing and the use of private delivery services.

Subsequent Regulatory Changes

Subsequent to the publication of Notice No. 83, TTB published two Treasury Decisions that amended regulatory provisions of part 19. Changes to the regulatory text in this final rule reflect these provisions:

- T.D. TTB–89, published in the **Federal Register** (76 FR 3502) on January 20, 2011, updated and reissued temporary rules regarding semimonthly and quarterly payment of tax. Provisions reflecting these subjects are found in this document at §§ 19.234–19.237 and § 19.465.
- T.D. TTB–84, published in the **Federal Register** (75 FR 16666), on April 2, 2010, reflected the removal of the requirement for Special (Occupational) Tax and implemented dealer registration requirements. These provisions are found in subpart H of part 19 in this final rule.

Changes to Part 19 Cross-References Elsewhere in 27 CFR

The revision of part 19 contained in this final rule also requires the revision of the cross-references to specific part 19 subparts and sections contained in other parts of the TTB regulations in 27 CFR chapter I. Except for the regulatory changes inherent in the revision of part 19 contained in this final rule, the corrections to the cross-references described below do not change any recordkeeping or regulatory requirement outside of part 19; the changes to these cross-references are merely technical in nature.

The cross-references to part 19 requiring changes in 27 CFR chapter I are shown in the chart below:

CHANGES IN PART 19 CROSS-REFERENCES IN 27 CFR CHAPTER I

In section:	Remove the reference to:	and replace with a reference to:
§ 1.82(a)	§ 19.157	§ 19.91
§ 17.162(d) and (f)	§ 19.780	§ 19.626
§ 17.163(a)	§ 19.780	§ 19.626
§ 24.226 (1st sentence)	§ 19.510	§ 19.407
§ 24.226 (3rd sentence)	§ 19.508	§ 19.405
§ 24.235(a)	§ 19.522(c)	§ 19.233
§ 26.199f(a)	§ 19.562	§ 19.462
§ 26.293(a)(3)	subpart R	subpart S
§ 28.118	subpart U	subpart Q
§ 30.31(d)	§ 19.383	§ 19.353
§ 30.52	§ 19.722	§ 19.582
§ 31.45(b)	§ 19.58	§ 19.5
§ 31.65(a)	§ 19.58	§ 19.5

Existing Alternate Methods or Procedures

By changing the part 19 regulations to provide for many of the methods or procedures formerly approved as alternate methods or procedures, these regulations have made a number of former approvals obsolete. However, there are some preexisting alternate methods or procedures that we did not make universally applicable and that we did not intend to revoke with this

revision to part 19. Accordingly, any proprietor with a valid, unrevoked alternate method or procedure issued under the authority of the current § 19.62 (recodified in the new § 19.26) that is not contrary to the new regulations may continue to use the approval. Note, however, that any change in law or regulation that makes the alternate method or procedure contrary to law or regulation revokes the alternate method or procedure by the application of law.

It is the proprietor's responsibility to ensure that these existing alternate methods or procedures are not contrary to the new regulations, that is, that they remain consistent with the purpose and effect of the methods and procedures prescribed in this revised part. A proprietor may write to the Director, Regulations and Rulings Division, or the Director, National Revenue Center, as appropriate, to request that approvals in existence prior to the adoption of this final rule be reevaluated under the new regulations.

Any conditions in alternate methods or procedures continue to apply. TTB may revoke any alternate method or procedure if there is jeopardy to the revenue or if the method or procedure increases cost to the Government or hinders TTB's administration of part 19.

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 revised 27 CFR part 19 regulations contained in this final rule document and the section numbers in the existing part 19 regulations in effect at the time of publication of this final rule.

Requirements of new 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
19.202	19.50
19.203	19.51
19.204	19.52
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

Requirements of new section:	Are derived from current section:
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

Requirements of new section:	Are derived from current section:
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

Requirements of new section:	Are derived from current section:
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
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	19.642–19.650
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)

Requirements of new section:	Are derived from current section:
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 & 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
19.691	New
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

Regulatory Analyses and Notices

Paperwork Reduction Act

The collections of information contained in this final rule 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 when a final rule does not have a significant economic impact on a substantial number of small entities. This rule restates existing regulations in plain language, makes certain variations currently granted to individual plants available to all plants, and adopts certain suggestions made by industry associations to reduce the burdens of regulatory compliance. This rule reduces the burden on members of the distilled spirits industry, including small businesses. Accordingly, it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Executive Order 12866

We have determined that this final rule 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 final rule does not have federalism implications. This final 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.

Drafting Information

This notice was prepared by Christopher M. Thiemann of the Regulations and Rulings Division, along with several other employees of the Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 1

Administrative practice and procedure, Alcohol and alcoholic beverages, Imports, Liquors, Packaging and containers, Warehouses, Wine.

27 CFR Part 17

Administrative practice and procedure, Claims, Cosmetics, Customs duties and inspection, Drugs, Excise taxes, Exports, Imports, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Virgin Islands.

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.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 28

Aircraft, Alcohol and alcoholic beverages, Armed forces, Beer, Claims, Excise taxes, Exports, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

27 CFR Part 30

Liquors, Scientific equipment.

27 CFR Part 31

Alcohol and alcoholic beverages, Claims, Excise taxes, Exports, Packaging and containers, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons explained in the preamble, TTB amends chapter I of title 27 of the Code of Federal Regulations as follows:

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

■ 1. The authority citation for 27 CFR part 1 continues to read as follows:

Authority: 27 U.S.C. 203, 204, 206, 211 unless otherwise noted.

§ 1.82 [Amended]

■ 2. In § 1.82, paragraph (a) is amended by removing the reference to "§ 19.157" and adding, in its place, a reference to "§ 19.91".

PART 17—DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

■ 3. The authority citation for 27 CFR part 17 continues to read as follows:

Authority: 26 U.S.C. 5010, 5111–5114, 5123, 5206, 5273, 6065, 6091, 6109, 7213, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 17.162 [Amended]

■ 4. In § 17.162, paragraphs (d) and (f) are amended by removing the references to "§ 19.780" and adding, in their place, references to "§ 19.626".

§ 17.163 [Amended]

■ 5. In § 17.163, paragraph (a) is amended by removing the reference to "§ 19.780" and adding, in its place, a reference to "§ 19.626".

■ 6. Part 19 of title 27 Code of Federal Regulations is revised to read as follows:

PART 19—DISTILLED SPIRITS PLANTS

Sec.

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5114, 5121, 5122–5124, 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 of the meter or other qualified person as accurate within a tolerance of plus or minus 0.1 percent. A mass flow meter used for all other required volume determinations of bulk spirits must be certified by the manufacturer of the meter or other qualified person as accurate within a tolerance of plus or minus 0.5 percent.

Administrator. The Administrator of the Alcohol and Tobacco Tax and Trade Bureau, the Department of the Treasury, Washington, D.C., 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. 5111–5114, 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 that 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 3-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 itself 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. 5114;

(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 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. Title 27 of the Code of Federal Regulations, Chapter I, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury (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 byproduct; 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 byproduct.

(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 through 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 Plants. 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 obtain TTB forms by accessing the TTB Web site (*http://*

www.ttb.gov) or by mailing a request to the TTB National Revenue Center, 550 Main Street, Suite 8002, Cincinnati, Ohio 45202.

(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 or 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.

(c) *Prior approvals.* Alternate methods or procedures in effect prior to April 18, 2011, which are not contrary to the regulations in this part, are preserved until renewed unless revoked by operation of law due to the enactment of law that is contrary to the alternate method or procedure.

(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, email, 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.

(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.

(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 scientific 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 such operations as a distilled spirits plant and is subject to the registration requirements 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 dealer registration requirement) 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 byproduct 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)

"Penalties of Perjury" Declaration

§ 19.45 Execution under penalties of perjury.

(a) *Declaration.* When TTB requires under this part that a document be executed under penalties 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 Form 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 Form 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 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 covered by 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 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 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 nonindustrial 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 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), (a)(3)(iii), (b)(1), or (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 to revoke or suspend 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 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 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 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 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 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 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 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.

(a) If the location of the plant changes, the proprietor must:

(1) File form TTB F 5110.41, Registration of Distilled Spirits Plant, to amend the registration;

(2) File a new bond or a consent of surety on form TTB F 5000.18; and

(3) Not begin operations at the new location prior to approval of the amended registration.

(b) If there is a temporary change of delivery address within a plant with no change in plant location, the proprietor may file a letterhead notice to temporarily amend the registration.

(26 U.S.C. 5172, 5173, 5271)

§ 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 TTB F 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 or 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 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 TTB F 5110.41 submitted, unless the appropriate TTB officer requires an immediate submission of 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 26 U.S.C. 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 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 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 TTB F 5110.25 if administrative difficulties occur as a result of the letterhead notice.

(b) *FAA Act 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 26 U.S.C. 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 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 26 U.S.C. 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. 5171, 5172)

§ 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 F 5110.25 Application for Operating Permit Under 26 U.S.C. 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) On TTB F 5110.25, Application for Operating Permit Under 26 U.S.C. 5171(d), the fiduciary may incorporate by reference 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 26 U.S.C. 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 26 U.S.C. 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 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 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 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 to be reincluded in the bonded 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 versa, the proprietor must comply with the requirements of §§ 18.39 and 18.41 through 18.43 of this chapter.

(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 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 final 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 a 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 TTB F 5110.56.

(c) *Corporations and controlled subsidiaries.* For purposes of this subpart, the term "corporation" includes a Limited Liability Company (LLC) or Limited Liability Partnership (LLP) 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 or LLP) 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 Web site 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 the 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 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 of the surety 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 F 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 of the applicant 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

(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—
(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 paragraph (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 paragraph (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 paragraph (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 paragraph (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.
(2) Two or more distilled spirits plants.	Sum of the penal sums for each plant calculated in paragraph (c)(1) of this section.	($1,000) × (number of plants).	(Number of plants) × $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 paragraphs (a) and (c)(1) in this section.).	$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 paragraphs (b) and (c)(2) in this section.).	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 that 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, Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties. 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	Minimum graduation
Not exceeding 2,000 pounds	½ pound
Between 2,000 and 6,000 pounds.	1 pound
Between 6,000 and 20,000 pounds.	2 pounds
Between 20,000 and 50,000 pounds.	5 pounds
Over 50,000 pounds	10 pounds

(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 0.5 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 plus or minus 0.1 percent. 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 plus or minus 0.5 percent. 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 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)

§ 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—Dealer Registration and Recordkeeping

§ 19.201 Definitions.

For purposes of this subpart, the following terms have the meanings indicated:

Dealer. A person that sells, or offers for sale, any alcohol product (distilled spirits, wines, and/or beer) fit for beverage use.

Retail dealer in liquors. A dealer that sells, or offers for sale, distilled spirits, wines, or beer to any person other than a dealer.

Wholesale dealer in liquors. A dealer that sells, or offers for sale, distilled spirits, wines, or beer to another dealer.

(26 U.S.C. 5121, 5122)

§ 19.202 Dealer registration.

Every proprietor that sells or offers for sale any alcoholic product (distilled spirits, wines, or beer) fit for beverage

use must register as a dealer under part 31 of this chapter. However, the proprietor's application for registration of a distilled spirits plant filed under subpart D of this part, and approval of that application by the appropriate TTB officer, will constitute the proprietor's registration as a dealer at the distilled spirits plant. Every proprietor registered as a dealer under this subpart will be classified as a wholesale dealer in liquors (see § 31.32 of this chapter) and as such may also operate as a retail dealer in liquors without additional registration. Registration covers all sales from the same location, including sales of wine, beer, or other proprietors' spirits. A proprietor who conducts business as a dealer at a location other than the distilled spirits plant must register and keep records in accordance with part 31 of this chapter.

(26 U.S.C. 5124)

§ 19.203 Amending the dealer registration.

Every proprietor registered as a dealer under this subpart must maintain a current and accurate distilled spirits plant registration. Whenever there is a change to any of the information provided in the proprietor's approved notice of registration, the proprietor must amend the registration within the time period specified in subpart E of this part. An amendment of the proprietor's distilled spirits plant registration will also serve as an amendment of the proprietor's dealer registration under this subpart. The proprietor's dealer registration will also terminate when distilled spirits plant operations under the notice of registration terminate.

(26 U.S.C. 5124)

§ 19.204 Dealer records.

Every dealer is required to maintain records of transactions. Distilled spirits transactions that appear in the records required by subpart V of this part will meet the proprietor's recordkeeping requirements as a dealer. For other transactions not covered in the distilled spirits plant records, such as retail sales of wine or beer in a restaurant at the distilled spirits plant, or operations as a wholesale dealer in wine or beer, the proprietor must keep the records specified for dealers in part 31 of this chapter.

(26 U.S.C. 5121, 5122, 5124)

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 2.5 percent 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 that 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 required, using 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 has defaulted 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 the proprietor 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 its 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 its 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 also § 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)

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, the proprietor 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 TTB F 5000.24. The proprietor will note the serial number of the 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 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 that 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 that 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 that 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. The following additional rules apply to the quarterly return period procedure under this section:

(1) A taxpayer with multiple locations must combine the distilled spirits tax liability for all locations to determine eligibility for the quarterly return procedure;

(2) A taxpayer that has both domestic operations and import transactions must combine the distilled spirits tax liability on the domestic operations and the imports to determine eligibility for the quarterly return procedure;

(3) The controlled group rules of 26 U.S.C. 5061(e), which concern treatment of controlled groups as one taxpayer, do not apply for purposes of determining eligibility for the quarterly return procedure. However, a taxpayer that is eligible for the quarterly return procedure, and that is a member of a controlled group that owes $5 million or more in distilled spirits excise taxes per year, is required to pay taxes by electronic fund transfer (EFT). Quarterly payments via EFT must be transmitted in accordance with section 5061(e);

(4) A new taxpayer is eligible to file quarterly returns in the first year of business simply if the taxpayer reasonably expects to be liable for not more than $50,000 in distilled spirits taxes during that calendar year; and

(5) If a taxpayer filing quarterly exceeds $50,000 in tax liability during a taxable year and therefore must revert to the semimonthly return procedure, that taxpayer may resume quarterly payments only after a full calendar year has passed during which the taxpayer's liability did not exceed $50,000.

(c) *Semimonthly return period.* Except in the case of a taxpayer that 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 § 19.237.

(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 that there is no existing or anticipated circumstances known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit.

Taxpayer. A *taxpayer* is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number (EIN) as defined in 26 CFR 301.7702.12.

(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 semimonthly 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 premises 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 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 1st day through the 15th 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 depend upon whether the proprietor remits tax payments by 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 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 TTB F 5000.24 and remittance for the period September 16–25 is due on or before September 28.

The return on TTB F5000.24 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 eleven-fifteenths (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 two-thirds (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) *Weekends and holidays.* 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, eleven-fifteenths 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 or courier.

(a) *Payment by mail.* The proprietor must file each return on form TTBF 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 return and also the remittance, if included. 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.

(b) *Payment by courier or other private delivery service.* A proprietor may send a return, with or without remittance, by courier or other private delivery service. If the proprietor sends the return with or without remittance with a courier or private delivery service that is available to the general public and that is at least as timely and reliable as the U.S. mail, and the delivery service has tracking and tracing procedures for its deliveries, TTB will consider the date of tender to the delivery service as recorded in the tracking and tracing record for the parcel as the date of delivery. If the proprietor sends the return, with or without remittance, by courier or other private delivery service that does not meet the above requirements, the actual date of delivery to TTB 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 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 if 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 EFT. Payments must be made by EFT in the current calendar year if the proprietor, as a taxpayer, was liable for $5 million 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 and 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 $5 million 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 on 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 distilled spirits tax liability is $5 million 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 it 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 $5 million 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 $5 million. The proprietor must further state that future tax payments will be filed with the returns on TTB F 5000.24.

(c) *Remittance*—(1) *Identifying EFT payments.* When the proprietor completes the return on TTB F 5000.24, the proprietor must indicate on the form that the tax was paid by EFT. The proprietor must file the completed 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 tax payment 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. The proprietor must follow instructions provided by Customs and Border Protection (CBP) 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 it 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 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 Internal Revenue Service Centers, from IRS District Directors, 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 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 2.5 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 2.5 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 2.5 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.

$$\frac{2249.1(\$13.50) + 2265.0(\$1.07) + 1020(\$1.57) + 16.6^{1}(\$13.50)}{2249.1 + 100.9 + (2265.0 \times .28) + (1020 \times .38)} =$$

$$\frac{\$30{,}362.85 + \$2{,}423.55 + \$1{,}601.40 + \$224.10}{2{,}350.0 + 634.2 + 387.6} =$$

$$\frac{\$34{,}611.90}{3{,}371.8} = \$10.27, \text{ the effective tax rate.}$$

(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

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2.5% of the total proof gallons in the batch (100.9 − (2.5% × 3,371.8) = 16.6).

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 nonstandard 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 it 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, 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 for the returned spirits.

(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 its 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 required to do so by the appropriate TTB officer or when the spirits, wine, or flavoring materials 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; or

(l) Denatured.

(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 plus or minus 0.1 percent.

(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 plus or minus 0.5 percent; or

(3) Another device or method approved by the appropriate TTB officer.

(26 U.S.C. 5559)

§ 19.285 Proof determination of distilled spirits.

(a) *Proof.* 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 chapter, 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 provided 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 recordkeeping 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 Byproducts

§ 19.308 Spirits content of chemicals produced.

All chemicals and chemical byproducts 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 recordkeeping 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° 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° or more of proof, whether or not later reduced, may be mingled in storage.

(b) Domestic spirits distilled at less than 190° 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° 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° 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° 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° 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)
(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)
(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 recordkeeping 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)
(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. 5111–5114, 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 approval of a 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.

(a) 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.

(b) 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 from the quantity stated on the label or bottle by more than plus or minus:

(1) 1.5 percent for bottles 1.0 liter and above;

(2) 2.0 percent for bottles 999 mL through 376 mL;

(3) 3.0 percent for bottles 375 mL through 101 mL; or

(4) 4.5 percent for bottles 100 mL and below.

(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 fewer 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 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 6 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 she or 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 part 21 of this chapter.

(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 Gauging 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) *General.* 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) *Testing.* A proprietor must comply with the following when testing a lot of denaturants:

(1) 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.

(2) *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.

(c) *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. 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 form 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 form 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 form 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 form TTB F 5100.16 must have been previously approved for the new consignee, except that an approved 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's 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° 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 form 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 form 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. 5214, 7510)

§ 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 form 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 subagencies, the copy of the signed permit must contain an attachment listing all subagencies 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 5 gallons per calendar year. However, a proprietor may furnish samples in excess of 5 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 5 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 5 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 form 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 form 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 three-fourths of an inch in diameter, ball-strap-type (railroad) seals with a strap at least five-sixteenths of an inch wide, and locking security cable with at least a 1/16-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, which will not be repeated within the following 6-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, consistent with 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 Chapter 51 of the IRC.* 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 permissible returns of distilled spirits products to a proprietor's 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
(a) 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.
(b) Recovered denatured spirits	(1) For restoration or redenaturation	(i) To any DSP authorized to denature. (ii) If SDA needs to be redistilled, the DSP must be authorized to produce or process spirits. (iii) Returns must be in accordance with part 20 of this chapter.
(c) Recovered articles	(1) For restoration or redenaturation	(i) To any DSP authorized to denature. (ii) If recovered articles need to be redistilled, the DSP must be authorized to produce or process spirits. (iii) Returns must be in accordance with part 20 of this chapter.
(d) Articles manufactured under part 20 of this chapter and spirits residues from manufacturing processes.	(1) For recovery by redistillation	To a DSP authorized to produce or process spirits.
(e) 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, TTB F 5000.18, to extend the terms of the operations or unit bond to cover the return of spirits.
(f) Tax-free spirits withdrawn under part 22 of this chapter.	(1) For redistillation	(i) To any DSP authorized to produce or process.
	(2) For subsequent lawful withdrawal	(ii) To any DSP. The DSP proprietor must file a consent of surety, TTB F 5000.18, to extend the terms of the operations or unit bond to cover the return of spirits.
(g) Recovered tax-free spirits withdrawn under part 22 of this chapter.	(1) For redistillation	(i) To any DSP authorized to produce or process.
	(2) For restoration (not including redistillation).	(ii) To any DSP. The DSP proprietor must file a consent of surety, TTB F 5000.18, to extend the terms of the operations or unit bond to cover the return of spirits.
(h) 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	(i) For (1)—To any to DSP authorized to produce or process spirits.

Type of product	Purpose of return	Conditions
	(2) For later lawful removal	(ii) For (2)—To the bonded premises from which withdrawn for later lawful removal. (iii) For (1) and (2)—Returns must be made in accordance with the provisions of part 28 of this chapter.
(i) Wine spirits withdrawn without payment of tax for use in wine production.	(1) Any lawful purpose	(i) To any DSP. (ii) The proprietor must obtain approval as provided in § 19.403. (iii) Removal of wine spirits from a winery must be in accordance with part 24 of this chapter.
(j) Spirits withdrawn without payment of tax for research, development, or testing.	(1) For destruction, or return to containers, or return to the distilling system.	(i) 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 1 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 2 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 1.5 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 its 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 form 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 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 the prescribed material is unsuitable 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 it 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 must show when the package was 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 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. 5066, 5206)

§ 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 nonessential 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 part 28 of this chapter; 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 relabeling.

(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.

(26 U.S.C. 5301)

§ 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 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 percentage of alcohol by volume (ABV) 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 percentage of 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 hardcopy 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 provide a letterhead notice to 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 in a manner that will 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 § 70.22 of this chapter 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) Taxpayment;

(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 records.

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° 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 that show the 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° of proof.

A proprietor must keep a record for each tank (including each bulk conveyance) containing wine or spirits of less than 190° 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 Island 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° or more of proof.

(a) *General.* A proprietor must keep a tank summary record for spirits of 190° 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° 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° of 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 records.

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 bottles 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 quantity of 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 records.

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)

§ 10.603 Liquor bottle records.

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 that 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 that 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 records of tax determinations.

Each proprietor that 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 2.5 percent 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 5 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, or 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 then 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 Records 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 records.

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, which must either:

(1) Commence with "1" at the start of each calendar or fiscal year, or

(2) Be a unique identifying number that is not repeated.

(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° 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° 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° 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° of 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 its distilled spirits plant, the transfer record must include:

(a) The serial number of the transfer record, which must either:

(1) Commence with "1" at the start of each calendar or fiscal year, or

(2) Be a unique identifying number that is not repeated.

(b) The serial number and date of form TTB F 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 penalty-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 penalty-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 records 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 Records 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 form 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 six-month period. The average must be adjusted at the end of each month in order to include only the preceding six-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 records 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 the consignee;

(5) The kind of the 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 its files.

(26 U.S.C. 5207)

§ 19.626 Records 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 the 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 its 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 its records. The required monthly report forms are as follows:

(1) Monthly Report of Production Operations, form 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, form TTB F 5110.11;

(3) Monthly Report of Processing Operations, form TTB F 5110.28; and

(4) Monthly Report of Processing (Denaturing) Operations, form 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 preapproval 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); and § 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° 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.

(c) *Prior approvals.* Alternate methods or procedures in effect prior to April 18,

2011, which are not contrary to the regulations in this part, are preserved until renewed unless revoked by operation of law due to the enactment of law that is contrary to the alternate method or procedure.

(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, email, 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, immediately notify the appropriate TTB officer by telephone of the action and then file the required written application as soon as possible. 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, and 19.225);

(2) Assessment of tax (§§ 19.253 and 19.254); and

(3) Claims for tax (§§ 19.262 and 19.263).

(26 U.S.C. 5001, 5181)

§ 19.670 Dealer registration and recordkeeping.

An alcohol fuel plant that sells spirits that have not been rendered unfit for beverage use is subject to the requirements of subpart H of this part, except that the reference in § 19.202 to "subpart D" should be taken to refer to subpart X.

(26 U.S.C. 5181)

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 each 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 principal 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 each 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 of the principal persons 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 ownership 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, bylaws, 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 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 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 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, 19.695, and 19.691 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 TTB F 5110.74 if administrative difficulties occur as a result of the letterhead notice.

(26 U.S.C. 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. 5181, 5271)

§ 19.686 Change in name of proprietor.

When there is a change in 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 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, 5181)

§ 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, 5181)

§ 19.691 Change in address without change in location or area.

If there is a change in the address of an alcohol fuel plant that does not involve a change in the location or area of the plant itself, the proprietor must submit a letterhead notice to the appropriate TTB officer within 30 days of the change.

(26 U.S.C. 5172, 5181)

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 its 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. 5181, 5271)

§ 19.697 Permit suspension or revocation.

TTB will conduct proceedings to revoke or suspend an alcohol fuel plant 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 a person holding a 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 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 in §§ 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 Web site 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.*

(26 U.S.C. 5173, 5181; 31 U.S.C. 9301, 9303, 9304, 9306)

§ 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 that operates a small plant that receives not more than 10,000 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 that 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, (over 20,000 gallons) that will be produced or received. 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 that 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 (over 510,000 gallons) that will be produced and received. 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

ANNUAL PRODUCTION AND RECEIPTS IN PROOF GALLONS—Continued

More than	But not over	Amount of bond
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 is in the amount of at least 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. 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 to 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, hardcopy 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 a 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 submit a letterhead notice to the appropriate TTB officer indicating 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, and 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 form 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. 5181, 5212)

§ 19.734 Consignor for in-bond shipments.

A proprietor that 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 form 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 that 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 itself or to another consignee that is qualified to receive the spirits. In either case, an Application for Transfer of Spirits and/or Denatured Spirits in Bond on form 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 that 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 of this part. 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, 19.404, 19.405, and 19.407 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° 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) of an 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; and

(ii) Distillation range: No more than 10 percent of the sample may distill below 97 degrees Fahrenheit; at least 50 percent shall distill at or below 156 degrees Fahrenheit; and at least 90 percent shall distill at or below 209 degrees Fahrenheit.

(3) Raffinate must meet the following specifications—

(i) Octane (R+M/2): 66–70;

(ii) Distillation, in degrees Fahrenheit: 10 percent: 120–150 °F; 50 percent: 144–180 °F; 90 percent: 168–200 °F; end point: 216–285 °F;

(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 Fahrenheit: 64–70 °F;
(ii) Lb/Gal: 5.845–6.025;
(iii) Density: 0.7022–0.7238;
(iv) Reid Vapor Pressure: 8 P.S.I.A. Max.;
(v) Distillation in degrees Fahrenheit: I.B.P.: 85 °F Max.; 10 percent: 130 °F Max.; 50 percent: 250 °F Max.; 90 percent: 340 °F Max.; end point: 380 °F;
(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 8-ounce sample of such material. 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

Section where contained	Current OMB control No.
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
19.222	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
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	1513–0088
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19.249	1513–0045
19.253	1513–0088
19.256	1513–0045
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19.288	1513–0056
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	1513–0056
19.292	1513–0044
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19.294	1513–0047
19.295	1513–0047
19.303	1513–0056
19.305	1513–0039
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19.306	1513–0056
19.307	1513–0056
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19.309	1513–0047
19.312	1513–0056
19.322	1513–0039
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19.324	1513–0039
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19.329	1513–0039
19.331	1513–0056
19.333	1513–0056
19.343	1513–0041
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19.354	1513–0088
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19.360	1513–0041
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19.363	1513–0041
19.371	1513–0056
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19.372	1513–0048
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19.420	1513–0048
19.425	1513–0056
19.427	1513–0056
19.431	1513–0056
19.434	1513–0048
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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
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19.574	1513–0039
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	1513–0056
	1513–0088
19.576	1513–0039
	1513–0045
	1513–0049
	1513–0056
	1513–0088
19.577	1513–0039
	1513–0045
	1513–0056

Section where contained	Current OMB control No.
	1513–0088
19.580	1513–0039
	1513–0045
	1513–0049
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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
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19.602	1513–0041
19.603	1513–0041
19.604	1513–0041
19.606	1513–0049
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19.611	1513–0045
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19.612	1513–0045
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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
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	1513–0047
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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
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19.684	1513–0051
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19.695	1513–0052
19.709	1513–0052
19.710	1513–0052
19.714	1513–0052
19.715	1513–0052
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19.716	1513–0052
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19.718	1513–0052
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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

PART 24—WINE

■ 7. The authority citation for 27 CFR part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122–5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.226 [Amended]

■ 8. In § 24.226:

■ a. The first sentence is amended by removing the reference to "27 CFR 19.510" and adding, in its place, a reference to "§ 19.407 of this chapter"; and

■ b. The third sentence is amended by removing the reference to "27 CFR 19.508" and adding, in its place, a reference to "§ 19.405 of this chapter".

§ 24.235 [Amended]

■ 9. In § 24.235, paragraph (a) is amended by removing the reference to "27 CFR 19.522(c)" and adding, in its place, a reference to "§ 19.233 of this chapter".

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

■ 10. The authority citation for 27 CFR part 26 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111–5114, 5121, 5122–5124, 5131–5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 26.199f [Amended]

■ 11. In § 26.199f, paragraph (a) is amended by removing the reference to "27 CFR 19.562" and adding, in its place, a reference to "§ 19.462 of this chapter".

§ 24.226 [Amended]

■ 12. In § 26.293, paragraph (a)(3) is amended by removing the reference to "subpart R" and adding, in its place, a reference to "subpart S".

PART 28—EXPORTATION OF ALCOHOL

■ 13. The authority citation for 27 CFR part 28 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5121, 5122, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

§ 28.118 [Amended]

■ 14. Section 28.118 is amended by removing the reference to "subpart U" and adding, in its place, a reference to "subpart Q".

PART 30—GAUGING MANUAL

■ 15. The authority citation for 27 CFR part 30 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 30.31 [Amended]

■ 16. In § 30.31, paragraph (d) is amended by removing the reference to "§ 19.383" and adding, in its place, a reference to "§ 19.353 of this chapter".

§ 30.52 [Amended]

■ 17. Section 30.52 is amended by removing the reference to "§ 19.722" and adding, in its place, a reference to "§ 19.582".

PART 31—ALCOHOL BEVERAGE DEALERS

■ 18. The authority citation for 27 CFR part 31 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5121, 5122–5124, 5131, 5132, 5206, 5207, 5273, 5301, 5352, 5555, 5603, 5613, 5681, 5687, 6061, 6065, 6071, 6091, 6103, 6109, 6723, 6724, 7805.

§ 31.45 [Amended]

■ 19. In § 31.45, paragraph (b) is amended by removing the reference to "§ 19.58" and adding, in its place, a reference to "§ 19.5".

§ 31.65 [Amended]

■ 20. In § 31.65, paragraph (a) is amended by removing the reference to "§ 19.58" and adding, in its place, a reference to "§ 19.5".

Signed: May 27, 2010.

John J. Manfreda,

Administrator.

Approved: September 23, 2010.

Timothy E. Skud,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 2011–1956 Filed 2–15–11; 8:45 am]

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Part III

Department of Defense

Department of the Army, Corps of Engineers

Proposal To Reissue and Modify Nationwide Permits; Notice

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

ZRIN 0710–ZA05

Proposal To Reissue and Modify Nationwide Permits

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is soliciting comments for the reissuance of the existing nationwide permits (NWPs), general conditions, and definitions, with some modifications. The Corps is also proposing to issue two new NWPs and two new general conditions. The Corps is requesting comment on all aspects of these proposed nationwide permits. More specifically, the Corps is requesting comments on options for NWP 21, which authorizes discharges of dredged or fill material into waters of the United States associated with surface coal mining activities, such as reissuing NWP 21 with modifications or not reissuing NWP 21. The Corps is also seeking comments on whether to reissue NWP 48 with modifications to authorize new commercial shellfish aquaculture activities or to issue a separate NWP to authorize only new commercial shellfish aquaculture activities. The reissuance process starts with today's publication of the proposed NWPs in the **Federal Register** for a 60-day comment period. The purpose of this **Federal Register** notice is to solicit comments on the proposed new and modified NWPs, as well as the NWP general conditions and definitions. Shortly after the publication of this **Federal Register** notice, each Corps district will publish a public notice to solicit comments on their proposed regional conditions for the new and modified NWPs. The comment period for these district public notices will be 45 days.

DATES: Submit comments on or before April 18, 2011.

ADDRESSES: You may submit comments, identified by docket number COE–2010–0035 and/or ZRIN 0710–ZA05, by any of the following methods:

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

E-mail: NWP2012@usace.army.mil. Include the docket number, COE–2010–0035, and/or the ZRIN number, 0710–ZA05, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO–R, 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2010–0035 and/or ZRIN 0710–ZA05. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to regulations.gov. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Casey at 907–283–3519 or 202–761–5903 or Mr. David Olson at 202–761–4922 or access the U.S. Army Corps of Engineers Regulatory Home Page at *http://www.usace.army.mil/CECW/Pages/cecwo_reg.aspx*.

SUPPLEMENTARY INFORMATION:

Background

The current nationwide permits (NWPs), which were published in the March 12, 2007, issue of the **Federal Register** (72 FR 11092) expire on March 18, 2012. With this **Federal Register** notice, we are beginning the process for reissuing the NWPs so that the reissued NWPs will be in effect as the current NWPs expire.

Section 404(e) of the Clean Water Act provides the statutory authority for the Secretary of the Army, after notice and opportunity for public hearing, to issue general permits on a nationwide basis for any category of activities involving discharges of dredged or fill material into waters of the United States. Activities authorized by NWPs must be similar in nature, cause only minimal adverse environmental effects when performed separately, and cause only minimal cumulative adverse effect on the aquatic environment. Nationwide permits can also be issued to authorize activities pursuant to Section 10 of the Rivers and Harbors Act of 1899. The NWP program is designed to provide timely authorizations for the regulated public while protecting the Nation's aquatic resources.

Today's proposal to reissue 48 of the 49 existing NWPs with some modifications and to issue two new NWPs reflects the Corps commitment to its environmental protection mission and to aquatic resource protection. For the reasons provided below, we are proposing to let one NWP expire and not reissue it: NWP 47—Pipeline Safety Program Designated Time Sensitive Inspections and Repairs. We are proposing to revise the text of some of the NWPs, general conditions, and definitions so that they are clearer and can be more easily understood by the regulated public, government personnel, and interested parties, while retaining terms and conditions that protect the aquatic environment. Making the text of the NWPs clearer and easier to understand will also facilitate compliance with these permits, which will benefit the aquatic environment. The NWP program allows the Corps to authorize activities with minimal adverse environmental impacts in a timely manner and protect the aquatic environment. The NWP program also allows the Corps to focus its limited resources on more extensive evaluation of projects that have the potential for causing environmentally damaging adverse effects.

Through the NWPs, impacts to the aquatic environment may also receive additional protection through regional conditions, case-specific special

conditions, and case-specific discretionary authority to require individual permits. Nationwide permits and other general permits help protect the aquatic environment because permit applicants often reduce project impacts to meet the restrictive requirements of general permits and receive authorization more quickly than they would through the individual permit process.

Thirty of the NWPs proposed for reissuance require pre-construction notification (PCN) for certain activities. Twenty of those NWPs require PCNs for all activities. Each of the two proposed new NWPs require PCNs. Pre-construction notification requirements give the Corps the opportunity to evaluate certain proposed NWP activities on a case-by-case basis to ensure that they will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. This case-by-case review often results in adding case-specific conditions to the NWP authorization to ensure that impacts to the aquatic environment are minimal. Review of a PCN may also result in the Corps asserting discretionary authority to require an individual permit if the district engineer determines, based on the information provided in the PCN, that adverse impacts will be more than minimal, either individually or cumulatively, or there are sufficient concerns for any of the Corps public interest review factors.

Regional conditions may be imposed by division engineers to take into account regional differences in aquatic resource functions and services across the country and to restrict or prohibit the use of NWPs to protect those resources. Through regional conditions, a division engineer can modify an NWP to require submission of PCNs for certain activities. Regional conditions may also restrict or prohibit the use of an NWP in certain waters or geographic areas, if the use of that NWP in those waters or areas might result in more than minimal individual or cumulative adverse effects to the aquatic environment.

District engineers may impose special conditions on NWP authorizations to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and other public interest review factors. In addition, special conditions will often include compensatory mitigation requirements to reduce the project impacts to the minimal level. Compensatory mitigation may include the restoration, establishment, enhancement, and/or preservation of aquatic habitats, as well as the establishment and maintenance of riparian areas next to streams and other open waters. Compensatory mitigation can be provided through permittee-responsible mitigation, mitigation banks, or in-lieu fee programs.

Process for Reissuing the NWPs

The NWPs reissued on March 12, 2007, went into effect on March 19, 2007, and expire on March 18, 2012. The reissuance process starts with today's publication of the proposed NWPs in the **Federal Register** for a 60-day comment period. Requests for a public hearing must be submitted in writing to the address in the **ADDRESSES** section of this notice. These requests must state the reason(s) for holding a public hearing. If we determine that a public hearing or hearings would assist in making a decision on the issuance of the proposed new NWPs, reissuance of existing NWPs, or the NWP general conditions or definitions, a 30-day advance notice will be published in the **Federal Register** to advise interested parties of the date(s) and location(s) for the public hearing(s). Any announcement of public hearings would also be posted as a supporting material in the docket at *http://www.regulations.gov* as well as the Corps regulatory home page at *http://www.usace.army.mil/CECW/Pages/cecwo_reg.aspx.*

Shortly after the publication of this **Federal Register** notice, Corps district offices will issue public notices to solicit comments on proposed regional conditions. In their district public notices, district engineers may also propose to suspend or revoke some or all of these NWPs if they have issued, or are proposing to issue, regional general permits, programmatic general permits, or section 404 letters of permission for use in lieu of NWPs. The comment period for these district public notices will be 45 days.

After the comment period has ended, we will review the comments received in response to this **Federal Register** notice. Then we will draft the final NWPs, and those final draft NWPs will be subjected to another review by interested Federal agencies. The final issued NWPs will be published in the **Federal Register** by December 2011. The final NWPs will go into effect 90 days after their publication. In the past, the schedule normally allowed state governments, tribal governments, and EPA a 60-day period for Clean Water Act Section 401 water quality certifications (WQCs) as well as Coastal Zone Management Act (CZMA) consistency determinations by states. The change to 90 days is made in order to meet the requirements of the Department of Commerce that require Federal agencies to provide at least 90 days for state governments to make their CZMA consistency determinations (see 15 CFR 930.36(b)). Within this 90-day period, division engineers will also develop regional conditions and supplemental decision documents. Supplemental decision documents address the environmental considerations related to the use of NWPs in a Corps district. The supplemental decision documents will certify that the NWPs, with any regional conditions or geographic suspensions or revocations, will only authorize activities within that Corps district that result in minimal individual and cumulative adverse effects on the aquatic environment. The regional conditioning and WQC/CZMA processes are discussed below.

Compliance With Section 404(e) of the Clean Water Act

The proposed NWPs are issued in accordance with Section 404(e) of the Clean Water Act. These NWPs authorize categories of activities that are similar in nature. The "similar in nature" requirement does not mean that activities authorized by an NWP must be identical to each other. We believe that the "categories of activities that are similar in nature" requirement of section 404(e) is to be interpreted broadly, for practical implementation of this general permit program. Nationwide permits, as well as other general permits, are intended to reduce administrative burdens on the Corps and the regulated public, by efficiently authorizing activities that have minimal adverse environmental effects.

As for the minimal adverse effects provision of section 404(e), the various terms and conditions of these NWPs, including the provisions in the NWP regulations at 33 CFR 330.1(d) and 33 CFR 330.4(e) that allow district engineers to exercise discretionary authority, ensure compliance with this requirement. A decision document will be prepared for each NWP to address the requirements of the National Environmental Policy Act and generally discuss the anticipated impacts the NWP will have on the Corps public interest review factors. For those NWPs that may authorize discharges of dredged or fill material into waters of the United States, a 404(b)(1) Guidelines analysis will be provided in the decision document. The 404(b)(1) Guidelines analysis will be conducted in accordance with 40 CFR 230.7. The draft decision documents for the

proposed NWPs are available on the internet at: *http://www.regulations.gov* (docket ID number COE–2010–0035). We are soliciting comments on these draft decision documents, and any comments received will be considered when preparing the final decision documents for the NWPs.

National Environmental Policy Act Compliance

We have prepared a draft decision document for each proposed NWP. Each decision document contains an environmental assessment (EA). If the proposed NWP authorizes discharges of dredged or fill material into waters of the United States, the decision document will also include a 404(b)(1) Guidelines analysis conducted in accordance with 40 CFR 230.7. These decision documents will consider the environmental effects of each NWP from a national perspective. Division engineers will issue supplemental decision documents to evaluate regional effects on the aquatic environment and other public interest review factors. Those supplemental decision documents will discuss regional conditions imposed by division engineers to protect the aquatic environment and ensure that any adverse effects resulting from NWP activities will be no more than minimal.

The assessment of cumulative effects occurs at two levels: national and regional (district). However, modifications at the district level are made by the appropriate division engineer. There are eight Corps division offices in the United States, with 38 district offices. A division office may oversee as many as seven districts (Lakes and Rivers Division) or as few as two district offices (Pacific Ocean Division).

At the national level, the decision documents issued by Corps Headquarters include cumulative effects assessments required by NEPA and, if the NWP authorizes discharges of dredged or fill material into waters of the United States, the 404(b)(1) Guidelines. The 404(b)(1) Guidelines at 40 CFR 230.7(b) require an evaluation of the potential individual and cumulative impacts of the category of activities authorized under the NWP.

The supplemental decision documents issued by division engineers include cumulative effects assessments at the regional (district) level, for each district within the division. For those NWPs that authorize section 404 activities, the supplemental decision documents will also discuss local concerns relating to the Section 404(b)(1) Guidelines, if the national decision documents do not adequately address those issues. If the NWP is not suspended or revoked in a district, the supplemental decision document includes a certification that the use of the NWP in that district, with any applicable regional conditions (i.e., applicable in a specific district), will result in minimal cumulative adverse environmental effects. The supplemental decision documents are prepared by Corps districts, but must be approved and formally issued by the appropriate division engineer, since the NWP regulations at 33 CFR 330.5(c) state that the division engineer has the authority to modify, suspend, or revoke NWP authorizations for any specific geographic area within his division. Regional conditions are considered NWP modifications. Therefore, when the process is completed, each district will have approved supplemental decision documents for each NWP, and those supplemental decision documents will assess cumulative effects within that district.

District engineers may also recommend that the division engineer exercise discretionary authority to modify, suspend, or revoke case-specific NWP authorizations within a district to ensure that only minimal cumulative adverse effects on the aquatic environment result from activities authorized by that NWP. Evaluations by a district engineer may result in the division engineer modifying, suspending, or revoking NWP authorizations in a particular geographic region or watershed at a later time, if the use of an NWP in a particular area will result in more than minimal cumulative or individual adverse effects on the aquatic environment. Special conditions added to NWP authorizations on a case-by-case basis by district engineers, such as compensatory mitigation requirements, help ensure that the NWPs authorize only activities that result in minimal individual and cumulative adverse effects on the aquatic environment.

Acreage Limits and Pre-Construction Notification Thresholds

We are proposing to retain most of the current acreage limits for the NWPs and propose to modify some of the NWPs acreage limits. We are also proposing to modify the language concerning the use of waivers in NWPs 13, 29, 36, 39, 40, 42, and 43 by clarifying that a waiver may be granted only after the district engineer makes a written determination concluding that the discharge will result in minimal adverse effects. The modified waiver language will also be applied to NWPs 21, 44, and 50, as well as proposed new NWPs A and B. We are proposing to replace the 25 cubic yard limit for temporary pads in NWP 6 with a 1/10-acre limit for temporary pads. For NWP 50 we are proposing a 1/2-acre limit on non-tidal waters of the United States including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. In NWPs 40 and 44 we are proposing to increase protection of streams by adding a 300 linear foot limit for losses of stream bed, which can be waived for intermittent and ephemeral stream beds if the district engineer makes a written determination concluding that the discharge will result in minimal adverse effects.

Proposed NWP A, Land-Based Renewable Energy Generation Facilities, and proposed NWP B, Water-Based Renewable Energy Generation Pilot Projects, have a 1/2-acre limit for losses of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. Both of these proposed NWPs require PCNs.

In NWP 48, we are proposing to add another PCN threshold for proposed expansions of the project area for the production of shellfish.

Compliance With the Endangered Species Act

In its April 6, 2005, decision in *National Wildlife Federation et al.* v. *Les Brownlee* (No. 03–1392), the U.S. District Court for the District of Columbia determined that the Corps is obligated to consult with the U.S. Fish and Wildlife Service (FWS) on the effects of the NWPs. In response to that decision, on March 13, 2007, the Corps initiated Endangered Species Act Section 7(a)(2) programmatic consultation with FWS and the National Marine Fisheries Service (NMFS) for the current NWPs. NMFS provided a draft biological opinion and the Corps provided comments on that draft biological opinion, as well as additional information regarding the NWPs to NMFS as well as FWS. The Corps also granted an extension of time to the NMFS to provide the next draft of the biological opinion, and to the FWS to provide its draft biological opinion. Since the 2007 programmatic consultation was not completed, the

Corps has reinitiated programmatic Section 7 consultation for the NWP program. Corps districts will consult, as necessary, with the FWS and the NMFS for the species that occur in their districts and may develop regional conditions to protect listed species and designated critical habitat.

Essential Fish Habitat

The NWP Program's compliance with the essential fish habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act will be achieved through EFH consultations between Corps districts and NMFS regional offices. Corps districts will request EFH consultations with the NMFS regional office in cases where activities authorized by NWP may adversely affect EFH. The purpose of these regional consultations is to determine if implementation of the proposed NWPs and regional conditions within a particular region may have an adverse effect on EFH. These consultations will be conducted according to the EFH consultation regulations at 50 CFR 600.920.

Regional Conditioning of Nationwide Permits

Under Section 404(e), NWPs can only be issued for those activities that result in minimal individual and cumulative adverse effects on the aquatic environment. An important mechanism for ensuring compliance with this requirement is an effective regional conditioning process. Coordination with Federal and state agencies and Indian Tribes, and the solicitation of public comments, assist division and district engineers in identifying and developing appropriate regional conditions for the NWPs. Effective regional conditions protect local aquatic ecosystems and helps ensure that the NWPs authorize only those activities that result in minimal individual and cumulative adverse effects on the aquatic environment, and are in the public interest.

There are two types of regional conditions: (1) Corps regional conditions and (2) water quality certification/Coastal Zone Management Act consistency determination regional conditions.

Corps regional conditions may be added to NWPs by division engineers after a public notice and comment process and coordination with other Federal, state, and local agencies.

Examples of Corps regional conditions include:

• Restricting the types of waters of the United States where the NWPs may be used (*e.g.,* fens, bogs, bottomland hardwoods, etc.) or prohibiting the use of some or all of the NWPs in those types of waters or in specific watersheds.

• Restricting or prohibiting the use of NWPs in an area covered by a Special Area Management Plan, or an Advanced Identification study with associated regional general permits.

• Adding pre-construction notification (PCN) requirements to NWPs to require notification for all work in certain watersheds or certain types of waters of the United States, or lowering the PCN threshold.

• Reducing NWP acreage limits in certain types of waters of the United States, or specific waterbodies.

• Revoking certain NWPs on a geographic or watershed basis.

• Restricting activities authorized by NWPs to certain times of the year in a particular waterbody, to minimize the adverse effects of those activities on fish or shellfish spawning, wildlife nesting, or other ecologically cyclical events.

• Conditions necessary to ensure compliance with the Endangered Species Act and essential fish habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act.

Corps regional conditions approved by division engineers cannot remove or reduce any of the terms and conditions of the NWPs, including general conditions and PCN requirements. In other words, Corps regional conditions can only be more restrictive than the original NWP terms and conditions.

Regional conditions may also be added to the NWPs as a result of water quality certifications (WQCs) issued by states, Indian Tribes, or the U.S. EPA, as well as state Coastal Zone Management Act (CZMA) consistency determinations.

At approximately the same time as the publication of this **Federal Register** notice, each Corps district will issue an initial public notice. Those initial public notices will include Corps regional conditions proposed by our district offices, and will also request comments or suggestions for additional Corps regional conditions. The initial public notice may also include, for informational purposes only, any proposed state or tribal WQC regional conditions or state CZMA regional conditions. However, public comment on the state or tribal WQC regional conditions or state CZMA regional conditions is handled through a separate state or tribal administrative procedures process. The public should not address such comments to the Corps.

In response to the district's initial public notice, interested parties may suggest additional Corps regional conditions, or suggest suspension or revocation of NWPs in certain geographic areas, such as specific watersheds or waterbodies. Such comments should include data to support the need for any suggested modifications, suspensions, or revocations of NWPs.

After the NWPs are issued or reissued, the division engineer will issue supplemental decision documents for each NWP. These supplemental decision documents will address the NWP regional conditions. Each supplemental decision document will also include a statement by the division engineer, which will certify that the NWP, with approved regional conditions, will authorize only activities with minimal individual and cumulative adverse effects on the aquatic environment.

After the division engineer approves the Corps regional conditions, each Corps district will issue a final public notice for the NWPs. The final public notice will announce both the final Corps regional conditions and any final WQC/CZMA regional conditions. The final public notices will also announce the final status of water quality certifications and CZMA consistency determinations for the NWPs. Corps districts may adopt additional regional conditions in future public notices (following public notice and comment procedures), if they identify a need for such conditions.

Information on regional conditions and revocation can be obtained from the appropriate district engineer, as indicated below. Furthermore, this and additional information can be obtained on the internet at *http://www.usace.army.mil/CECW/Pages/cecwo_reg.aspx.* If you select a state on this Web site you will be directed to the Web site of the appropriate Corps district office.

In cases where a Corps district has issued a regional general permit that authorizes similar activities as one or more NWPs, the district will clarify the use of the regional general permit versus the NWP(s) during the regional conditioning process. For example, the division engineer may revoke the applicable NWP(s) so that only the regional general permit may be used to authorize those activities.

Water Quality Certification/Coastal Zone Management Act Consistency Determination for Nationwide Permits

State or Tribal water quality certification, or waiver thereof, is

required by Section 401 of the Clean Water Act, for activities authorized by NWPs which result in a discharge into waters of the United States. In addition, any state with a federally-approved CZMA plan must agree with the Corps determination that activities authorized by NWPs which are within, or will affect any land or water uses or natural resources of the state's coastal zone, are consistent with the CZMA plan to the maximum extent practicable. Water quality certifications and/or CZMA consistency determinations may be issued without conditions, issued with conditions, or denied for specific NWPs.

We believe that, in general, the activities authorized by the NWPs will not violate State or Tribal water quality standards and will be consistent with state CZMA plans. The NWPs are conditioned to ensure that adverse environmental effects will be minimal and address the types of activities that would be routinely authorized if evaluated under the individual permit process. We recognize that in some states or Tribal lands there will be a need to add regional conditions, or individual state or Tribal review for some activities, to ensure compliance with water quality standards and/or consistency with the state's CZMA plans. As a practical matter, we intend to work with states and Tribes to ensure that NWPs include the necessary conditions so that they can issue water quality certifications or CZMA consistency concurrences. Therefore, each Corps district will initiate discussions with their respective state(s) and Tribe(s), as appropriate, to discuss issues of concern and identify regional modification and other approaches to address the scope of waters, activities, discharges, and PCNs, as appropriate, to resolve these issues. Note that in some states the Corps has issued state programmatic general permits (SPGPs), and within those states some or all of the NWPs may be suspended or revoked by division engineers. Concurrent with today's proposal, district engineers may be proposing modification or revocation of the NWPs in states where SPGPs will be used in place of some or all of the NWPs.

Section 401 of the Clean Water Act

This **Federal Register** notice serves as the Corps application to the Tribes, States, or EPA, where appropriate, for water quality certification of the activities authorized by these NWPs. The Tribes, States, and EPA, where appropriate, are requested to issue, deny, or waive water quality certification pursuant to 33 CFR 330.4(c) for these NWPs.

If a state denies a water quality certification for an NWP within that state, then the affected activities are not authorized by NWP within that state, until a project proponent obtains an individual water quality certification, or the water quality certification is waived. However, when applicants request approval of such activities, and the Corps determines that those activities meet the terms and conditions of the NWP, the Corps will issue provisional NWP verification letters. The provisional verification letter will contain general and regional conditions as well as any project specific conditions the Corps determines are necessary for NWP authorization. The Corps will notify the applicant that they must obtain a project specific water quality certification, or waiver thereof, before they are authorized to start work in waters of the United States. That is, NWP authorization will be contingent upon obtaining the necessary water quality certification or waiver thereof from the State, Tribe, or EPA where appropriate. Anyone wanting to perform such activities where pre-construction notification to the Corps is not required has an affirmative responsibility to first obtain a project-specific water quality certification or waiver thereof from the Tribe, State, or EPA before proceeding under the NWP. This requirement is provided at 33 CFR 330.4(c).

Section 307 of the Coastal Zone Management Act (CZMA)

This **Federal Register** notice serves as the Corps determination that the activities authorized by these NWPs are, to the maximum extent practicable, consistent with state CZMA programs. This determination is contingent upon the addition of state CZMA conditions and/or regional conditions, or the issuance by the state of an individual consistency concurrence, where necessary. States are requested to agree or disagree with the consistency determination following 33 CFR 330.4(d) for these NWPs.

The Corps CZMA consistency determination only applies to NWP authorizations for activities that are within, or affect, any land, water uses or natural resources of a State's coastal zone. NWP authorizations for activities that are not within or would not affect a State's coastal zone do not require a Corps CZMA consistency determination and thus are not contingent on a State's agreement with the Corps consistency determinations.

If a state disagrees with the Corps consistency determination for an NWP, then the affected activities are not authorized by NWP within that state, until a project proponent obtains an individual consistency determination, or sufficient time (six months) passes after requesting a consistency determination for the applicant to make a presumption of consistency, as provided for in 33 CFR 330.4(d)(6). However, when applicants request approval of such activities, and the Corps determines that those activities meet the terms and conditions of the NWP, the Corps will issue provisional NWP verification letters. The provisional verification letter will contain general and regional conditions as well as any project specific conditions the Corps determines are necessary for NWP authorization. The Corps will notify the applicant that they must obtain a project specific CZMA consistency determination before they are authorized to start work in waters of the United States. That is, NWP authorization will be contingent upon obtaining the necessary CZMA consistency concurrence from the State. Anyone wanting to perform such activities where pre-construction notification to the Corps is not required has an affirmative responsibility to present a consistency certification to the appropriate State agency for concurrence. Upon concurrence with such consistency certifications by the state, the activity would be authorized by the NWP. This requirement is provided at 33 CFR 330.4(d).

Nationwide Permit Verifications

Certain NWPs require the permittee to submit a PCN, and thus request confirmation from the district engineer that an activity complies with the terms and conditions of an NWP, prior to commencing the proposed work. The requirement to submit a PCN is identified in the NWP text. Pre-construction notification requirements may be added to NWPs by division engineers through regional conditions. In cases where pre-construction notification is not required, a project proponent may submit a PCN voluntarily, if he or she wants assurance that the activity is authorized by an NWP. A NWP verification is a response to a PCN that confirms that a particular activity is authorized by an NWP.

In response to an NWP verification request or PCN, the district engineer reviews the information submitted by the prospective permittee. If the district engineer determines that the activity complies with the terms and conditions of the NWP, he or she will notify the permittee. Special conditions, such as compensatory mitigation requirements, may be added to the NWP authorization to ensure that the activity results in

minimal individual and cumulative adverse effects on the aquatic environment and other public interest factors. The special conditions are incorporated into the NWP verification, along with the NWP text and the NWP general conditions.

If the district engineer reviews the NWP verification request and determines that the proposed activity does not comply with the terms and conditions of an NWP, he or she will notify the project proponent and provide instructions for applying for authorization under a regional general permit or an individual permit. District engineers will respond to NWP verification requests, submitted voluntarily or when required, within 45 days of receiving a complete PCN. Except for NWPs 21, 49, and 50, and for proposed NWP activities that require Endangered Species Act Section 7 consultation and/or National Historic Preservation Act Section 106 consultation, if the project sponsor has not received a reply from the Corps within 45 days, he or she may assume that the project is authorized, consistent with the information in the PCN. For NWPs 21 (Surface Coal Mining Activities), 49 (Coal Remining Activities), and 50 (Underground Coal Mining Activities), and for proposed NWP activities that require Endangered Species Act Section 7 consultation and/or National Historic Preservation Act Section 106 consultation, the project sponsor may not begin work before receiving a written NWP verification.

Contact Information for Corps District Engineers

Alabama

Mobile District Engineer, ATTN: CESAM–RD, 109 St. Joseph Street, Mobile, AL 36602–3630.

Alaska

Alaska District Engineer, ATTN: CEPOA–RD, P.O. Box 6898, Elmendorf AFB, AK 99506–6898.

Arizona

Los Angeles District Engineer, ATTN: CESPL–RG–R, P.O. Box 532711, Los Angeles, CA 90053–2325.

Arkansas

Little Rock District Engineer, ATTN: CESWL–RD, P.O. Box 867, Little Rock, AR 72203–0867.

California

Sacramento District Engineer, ATTN: CESPK–RD, 1325 J Street, Sacramento, CA 95814–2922.

Colorado

Albuquerque District Engineer, ATTN: CESPA–OD–R, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435.

Connecticut

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

Delaware

Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390.

Florida

Jacksonville District Engineer, ATTN: CESAJ–RD, P.O. Box 4970, Jacksonville, FL 32232–0019.

Georgia

Savannah District Engineer, ATTN: CESAS–RD, 100 West Oglethorpe Avenue, Savannah, GA 31401–3640.

Hawaii

Honolulu District Engineer, ATTN: CEPOH–EC–R, Building 230, Fort Shafter, Honolulu, HI 96858–5440.

Idaho

Walla Walla District Engineer, ATTN: CENWW–RD, 201 North Third Avenue, Walla Walla, WA 99362–1876.

Illinois

Rock Island District Engineer, ATTN: CEMVR–OD–P, P.O. Box 2004, Rock Island, IL 61204–2004.

Indiana

Louisville District Engineer, ATTN: CELRL–OP–F, P.O. Box 59, Louisville, KY 40201–0059.

Iowa

Rock Island District Engineer, ATTN: CEMVR–OD–P, P.O. Box 2004, Rock Island, IL 61204–2004.

Kansas

Kansas City District Engineer, ATTN: CENWK–OD–R, 635 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896.

Kentucky

Louisville District Engineer, ATTN: CELRL–OP–F, P.O. Box 59, Louisville, KY 40201–0059.

Louisiana

New Orleans District Engineer, ATTN: CEMVN–OD–S, P.O. Box 60267, New Orleans, LA 70160–0267.

Maine

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

Maryland

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715.

Massachusetts

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

Michigan

Detroit District Engineer, ATTN: CELRE–RG, 477 Michigan Avenue, Detroit, MI 48226–2550.

Minnesota

St. Paul District Engineer, ATTN: CEMVP–OP–R, 180 Fifth Street East, Suite 700, St. Paul, MN 55101–1678.

Mississippi

Vicksburg District Engineer, ATTN: CEMVK–OD–F, 4155 Clay Street, Vicksburg, MS 39183–3435.

Missouri

Kansas City District Engineer, ATTN: CENWK–OD–R, 635 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896.

Montana

Omaha District Engineer, ATTN: CENWO–OD–R, 1616 Capitol Avenue, Omaha, NE 68102–4901.

Nebraska

Omaha District Engineer, ATTN: CENWO–OD–R, 1616 Capitol Avenue, Omaha, NE 68102–4901.

Nevada

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, Sacramento, CA 95814–2922.

New Hampshire

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

New Jersey

Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390.

New Mexico

Albuquerque District Engineer, ATTN: CESPA–OD–R, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435.

New York

New York District Engineer, ATTN: CENAN–OP–R, 26 Federal Plaza, New York, NY 10278–0090.

North Carolina

Wilmington District Engineer, ATTN: CESAW–RG, P.O. Box 1890, Wilmington, NC 28402–1890.

North Dakota

Omaha District Engineer, ATTN: CENWO–OD–R, 1616 Capitol Avenue, Omaha, NE 68102–4901.

Ohio

Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070.

Oklahoma

Tulsa District Engineer, ATTN: CESWT–RO, 1645 S. 101st East Ave, Tulsa, OK 74128–4609.

Oregon

Portland District Engineer, ATTN: CENWP–OD–G, P.O. Box 2946, Portland, OR 97208–2946.

Pennsylvania

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715.

Rhode Island

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

South Carolina

Charleston District Engineer, ATTN: CESAC–CO–P, P.O. Box 919, Charleston, SC 29402–0919.

South Dakota

Omaha District Engineer, ATTN: CENWO–OD–R, 1616 Capitol Avenue, Omaha, NE 68102–4901.

Tennessee

Nashville District Engineer, ATTN: CELRN–OP–F, 3701 Bell Road, Nashville, TN 37214.

Texas

Galveston District Engineer, ATTN: CESWG–PE–R, P.O. Box 1229, Galveston, TX 77553–1229.

Utah

Sacramento District Engineer, ATTN: CESPK–RD, 1325 J Street, CA 95814–2922.

Vermont

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

Virginia

Norfolk District Engineer, ATTN: CENAO–REG, 803 Front Street, Norfolk, VA 23510–1096.

Washington

Seattle District Engineer, ATTN: CENWS–OP–RG, P.O. Box 3755, Seattle, WA 98124–3755.

West Virginia

Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070.

Wisconsin

St. Paul District Engineer, ATTN: CEMVP–OP–R, 180 Fifth Street East, Suite 700, St. Paul, MN 55101–1678.

Wyoming

Omaha District Engineer, ATTN: CENWO–OD–R, 1616 Capitol Avenue, Omaha, NE 68102–4901.

District of Columbia

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715.

Pacific Territories (American Samoa, Guam, & Commonwealth of the Northern Mariana Islands)

Honolulu District Engineer, ATTN: CEPOH–EC–R, Building 230, Fort Shafter, Honolulu, HI 96858–5440.

Puerto Rico and Virgin Islands

Jacksonville District Engineer, ATTN: CESAJ–RD, P.O. Box 4970, Jacksonville, FL 32232–0019.

Request for Comment

We are proposing to reissue 48 nationwide permits, as well as the general conditions and definitions. We are also proposing to issue two new NWPs, two new general conditions, and one new definition. Substantive changes to the nationwide permits, general conditions, and definitions are discussed below, but we are soliciting comments on all the nationwide permits, general conditions, and definitions. Minor grammatical changes, the removal of redundant language, and other small changes are not discussed in the preamble below. Therefore, commenters should carefully read each proposed NWP, general condition, and definition in this notice.

NWP Not Proposed for Reauthorization

NWP 47. *Pipeline Safety Program Designated Time Sensitive Inspections and Repairs.* This NWP was first issued in 2007 in reliance on the Pipeline and Hazardous Materials Safety Administration's (PHMSA) implementation of a Web-based system called the Pipeline Repair and Environmental Guidance System (PREGS). The terms of NWP 47 required permittees to report their use of this NWP through PREGS. PHMSA ceased their development of PREGS, which the Corps planned to use in order to monitor projects authorized by NWP 47. In the place of NWP 47, projects subject to PHMSA's Pipeline Safety Program may be eligible for authorization under NWP 3, Maintenance, or NWP 12, Utility Line Activities, provided those projects meet the terms and conditions of the appropriate NWP(s).

Discussion of Proposed Modifications to Existing Nationwide Permits

If an existing NWP is not listed in this section of the preamble, we are proposing to reissue the NWP without changing it.

NWP 3. *Maintenance.* We are proposing to clarify that stream channel excavation immediately adjacent to the structure or fill being maintained that involves discharges of dredged or fill material into waters of the United States and/or work in navigable waters of the United States is authorized under paragraph (a) and does not require a PCN. Examples of stream channel excavation activities that may be authorized under paragraph (a) include those necessary to facilitate minor deviations in a structure's configuration or filled area. This can occur when structures or fills are replaced with larger culverts or bridges that improve fish passage. Specifically, we are proposing to add "Any stream channel modification, is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications must be immediately adjacent to the project" to paragraph (a).

To simplify and clarify the text, we propose to replace the word "and" with "and/or" in the first sentence of paragraph (b) to indicate that the activity does not need to include the placement of new or additional riprap in order to qualify for the NWP. In paragraph (d) we propose to explicitly state beach restoration is not authorized by the NWP by removing beach restoration from the first sentence and adding a stand-alone sentence. In the Notification provision we propose to remove from the first part of the second sentence the phrase "[w]here maintenance dredging is proposed" because paragraph (b) of the NWP is the only component of the NWP that requires a PCN. This deletion will simplify redundant and confusing text.

NWP 5. *Scientific Measurement Devices.* We are proposing to add a sentence to explicitly require the removal of the device and any associated structures or fills at the conclusion of the study. Specifically, we are proposing to add the following sentence: "Upon completion of the study the measuring device and any other structures or fills associated with that device (e.g., anchors, buoys, lines, etc.) must be removed and to the maximum extent practicable the site must be restored to pre-construction elevations after the removal of associated structures." We are proposing to add "meteorological stations" as an example of the types of scientific measuring devices authorized by this NWP since such devices are currently being used to collect meteorological data for planning offshore wind energy generation facilities. We are also proposing to add "current gages" and "biological observation devices" to the list of examples, because such instruments may be used to collect data for sites that are being considered for hydrokinetic energy generation facilities.

NWP 6. *Survey Activities.* We are proposing to modify how exploratory trenches are backfilled by stating the work "must not drain a water of the United States." This would make the NWP consistent with other NWPs that involve backfilling. We also propose to adjust the requirements for the temporary pads necessary to provide proper levels for equipment used for core sampling. Specifically, we propose to remove 25 cubic yard limit and replace it with a 1/10-acre limit. The acreage limit for temporary pads applies to a single and complete project, as defined at 33 CFR 330.2(i).

NWP 8. *Oil and Gas Structures on the Outer Continental Shelf.* We are proposing to update the name of former Mineral Management Service to the Bureau of Ocean Energy Management, Regulation, and Enforcement.

NWP 12. *Utility Line Activities.* We are proposing one minor change regarding how the calculation of loss of waters of the United States for a single and complete project with multiple components is made by replacing the phrase "* * * the total discharge from a * * *" with " * * * the activity, in combination with all other activities included in one * * *" to the access road component of the NWP. This adjustment would match the language from the utility line substation component of the NWP.

NWP 13. *Bank Stabilization.* To encourage bank stabilization activities that use bioengineering techniques and other methods that may have less adverse environmental effects, we are proposing to modify paragraph (c) by removing the waiver provision and authorizing bank stabilization activities that utilize bioengineered techniques to exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line. This change would not authorize bank stabilization activities that involve hardening the bank with material such as sheet pile, riprap, concrete, etc. if the discharge exceeds one cubic yard per running foot. A separate form of Department of the Army authorization, such as an individual permit or regional general permit, would be required for such activities. Bioengineered techniques can slow erosion rates and can have beneficial effects on habitat for macroinvertebrates and fish and may include the use of living material or other material such as tree revetments or root wads.

Because some bank stabilization activities require temporary structures or fills, or a site to be temporarily dewatered, we propose to add language authorizing these associated activities. This proposed language is consistent with that used to authorize the same activity in NWPs 3, 12, and 14.

NWP 15. *U.S. Coast Guard Approved Bridges.* We are proposing to modify this NWP by removing the reference to the U.S. Coast Guard authorizing the discharge of dredged or fill material into waters of the United States as a part of their bridge permit, since their bridge permits do not authorize such activities. We are also proposing to reference the U.S. Coast Guard's bridge permitting authority under Section 9 of the Rivers and Harbors Act of 1899 and other applicable laws. The other applicable laws include: The International Bridge Act of 1972 (at 33 U.S.C. 535–535(i)), the General Bridge Act of 1946 (at 33 U.S.C. 525, 528, 530, and 533), the Bridge Act of 1906 (at 33 U.S.C. 491, 494, and 495); and the Rivers and Harbors Appropriation Act of 1899 (at 33 U.S.C. 401, 403, 406, and 502). Because a bridge permit issued by the U.S. Coast Guard does not cover discharges of dredged or fill material into navigable waters of the United States, and such discharges are likely to be considered work that modifies those waters, we propose to add section 10 authority to this NWP to provide authorization under the Rivers and Harbors Act of 1899.

NWP 20. *Response Operations for Oil and Hazardous Substances.* We are proposing to change the name of this NWP from "Oil Spill Cleanup" to "Response Operations for Oil and Hazardous Substances" to better describe the activities and types of materials authorized by the NWP.

The proposed modification would also authorize a wider set of activities, specifically containment and mitigation, associated with a response operation's effort to manage a release of oil or hazardous substances.

We are also proposing to modify the NWP to authorize work under a wider range of approved response plans or work approved by a Federal on-scene coordinator as designated by 40 CFR part 300.

Additionally, we propose to modify this NWP to authorize training exercises for the cleanup of oil and hazardous substance by this NWP. These drills can take place on land and water and sometimes involve the use of temporary structures and fills used to contain spilt materials.

NWP 21. *Surface Coal Mining Activities.* To help make a fully informed decision about whether or not to reissue NWP 21, we are soliciting comment on three options for this NWP. Option 1 would be to not reissue NWP 21. Option 2 would be to reissue NWP 21 with modifications, including a ½-acre limit for losses of non-tidal waters of the United States, a 300 linear foot limit for the loss of stream bed (with a waiver for the loss of intermittent and ephemeral stream beds if the district engineer makes a written determination that the discharge will result in minimal adverse effects), and a provision prohibiting the use of NWP 21 to authorize discharges of dredged or fill material into waters of the United States associated with the construction of valley fills for surface coal mining activities. Option 3 would be to reissue NWP 21 with the same modifications as described for Option 2, except there would be no provision prohibiting the use of NWP 21 to authorize discharges of dredged or fill material into waters of the United States associated with the construction of valley fills. Options 2 and 3 would not authorize discharges of dredged or fill material into tidal waters or non-tidal wetlands adjacent to tidal waters.

The preferred option is Option 2, since the construction of valley fills for surface coal mining activities substantially alters the watersheds associated with headwater streams and has a greater potential to cause more than minimal adverse effects on the aquatic environment. Those changes to the watershed cause direct and indirect effects to downstream waters.

Option 1, to not reissue NWP 21, would be consistent with a

determination that any discharge of dredge or fill material associated with surface coal mining activities, in any region of the country, might result in more than minimal adverse effects on the aquatic environment and thus warrant the more rigorous review associated with an individual permit. In contrast, the proposed modifications presented in Options 2 and 3 would authorize minor activities associated with surface coal mining activities such as the discharges of dredged or fill material to construct sediment ponds or minor road crossings. All the Options would require larger surface coal mining activities involving discharges of dredged or fill material into waters of the United States to be authorized by individual permits. In previously issued versions of NWP 21, there was no limit on losses of waters of the United States. Instead of acreage or linear foot limits the Corps relied on the following to ensure minimal adverse effects: (a) The implementation of environmental protections through SMCRA (e.g., preventing material damage to the hydrologic balance in the surrounding areas and minimizing adverse impacts to fish and wildlife habitat); and, (b) the requirement that the prospective permittee could not commence work in waters of the United States until he or she received written verification from the Corps district that the activity was authorized by NWP 21. Under Options 2 and 3, the Corps would continue to rely on these sources of assurance, along with the proposed new acreage and linear foot limits, to ensure minimal adverse effects. The Corps believes that this combination of safeguards is sufficient, particularly if discharges associated with valley fills are not authorized, and has thus identified Option 2 as its preferred option.

We are also soliciting public comment on additional options that should be considered for the reissuance of NWP 21. In addition to the three options described above, we are proposing to change the title of this NWP by replacing the word "Operations" with "Activities" because the Corps only authorizes discharges of dredged or fill material into waters of the United States, not the operation of the surface coal mine. The operation of a surface coal mine is regulated under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In addition, Clean Water Act Section 402 National Pollutant Discharge Elimination System permits may authorize discharges of pollutants other than dredge or fill material to waters of the United States, including those from outfall pipes of sediment ponds.

On June 11, 2009, the Department of the Army, the Department of the Interior (DOI), and the U.S. Environmental Protection Agency (EPA) signed a Memorandum of Understanding (MOU) that addresses actions to strengthen the environmental review of Appalachian surface coal mining. The MOU includes an Interagency Action Plan (IAP) that was developed to reduce the adverse environmental effects of surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, while assuring that future mining remains consistent with the Clean Water Act and SMCRA. One of the short-term action items the Army agreed to do under the IAP was to issue a **Federal Register** notice proposing to modify NWP 21 to preclude its use to authorize discharges of fill material into streams for surface coal mining activities in the Appalachian region of these six states and to seek public comment on this proposal. On July 15, 2009, the Corps published a **Federal Register** notice (74 FR 34311) to solicit public comment on this proposal. As an interim measure to provide environmental protection while the Corps evaluated the comments received on the proposal to modify NWP 21, on June 18, 2010, the Corps suspended NWP 21 in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia (see 75 FR 34711).

Since the current NWP 21 will expire on March 18, 2012, it would be more prudent to address the modification of NWP 21 in today's proposal, instead of making a separate decision on the July 15, 2009, proposal to modify NWP 21 in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. We also believe that substantial changes to NWP 21 are necessary to ensure, at a national level, that it authorizes only those discharges of dredged or fill material into waters of the United States associated with surface coal mining activities that have minimal individual and cumulative adverse effects on the aquatic environment and other public interest review factors. Nationwide permit 21 has been used to authorize surface coal mining activities in at least 20 other states, such as states in the west and southeast, and we believe it is necessary to impose an acreage limit on NWP 21 to ensure that the surface coal mining activities in those other states result in minimal adverse effects.

Division engineers have the authority to regionally condition this NWP to impose an acreage or linear foot limit or other special conditions, if there are concerns for the aquatic environment in a particular district, watershed, or other geographic region. The proposed modification of NWP 21 will provide an NWP for minor activities associated with surface coal mining activities. Pre-construction notification is still required before any activities commence in waters of the United States and the applicant must receive authorization in writing from the Corps before beginning the activity.

NWP 27. *Aquatic Habitat Restoration, Establishment, and Enhancement Activities.* We are proposing to add "the removal of small dams" to the list of examples of activities that can be authorized by this NWP. In the reversion provision we are proposing to remove the phrase "that has not been abandoned" that modifies the term "prior converted cropland" because areas of prior converted cropland being used for wetland or stream enhancement or restoration that are eligible for this provision are subject to a binding agreement with the Natural Resources Conservation Service and have not been abandoned, so the qualifier is unnecessary.

We are proposing to modify "Notification" provisions (1) and (2) by having stream restoration, rehabilitation, and enhancement activities conducted in accordance with binding agreements with the appropriate agencies or as voluntary actions documented by NRCS or a USDA Technical Service Provider be subject to the reporting provision instead. Additionally, we propose to modify notification provision (1) by adding the United States Forest Service to the list of Federal agencies that can develop stream or wetland enhancement, restoration, or establishment agreements. The "Notification" provision requires the permittee or appropriate Federal or state agency to notify the district engineer in accordance with general condition 30 (formerly general condition 27).

NWP 29. *Residential Developments.* We are proposing to modify the waiver provision for activities resulting in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed to clarify that the district engineer will only issue the waiver after making a project-specific written determination that the activity will result in minimal adverse effects.

NWP 31. *Maintenance of Existing Flood Control Facilities.* We are proposing to add language that states, in those cases where a Corps permit is required, the NWP authorizes the removal of vegetation from levees

associated with a flood control project. The removal of vegetation from a flood control levee may require a permit under Section 10 of the Rivers and Harbors Act of 1899 if it is considered to be work in navigable waters of the United States. Vegetation removal may also require Clean Water Act Section 404 authorization if it involves discharges of dredged or fill material into waters of the United States.

NWP 39. *Commercial and Institutional Developments.* We are proposing to modify the waiver provision for activities resulting in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed to clarify that the district engineer will only issue the waiver after making a project-specific written determination that the activity will result in minimal adverse effects.

NWP 40. *Agricultural Activities.* We are proposing to modify the text of this NWP to impose a limit on stream bed impacts that mirrors the limits in other NWPs, such as NWPs 29 and 39. Currently, the 300 linear foot limit for this NWP only applies to the relocation of ditches constructed in streams. The modification would apply to all stream impacts authorized by the NWP. Specifically, we propose to replace the last sentence of the fourth paragraph with: "The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects."

NWP 42. *Recreational Facilities.* We are proposing to modify the waiver provision for activities resulting in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed to clarify that the district engineer will only issue the waiver after making a project-specific written determination that the activity will result in minimal adverse effects.

NWP 43. *Stormwater Management Facilities.* We are proposing to add "low impact development stormwater features" to the examples of types of stormwater management facilities that are authorized by this NWP. Low impact development for stormwater management comprises a set of site design approaches and small-scale features that promote the use of natural systems for infiltration, evapotranspiration, and reuse of rainwater. The types of low impact development stormwater practices that would be eligible for this NWP could include bioretention features, swales and vegetated landscaping. We are also proposing to modify the waiver provision for activities resulting in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed to clarify that the district engineer will only issue the waiver after making a project-specific written determination that the activity will result in minimal adverse effects.

NWP 44. *Mining Activities.* To be consistent with other NWPs and ensure that the NWP authorizes only those activities with minimal adverse effects, we are proposing to add a 300 linear foot limit for the loss of stream bed, which for intermittent and ephemeral stream beds can be waived by the district engineer if he or she makes a written determination concluding that the discharge will result in minimal adverse effects.

NWP 45. *Repair of Uplands Damaged by Discrete Events.* We are proposing to modify this NWP by adding a sentence to clarify that it does not authorize beach restoration. Beach nourishment or restoration activities may be authorized by individual permits or regional general permits.

NWP 48. *Existing Commercial Shellfish Aquaculture Activities.* The modifications proposed for this NWP include authorizing the expansion of existing commercial shellfish aquaculture operations. We are proposing to remove the reporting requirement because we do not believe it is necessary to track all activities authorized by this NWP. Many existing commercial shellfish aquaculture activities have been in continuous operation for many years, and are subject to a multitude of Federal, state, and local regulations. We believe that our focus should be on reviewing those proposed commercial shellfish aquaculture activities that have the potential to result in more than minimal adverse effects on the aquatic environment. Such activities are those commercial shellfish aquaculture operations that exceed 100 acres in size, involve dredge harvesting, tilling, or harrowing in areas inhabited by submerged aquatic vegetation, or involve changes in operation, such as expansions, reconfigurations, relocations, changes in species cultivated, or changes in culture methods. Since many commercial shellfish aquaculture activities, especially those on the west coast, may affect listed or threatened species under the Endangered Species Act, the notification requirement in general condition 19, Endangered Species, will also result in these activities being reported to the Corps.

We are also proposing to modify the notification thresholds by adding a pre-construction notification requirement for all activities that propose to expand the commercial production of shellfish beyond the existing project area.

We are proposing to change the notification provision to require the prospective permittee to submit the information that was required for reporting under the current version of NWP 48. That information will be used with the information submitted in accordance with paragraph (b) of general condition 30, Pre-Construction Notification, to determine if the proposed activity will result in minimal individual and cumulative adverse effects on the aquatic environment and other public interest review factors.

We are seeking comments on modifying NWP 48 to authorize new commercial shellfish aquaculture activities or alternatively, issuing a new NWP to authorize those activities that require DA authorization under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. We are also soliciting comments and suggestions regarding appropriate limits for new commercial shellfish aquaculture activities, as well as other terms and conditions that would be appropriate for authorizing new shellfish aquaculture activities with a nationwide permit to ensure minimal individual and cumulative adverse effects.

NWP 49. *Coal Remining Activities.* We are proposing to modify this NWP to clarify how the 40% of newly mined area is determined. As an example, if there are 600 acres of land previously unreclaimed as a result of previous mining activities and the Corps agrees with the SMCRA agency's determination that there are 200 acres needed to adequately reclaim the 600 acres, then there are a total of 800 acres included in the previously mined area and area needed to be reclaimed. Given this, the amount of newly mined area eligible for the NWP is 320 acres (40% of 800 acres). While the Corps acknowledges the SMCRA agency's expertise, the Corps will review the SMCRA agency's determination regarding the amount of previously unmined area necessary for the reclamation of the previously mined area and independently determine this area. This is necessary in order for the Corps to make informed decisions regarding whether the proposal satisfies the minimal adverse effects requirement of the NWP. We have also modified the notification provision by requiring the

prospective permittee to submit documentation with the PCN "describing how the overall mining plan will result in a net increase in aquatic resource functions."

NWP 50. *Underground Coal Mining Activities.* To provide acreage and linear foot limits consistent with other NWPs and provide greater assurance that the NWP will only authorize activities with minimal adverse environmental effects, we are proposing to modify this NWP to impose a ½-acre limit on losses of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects.

Discussion of Proposed New Nationwide Permits

A. *Land Based Renewable Energy Generation Facilities.* We are proposing to issue a new NWP to authorize the discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction, expansion, or modification of land-based renewable energy production facilities. Examples include infrastructure to generate solar (concentrating solar power and photovoltaic), biomass, wind or geothermal energy and their collection systems. Attendant features may include, but are not limited to roads, parking lots, utility lines, and storm water management facilities.

We are proposing a ½-acre limit for this NWP, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives this 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. We believe the ½-acre limit, as well as the 300 linear foot limit for stream impacts, will authorize only those activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. Division engineers can regionally condition this NWP to lower the acreage or linear foot limit or otherwise limit its use. We are proposing to require pre-construction notification for all activities. We are seeking comments on this proposed NWP, including its terms and conditions, such as the proposed ½-acre and 300 linear foot limits.

B. *Water-Based Renewable Energy Generation Pilot Projects.* We are proposing to issue a new NWP to authorize structures and work in navigable waters of the United States and the discharges of dredged or fill material into waters of the United States, for the construction, expansion, and modification of hydrokinetic or wind energy generation pilot projects and their attendant features. This NWP also authorizes structures and infrastructure to collect energy as well as utility lines to transfer the energy to land-based distribution facilities.

We are proposing a ½-acre limit for this NWP, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives this 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. We believe the ½-acre limit, as well as the 300 linear foot limit for stream impacts, will authorize only those activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. Division engineers can regionally condition this NWP to lower the acreage or linear foot limit or add additional restrictions on its use.

The proposed NWP would also prohibit activities in danger zones and restricted areas established by the Corps, as well as anchorage areas and shipping safety fairways or traffic separation schemes designated by the U.S. Coast Guard. This NWP would not authorize structures in open water dredged material disposal areas designated by the Corps or EPA. In addition, the NWP would not authorize activities in coral reefs.

We are proposing to require pre-construction notification for all activities. This proposed NWP would authorize activities that require section 10 and/or 404 authorization.

We are proposing to add a note to this NWP (Note 1) to make it clear that if the proposed activity involves modification of an existing Corps project, a separate authorization from the Chief of Engineers is required under 33 U.S.C. 408 to alter that Corps project.

The proposed NWP also includes Note 2, which instructs district engineers to provide a copy of the NWP verification to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting structures and utility lines in navigable waters of the United States to protect navigation.

We are seeking comments on this proposed new NWP, including its terms and conditions, such as the proposed ½-acre and 300 linear foot limits.

Discussion of Proposed Modifications to Nationwide Permit General Conditions

In the 2007 NWPs we reordered the general conditions (GCs) to make them easier to read and to group together the GCs that are associated with environmental concerns and public interest review factors, followed by general conditions relating to administrative requirements. In this proposal, we are moving former general condition 28, Single and Complete Project, and renumbering it as general condition 16. The following GCs would be renumbered, but we are not proposing to make any changes to the text of those GCs: Proper Maintenance; Tribal Rights; Water Quality; Coastal Zone Management; Regional and Case-by-Case Conditions; Use of Multiple Nationwide Permits; and Transfer of Nationwide Permit Verifications.

GC 2. *Aquatic Life Movements.* To provide added protection to the aquatic environment we are proposing to modify this GC by adding a statement requiring bottomless culverts to be used when practicable. We are proposing to provide an example of a circumstance where it would not be practicable to use a bottomless culvert, such as sites where sub-grade instability would make it unsafe to use a bottomless culvert. The proposed modification of this general condition would also require the bottom of the culvert to be below the grade of the stream bed unless the stream bed consists of bedrock or boulders.

GC 14. *Discovery of Previously Unknown Remains and Artifacts.* We are proposing to add a new general condition to address circumstances when previously unknown historic, cultural or archeological remains or artifacts are discovered during construction of the authorized activity. The Corps uses a similar general condition (number 3) on all standard permits as prescribed by 33 CFR part 325, Appendix A. This GC would also require a permittee, to the maximum extent practicable, to stop activities that would adversely affect those remains and artifacts until the required coordination has been completed.

GC 17. *Wild and Scenic Rivers.* We are proposing to modify this general condition to clarify that project proponents should obtain information from the specific Federal land management agency responsible for the designated Wild and Scenic River or study river.

GC 19. *Endangered Species.* We are proposing to modify paragraph (a) of this general condition to clarify that direct and indirect effects are to be taken into account when assessing

whether an activity may jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, or destroy or adversely modify the critical habitat of such species.

We are also proposing to modify paragraph (e) to include definitions of "take" and "harm". We are proposing to add a new paragraph (f) to provide prospective permittees with guidance on where they can obtain information on the locations of listed species and their critical habitat. That guidance was previously provided in paragraph (e).

GC 20. *Historic Properties.* (Formerly general condition 18.) We are proposing to modify paragraph (c) by stating district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The Regulatory Program's procedures for the protection of historic properties are provided in Appendix C of 33 CFR part 325. On April 25, 2005, we issued revised interim guidance for implementing Appendix C in light of the Advisory Council on Historic Preservation's revised regulations at 36 CFR part 800. We believe this general condition should have a more general reference to the Corps Regulatory Program's current procedures for section 106 compliance, since we are using Appendix C, the revised interim guidance, and other guidance for section 106 compliance.

GC 21. *Designated Critical Resource Waters.* (Formerly general condition 19.) We are proposing to modify this general condition to clarify the types of areas subject to the GC by altering how NOAA's marine sanctuaries are described, which categories of critical resource waters are always subject to this general condition, and which categories of critical resource waters can be designated by a district engineer after a public notice and comment process. This general condition will also specify that state-designated outstanding national resource waters are intended for inclusion in the general condition. We also propose making state natural heritage sites subject to the district engineer's designation process in order to provide the public an opportunity to comment on a proposed designation of new critical resource waters and any effects the designation of those waters will have on local NWP program implementation. States may request the district engineer to consider designating state natural heritage sites as critical resource waters subject to this general condition. For those NWPs listed in paragraph (b), district engineers determine on a case-by-case basis whether special permit conditions are needed to protect critical resource waters, or whether discretionary authority to require an individual permit should be exercised.

We are proposing to add proposed new NWPs A and B to the list of NWPs in paragraph (a) that cannot be used to authorize activities in designated critical resource waters.

GC 22. *Mitigation.* (Formerly general condition 20.) We are proposing to modify paragraph (g) so it better reflects our compensatory mitigation regulations at 33 CFR part 332. Specifically, we would replace the word "arrangements" with "programs" in describing in-lieu fee programs. We are also proposing to replace the phrase "activity-specific" with "permittee-responsible" when referring to compensatory mitigation implemented by the permittee. Another proposed change is the addition of a provision stating that for activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. This will encourage the use of in-kind mitigation to compensate for the losses of marine or estuarine resources. Lastly, we propose to revise the last sentence of paragraph (g) to state that the party responsible for providing the required permittee-responsible mitigation, including any required long-term management, shall be identified in the special conditions of the NWP verification.

GC 23. *Safety of Impoundment Structures.* We are proposing to add this general condition to clarify that district engineers can request that a non-Federal applicant demonstrate the proposed impoundment structure is designed for safety in accordance with 33 CFR 320.4(k).

GC 29. *Compliance Certification.* (Formerly general condition 26.) We are proposing to make minor changes to clarify that the Corps provides the permittee with the necessary document to complete and return to the Corps as the signed certification.

GC 30. *Pre-Construction Notification.* (Formerly general condition 27.) We are proposing to rearrange paragraph (d)(2) to make it clearer that all NWP activities resulting in the loss of greater than ½-acre of waters of the United States require agency coordination. We are also proposing to require agency coordination for an NWP 21, 29, 39, 40, 42, 43, 50, A, or B PCN when the proposed activity will result in the loss of greater than 1,000 linear feet of intermittent and ephemeral stream bed. This is a subset of cases where a waiver by the district engineer is required for a loss of greater than 300 linear feet of intermittent and ephemeral stream bed. The Corps believes that the addition of this coordination requirement for a subset of waivers, along with the added requirement of written minimal adverse effects determinations for all waivers and further specification of factors that need to be taken into account in minimal effects determinations (see below), appropriately balances the need to ensure that any waiver does not result in more than minimal adverse effects, individually and cumulatively, with the regulated public's expectation that the Corps will issue NWP verifications in a timely manner. The Corps requests comment on this approach for strengthening the waiver provisions of the affected NWPs.

In paragraph (e), we are proposing to clarify that the district engineer must make a written determination of minimal adverse effects before waiving the 300 linear foot limit on impacts to intermittent or ephemeral streams or an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, A or B. More generally, we are also proposing to clarify that the district engineer is to consider direct and indirect effects caused by the NWP activity when determining if an NWP activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. Specifically, we are proposing to add this language after the first sentence of paragraph (e)(1): "If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, A or B, the district engineer will only grant the waiver upon a written determination that the discharge will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity."

We are also proposing to add language to paragraph (e)(1) that describes factors to consider when making minimal effects determinations for the purposes of the NWPs. Functional assessments may be used to make minimal effects determinations, if appropriate methods are available and practicable to use for a particular NWP activity. District engineers may also add special conditions to NWP authorizations to address site-specific environmental concerns and impose requirements to

ensure that authorized activities result in minimal adverse effects.

Discussion of Proposed Modifications to Existing Nationwide Permit Definitions

We are proposing changes to some of the NWP definitions. If a definition is not discussed below, we are not proposing any substantive changes to that definition.

Compensatory Mitigation. We are proposing to modify this definition to be consistent with the definition of this term found in 33 CFR 332.2.

Re-establishment. We are proposing to modify this definition by adding "and functions" to the end of the last sentence in order to be consistent with the definition of this term found in 33 CFR 332.2.

Single and Complete Project. We are proposing to modify this definition by splitting it into two definitions pertaining to linear (Single and Complete Linear Projects) and non-linear (Single and Complete Non-Linear Projects) projects in order to clarify how the "independent utility" test applies to non-linear projects.

Discussion of New Proposed Nationwide Permit Definitions

We are proposing to add three new definitions to assist those using the nationwide permits. As discussed above, we are proposing separate definitions of the terms "single and complete linear project" and "single and complete non-linear project." We are also proposing to add a definition of the term "high tide line." The definition of "high tide line" is adapted from the definition at 33 CFR 328.3(d).

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, (63 FR 31855) regarding plain language, this preamble is written using plain language. The use of "we" in this notice refers to the Corps. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

The proposed NWPs will increase the number of permittees who are required to submit a PCN. The content of the PCN is not changed from the current NWPs, except for NWP 48, where information from the current reporting requirement is being moved into the PCN, but the paperwork burden will increase because of the increased number of PCNs submitted. For the two new proposed NWPs A and B, the paperwork burden would be an estimated 3,300 hours per year for 300 PCNs. This is based on an average burden to complete and submit a PCN of 11 hours. However, activities that would be authorized by the two proposed new NWPs are currently authorized by alternative forms of Department of the Army (DA) permits (*i.e.,* standard permits, letters of permission, or regional general permits), with many needing a standard permit application which requires an average burden of 11 hours to complete and submit. Since the paperwork burden is similar for standard permit applications and PCNs, we anticipate no additional paperwork burden if the two proposed NWPs are issued. Similarly, we anticipate no additional burden from the increased information required in a PCN for NWP 48 because the same information is currently being requested through the reporting requirement, which we are proposing to eliminate. Prospective permittees who are required to submit a PCN for a particular NWP, or who are requesting verification that a particular activity qualifies for NWP authorization, may use the current standard Department of the Army permit application form.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. For the Corps Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information collection requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003, which expires on August 31, 2012).

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by OMB and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that the proposed rule is a "significant regulatory action" and the draft rule was submitted to OMB for review.

Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the Corps to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The proposed issuance and modification of NWPs does not have federalism implications. We do not believe that the proposed NWPs will have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed NWPs will not impose any additional substantive obligations on State or local governments. Therefore, Executive Order 13132 does not apply to this proposal.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

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

For purposes of assessing the impacts of the proposed issuance and modification of NWPs on small entities, a small entity is defined as: (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The statues under which the Corps issues, reissues, or modifies nationwide permits are Section 404(e) of the Clean Water Act (33 U.S.C. 1344(e)) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). Under section 404, Department of the Army (DA) permits are required for discharges of dredged or fill material into waters of the United States. Under section 10, DA permits are required for any structures or other work that affect the course, location, or condition of navigable waters of the United States. Small entities proposing to discharge dredged or fill material into waters of the United States and/or conduct work in navigable waters of the United States must obtain DA permits to conduct those activities, unless a particular activity is exempt from those permit requirements. Individual permits and general permits can be issued by the Corps to satisfy the permit requirements of these two statutes. Nationwide permits are a form of general permit issued by the Chief of Engineers.

Nationwide permits automatically expire and become null and void if they are not modified or reissued within five years of their effective date (*see* 33 CFR 330.6(b)). Furthermore, Section 404(e) of the Clean Water Act states that general permits, including NWPs, can be issued for no more than five years. If the current NWPs are not reissued, they will expire on March 18, 2012, and small entities and other project proponents would be required to obtain alternative forms of DA permits (i.e., standard permits, letters of permission, or regional general permits) for activities involving discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States. Regional general permits that authorize similar activities as the NWPs may be available in some geographic areas, but small entities conducting regulated activities outside those geographic areas would have to obtain individual permits for activities that require DA permits.

When compared to the compliance costs for individual permits, most of the terms and conditions of the proposed NWPs are expected to result in decreases in the costs of complying with the permit requirements of sections 10 and 404. The anticipated decrease in compliance cost results from the lower cost of obtaining NWP authorization instead of standard permits. Unlike standard permits, NWPs authorize activities without the requirement for public notice and comment on each proposed activity.

Another requirement of Section 404(e) of the Clean Water Act is that general permits, including nationwide permits, authorize only those activities that result in minimal adverse environmental effects, individually and cumulatively. The terms and conditions of the NWPs, such as acreage or linear foot limits, are imposed to ensure that the NWPs authorize only those activities that result in minimal adverse effects on the aquatic environment and other public interest review factors.

After considering the economic impacts of the proposed nationwide permits on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. Small entities may obtain required DA authorizations through the NWPs, in cases where there are applicable NWPs authorizing those activities and the proposed work will result in minimal adverse effects on the aquatic environment and other public interest review factors. The terms and conditions of the revised NWPs will not impose substantially higher costs on small entities than those of the existing NWPs. If an NWP is not available to authorize a particular activity, then another form of DA authorization, such as an individual permit or regional general permit, must be secured. However, as noted above, we expect a slight to moderate increase in the number of activities than can be authorized through NWPs, because we are adding two new NWPs, and we are removing some limitations in existing NWPs and replacing them with PCN requirements that will allow the district engineer to judge whether any adverse effects of the proposed project are more than minimal, and authorize the project under an NWP if they are not.

We are interested in the potential impacts of the proposed NWPs on small entities and welcome comments on issues related to such impacts.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows an agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Before an agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed NWPs do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The proposed NWPs are generally consistent with current agency practice, do not impose new substantive requirements and therefore do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this proposal is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, we have determined that the proposed NWPs contain no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed issuance and modification of NWPs is not subject to the requirements of Section 203 of UMRA.

Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria,

we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The proposed NWPs are not subject to this Executive Order because they are not economically significant as defined in Executive Order 12866. In addition, the proposed NWPs do not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The phrase "policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The proposal to issue NWPs does not have tribal implications. It is generally consistent with current agency practice and will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, Executive Order 13175 does not apply to this proposal. However, in the spirit of Executive Order 13175, we specifically request comment from Tribal officials on the proposed rule. Each Corps district will be conducting government-to-government consultation with Tribes, to identify regional conditions or other local NWP modifications that may be necessary to protect aquatic resources of interest to Tribes, as part of the Corps responsibility to protect trust resources.

Environmental Documentation

A draft decision document, which includes a draft environmental assessment and Finding of No Significant Impact (FONSI) has been prepared for each proposed NWP. These draft decision documents are available at: *http://www.regulations.gov* (docket ID number COE–2010–0035). They are also available by contacting Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street, NW., Washington, DC 20314–1000.

Congressional Review Act

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

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

The proposed NWPs are not expected to negatively impact any community, and therefore are not expected to cause any disproportionately high and adverse impacts to minority or low-income communities.

Executive Order 13211

The proposed NWPs are not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Authority

We are proposing to issue new NWPs, modify existing NWPs, and reissue NWPs without change under the authority of Section 404(e) of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*).

Dated: February 9, 2011.

MG William T. Grisoli,

Deputy Commanding General for Civil and Emergency Operations.

Nationwide Permits, Conditions, Further Information, and Definitions

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44. Mining Activities

B. Nationwide Permits

1. *Aids to Navigation.* The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (*see* 33 CFR, chapter I, subchapter C, part 66). (Section 10)

2. *Structures in Artificial Canals.* Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (*see* 33 CFR 322.5(g)). (Section 10)

3. *Maintenance.* (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications must be immediately adjacent to the project. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of and within existing structures (*e.g.,* bridges, culverted road crossings, water intake structures, etc.) and/or the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the district engineer under separate authorization. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 30). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any

previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and clam and oyster digging, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Sections 10 and 404)

5. *Scientific Measurement Devices.* Devices, whose purpose is to measure and record scientific data, such as staff gages, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. Upon completion of the study, the measuring device and any other structures or fills associated with that device (e.g., anchors, buoys, lines, etc.) must be removed and, to the maximum extent practicable, the site must be restored to pre-construction elevations. (Sections 10 and 404)

6. *Survey Activities.* Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, and historic resources surveys. For the purposes of this NWP, the term "exploratory trenching" means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 1/10-acre in waters of the U.S. discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404)

7. *Outfall Structures and Associated Intake Structures.* Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or that are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (*See* general condition 30.) (Sections 10 and 404)

8. *Oil and Gas Structures on the Outer Continental Shelf.* Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Bureau of Ocean Energy Management, Regulation, and Enforcement. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). The district engineer will review such proposals to ensure compliance with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this NWP will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, nor will such structures be permitted in EPA or Corps designated dredged material disposal areas.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (*See* general condition 30.) (Section 10)

9. *Structures in Fleeting and Anchorage Areas.* Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the U.S. Coast Guard has established such areas for that purpose. (Section 10)

10. *Mooring Buoys.* Non-commercial, single-boat, mooring buoys. (Section 10)

11. *Temporary Recreational Structures.* Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

12. *Utility Line Activities.* Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than ½-acre of waters of the United States.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or

utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than ½-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than ½-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (*e.g.,* at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) The activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 30.) (Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (*i.e.,* section 10 waters), copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

13. *Bank Stabilization.* Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;

(c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless the permittee utilizes bioengineering techniques to accomplish the bank stabilization;

(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;

(e) No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any water of the United States;

(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,

(g) The activity is not a stream channelization activity.

This NWP also authorizes temporary structures, fills, and work necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) Involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length. (See general condition 30.) (Sections 10 and 404)

14. *Linear Transportation Projects.* Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways,

trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than ½-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than ⅓-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (*See* general condition 30.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (*see* 33 CFR 323.4).

15. *U.S. Coast Guard Approved Bridges.* Discharges of dredged or fill material incidental to the construction of a bridge across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided the construction of the bridge structure has been authorized by the U.S. Coast Guard under Section 9 of the Rivers and Harbors Act of 1899 and other applicable laws. Causeways and approach fills are not included in this NWP and will require a separate section 404 permit. (Sections 10 and 404)

16. *Return Water From Upland Contained Disposal Areas.* Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Section 404)

17. *Hydropower Projects.* Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5,000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 30.) (Section 404)

18. *Minor Discharges.* Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

(a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

(b) The discharge will not cause the loss of more than 1/10-acre of waters of the United States; and

(c) The discharge is not placed for the purpose of a stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 30.) (Sections 10 and 404)

19. *Minor Dredging.* Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (*i.e.,* section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (*see* 33 CFR 322.5(g)). (Sections 10 and 404)

20. *Response Operations for Oil and Hazardous Substances.* Activities conducted in response to a discharge or release of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) including containment, cleanup, and mitigation efforts, provided that the activities are done under either: (1) The Spill Control and Countermeasure Plan required by 40 CFR 112.3; (2) the direction or oversight of the Federal on-scene coordinator designated by 40 CFR part 300; or (3) any approved existing state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. This NWP also authorizes the use of temporary structures and fills in waters of the U.S. for spill response training exercises. (Sections 10 and 404)

21. *Surface Coal Mining Activities.* We are seeking comment on the following three options:

Option 1—Do not reissue NWP 21.

Option 2 (Preferred Option)—21. *Surface Coal Mining Activities.* Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations provided the activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or as part of an integrated permit processing procedure by the Department of Interior (DOI), Office of Surface Mining Reclamation and Enforcement (OSMRE).

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including

the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into tidal waters or non-tidal wetlands adjacent to tidal waters.

This NWP does not authorize discharges of dredged or fill material into waters of the United States associated with the construction of valley fills.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 30.) (Sections 10 and 404)

Option 3—21. *Surface Coal Mining Activities.* Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations provided the activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or as part of an integrated permit processing procedure by the Department of Interior (DOI), Office of Surface Mining Reclamation and Enforcement (OSMRE).

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into tidal waters or non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 30.) (Sections 10 and 404)

22. *Removal of Vessels.* Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 30.) If condition 1 above is triggered, the permittee cannot commence the activity until informed by the district engineer that compliance with the "Historic Properties" general condition is completed. (Sections 10 and 404)

Note 1: If a removed vessel is disposed of in waters of the United States, a permit from the U.S. EPA may be required (*see* 40 CFR 229.3). If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

Note 2: Compliance with general condition 19, Endangered Species, and general condition 20, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the likelihood that submerged vessels may be historic properties.

23. *Approved Categorical Exclusions.* Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 *et seq.*), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions, which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW–CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 30). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW–CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are the: Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05–07, which is available at: *http://www.usace.army.mil/CECW/Pages/rglsindx.aspx.* Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same Web site.

24. *Indian Tribe or State Administered Section 404 Programs.* Any activity permitted by a state or Indian Tribe administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)–(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. (Section 10)

Note 1: As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own section 404 permit programs.

Note 2: Those activities that do not involve an Indian Tribe or State section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Public Law 94–587, 90 Stat. 2917 (33 U.S.C. 591) (*see* 33 CFR 322.4(b)).

25. *Structural Discharges.* Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways, or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a section 10 permit if located in navigable waters of the United States. (Section 404)

26. [Reserved]

27. *Aquatic Habitat Restoration, Establishment, and Enhancement Activities.* Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas and the restoration and enhancement of non-tidal streams and other non-tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to:

The removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; the removal of small dams; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (*e.g.,* stream to wetland or vice versa) or uplands. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity result in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting: For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSMRE or the applicable state agency. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification. The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 30), except for the following activities:

(1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies;

(2) Voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or

(3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSMRE or the applicable state agency.

However, the permittee must submit a copy of the appropriate documentation. (Sections 10 and 404)

Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

28. *Modifications of Existing Marinas.* Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. (Section 10)

29. *Residential Developments.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant

features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed ½-acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 30.) (Sections 10 and 404)

30. *Moist Soil Management for Wildlife.* Discharges of dredged or fill material into non-tidal waters of the United States and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to, plowing or discing to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, including streams to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies. (Section 404)

Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3. Some such activities may qualify for an exemption under Section 404(f) of the Clean Water Act (*see* 33 CFR 323.4).

31. *Maintenance of Existing Flood Control Facilities.* Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) Were previously authorized by the Corps by individual permit, general permit, or 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the "maintenance baseline," as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. To the extent that a Corps permit is required, this NWP authorizes the removal of vegetation from levees associated with the flood control project. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged material must be placed in an upland site or an authorized disposal site in waters of the United States, and proper siltation controls must be used.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (*e.g.,* depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

Mitigation: The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline. In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or best management practices as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are

those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 30). The pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The pre-construction notification must include a description of the maintenance baseline and the dredged material disposal site. (Sections 10 and 404)

32. *Completed Enforcement Actions.* Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:

(a) The unauthorized activity affected no more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Sections 10 and 404)

33. *Temporary Construction, Access, and Dewatering.* Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to upland areas, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 30). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Sections 10 and 404)

34. *Cranberry Production Activities.* Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded. (See general condition 30.) (Section 404)

35. *Maintenance Dredging of Existing Basins.* Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less, provided the dredged material is deposited at an upland site and proper siltation controls are used. (Section 10)

36. *Boat Ramps.* Activities required for the construction of boat ramps, provided the activity meets all of the following criteria:

(a) The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the district engineer waives the 50 cubic yard limit by making a written determination concluding that the discharge will result in minimal adverse effects;

(b) The boat ramp does not exceed 20 feet in width, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;

(c) The base material is crushed stone, gravel or other suitable material;

(d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and,

(e) No material is placed in special aquatic sites, including wetlands.

The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging may be authorized by another NWP, a regional general permit, or an individual permit.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 30.) (Sections 10 and 404)

37. *Emergency Watershed Protection and Rehabilitation.* Work done by or funded by:

(a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);

(b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);

(c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);

(d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR Subchapter R), where the activity does not involve coal extraction; or

(e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).

In general, the prospective permittee should wait until the district engineer issues an NWP verification or 45 calendar days have passed before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification and any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

Notification: Except in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 30). (Sections 10 and 404)

38. *Cleanup of Hazardous and Toxic Waste.* Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 30.) (Sections 10 and 404)

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

39. *Commercial and Institutional Developments.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses, new ski areas, or oil and gas wells is not authorized by this NWP.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 30.) (Sections 10 and 404)

40. *Agricultural Activities.* Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.

This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.

This NWP also authorizes discharges of dredged or fill material into non-tidal waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 30.) (Section 404)

Note: Some discharges for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act Section

404(f)(1)(C) exemption because of the recapture provision at Section 404(f)(2).

41. *Reshaping Existing Drainage Ditches.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the ditch as originally constructed (*i.e.,* the capacity of the ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity, if more than 500 linear feet of drainage ditch will be reshaped. (*See* general condition 30.) (Section 404)

42. *Recreational Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 30.) (Section 404)

43. *Stormwater Management Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction and maintenance of stormwater management facilities, including the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; low impact development stormwater features; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For the construction of new stormwater management facilities, or the expansion of existing stormwater management facilities, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 30.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility. (Section 404)

44. *Mining Activities.* Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities. The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (*See* general condition 30.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

45. *Repair of Uplands Damaged by Discrete Events.* This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

This NWP does not authorize beach restoration.

Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 30) within 12-months of the date of the damage. The pre-construction notification should include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Sections 10 and 404)

Note: The uplands themselves that are lost as a result of a storm, flood, or other discrete event can be replaced without a section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (*See also* 33 CFR 328.5.) This NWP authorizes discharges of dredged or fill

material into waters of the United States associated with the restoration of uplands.

46. *Discharges in Ditches.* Discharges of dredged or fill material into non-tidal ditches that are: (1) Constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) are determined to be waters of the United States. The discharge must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize discharges of dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. This NWP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the United States prior to construction of the ditch.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 30.) (Section 404)

47. [Reserved]

48. *Existing Commercial Shellfish Aquaculture Activities.* Discharges of dredged or fill material in waters of the United States or structures or work in navigable waters of the United States necessary for the continued operation and/or expansion of existing commercial shellfish aquaculture operations, including the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures. This NWP also authorizes discharges of dredged or fill material necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked. This NWP does not authorize:

(a) The cultivation of species not previously cultivated in the waterbody or of an aquatic nuisance species as defined in the Non-Indigenous Aquatic Nuisance Prevention and Control Act of 1990; or,

(b) Attendant features such as docks, piers, boat ramps, stockpiles, staging areas, or the deposition of shell material back into waters of the United States as waste.

This NWP does not authorize new commercial shellfish aquaculture operations, except for expansions of existing operations.

Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) The project area is greater than 100 acres; or (2) there is any reconfiguration of the aquaculture activity, such as relocating existing operations into portions of the project area not previously used for aquaculture activities; or (3) there is a change in culture methods (*e.g.,* from bottom culture to off-bottom culture); or (4) dredge harvesting, tilling, or harrowing is conducted in areas inhabited by submerged aquatic vegetation; or, (5) there is an expansion to the project area. (See general condition 30.)

In addition to the information required by paragraph (b) of general condition 30, the pre-construction notification must also include the following information: (a) The size of the project area, plus any proposed expansion (in acres); (b) the corner latitude and longitude coordinates of the project area and the expansion area; (c) a brief description of the culture and harvest method(s), including plans for rotating production within a project area; (d) the name(s) of the cultivated species; (e) whether canopy predator nets are being used; and, (f) a description of the composition of the substrate material and vegetation. (Sections 10 and 404)

Note 1: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

Note 2: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines "aquatic nuisance species" as "a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters."

49. *Coal Remining Activities.* Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal. The activities must already be authorized, or they must currently be in process as part of an integrated permit processing procedure, by the Department of Interior (DOI) Office of Surface Mining Reclamation and Enforcement (OSMRE), or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts.

As part of the project, the permittee may conduct new coal mining activities in conjunction with the remining activities when he or she clearly demonstrates to the district engineer that the overall mining plan will result in a net increase in aquatic resource functions. The Corps will consider the SMCRA agency's decision regarding the amount of currently undisturbed adjacent lands needed to facilitate the remining and reclamation of the previously mined area. The total area disturbed by new mining must not exceed 40 percent of the total acreage covered by both the remined area and the additional area necessary to carry out the reclamation of the previously mined area.

Notification: The permittee must submit a pre-construction notification and a document describing how the overall mining plan will result in a net increase in aquatic resource functions to the district engineer and receive written authorization prior to commencing the activity. (See general condition 30.) (Sections 10 and 404)

50. *Underground Coal Mining Activities.* Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining Reclamation and Enforcement (OSMRE), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 30.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

Note: Coal preparation and processing activities outside of the mine site may be authorized by NWP 21.

A. *Land-Based Renewable Energy Generation Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction, expansion, or modification of land-based renewable energy production facilities. Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or geothermal energy, as well as utility lines to transfer the energy to land-based distribution facilities. Attendant features may include, but are not limited to roads, parking lots, utility lines, and storm water management facilities.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This permit does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 30.) (Sections 10 and 404)

B. *Water-Based Renewable Energy Generation Pilot Projects.* Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction, expansion, or modification of water-based wind or hydrokinetic renewable energy generation pilot projects and their attendant features. Attendant features may include, but are not limited to, land-based distribution facilities, roads, parking lots, stormwater management facilities, utility lines, including utility lines to transfer the energy to land-based distribution facilities.

The discharge must not cause the loss of greater than ½-acre of waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects.

For each single and complete project, no more than 10 generation units (e.g., wind turbines) are authorized.

This NWP does not authorize activities in coral reefs.

Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR part 322.5(l)(2).

Structures may not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR part 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 30.) (Sections 10 and 404)

Note 1: An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate approval from the Chief of Engineers under 33 U.S.C. 408.

Note 2: Copies of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the project and associated utility line(s) to protect navigation.

C. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. *Navigation.* (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. Bottomless culverts must be used where practicable. For an activity where it is not practicable to use a bottomless culvert, such as circumstances where sub-grade instability would make it unsafe to use a bottomless culvert, the bottom of the culvert must be below the grade of the stream bed unless the stream bed consists of bedrock or boulders.

3. *Spawning Areas.* Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. *Migratory Bird Breeding Areas.* Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. *Shellfish Beds.* No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48.

6. *Suitable Material.* No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (*see* Section 307 of the Clean Water Act).

7. *Water Supply Intakes.* No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting

its flow must be minimized to the maximum extent practicable.

9. *Management of Water Flows.* To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. *Fills Within 100-Year Floodplains.* The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. *Equipment.* Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. *Removal of Temporary Fills.* Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. *Discovery of Previously Unknown Remains and Artifacts.* If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found, and to the maximum extent practicable, stop activities that would adversely affect those remains and artifacts until the required coordination has been completed. We will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

15. *Proper Maintenance.* Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

16. *Single and Complete Project.* The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

17. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

18. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

19. *Endangered Species.* (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-Federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (*e.g.,* an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at *http://www.fws.gov/* or *http://www.fws.gov/ipac* and *http://www.noaa.gov/fisheries.html* respectively.

20. *Historic Properties.* (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the

National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-Federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (*see* 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h–2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. *Designated Critical Resource Waters.* Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, National Estuarine Research Reserves, and state designated outstanding national resource waters. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, A, and B for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 30, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

22. *Mitigation.* The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if

compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (*e.g.,* conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation, performance, and long-term management of the compensatory mitigation project.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

23. *Safety of Impoundment Structures.* To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

24. *Water Quality.* Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

25. *Coastal Zone Management.* In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (*see* 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

26. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the Division Engineer (*see* 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

27. *Use of Multiple Nationwide Permits.* The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

28. *Transfer of Nationwide Permit Verifications.* If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____

(Transferee)

_____

(Date)

29. *Compliance Certification.* Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;

(b) A statement that any required compensatory mitigation was completed in accordance with the permit conditions; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

30. *Pre-Construction Notification.*

(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The

prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 19 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (*see* 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (*see* 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision.);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that result in the loss of greater than 1/2-acre of waters of the United States, NWP 21, 29, 39, 40, 42, 43, 44, 50, A, and B activities that will result in the loss of greater than 1,000 linear feet of intermittent and ephemeral stream bed, and all NWP 48 activities requiring pre-construction notification, the district engineer will immediately provide (*e.g.,* via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the

Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(e) *District Engineer's Decision:* (1) In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, A or B, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (*e.g.,* partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (*e.g.,* watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

(2) If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

(3) If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

D. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

E. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Discharge: The term "discharge" means any discharge of dredged or fill material and any activity that causes or results in such a discharge.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: For linear projects, the term "single and complete project" is defined as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers and includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility").

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (*i.e.,* water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent—meaning bordering, contiguous, or neighboring—to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

[FR Doc. 2011–3371 Filed 2–15–11; 8:45 am]

BILLING CODE 3720–58–P

FEDERAL REGISTER

Vol. 76 Wednesday,
No. 32 February 16, 2011

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Draft NOAA National Aquaculture Policy and Draft DOC National Aquaculture Policy; Notices

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA214

Draft NOAA National Aquaculture Policy

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

ACTION: Notice of availability of draft aquaculture policy; request for comments.

SUMMARY: NOAA is seeking public comment on a draft national aquaculture policy that supports sustainable marine aquaculture in the United States. The intent of the policy is to guide NOAA's actions and decisions on aquaculture and to provide a national approach for supporting sustainable aquaculture. The NOAA Aquaculture Program will host national call-in briefings on the policy for the public.

DATES: Public comments must be received by midnight, EST, April 11, 2011.

ADDRESSES: The NOAA draft national aquaculture policy is available online at: *http://www.nmfs.noaa.gov/aquaculture/policy2/index.htm*. Paper copies of this document are also available on request from NOAA Aquaculture Program, Attn: Susan Bunsick, 1315 East-West Highway, SSMC#3–13th Floor, Rm. 13152, Silver Spring, MD 20910.

You may submit comments, identified by "NOAA Aquaculture Policy," by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments online by accessing *http://www.nmfs.noaa.gov/aquaculture/policy2/index.htm* and following the instructions for submitting comments.
- *Fax:* (301) 713–9108, Attn: Susan Bunsick, NOAA Aquaculture Program.
- *Mail:* NOAA Aquaculture Program, Attn: Susan Bunsick, 1315 East-West Highway, SSMC#3–13th Floor, Rm. 13152, Silver Spring, MD 20910. Mark the outside of the envelope, "Comments on NOAA Aquaculture Policy."

Instructions: All comments received will be posted online. Do not submit confidential business information or otherwise sensitive or protected information. All comments and attachments will be reviewed based on the commenting guidelines listed below. If you have a question about the status of your comment, send an email to *NOAA.Aquaculture@noaa.gov.* Do not submit comments to this e-mail address. Use the comment form provided on line.

Commenting Guidelines. In accordance with NOAA's Online Privacy Policy, we treat your name, city, state, and any comments you provide as public information. You may enter a comment as 'anonymous' if you do not want this information available to the public. Also, supporting documents, links, etc., are welcome as long as they are pertinent to the policy. However, the appearance of external links, advertisements, political opinions, or other comments do not constitute endorsement by NOAA or that of the U.S. Government.

While this is a public process, NOAA will not post content that meets the following criteria:

Contains vulgar language, personal attacks of any kind, threats, obscenity, or offensive terms that target specific ethnic or racial groups;

Promotes services or products (non-commercial links that are relevant to the comment are acceptable);

Are far off-topic (*i.e.,* not pertinent to the draft policy); or

Make unsupported accusations.

You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Susan Bunsick, NOAA Aquaculture Program, (301) 713–9079; fax: (301) 713–9108.

SUPPLEMENTARY INFORMATION:

Background

The draft NOAA Aquaculture Policy provides guidance for NOAA's actions regarding the development of all forms of marine aquaculture, from shellfish farming and habitat restoration to the culture of marine fish and algae on land and offshore. The policy provides a national approach for supporting sustainable commercial production, expanding restoration aquaculture, and researching and developing new technologies, and is part of NOAA's national approach to sustainable seafood, which encompasses both aquaculture and capture fisheries. The draft policy features:

- A reaffirmation of the importance of aquaculture.
- An overarching policy statement to guide agency actions.
- A set of updated agency priorities to implement the policy through initiatives in four areas:
  - Science and research
  - Regulation
  - Innovation, partnerships and outreach and
  - International cooperation
- Detailed principles for aquaculture in federal waters.

The draft policy responds to public input submitted to NOAA at the listening sessions held in 2010, by emphasizing the protection of wild species, acknowledging the importance of sound science, and taking other suggestions into account. It also affirms that sustainable U.S. marine aquaculture is vital to the U.S. seafood supply, the economic vitality of coastal communities, and the maintenance of working waterfronts.

Informational Briefings for the Public

The NOAA Aquaculture Program will host a series of informational briefings for stakeholders interested in learning more about the draft policy. The briefings are as follows:

Feb. 16, 2011

10–11 a.m. (Eastern)

Call-in—800–369–1823, Passcode: Aquaculture.

4–5 p.m. (Eastern)

Call-in #—800–369–1823, Passcode: Aquaculture.

Feb. 23, 2011

10–11:a.m. (Eastern)

Call-in #—800–369–1823, Passcode: Aquaculture.

4—5 p.m. (Eastern)

Call-in #—800–369–1823, Passcode: Aquaculture.

Dated: February 10, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–3424 Filed 2–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Draft DOC National Aquaculture Policy

AGENCY: Commerce.

ACTION: Notice of availability of draft aquaculture policy; request for comments.

SUMMARY: The Department of Commerce (DOC) is seeking public comment on a draft national aquaculture policy that supports sustainable aquaculture in the United States. The intent of the policy is to guide DOC's actions and decisions on aquaculture and to provide a national approach for supporting sustainable aquaculture. The National Oceanic and Atmospheric Administration (NOAA) within the

Department of Commerce is also seeking public comments on a NOAA draft aquaculture policy via a separate **Federal Register** Notice, and will host national call-in briefings for the public on the complementary NOAA and DOC draft aquaculture policies.

DATES: Public comments must be received by midnight, EST, April 11, 2011.

ADDRESSES: The DOC draft national aquaculture policy is available online at: *http://www.nmfs.noaa.gov/aquaculture/policy2/index.htm.* Paper copies of this document are also available on request from NOAA Aquaculture Program, Attn: Susan Bunsick, 1315 East-West Highway, SSMC#3–13th Floor, Rm. 13152, Silver Spring, MD 20910.

You may submit comments, identified by "DOC Aquaculture Policy," by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments online by accessing *http://www.nmfs.noaa.gov/aquaculture/policy2/index.htm* and following the instructions for submitting comments.
- *Fax:* (301) 713–9108, Attn: Susan Bunsick, NOAA Aquaculture Program.
- *Mail:* NOAA Aquaculture Program, Attn: Susan Bunsick, 1315 East-West Highway, SSMC#3–13th Floor, Rm. 13152, Silver Spring, MD 20910. Mark the outside of the envelope, "Comments on DOC Aquaculture Policy."

Instructions: All comments received will be posted online. Do not submit confidential business information or otherwise sensitive or protected information. All comments and attachments will be reviewed based on the commenting guidelines listed below. If you have a question about the status of your comment, send an e-mail to *NOAA.Aquaculture@noaa.gov.* Do not submit comments to this e-mail address. Use the comment form provided on line.

Commenting Guidelines. In accordance with DOC's and NOAA's Online Privacy Policy, we treat your name, city, state, and any comments you provide as public information. You may enter a comment as 'anonymous' if you do not want this information available to the public. Also, supporting documents, links, etc., are welcome as long as they are pertinent to the policy. However, the appearance of external links, advertisements, political opinions, or other comments do not constitute endorsement by Commerce, NOAA, or that of the U.S. Government.

While this is a public process, DOC and NOAA will not post content that meets the following criteria:

Contains vulgar language, personal attacks of any kind, threats, obscenity, or offensive terms that target specific ethnic or racial groups;

Promotes services or products (non-commercial links that are relevant to the comment are acceptable);

Are far off-topic (*i.e.,* not pertinent to the draft policy); or

Make unsupported accusations.

You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Susan Bunsick, NOAA Aquaculture Program, (301) 713–9079; fax: (301) 713–9108.

SUPPLEMENTARY INFORMATION:

Background

The draft Commerce Department aquaculture policy supports the development of sustainable aquaculture within the context of the key Commerce goals of encouraging economic growth and employment opportunities in the United States.

Informational Briefings for the Public

The NOAA Aquaculture Program will host a series of informational briefings for stakeholders interested in learning more the complementary draft DOC and NOAA aquaculture policies. The briefings are as follows:

Feb. 16, 2011

10–11 a.m. (Eastern)

Call-in—800–369–1823, Passcode: Aquaculture.

4–5 p.m. (Eastern)

Call-in #—800–369–1823, Passcode: Aquaculture.

Feb. 23, 2011

10–11 a.m. (Eastern)

Call-in #—800–369–1823, Passcode: Aquaculture.

4–5 p.m. (Eastern)

Call-in #—800–369–1823, Passcode: Aquaculture.

Rebecca Blank,

Acting Deputy Secretary, Department of Commerce.

[FR Doc. 2011–3427 Filed 2–15–11; 8:45 am]

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Federal Register

Vol. 76, No. 32

Wednesday, February 16, 2011

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

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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 revison date of each title.

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H.R. 366/P.L. 112-1
To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Jan. 31, 2011)

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