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

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

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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–26920; Directorate Identifier 2006–NM–244–AD; Amendment 39–14897; AD 2007–02–10]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 900 and Falcon 900EX Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as smoke or fire, which could be fanned by oxygen leakage from the third crew member oxygen mask box. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective February 9, 2007.

The Director of the Federal Register approved the incorporation by reference of Dassault Service Bulletins F900–366 and F900EX–277, both dated July 19, 2006, listed in this AD as of February 9, 2007.

We must receive comments on this AD by March 26, 2007.

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive 2006–0330–E, dated October 25, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that a drawing review and further associated inspections on aircraft have highlighted a potential chafing risk between the third crew member oxygen mask box, optionally installed in the cockpit ceiling, and feeder cables routed in the area. This situation, if not corrected, could generate smoke or fire, which could be fanned by oxygen leakage from the box. The MCAI requires a modification (application of epoxy resin to the oxygen box nuts and rivets), after a detailed inspection of the feeder cables and wiring for damage and correct location and corrective actions (repairing the feeder cable, re-routing certain wiring, or installing a protective plate), if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dassault has issued Service Bulletins F900–366 and F900EX–277, both dated July 19, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the manufacturer has identified a potential chafing risk between the third crew member oxygen mask box, which may optionally be installed in the cockpit ceiling, and the feeder cables routed in the area. This could lead to smoke and fire, which could be fanned by oxygen leakage from the oxygen mask box. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–26920; Directorate Identifier 2006–NM–244–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD would not have federalism implications under Executive Order 13132. This 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 regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–02–10 Dassault Aviation: Amendment 39–14897. Docket No. FAA–2007–26920; Directorate Identifier 2006–NM–244–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 9, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Mystere–Falcon 900 airplanes, certificated in any category, ranging from serial number (s/n) 1 through s/n 202 inclusive, without modification M5213 or M5236, and equipped with a third crew member passenger-type oxygen mask on the cockpit ceiling; and Dassault Model Falcon 900EX airplanes, certificated in any category, ranging from s/n 1 through s/n 156 inclusive, without modification M5213 or M5236, and equipped with a third crew member passenger-type oxygen mask on the cockpit ceiling.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that a drawing review and further associated inspections on aircraft have highlighted a potential chafing risk between the third crew member oxygen mask box, optionally installed in the cockpit ceiling, and feeder cables routed in the area. This situation, if not corrected, could generate smoke or fire, which could be fanned by oxygen leakage from the box. The MCAI requires a modification (application of epoxy resin to the oxygen box nuts and rivets), after a detailed inspection of the feeder cables and wiring for damage and correct location and corrective actions (repairing the feeder cable, re-routing certain wiring, or installing a protective plate), if necessary.

Actions and Compliance

(e) Unless already done, within one month or 30 flight cycles, whichever occurs first, after the effective date of this AD: Do a modification (application of epoxy resin to the oxygen box nuts and rivets), after doing a detailed inspection of the feeder cables and wiring for damage and correct location and all applicable corrective actions (repairing the feeder cable, re-routing certain wiring, or installing a protective plate), as instructed in Dassault Service Bulletin F900–366 or F900EX–277, both dated July 19, 2006, as applicable. Before further flight, do all applicable corrective actions.

Note 1: The aforementioned service bulletins cover Dassault Aviation modification M5213.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, Attn: Tom Rodriguez, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149, has the

authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

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

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

Related Information

(g) Refer to MCAI European Aviation Safety Agency (EASA) Emergency Airworthiness Directive 2006–0330-E, dated October 25, 2006; and Dassault Service Bulletins F900–366 and F900EX–277, both dated July 19, 2006; for related information.

Material Incorporated by Reference

(h) You must use Dassault Service Bulletin F900–366, dated July 19, 2006; or Dassault Service Bulletin F900EX–277, dated July 19, 2006; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 12, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 07–258 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26050; Directorate Identifier 2006–NM–078–AD; Amendment 39–14890; AD 2007–02–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Bombardier Model DHC–8–400 series airplanes. That AD currently requires revising the airplane flight manual (AFM) to advise the flightcrew of appropriate procedures to follow in the event that a main landing gear (MLG) fails to extend following a gear-down selection. That AD also currently requires repetitive replacement of the left and right MLG uplock assemblies with new assemblies; and an inspection of the left and right MLG uplock rollers for the presence of an inner low friction liner, and corrective actions if necessary. This new AD revises the requirement for replacing the left and right MLG uplock assemblies by allowing replacement with alternative parts. For a certain MLG uplock assembly, this new AD requires repetitive inspections of the uplock hatch lower jaw for the presence of a wear groove and replacement with an improved part if necessary. For a certain MLG uplock assembly, this new AD requires repetitive inspections of the uplock roller to ensure that it rotates freely and replacement with a new part if necessary. This new AD allows optional replacement of the left and right MLG uplock assemblies with improved parts, which ends the requirements of the AFM revision and repetitive replacement and inspections. This new AD removes airplanes from the applicability. This AD results from development of a terminating action. We are issuing this AD to ensure that the flightcrew has the procedures necessary to address failure of an MLG to extend following a gear-down selection; and to detect and correct such failure, which could result in a gear-up landing and possible injury to passengers and crew.

DATES: This AD becomes effective March 1, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 1, 2007.

On April 23, 2002 (67 FR 19101, April 18, 2002), the Director of the Federal Register approved the incorporation by reference of Bombardier DHC–8 Alert Service Bulletin A84–32–15, dated February 4, 2002.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7320; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2002–08–05, amendment 39–12713 (67 FR 19101, April 18, 2002). The existing AD applies to certain Bombardier Model DHC–8–400 series airplanes. That NPRM was published in the **Federal Register** on October 13, 2006 (71 FR 60450). That NPRM proposed to continue to require revising the airplane flight manual (AFM) to advise the flightcrew of appropriate procedures to follow in the event that a main landing gear (MLG) fails to extend following a gear-down selection. That NPRM also proposed to continue to require repetitive replacement of the left and right MLG uplock assemblies with new assemblies; and an inspection of the left and right MLG uplock rollers for the presence of an inner low friction liner, and corrective actions if necessary. That NPRM also proposed to revise the requirement for replacing the

left and right MLG uplock assemblies by allowing replacement with alternative parts. For a certain MLG uplock assembly, that NPRM also proposed to require repetitive inspections of the uplock hatch lower jaw for the presence of a wear groove and replacement with an improved part if necessary. For a certain MLG uplock assembly, that NPRM also proposed to require repetitive inspections of the uplock roller to ensure that it rotates freely and replacement with a new part if necessary. That NPRM also proposed to allow optional replacement of the left and right MLG uplock assemblies with improved parts, which would end the requirements of the AFM revision and repetitive replacements and inspections. That NPRM also proposed to remove airplanes from the applicability.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the one comment that has been received on the NPRM.

Request To Provide Additional Terminating Action

Horizon Air requests that we revise paragraph (k) of the NPRM to provide an additional terminating action by allowing replacement with a new or overhauled uplock assembly having part number (P/N) 46500–9. Paragraph (k) of the NPRM proposed only to allow replacement of uplock assemblies having P/N 46500–3 or –5 with new or overhauled uplock assemblies having P/N 46500–7. As justification, the commenter states that P/N 46500–9 is the latest version of the uplock assembly. The commenter also points out that Bombardier DHC–8 Service Bulletin 84–32–46, dated July 4, 2006, provides instructions for modifying an uplock assembly having P/N 46500–7 and reidentifying it as P/N 46500–9.

We agree to revise paragraph (k) of this AD to provide P/N 46500–9 as a terminating action. We have also revised paragraphs (g) and (i)(1) of this AD to allow replacement with P/N 46500–9. Bombardier DHC–8 Service Bulletin 84–32–46 modifies an uplock assembly having P/N 46500–7 by improving retention of the proximity sensor target. Therefore, we have determined that a new or overhauled uplock assembly having P/N 46500–9 is also adequate for addressing the unsafe condition of this AD.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs, at an average labor rate of $80 per work hour, for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM revision (required by AD 2002–08–05)	1	None	$80	21	$1,680.
Replacement of uplock assemblies (required by AD 2002–08–05).	4	[1] $0	$320, per replacement cycle.	21	$6,720 per replacement cycle.
Inspection of uplock rollers (required by AD 2002–08–05).	1	None	$80	21	$1,680.
Inspections of uplock assemblies and uplock rollers (new action).	5	None	$400	21	$8,400.
Terminating action (new action)	4	[1] $0	$320	21	$6,720.

[1] The parts manufacturer states that it will supply required parts to operators at no cost.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12713 (67 FR 19101, April 18, 2002) and by adding the following new airworthiness directive (AD):

2007–02–03 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–14890. Docket No. FAA–2006–26050; Directorate Identifier 2006–NM–078–AD.

Effective Date

(a) This AD becomes effective March 1, 2007.

Affected ADs

(b) This AD supersedes AD 2002–08–05.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400 series airplanes, certificated in any category; serial numbers 4001 and 4003 through 4087 inclusive; equipped with main landing gear (MLG) uplock assembly part numbers (P/Ns) 46500–3 and –5.

Unsafe Condition

(d) This AD results from development of a terminating action. We are issuing this AD to ensure that the flightcrew has the procedures necessary to address failure of an MLG to extend following a gear-down selection; and to detect and correct such failure, which could result in a gear-up landing and possible injury to passengers and crew.

Compliance

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

Requirements of AD 2002–08–05

Revision of FAA-Approved Airplane Flight Manual (AFM)

(f) Within 3 days after April 23, 2002 (the effective date of AD 2002–08–05), amend all copies of the FAA-approved Bombardier Series 400 AFM, PSM 1–84–1A (for Models 400, 401, and 402), by adding the following procedure to the Limitations section of the AFM and opposite page 4–21–1 of the AFM; and advise all flightcrew members of these changes. (The revision may be accomplished by inserting a copy of this AD into the Limitations section of the AFM and affected paragraphs of the AFM.):

''If ONE main landing gear fails to extend after performing landing gear extension per normal procedures given in paragraph 4.3.7 and alternate extension procedures per paragraph 4.21.1 of the AFM:

1. Visually confirm that the affected gear has not extended and that the associated doors have opened.

2. Ensure No. 2 hydraulic system pressure and quantity are normal and the following landing gear advisory lights are illuminated: selector lever amber, gear green locked down (nose and non-affected main gear), red gear unlocked (affected main gear) and all amber doors open.

3. NOSE L/G RELEASE handle—Return to the stowed position.

4. LANDING GEAR ALTERNATE EXTENSION door—Close fully.

5. MAIN L/G RELEASE handle—Return to the stowed position.

6. LANDING GEAR ALTERNATE RELEASE door—Close fully.

7. LANDING GEAR lever—DN.

8. L/G DOWN SELECT INHIBIT SW—Normal and guarded. Check amber doors open advisory lights out (nose and non-affected main gear) and LDG GEAR INOP caution light out.

9. LANDING GEAR lever—UP Check all gear, door and LANDING GEAR lever advisory lights out.

10. With minimum delay, LANDING GEAR lever—DN. Check 3 green gear locked down advisory lights illuminate, all amber doors open, red gear unlocked and selector lever amber advisory lights out.

11. Items 9 and 10 may be repeated in an effort to achieve 3 gear down and locked.

CAUTION

Should the LDG GEAR INOP caution light illuminate, or loss of no. 2 hydraulic system pressure or quantity, or any abnormality in landing gear system indication other than those associated with the affected main landing gear be experienced, see paragraph 4.21.1 ALTERNATE LANDING GEAR EXTENSION.''

Accomplishing the actions specified in paragraph (k) of this AD terminates the requirements of this paragraph, and after the replacement has been done, the AFM limitation may be removed from the AFM.

Replacement of Uplock Assembly With New Replacement Parts and Requirements

(g) At the later of the times specified in paragraph (g)(1) or (g)(2) of this AD: Replace the left and right MLG uplock assemblies, P/N 46500–3, with new or overhauled uplock assemblies having P/N 46500–3, –5, –7, or –9 according to a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent). Using Tasks 32–31–21–000–801 and 32–31–21–400–801 of Chapter 32–31–21 of Bombardier Q400 Dash 8 Aircraft Maintenance Manual (AMM), PSM 1–84–2, is one approved method. For any uplock assembly having P/N 46500–3, repeat the replacement thereafter at intervals not to exceed 2,500 flight hours or 3,000 flight cycles, whichever occurs earlier. For any uplock assembly having P/N 46500–5, do the actions required by paragraph (i) of this AD. Replacing an uplock assembly with a new or overhauled uplock assembly having P/N 46500–7 or –9 terminates the requirements of this paragraph, for that uplock assembly only.

(1) Before the accumulation of 2,500 total flight hours or 3,000 total flight cycles on an uplock assembly, whichever occurs earlier; or

(2) Within 14 days after April 23, 2002.

One-Time Inspection of MLG Uplock Rollers With Added Inspection Definition

(h) Within 30 days after April 23, 2002, do a general visual inspection of the left and right MLG uplock rollers for the presence of an inner low friction (black-colored) liner, in accordance with the Accomplishment Instructions of Bombardier DHC–8 Alert Service Bulletin A84–32–15, dated February 4, 2002; and, before further flight, do the actions required by paragraph (h)(1) or (h)(2) of this AD.

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

Corrective Actions

(1) If a low friction liner is present, reinstall the existing uplock roller; or install a new uplock roller, P/N 46575–1, having a low friction liner; on the shock strut of the MLG in accordance with the service bulletin.

(2) If a low friction liner is not present, replace the existing uplock roller with a new uplock roller, P/N 46575–1, having a low friction liner, on the shock strut of the MLG in accordance with the service bulletin. After the effective date of this AD, if the low friction liner is not present, replace the uplock roller in accordance with paragraph (i)(2) of this AD.

Note 2: Bombardier DHC–8 Alert Service Bulletin A84–32–15, dated February 4, 2002, references Chapter 32–11–01 of Bombardier Q400 Dash 8 AMM, PSM 1–84–2, as an additional source of service information for procedures to replace an MLG uplock roller.

New Requirements of This AD

Repetitive Inspections and Replacement if Necessary of a Certain Uplock Assembly

(i) For any MLG uplock assembly having P/N 46500–5, do the inspections specified in paragraphs (i)(1) and (i)(2) of this AD at the later of the following compliance times: Before the accumulation of 2,500 total flight hours or 3,000 total flight cycles on the uplock assembly, whichever occurs first; or within 90 days after the effective date of this AD. Repeat the inspections thereafter at intervals not to exceed 400 flight hours or 480 flight cycles, whichever occurs first. Replacement of an uplock assembly in accordance with paragraph (i)(1) of this AD terminates the repetitive inspections of paragraphs (i)(1) and (i)(2) of this AD, for that uplock assembly only.

(1) Do a detailed dimensional inspection of the surface of the uplock hatch lower jaw for the presence of a wear groove and measure the wear groove depth to an accuracy of 0.001 inch, according to a method approved by either the Manager, New York ACO; or TCCA (or its delegated agent). Using Task 32–31–21–220–801 of the Bombardier Q400 Dash 8 AMM, PSM 1–84–2, is one approved

method. If the groove depth exceeds 0.007 inch, before further flight, replace the uplock assembly with a new or serviceable uplock assembly, P/N 46500–7 or –9, according to a method approved by either the Manager, New York ACO; or TCCA (or its delegated agent). Using Tasks 32–31–21–000–801 and 32–31–21–400–801 of Chapter 32–31–21 of the Bombardier Q400 Dash 8 AMM, PSM 1–84–2, is one approved method.

(2) Do a general visual inspection of the uplock roller, P/N 46575–1, of the MLG uplock assembly to ensure that it rotates freely. If the uplock roller does not rotate freely, before further flight, replace the uplock roller with a new uplock roller, P/N 46575–1, in accordance with Bombardier Temporary Revision (TR) 32–191 and Bombardier TR 32–192, both dated May 29, 2006, both to Bombardier Q400 Dash 8 AMM.

(j) When the information in Bombardier TR 32–191 and Bombardier TR 32–192, both dated May 29, 2006, is included in the AMM, the AMM is approved as an acceptable method of compliance for the replacement specified in paragraph (i)(2) of this AD.

Optional Terminating Action for AFM Revision, Repetitive Replacements, and Repetitive Inspections

(k) Replacing the left and right MLG uplock assemblies having P/N 46500–3 or –5 with new or overhauled uplock assemblies having P/N 46500–7 or –9 according to a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent); terminates the requirements of paragraphs (f), (g), (h), and (i) of this AD, as applicable. Using Tasks 32–31–21–000–801 and 32–31–21–400–801 of Chapter 32–31–21 of Bombardier Q400 Dash 8 Aircraft Maintenance Manual (AMM), PSM 1–84–2, is one approved method. After the replacements have been done, the AFM limitation required by paragraph (f) of this AD may be removed from the AFM.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously in accordance with AD 2002–08–05, are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(m) Canadian airworthiness directive CF–2002–13R2, dated May 19, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

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

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Service information	Revision level	Date
Bombardier DHC–8 Alert Service Bulletin A84–32–15	Original	February 4, 2002.
Bombardier Temporary Revision 32–191 to the Bombardier Q400 Dash 8 Aircraft Maintenance Manual.	Original	May 29, 2006.
Bombardier Temporary Revision 32–192 to the Bombardier Q400 Dash 8 Aircraft Maintenance Manual.	Original	May 29, 2006.

(1) The Director of the Federal Register approved the incorporation by reference of Bombardier Temporary Revision 32–191, dated May 29, 2006, to the Bombardier Q400 Dash 8 Aircraft Maintenance Manual; and Bombardier Temporary Revision 32–192, dated May 29, 2006, to the Bombardier Q400 Dash 8 Aircraft Maintenance Manual; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On April 23, 2002 (67 FR 19101, April 18, 2002), the Director of the Federal Register approved the incorporation by reference of Bombardier DHC–8 Alert Service Bulletin A84–32–15, dated February 4, 2002.

(3) Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 5, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–909 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25889; Directorate Identifier 2006–NM–168–AD; Amendment 39–14902; AD 2007–02–15]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain EMBRAER Model ERJ 170 airplanes. This AD requires replacement of certain electrical bonding clamps and attaching hardware with new or serviceable parts, as applicable, and other specified action. This AD results from failure of an electrical bonding clamp, used to attach the electrical bonding straps to the fuel system lines. We are issuing this AD to prevent loss of bonding protection in the interior of the fuel tanks or adjacent areas that, in combination with lightning strike, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective March 1, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 1, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington

98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain EMBRAER Model ERJ 170 airplanes. That NPRM was published in the **Federal Register** on September 26, 2006 (71 FR 56062). That NPRM proposed to require replacement of certain electrical bonding clamps and attaching hardware with new or serviceable parts, as applicable, and other specified action.

Comments

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

Request To Extend Compliance Time

EMBRAER requests that we extend the compliance from 5,000 flight hours to 6,600 flight hours. EMBRAER states that 6,000 flight hours corresponds with a heavy maintenance visit, and that an additional 600 flight hours is needed for the logistics associated with such maintenance intervention. As justification, EMBRAER states that (1) There is a large number of bonding clamps to replace, (2) low levels of lightning currents were measured on the tank tubes during airplane certification testing, and (3) very conservative results were obtained during laboratory lightning tests of the tank tubes.

We agree. Extending the compliance time to 6,600 flight hours will not adversely affect safety and will allow the replacement to be performed during regularly scheduled maintenance at a base where special equipment and trained maintenance personnel will be available if necessary. Further, we have coordinated with the Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, and ANAC agrees with extending the compliance time as proposed by the commenter. Therefore, we have revised paragraph (f) of this AD to specify a compliance time of 6,600 flight hours.

Request To Publish Service Information

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

We understand MARPA's comment concerning incorporation by reference. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the document necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

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

Conclusion

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

Costs of Compliance

This AD affects about 68 airplanes of U.S. registry. The required actions take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Required parts cost about $41 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $8,228, or $121 per airplane.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–02–15 Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39–14902. Docket No. FAA–2006–25889; Directorate Identifier 2006–NM–168–AD.

Effective Date

(a) This AD becomes effective March 1, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes, certificated in any category; serial numbers 17000007, 17000033, 17000034, 17000036 through 17000046 inclusive, and 17000050 through 17000067 inclusive.

Unsafe Condition

(d) This AD results from failure of an electrical bonding clamp, used to attach the electrical bonding straps to the fuel system lines. We are issuing this AD to prevent loss of bonding protection in the interior of the fuel tanks or adjacent areas that, in combination with lightning strike, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Replacement

(f) Within 6,600 flight hours after the effective date of this AD: Replace all electrical bonding clamps having part number AN735D4 or AN735D6 with new clamps and replace the attaching hardware with new or serviceable attaching hardware, and do the other specified action, by accomplishing all of the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 170–28–0009, Revision 01, dated February 23, 2006. The other specified action must be done before further flight.

Credit for Previous Service Bulletin

(g) Actions done before the effective date of this AD in accordance with EMBRAER Service Bulletin 170–28–0009, dated December 30, 2005, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) Brazilian airworthiness directive 2006–06–03, effective July 7, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use EMBRAER Service Bulletin 170–28–0009, Revision 01, dated February 23, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 11, 2007.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–899 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25328; Directorate Identifier 2006–NM–130–AD; Amendment 39–14880; AD 2007–01–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400 series airplanes. This AD requires inspecting for fouling and chafing damage of the outboard brake control cable of the main landing gear, replacing the control cable if necessary, reworking the control cable cover, and, if applicable, manufacturing/installing an offset plate on the control cable cover. This AD results from a review of brake control cable operation conducted by the manufacturer. We are issuing this AD to prevent abrasion and wear of the outboard brake control cable, which could lead to cable separation and reduced control of airplane braking.

DATES: This AD becomes effective March 1, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 1, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7320; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model DHC–8–400 series airplanes. That NPRM was published in the **Federal Register** on July 12, 2006 (71 FR 39244). That NPRM proposed to require inspecting for fouling and chafing damage of the outboard brake control cable of the main landing gear, replacing the control cable if necessary, reworking the control cable cover, and, if applicable, manufacturing/installing an offset plate on the control cable cover.

Comments

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

Request To Publish Service Information

One commenter, the Modification and Replacement Parts Association (MARPA), requests that we revise our procedures for incorporation by reference (IBR) of service information in ADs. MARPA states that, as an AD is a public regulatory instrument, it can not rely upon private writings. MARPA asserts that such IBR documents lose any original proprietary, protected status and become public documents, and, therefore, that they must be published in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA addresses the stated purpose of the Office of the Federal Register (OFR) IBR method, brevity, which is intended to relieve the OFR from needlessly publishing documents already supplied to affected individuals (owners and operators of affected aircraft). MARPA asserts that ''affected individuals'' are no longer merely owners and operators, but, since most aircraft maintenance is now performed by specialty shops, that a new class of affected individuals has emerged. This new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under section 21.303 of the Federal Aviation Regulations (14 CFR 21.303). Further, MARPA contends that the concept of brevity is now nearly archaic as most documents are kept in electronic files. MARPA therefore requests that IBR documents be posted in the DMS docket for the applicable AD.

We understand MARPA's comment concerning incorporation by reference. The OFR requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the document necessary for the accomplishment of the actions required by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

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

Request for Policy Changes and Clarification

MARPA also expresses concern about several perceived inconsistencies in current FAA policy regarding parts manufacturing approval (PMA) parts. MARPA states that type certificate holders in their service documents universally ignore the possible existence of PMA parts and that this is especially true with foreign manufacturers where the concept may not exist or be implemented in the country of origin. Frequently the service document upon which an airworthiness directive is based will require the removal of a certain part-numbered part and the installation of a different part-numbered part as a corrective action. This practice ''runs afoul of 14 CFR 21.303,'' which permits development, certification, and installation of alternatively certified parts.

MARPA's statement that ''this practice runs afoul of 14 CFR 21.303,'' under which the FAA issues PMAs, appears to reflect a misunderstanding of the relationship between ADs and the certification procedural regulations of part 21 of the Federal Aviation Regulations (14 CFR part 21). Those regulations, including 14 CFR 21.203, are intended to ensure that aeronautical products comply with applicable airworthiness standards. But ADs are issued when, notwithstanding those procedures, we become aware of unsafe conditions in these products or parts. Therefore, an AD takes precedence over design approvals when we identify an unsafe condition, and mandating installation of a certain part number in an AD is not at variance with section 21.303.

The AD provides a means of compliance for operators to ensure that the identified unsafe condition is addressed appropriately. For an unsafe condition attributable to a part, the AD normally identifies the replacement parts necessary to obtain that compliance. As stated in section 39.7 of the Federal Aviation Regulations (14 CFR 39.7), ''Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section.'' Unless an operator obtains approval for an alternative method of compliance (AMOC), replacing a part with one not specified by the AD would make the operator subject to an enforcement action and result in a civil penalty. No change to the AD is necessary in this regard.

Request for Agreement on Parts Replacement

MARPA further states the belief that the practice of requiring an AMOC to install a PMA part should be stopped, asserting that this is somehow tantamount to illogically stating that all PMA parts are inherently defective and require an additional layer of approval when the original equipment manufacturer (OEM) part is determined to be defective. MARPA states that the FAA personnel who diligently labored to certify the PMA part might disagree with such a narrow, OEM-slanted view. MARPA states that if the PMA part is defective, it must be deemed so in the AD and not simply implied by a catch-all AMOC requirement. MARPA states that this is the reason for its repeated

requests that language be adopted to trap such defective parts and suggests the Transport Airplane Directorate adopt the language used by the Small Airplane Directorate to accomplish this. MARPA asserts that the Small Airplane Directorate has developed a blanket statement that resolves this issue as set forth in AD 2006–20–10, amendment 39–14779 (71 FR 57405, September 29, 2006):

(f) 14 CFR 21.303 allows for replacement parts through parts manufacturer approval (PMA). The phrase ''or FAA-approved equivalent P/N'' in this AD is intended to allow for the installation of parts approved through identicality to the design of the replacement parts. Equivalent replacement parts to correct the unsafe condition under PMA (other than identicality) may also be installed provided they meet current airworthiness standards, which include those actions cited in this AD.

MARPA concludes that, typically, the Engine Directorate and the Rotorcraft Directorate avoid the issue by specifying ''airworthy parts'' be installed, leaving the determination of exactly which parts to the installer. MARPA contends that, because this proposed action differs markedly in treatment of this issue from that of the other directorates, the mandates contained in Section 1, paragraph (b)(10), of Executive Order 12866, which requires that all agencies act uniformly on a given issue, are not being met. MARPA therefore requests that steps be taken to bring the universe of PMA parts under the appropriate scope of this proposed action, both with respect to possible defective PMA parts and the use of possible present or future approved parts.

The FAA recognizes the need for standardization on this issue and currently is in the process of reviewing it at the national level. However, the Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the AD in this regard.

Request To Comply With Draft FAA Order 8040.2

MARPA asserts that the NPRM, as written, does not comply with proposed FAA Order 8040.2 which states, ''Parts Manufacturer Approval (PMA). MCAI (mandatory continuing airworthiness information) that require replacement or installation of certain parts could have replacement parts approved under 14 CFR 21.303 based on a finding of identicality. We have determined that any parts approved under this regulation and installed should be subject to the actions of our AD and included in the applicability of our AD.''

The NPRM did not address PMA parts, as provided in draft FAA Order 8040.2, because the Order was only a draft that was out for comment at the time. After issuance of the NPRM, the Order was revised and issued as FAA Order 8040.5 with an effective date of September 29, 2006. FAA Order 8040.5 does not address PMA parts in ADs. We acknowledge the need to ensure that unsafe PMA parts are identified and addressed in MCAI-related ADs. We are currently examining all aspects of this issue, including input from industry. Once we have made a final determination, we will consider how our policy regarding PMA parts in ADs needs to be revised. No change to the AD is needed in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD, at an average labor rate of $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspect brake cable	1	N/A	$80	17	$1,360.
Rework cable cover	3	N/A	240	17	$4,080.
Manufacture/install offset plate, as applicable	3	$200	440	Up to 17	Up to $7,480.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–01–08 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–14880. Docket No. FAA–2006–25328; Directorate Identifier 2006–NM–130–AD.

Effective Date

(a) This AD becomes effective March 1, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400 series airplanes, certificated in any category; having serial numbers 4003, 4004, 4006, 4008 through 4064 inclusive, 4072, and 4073.

Unsafe Condition

(d) This AD results from a review of brake control cable operation conducted by the manufacturer. We are issuing this AD to prevent abrasion and wear of the outboard brake control cable, which could lead to cable separation and reduced control of airplane braking.

Compliance

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

Inspection of Control Cable

(f) Within 12 months after the effective date of this AD, perform a general visual inspection for fouling and chafing damage of the outboard brake control cable of the main landing gear, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–53–37, Revision 'C,' dated December 5, 2005.

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

Control Cable Cover Rework Only

(g) If no fouling or damage is found during the inspection required by paragraph (f) of this AD: Within 24 months after the accomplishment date of the inspection, rework the control cable cover and, as applicable, manufacture/install the offset plate assembly; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–53–37, Revision 'C,' dated December 5, 2005.

Cable Replacement and Control Cable Cover Rework

(h) If any fouling or damage is found during the inspection required by paragraph (f) of this AD: Before further flight, replace the control cable with a new control cable, rework the control cable cover and, if not already installed, manufacture/install the offset plate assembly; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–53–37, Revision 'C,' dated December 5, 2005.

Actions Accomplished According to Previous Issue of Service Bulletin

(i) Actions accomplished before the effective date of this AD in accordance with Bombardier Service Bulletin 84–53–37, Revision 'A,' dated October 17, 2005; or Revision 'B,' dated November 24, 2005; are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(k) Canadian airworthiness directive CF–2006–05, dated March 31, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Bombardier Service Bulletin 84–53–37, Revision 'C,' dated December 5, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 26, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–911 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26597; Directorate Identifier 2006–CE–86–AD; Amendment 39–14900; AD 2007–02–13]

RIN 2120–AA64

Airworthiness Directives; DORNIER LUFTFAHRT GmbH Model 228–212 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for DORNIER LUFTFAHRT GmbH Model 228–212 airplanes. This AD requires you to inspect the landing gear carbon brake assembly. This AD results from mandatory continuing airworthiness information (MCAI) issued by the European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union. We are issuing this AD to inspect the landing gear carbon brake assembly to detect and replace loose bolts or self-locking nuts, which could result in the brake assembly detaching and malfunctioning, degrade brake performance and potentially cause loss of control of the aircraft during landing and roll-out.

DATES: This AD becomes effective on March 1, 2007.

As of March 1, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by February 26, 2007.

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

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

• *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

To get the service information identified in this AD, contact RVAG Aerospace Services GmbH, Dornier 228 Customer Support, PO Box 1253, D–82231Wessling, Federal Republic of Germany; telephone: 49 8153 302280.

To view the comments to this AD, go to *http://dms.dot.gov.* The docket number is FAA–2006–26597; Directorate Identifier 2006–CE–86–AD.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union, recently notified the FAA that an unsafe condition may exist on certain DORNIER LUFTFAHRT GmbH Dornier Model 228–212 airplanes. The EASA reports that during a maintenance inspection, loose bolts and nuts were detected on the landing gear carbon brake assembly.

This condition, if not corrected, could result in the brake assembly detaching and malfunctioning, degrading brake performance, and potentially causing loss of control of the aircraft during landing or roll-out.

Relevant Service Information

We reviewed DORNIER LUFTFAHRT GmbH Dornier 228 Alert Service Bulletin (ASB) No. ASB–228–265, dated November 17, 2006. The service information describes procedures for a visual inspection of the landing gear to detect loose bolts and self-locking nuts at the carbon brake assembly.

The EASA classified this service bulletin as mandatory and issued EASA AD Number EAD 2006–0352–E, dated November 24, 2006, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Determination and Requirements of This AD

These DORNIER LUFTFAHRT GmbH Model 228–212 airplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the EASA has kept us informed of the situation described above. We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD requires an inspection of the landing gear carbon brake assembly to detect and replace loose bolts or self-locking nuts.

Cost Impact

None of the DORNIER LUFTFAHRT GmbH Model 228–212 airplanes affected by this action are currently on the U.S. Registry. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action at this time. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Registry.

Should an affected airplane be imported and placed on the U.S. Registry, accomplishment of the required action would take approximately 10 workhours at an average labor rate of $80 per workhour. Based on these figures, the total cost impact of this AD would be $800 per airplane.

Comments Invited

Because there are no affected airplanes on the U.S. Registry, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number ''FAA–2006–26597; Directorate Identifier 2006–CE–86–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–02–13 DORNIER LUFTFAHRT: Amendment 39–14900; Docket No. FAA–2006–26597; Directorate Identifier 2006–CE–86–AD.

Effective Date

(a) This AD becomes effective on March 1, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to DORNIER LUFTFAHRT GmbH Model 228–212 airplanes, all serial numbers, if Carbon Brake Assemblies with Part Number (P/N) 5009850–1, 5009850–2, 5009850–3 or 5009850–4 are installed, that are certificated in any category.

Unsafe Condition

(d) This AD is the result of loose bolts and nuts being detected on the landing gear carbon brake assembly during a maintenance inspection. We are issuing this AD to require an inspection to detect loose bolts and self-locking nuts on the landing gear carbon brake assembly, which, if not corrected, could result in the brake assembly detaching and malfunctioning, degrading brake performance, and potentially causing loss of control of the aircraft during landing or roll-out.

Compliance

(e) To address this problem, you must do the following, unless already done, before the next flight after the effective date of this AD: Inspect the landing gear carbon brake assembly in accordance with the instructions contained in DORNIER LUFTFAHRT GmbH Dornier 228 Alert Service Bulletin ASB–228–265 dated November 17, 2006, and, if necessary, replace the affected brake assembly.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Standards Staff, FAA, ATTN: Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) This AD is related to EASA EAD No. 2006–0352–E, dated November 24, 2006, which references Dornier Luftfahrt GmbH ASB–228–265, dated November 17, 2006.

Material Incorporated by Reference

(h) You must use DORNIER LUFTFAHRT GmbH Service Bulletin No. ASB–228–265, dated November 17, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact RVAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, D–82231 Wessling, Federal Republic of Germany.

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

Issued in Kansas City, Missouri, on January 12, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–900 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25518; Directorate Identifier 2006–NM–092–AD; Amendment 39–14881; AD 2007–01–09]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–100B SUD, 747–200B, 747–300, 747–400, 747–400D, and 747SP series airplanes. This AD requires repetitive inspections for cracking of the crease beam and adjacent intercostals, stringers, frames, and skin panels; and related investigative and corrective actions if cracking is found. This AD results from a report indicating that an operator discovered crease beam cracking on two Model 747 airplanes. We are issuing this AD to detect and correct cracking of the crease beam and adjacent structure, which could become large and result in in-flight depressurization and inability of the airframe structure to sustain flight loads.

DATES: This AD becomes effective March 1, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 1, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to Boeing Model 747–100B SUD, 747–200B, 747–300, 747–400, 747–400D, and 747SP series airplanes. That NPRM was published in the **Federal Register** on August 8, 2006 (71 FR 44933). That NPRM proposed to require repetitive inspections for cracking of the crease beam and adjacent intercostals, stringers, frames, and skin panels; and related investigative and corrective actions if cracking is found.

Comments

We provided the public the opportunity to participate in the development of this AD.

Clarification of Submission of Comments to This AD

The Docket Management System has informed us that an error occurred in the assignment of the docket number provided for this AD. DMS docket number FAA–2006–22518 appeared in the published NPRM; in fact, the correct docket number is FAA–2006–25518. The number 22518 refers to docket NHTSA–2005–22518, which is a motor vehicle surface travel issue having nothing to do with any aircraft. In case this confusion had caused comments to NPRM 2006–NM–092–AD to be submitted either to the incorrect docket or to both dockets, we checked both dockets FAA–2006–25518 and NHTSA–2005–22518 for comments applicable to this AD. We found one comment applicable to this AD in each docket. We determined that no other comments have been submitted regarding this AD and have considered the two comments received, both of which now correctly appear only in docket FAA–2006–25518.

Support for the NPRM

Boeing states that it has reviewed the NPRM and concurs with the contents of the NPRM.

Request for Posting of Service Information

One commenter, the Modification and Replacement Parts Association (MARPA), requests that we revise our procedures for incorporation by reference (IBR) of service information in ADs. MARPA states, ''This proposed action requires work be accomplished pursuant to certain OEM and/or manufacturer service documents. Typically airworthiness directives are based upon service information originating with the type certificate holder or its suppliers. Manufacturer service documents are privately authored instruments generally enjoying copyright protection against duplication and distribution. When a service document is incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51 into a public document such as an airworthiness directive, it loses its private, protected status and becomes itself a public document. If a service document is used as a mandatory element of compliance it should not simply be referenced, but should be incorporated into the regulatory document. Public laws by definition must be public which means they cannot rely for compliance upon private writings. Since the interpretation of a document is a question of law and not of fact, a service document not incorporated by reference will not be considered in a legal finding of the meaning of an airworthiness directive. We are therefore concerned that failure to incorporate essential service information could result in a court decision invalidating the airworthiness directive.

''Incorporated by reference service documents should be made available to the public by publication in the Document [sic]Management System (DMS) keyed to the action that incorporates them. The stated purpose of the incorporation by reference method of the **Federal Register** is brevity; to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals. Traditionally, ''affected individuals'' has meant aircraft owners and operators who are generally provided service information by the manufacturer. However, a new class of affected individuals has emerged since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. This new class includes maintenance and repair organizations (MRO), component servicing and repair shops, parts purveyors and distributors and organizations manufacturing or servicing alternatively certified parts under 14 CFR 21.303 (PMA). Further, the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. We therefore request that the service documents deemed essential to the accomplishment of this proposed action be (1) Incorporated by reference into the regulatory instrument, and (2) published in the DMS.''

The FAA acknowledges these requests. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the document necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

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

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 615 airplanes of the affected design in the worldwide fleet. This AD affects about 65 airplanes of U.S. registry. The required detailed inspection takes about 8 work hours per airplane, per inspection cycle, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is $41,600, or $640 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–01–09 Boeing: Amendment 39–14881. Docket No. FAA–2006–25518; Directorate Identifier 2006–NM–092–AD.

Effective Date

(a) This AD becomes effective March 1, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100B SUD, 747–200B, 747–300, 747–400, 747–400D, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2591, dated April 6, 2006.

Unsafe Condition

(d) This AD results from a report indicating that an operator discovered crease beam cracking on two Model 747 airplanes. We are issuing this AD to detect and correct cracking of the crease beam and adjacent structure, which could become large and result in in-flight depressurization and inability of the airframe structure to sustain flight loads.

Compliance

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

Repetitive Detailed Inspections and Related Investigative and Corrective Actions

(f) Perform a detailed inspection for cracking of the crease beam and adjacent intercostals, stringers, frames, and skin panels at the applicable initial and repetitive compliance times specified in Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2591, dated April 6, 2006; except, where the alert service bulletin specifies an initial compliance time after the date on the alert service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD. Do all applicable related investigative and corrective actions before further flight if any cracking is found. Do all applicable actions in accordance with the Accomplishment Instructions of the alert service bulletin, except as provided by paragraphs (f)(1) and (f)(2) of this AD.

(1) Where the alert service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, before further flight, repair those conditions using a method approved in accordance with paragraph (g) of this AD.

(2) Where the alert service bulletin specifies to report certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

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

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin 747–53A2591, dated April 6, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 26, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–910 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24691; Directorate Identifier 2006–NM–051–AD; Amendment 39–14901; AD 2007–02–14]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This AD requires testing the electrical resistance of the bond between the bulkhead fitting for the fuel feed line and the front spar of the left and right wings, inspecting an adjacent bonding jumper to make sure it is installed correctly, and performing corrective and other specified actions as applicable. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent arcing or sparking in the fuel tank in the event of a lightning strike, which could result in an uncontrolled fire or explosion.

DATES: This AD becomes effective March 1, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 1, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Doug Pegors, Aerospace Engineer,

Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6504; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. That NPRM was published in the **Federal Register** on May 5, 2006 (71 FR 26423). That NPRM proposed to require testing the electrical resistance of the bond between the bulkhead fitting for the fuel feed line and the front spar of the left and right wings, inspecting an adjacent bonding jumper to make sure it is installed correctly, and performing corrective and other specified actions as applicable.

Comments

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

Request To Cite Revised Service Information

AirTran Airways (AirTran) supports the NPRM. AirTran asks that if the NPRM is changed to refer to Revision 1 of Boeing Special Attention Service Bulletin 737–28–1225 (which was being drafted when the comment was submitted), credit be given for accomplishing the inspection and modification in accordance with the original issue of the service bulletin. The NPRM referred to Boeing Special Attention Service Bulletin 737–28–1225, dated January 12, 2006, as the source of service information for accomplishing the specified actions.

Boeing asks that paragraphs (c) and (f) of the NPRM be changed to reference Boeing Special Attention Service Bulletin 737–28–1225, Revision 1, dated October 30, 2006. Boeing notes that Revision 1 corrects the illustrations that show the routing of the bonding jumpers, as well as the illustration views that show the locations of the electrical bond resistance equipment probes. (At the time this comment was submitted, Revision 1 was not yet issued.) Boeing adds that its request is to eliminate the need for an alternative method of compliance (AMOC) request. Boeing also states that credit should be given for accomplishing the actions in accordance with the original issue.

We agree with these requests. We have reviewed Revision 1 of the referenced service bulletin, which specifies that no more work is necessary on airplanes changed as shown in the original issue of the service bulletin; the changes in Revision 1 are mainly editorial. Therefore, we have changed paragraph (f) of the AD to add Boeing Special Attention Service Bulletin 737–28–1225, Revision 1, dated October 30, 2006, as the source of service information for accomplishing the requirements in that paragraph, and we have added a new paragraph (g) to the AD to give credit for the actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–28–1225, dated January 12, 2006. We have also changed the applicability in paragraph (c) of the AD to reference Revision 1.

Request To Correct Certain Grammar

Boeing also asks that we correct the grammar specified in paragraph (f) of the NPRM by deleting the language ''by doing all of the actions specified.'' We agree and have changed the specified language.

Conclusion

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

Costs of Compliance

There are about 1,541 airplanes of the affected design in the worldwide fleet. This AD affects about 591 airplanes of U.S. registry. The required actions take about 4 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $189,120, or $320 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13

by adding the following new airworthiness directive (AD):

2007–02–14 Boeing: Amendment 39–14901. Docket No. FAA–2006–24691; Directorate Identifier 2006–NM–051–AD.

Effective Date

(a) This AD becomes effective March 1, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–28–1225, Revision 1, dated October 30, 2006.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent arcing or sparking in the fuel tank in the event of a lightning strike, which could result in an uncontrolled fire or explosion.

Compliance

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

Test, Inspection, and Corrective and Other Specified Actions

(f) Within 60 months after the effective date of this AD, test the electrical resistance of the bond between the bulkhead fitting for the fuel feed line and the wing front spar on the left and right wings, do a general visual inspection of adjacent bonding jumpers to make sure they are installed correctly, and do all applicable corrective and other specified actions. Do all the actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–28–1225, Revision 1, dated October 30, 2006. All applicable corrective actions and other specified actions must be done before further flight after the electrical resistance test.

Credit for Actions Accomplished Previously

(g) Actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–28–1225, dated January 12, 2006; are considered acceptable for compliance with the actions required by paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(i) You must use Boeing Special Attention Service Bulletin 737–28–1225, Revision 1, dated October 30, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 11, 2007.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–898 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25271; Directorate Identifier 2006–NM–067–AD; Amendment 39–14903; AD 2007–02–16]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Saab Model SAAB-Fairchild SF340A and SAAB 340B airplanes. That AD currently requires repetitive inspections for wear of the brushes and leads and for loose rivets of the direct current (DC) starter generator, and related investigative/corrective actions if necessary. This new AD requires installing new, improved generator control units (GCUs). Installing the GCUs ends the repetitive inspection requirements of the existing AD. This AD results from reports of premature failures of the DC starter generator prior to scheduled overhaul. We are issuing this AD to prevent failure of the starter generator, which could cause a low voltage situation in flight and result in increased pilot workload and reduced redundancy of the electrical powered systems.

DATES: This AD becomes effective March 1, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 1, 2007.

On April 1, 2005 (70 FR 9215, February 25, 2005), the Director of the Federal Register approved the incorporation by reference of Saab Service Bulletin 340–24–035, dated July 5, 2004, including Attachment 1 (Goodrich Service Information Letter 23080–03X–24–01), dated July 1, 2004.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2005–04–12, amendment 39–13984 (70 FR 9215, February 25, 2005). The existing AD applies to certain Saab Model SAAB-Fairchild SF340A and SAAB 340B airplanes. That NPRM was published in the **Federal Register** on July 6, 2006 (71 FR 38311). That NPRM proposed to continue to require repetitive inspections for wear of the brushes and leads and for loose rivets of the direct current (DC) starter generator, and related investigative/

corrective actions if necessary. That NPRM also proposed to require installing new, improved generator control units (GCUs), which would end the repetitive inspection requirements.

Comments

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

Request To Change Incorporation of Certain Information

The Modification and Replacement Parts Association (MARPA) states that, typically, airworthiness directives are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an airworthiness directive, it loses its private, protected status and becomes a public document. MARPA adds that if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings. MARPA is concerned that the failure to incorporate essential service information could result in a court decision invalidating the AD.

MARPA adds that incorporated by reference service documents should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under section 21.303 (parts manufacturer approval) (PMA) of the Federal Aviation Regulations (14 CFR part 21). MARPA adds that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument, and published in the DMS.

We understand MARPA's comment concerning incorporation by reference. The Office of the **Federal Register** (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the service information necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

Additionally, we do not publish service documents in DMS. We are currently reviewing our practice of publishing proprietary service information. Once we have thoroughly examined all aspects of this issue, and have made a final determination, we will consider whether our current practice needs to be revised. However, we consider that to delay this AD action for that reason would be inappropriate, since we have determined that an unsafe condition exists and that the requirements in this AD must be accomplished to ensure continued safety. Therefore, we have not changed the AD in this regard.

Request To Reference PMA Parts

MARPA also states that type certificate holders in their service documents typically ignore the possible existence of PMA parts. MARPA states that this is particularly true with foreign manufacturers where the concept may not exist or be implemented in the country of origin. MARPA points out that the service document upon which an airworthiness directive is based frequently will require removing a certain part-numbered part and installing a different part-numbered part as a corrective action. According to MARPA, this runs afoul of part 21 of the Federal Aviation Regulations (14 CFR part 21), section 21.303, which permits the development, certification, and installation of alternatively certified parts.

MARPA further states that installing a certain part-numbered part to the exclusion of all other parts is not a favored general practice. MARPA states that such an action has the dual effect of preventing, in some cases, the installation of a perfectly good part; while at the same time prohibiting the development of new parts permitted under § 21.303. According to MARPA, such a prohibition runs the risk of taking the AD out of the realm of safety and into the world of economics, since prohibiting the development, sale, and use of a perfectly airworthy part has noting to do with safety. MARPA states that courts could easily construe such actions as being outside the statutory basis of the AD (safety) and, as such, unenforceable. MARPA adds that courts are reluctant to find portions of a rule unenforceable since they lack the knowledge and authority to re-write requirements, and are thus generally inclined to simply void the entire rule.

In response to the commenter's statement regarding running afoul of part 21 of the Federal Aviation Regulations (14 CFR part 21, under which the FAA issues PMAs, this statement appears to reflect a misunderstanding of the relationship between ADs and the certification procedural regulations of 14 CFR part 21. Those regulations, including § 21.303, are intended to ensure that aeronautical products comply with the applicable airworthiness standards. But ADs are issued when, notwithstanding those procedures, we become aware of unsafe conditions in these products or parts. Therefore, an AD takes precedence over design approvals when we identify an unsafe condition, and mandating installation of a certain part number in an AD is not at variance with § 21.303.

The AD provides a means of compliance for operators to ensure that the identified unsafe condition is addressed appropriately. For an unsafe condition attributable to a part, the AD normally identifies the replacement parts necessary to obtain that compliance. As stated in § 39.7 of the Federal Aviation Regulations (14 CFR 39.7), ''Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section.'' Unless an operator obtains approval for an AMOC, replacing a part with one not specified by the AD would make the operator subject to an enforcement action and result in a civil penalty. No change to the AD is necessary in this regard.

Request to Stop Using Alternative Method of Compliance (AMOC)

MARPA also believes that the practice of requiring an AMOC to install a PMA part should be stopped. MARPA states that this is somehow tantamount to stating, illogically, that all PMA parts are inherently defective and require an additional layer of approval when the original equipment manufacturer (OEM) part is determined to be defective. MARPA suspects that the FAA personnel who labored diligently to certify the PMA part might disagree with such a narrow, OEM-slanted view. MARPA states that if the PMA part is defective, then it must be deemed so in the AD, and not simply implied by a catch-all AMOC requirement. MARPA states that this is why it has repeatedly requested that we adopt language to trap such defective parts, and suggests that the FAA's Transport Airplane Directorate adopt the language used by the Small Airplane Directorate to accomplish this.

We infer that MARPA would like the AD to permit installation of any equivalent PMA parts so that it is not necessary for an operator to request approval of an AMOC in order to install an ''equivalent'' PMA part. Whether an alternative part is ''equivalent'' in adequately resolving the unsafe condition can only be determined on a case-by-case basis based on a complete understanding of the unsafe condition. The Transport Airplane Directorate's policy is that, in order for operators to replace a part with one that is not specified in the AD, they must request an AMOC. This is necessary so that we can make a specific determination that an alternative part is or is not susceptible to the same unsafe condition.

Request for Compliance With FAA Order 8040.2/Agreement on Parts Replacement

MARPA points out that this AD, as written, does not comply with proposed FAA Order 8040.2 (AD Process for Mandatory Continuing Airworthiness Information (MCAI)), which states in the PMA section: ''MCAI that require replacement or installation of certain parts could have replacement parts approved under part 21 of the Federal Aviation Regulations (14 CFR part 21), section 21.303, based on a finding of identicality. We have determined that any parts approved under this regulation and installed should be subject to the actions of our AD and included in the applicability of our AD.'' MARPA points out that the Small Airplane Directorate has developed a blanket statement that resolves this issue. The statement includes words similar to that in the proposed Order 8040.2.

The FAA recognizes the need for standardization on the issue of addressing PMA parts in ADs, and currently is in the process of reviewing it at the national level. The Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the final rule in this regard.

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

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD affects about 170 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Inspections (required by AD 2005–04–12)	1	$80	$0	$80, per inspection cycle.	$13,600, per inspection cycle.
Installation (new action)	1	80	7,598	$7,678	$1,305,260.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13984 (70 FR 9215, February 25, 2005) and by adding the following new airworthiness directive (AD):

2007–02–16 Saab Aircraft AB: 39–14903. Docket No. FAA–2006–25271; Directorate Identifier 2006–NM–067–AD.

Effective Date

(a) This AD becomes effective March 1, 2007.

Affected ADs

(b) This AD supersedes AD 2005–04–12.

Applicability

(c) This AD applies to Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) airplanes having serial numbers 004 through 159 inclusive, and Model SAAB 340B airplanes having serial numbers 160 through 367 inclusive; certificated in any category; on which Saab Modification 2533 has not been implemented.

Unsafe Condition

(d) This AD results from reports of premature failures of the direct current (DC) starter generator prior to scheduled overhaul. We are issuing this AD to prevent failure of the starter generator, which could cause a low voltage situation in flight and result in increased pilot workload and reduced redundancy of the electrical powered systems.

Compliance

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

Restatement of the Requirements of AD 2005–04–12

Inspections for Wear of the DC Starter Generator Brushes and Leads

(f) For generators overhauled in accordance with Maintenance Review Board (MRB) Task 243104: Before 800 flight hours since last overhaul, or within 100 flight hours after April 1, 2005 (the effective date of AD 2005–04–12), perform a general visual inspection for wear of the DC starter generator brushes and leads, in accordance with Saab Service Bulletin 340–24–035, dated July 5, 2004.

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

Note 2: Saab Service Bulletin 340–24–035, dated July 5, 2004, references Goodrich Service Information Letter 23080–03X–24–01, dated July 1, 2004, as an additional source of service information.

(1) If the tops of the brush sets are above the top of the brush box, repeat the inspection thereafter at intervals not to exceed 800 flight hours until paragraph (i) of this AD is done.

(2) If the tops of the brush sets are below the top of the brush box, before further flight, measure the brushes and determine the amount of brush life remaining, in accordance with the service bulletin.

(i) If the brush wear is within the limits specified in the service bulletin, repeat the inspection thereafter at intervals not to exceed 800 flight hours until paragraph (i) of this AD is done.

(ii) If the brush wear is outside the limits specified in the service bulletin, before further flight, replace the starter generator with a new or serviceable starter generator, in accordance with the service bulletin.

Inspections for Loose Rivets

(g) For generators overhauled in accordance with MRB Task 243104: Before 800 flight hours since last overhaul, or within 100 flight hours after April 1, 2005, whichever occurs later, perform a general visual inspection of each leading wafer brush for loose rivets, in accordance with Saab Service Bulletin 340–24–035, dated July 5, 2004. Repeat the inspection thereafter at intervals not to exceed 800 flight hours until paragraph (i) of this AD is done. If any rivet is loose, before further flight, replace the DC starter generator with a new or serviceable starter generator, in accordance with the service bulletin.

MRB Task 243103 or 243101

(h) For generators overhauled or with brush replacement accomplished in accordance with MRB Task 243103 or 243101, no action is required by paragraphs (f) and (g) of this AD.

New Requirements of This AD

Installation

(i) For all generators: Within 36 months after the effective date of this AD, install new improved generator control units (GCUs) in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–24–026, Revision 03, dated December 20, 2004. Installing the GCUs terminates the repetitive inspection requirements of paragraphs (f) and (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(k) Swedish airworthiness directive 1–197, effective November 5, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Saab Service Bulletin 340–24–026, Revision 03, dated December 20, 2004; and Saab Service Bulletin 340–24–035, dated July 5, 2004, including Attachment 1 (Goodrich Service Information Letter 23080–03X–24–01), dated July 1, 2004; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Saab Service Bulletin 340–24–026, Revision 03, dated December 20, 2004, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On April 1, 2005 (70 FR 9215, February 25, 2005), the Director of the Federal Register approved the incorporation by reference of Saab Service Bulletin 340–24–035, dated July 5, 2004, including Attachment 1 (Goodrich Service Information Letter 23080–03X–24–01), dated July 1, 2004.

(3) Contact Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linko¨ping, Sweden, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 11, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–901 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–26095; Airspace Docket No. 06–AEA–014]

Establishment of Class D Airspace; Griffiss Airfield, Rome, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Griffiss Airfield, Rome, NY. This action is necessary for the protection of an activated control tower for Griffiss Airfield, Rome, NY. The area would be depicted on aeronautical charts for pilot reference. This was published in the **Federal Register** on November 17, 2006. 71 FR 66893.

EFFECTIVE DATE: 0901 UTC January 18, 2007. The Director of the **Federal Register** approves this incorporation by reference action under 1 CFR 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809: telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 28, 2006 a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class D airspace extending upward from the surface to and including 3,200 feet MSL within a 4.5 mile radius of the Griffiss Airfield, Rome, NY, was published in the **Federal Register.** Interested parties were invited to participate in this rulemaking by submitting written comments on the proposal to the FAA on or before December 29, 2006. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class D airspace at Griffiss AFB, Rome, NY. The protection of an activated Control Tower makes this action necessary. That airspace would extend from the surface to and including 3,200 feet MSL within a 4.5 mile radius of the Griffiss Airfield, Rome, NY, and within 2 miles each side of bearing 135°/315° from a point at Lat. 43°14.02′ N, Long. 75°24.25′ W, extending from the 4.5 mile radius zone, to a point 6 miles NW and 6 miles SE of the airport. The class D airspace area would be effective during the specific dates and times established in advance by a notice to airmen. The effective date and time would thereafter be continuously published in the Airport/Facility Directory. Class D airspace designations for airspace areas extending upward from the surface to and including 3,200 feet MSL are published in Paragraph 5000 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 5000 Class D airspace areas extending upward from the surface of the earth.

AEA NY (D) Griffiss Airfield, [New]

Rome, NY

(Lat. 43°14′02″ N., long. 75°24′25″ W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.5 mile radius of the Griffiss Airfield, Rome, NY, and within 2 miles each side of bearing 135°/315° from a point at lat. 43°14.02′ N., long. 75°24.25′ W., extending from the 4.5 mile radius zone, to a point 6 miles NW and 6 miles SE of the airport. The Class D airspace area is effective during the specific dates and times established in advance by a notice to airmen. The effective date and time thereafter be continuously published in the Airport/Facility Directory.

Issued in Jamaica, New York, on December 21, 2006.

Mark D. Ward,

Manager, System Support Group.

[FR Doc. 07–299 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–26116; Airspace Docket No. 067–AEA–015]

Establishment of Class E–2 Airspace; Griffiss Airfield, Rome, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice establishes Class E–2 airspace at Griffiss Airfield, Rome, NY. The opening of a tower and for the protection of instrument approaches make this action necessary. Controlled airspace extending upward from the surface to the base of the overlying controlled airspace is needed to contain aircraft executing an approach. The area would be depicted on aeronautical charts for pilot reference. This was published in the **Federal Register** on November 17, 2006. 71 FR 66894.

EFFECTIVE DATE: 0901 UTC January 18, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, 1 Aviation Plaza,

Jamaica, NY 11434–4809: telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 28, 2006 a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E–2 airspace extending upward from the surface to the base of the overlying controlled airspace within a 4.5 mile radius of the Griffiss Airfield, Rome, NY, was published in the **Federal Register.** Interested parties were invited to participate in this rulemaking by submitting written comments on the Proposal to the FAA on or before December 29, 2006. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E–2 airspace at Griffiss AFB, Rome, NY. The opening of a tower and for the protection of Instrument Approaches makes this action necessary. Controlled airspace extending upward from the surface to the base of the overlying controlled airspace is needed to accommodate the SIAPs. That airspace would extend from the surface to the base of the overlying controlled airspace within a 4.5 mile radius of the Griffiss Airfield, Rome, NY, and within 2 miles each side of bearing 135°/315° from a point at Lat 43°14.02′ N, Long 75°24.25′ W, extending from the 4.5 mile radius zone, to a point 10.5 miles NW and 10.5 miles SE of the airport. The class E–2 airspace area would be effective during the specific dates and times established in advance by a notice to airmen. The effective date and time would thereafter be continuously published in the Airport/Facility Directory. Class E–2 airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 6002 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E–2 airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6002 Class E–2 airspace areas extending upward from the surface of the earth

AEA NY (D) Griffiss Airfield [New]

Rome, NY

(Lat. 43°14′02″ N., long. 75°24′25″ W.)

That airspace extending upward from the surface to the base of the overlying controlled airspace with a 4.5 mile radius of the Griffiss Airfield, Rome, NY, and within 2 miles each side of bearing 135°/315° from a point at Lat. 43°14.02′ N., Long. 75°24.25′ W., extending from the 4.5 mile radius zone, to a point 10.5 miles NW. and 10.5 miles SE. of the airport. The Class E–2 airspace area is effective during the specific dates and times established in advance by a notice to airmen. The effective date and time thereafter be continuously published in the Airport/Facility Directory.

Issued in Jamaica, New York, on December 21, 2006.

Mark D. Ward,

Manager, System Support Group.

[FR Doc. 07–298 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–07–010]

RIN 1625–AA09 (Formerly RIN 2115–AE47)

Drawbridge Operation Regulations; Biscayne Bay, Atlantic Intracoastal Waterway, Miami River, and Miami Beach Channel, Miami-Dade County, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the operation of the east and west spans of the Venetian Causeway bridges across the Miami Beach Channel on the Atlantic Intracoastal Waterway, the Miami Avenue bridge and the Brickell Avenue bridge across the Miami River, Miami-Dade County. This temporary final rule allows these bridges to remain in the closed position during the running of the Miami Marathon on January 28, 2007. By doing so, this will allow the footrace to take place without runners being unnecessarily delayed.

DATES: This rule is effective from 6 a.m. until 12:25 p.m. on January 28, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD07–07–010] and are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 SE. 1st Avenue, Suite 432, Miami, Florida 33131–3028 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gwin Tate, Bridge Branch, (305) 415–6747.

SUPPLEMENTARY INFORMATION: We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This is the fourth year in which this annual footrace has taken place, and each year it affects the same bridges in an identical fashion. No public comments have ever been received upon publishing an NPRM in past years.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The event for which the rule is necessary is scheduled to occur less

than 30 days from the date of publication. Therefore, waiting an additional 30 days from the date of publication to make this rule effective is both unnecessary and impracticable.

Background and Purpose

As in previous years, the Miami Marathon Director requested that the Coast Guard temporarily change the existing regulations governing the operation of the east and west spans of the Venetian Causeway bridges, the Miami Avenue bridge and the Brickell Avenue bridge to allow them to remain in the closed position during the Miami Marathon on January 28, 2007. Closure times range from 6 a.m. through 12:25 p.m. Each closure is timed to match the expected pace and location of event participants. Each bridge will remain in the closed position for a limited period of time. The east and west spans of the Venetian Causeway bridges are located between Miami and Miami Beach. The current regulation governing the operation of the east span of the Venetian Causeway is published in 33 CFR 117.269 and requires the bridge to open on signal; except that, from November 1 through April 30 from 7:15 a.m. to 8:45 a.m. and 4:45 p.m. to 6:15 p.m. Monday through Friday, the draw need not be opened. However, the draw shall open at 7:45 a.m., 8:15 a.m., 5:15 p.m., and 5:45 p.m. if any vessels are waiting to pass. The draw shall open on signal on Thanksgiving Day, Christmas Day, New Year's Day, and Washington's Birthday. The draw shall open at any time for public vessels of the United States, tugs with tows, regularly scheduled cruise vessels and vessels in distress.

The current regulation governing the operation of the west span of the Venetian Causeway, Atlantic Intracoastal Waterway mile 1088.6, at Miami, is published in 33 CFR 117.5 and requires the draw to open promptly and fully for the passage of vessels when a request to open is given.

The regulation governing the Miami Avenue bridge, mile 0.3, at Miami, is published in 33 CFR 117.305 (c) and requires that the bridge open on signal; except that, from 7:35 a.m. to 8:59 a.m., 12:05 p.m. to 12:59 p.m. and 4:35 p.m. to 5:59 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels.

The regulation governing the Brickell Avenue bridge, mile 0.1, at Miami, is published in 33 CFR 117.305 (d) and requires that the bridge shall open on signal; except that, from 7 a.m. to 7 p.m., Monday through Friday except Federal holidays, the draw need open only on the hour and half-hour. From 7:35 a.m. to 8:59 a.m., 12:05 p.m. to 12:59 p.m. and 4:35 p.m. to 5:59 p.m., Monday through Friday except Federal holidays, the draw need not open for the passage of vessels.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Based on previous years experience with this footrace, we expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation is unnecessary. The short duration of time during which the bridges will remain in the closed position on January 28, 2007, will have little, if any, economic impact.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels that will require passage through these bridges during the morning hours of January 28, 2007. These vessels will not be able to pass through these bridges during the effective times of this rule. However, this rule will be in effect for a limited amount of time on a Sunday morning when traffic is extremely low. No public comments were received regarding previous years' races.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk

to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. In Sec. 117.269, from 6 a.m. to 8:55 a.m. on January 28, 2007, temporarily designate the existing regulatory text as paragraph (a); suspend paragraph (a); and add a new paragraph (b) to read as follows:

§ 117.269 Biscayne Bay.

* * * * *

(b) The draw of the east span of the Venetian Causeway bridge across the Miami Beach Channel need not open from 6 a.m. to 8:55 a.m. on January 28, 2007. Public vessels of the United States and vessels in distress shall be passed at any time.

■ 3. In § 117.261, from 6:10 a.m. until 9:30 a.m. on January 28, 2007, temporarily suspend paragraph (nn), and add a new paragraph (oo) to read as follows:

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

* * * * *

(oo) The draw of the west span of the Venetian Causeway bridge, mile 1088.6 at Miami need not open from 6:10 a.m. until 9:30 a.m. on January 28, 2007. Public vessels of the United States and vessels in distress shall be passed at any time.

■ 4. In § 117.305, from 6:25 a.m. until 10:15 a.m. on January 28, 2007, paragraphs (c) and (d) are suspended and new paragraphs (e) and (f) are added to read as follows:

§ 117.305 Miami River.

* * * * *

(e) The draws of the Miami Avenue bridge, mile 0.3, and the S.W. Second Avenue Bridge, mile 0.5, at Miami, shall open on signal; except that, from 6:25 a.m. to 10:15 a.m. on January 28, 2007, the draw of the Miami Avenue bridge need not open for the passage of vessels. Public vessels of the United States and vessels in distress shall be passed at any time.

(f) The draw of the Brickell Avenue bridge across the Miami River, mile 0.1, at Miami, need not open from 7:10 a.m. to 12:25 p.m. on January 28, 2007. Public vessels of the United States and vessels in distress shall be passed at any time.

Dated: January 18, 2007.

D.W. Kunkel,

RADM, U. S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. E7–1027 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–06–158]

RIN 1625–AA09

Drawbridge Operation Regulations; Stickney Point (SR 72) Bridge, Gulf Intracoastal Waterway, Mile 68.6, Sarasota, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulation governing the operation of the Stickney Point (SR 72) Bridge across the Gulf Intracoastal Waterway, mile 68.6, Sarasota, Florida. The rule will require the drawbridge to open on the hour, twenty minutes past the hour and forty minutes past the hour.

DATES: This rule is effective February 26, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD07–06–130) and are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131–3050 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 3, 2006, we published a supplemental notice of proposed rulemaking (SNPRM) entitled Drawbridge Operation Regulations; Stickney Point (SR 72) Bridge, Gulf Intracoastal Waterway, mile 68.6, Sarasota, FL in the **Federal Register** (71 FR 58334). We received 460 comments on the proposed rule. No public meeting was requested and none was held.

Background and Purpose

The current regulations governing the operation of the Stickney Point Bridge, published in 33 CFR 117.5, require the draw to open on signal.

On December 21, 2005, a Notice of Proposed Rulemaking was published in the **Federal Register**, 70 FR 75767. This proposal was for a schedule of an hour and half-hour opening schedule. We received 48 comments from the public all which were against changing the regulations to twice an hour openings.

On April 24, 2006, a test of a twenty minute schedule, as published in the **Federal Register** 71 FR 16491, was conducted per the request of City officials of Sarasota, because they believed the current drawbridge regulation was not meeting the needs of vehicle traffic.

We received 5 comments during the test. Four of the comments were from motorists who were in favor of the twenty minute schedule and one was against changing the schedule from an on demand regulation.

On October 3, 2006, we published a supplemental notice of proposed rulemaking (SNPRM) entitled Drawbridge Operation Regulations; Stickney Point (SR 72) Bridge, Gulf Intracoastal Waterway, mile 68.6, Sarasota, FL in the **Federal Register** (71 FR 58334).

Discussion of Comments and Changes

The Coast Guard received 460 responses to the Supplemental Notice of Proposed Rulemaking. There were 448 comments in favor of the new schedule, 4 comments opposing the schedule and 8 comments recommending different schedules. Of the 4 dissenting comments, all were from waterway users. One commenter desired the schedule be implemented only during weekdays, which it will be. Two commenters cited safety issues of holding vessels near the bridge. This can be avoided by vessels timing their approach to the bridge. The last dissenting commenter had no specific issue regarding the change.

The bridge logs show the average bridge opening request was less than two openings per hour. The new rule allows three openings per hour. Therefore, the new rule will meet the reasonable needs of navigation and also allow local vehicular traffic the ability to plan their crossing of the bridge.

Regulatory Evaluation

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

Small Entities

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

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

This rule would affect the following entities, some of which may be small entities: the owners or operators of vessels needing to transit the Gulf Intracoastal Waterway in the vicinity of the Stickney Point bridge. The rule would not have a significant economic impact on a substantial number of small entities because the rule provides three openings per hour for vessel traffic.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Amend § 117.287 by revising paragraph (b–1) and by adding paragraph (c) to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(b–1) Stickney Point (SR 72) bridge, mile 68.6, at Sarasota. The draw shall open on signal, except that the draw need open only on the hour, twenty minutes past the hour, and forty minutes past the hour, from 6 a.m. to 10 p.m., Monday through Friday, except Federal holidays.

(c) The draw of the Siesta Drive Bridge, mile 71.6 at Sarasota, Florida shall open on signal, except that from 7 a.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour. On weekends and Federal holidays, from 11 a.m. to 6 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour.

* * * * *

Dated: January 5, 2007.

D.W. Kunkel,

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

[FR Doc. E7–1028 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–15–P

Proposed Rules

Federal Register
Vol. 72, No. 16
Thursday, January 25, 2007

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27011; Directorate Identifier 2006–NM–175–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Airbus Model A318, A319, A320, and A321 airplanes. The existing AD currently requires inspecting to determine the part number and serial number of the fuel tank boost pumps and, for airplanes with affected pumps, revising the airplane flight manual (AFM) and the FAA-approved maintenance program. The existing AD also provides for optional terminating action for compliance with the revisions to the AFM and the maintenance program. This proposed AD would require modifying or replacing the fuel tank boost pumps, which would allow removal of the limitations from the AFM and the maintenance program. This proposed AD results from a report that a fuel tank boost pump failed in service, due to a detached screw of the boost pump housing that created a short circuit between the stator and rotor of the boost pump motor and tripped a circuit breaker. We are proposing this AD to prevent electrical arcing in the fuel tank boost pump motor, which, in the presence of a combustible air-fuel mixture in the pump, could result in an explosion and loss of the airplane.

DATES: We must receive comments on this proposed AD by February 26, 2007.

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

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

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2007–27011; Directorate Identifier 2006–NM–175–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On June 7, 2006, we issued AD 2006–12–02, amendment 39–14626 (71 FR 34814, June 16, 2006), for all Airbus Model A318, A319, A320, and A321 airplanes. That AD requires inspecting to determine the part number and serial number of the fuel tank boost pumps and, for airplanes with affected pumps, revising the airplane flight manual (AFM) and the FAA-approved maintenance program. That AD also provides for optional terminating action for compliance with the revisions to the AFM and the maintenance program. That AD resulted from a report that a fuel tank boost pump failed in service, due to a detached screw of the boost pump housing that created a short circuit between the stator and rotor of the boost pump motor and tripped a circuit breaker. We issued that AD to ensure that the flightcrew is aware of procedures to prevent the presence of a combustible air-fuel mixture in the fuel tank boost pump, which, in the event of electrical arcing in the pump motor, could result in an explosion and loss of the airplane.

Actions Since Existing AD Was Issued

We considered AD 2006–12–02 interim action and were considering further rulemaking if final action were later identified. We now have determined that further rulemaking is necessary, and this proposed AD follows from that determination. Airbus has developed a modification to prevent the screws from coming loose and

issued new service information that addresses the identified unsafe condition.

Relevant Service Information

Airbus has issued the following service bulletins:

SERVICE BULLETINS

Airbus Service Bulletin	Revision	Date
A320–28–1152	Original	May 5, 2006.
	01	July 17, 2006.
A320–28–1153	01	July 13, 2006.

Service Bulletin A320–28–1152 describes procedures for determining the type, part number, and serial number of the fuel pumps of the wing and center tanks by either checking airplane records or inspecting the pump amendment label. The service bulletin recommends modifying affected fuel pumps in accordance with Service Bulletin A320–28–1153. Service Bulletin A320–28–1153 describes procedures for modifying the affected fuel pumps by replacing the nuts and bolts from the gas return outlet with new nuts and bolts, applying the correct torque to the nuts, and applying locktite adhesive, or replacing affected pumps with pumps having a serial number other than 6137 and subsequent.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The European Aviation Safety Agency (EASA), which is the aviation authority for the European Union, mandated the service information and issued airworthiness directive 2006–0222, dated July 20, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

Service Bulletin A320–28–1153 refers to Eaton Service Bulletin 8410–28–04, dated May 2, 2006, as an additional source of service information for the modification.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2006–12–02 and would retain the requirements and provisions of the existing AD. This proposed AD would also require modifying affected fuel pumps, which would allow removal of the limitations from the AFM and the maintenance program.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The parts manufacturer states that it will modify the pump free of charge.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Identify boost pumps, as required by AD 2006–12–02 ...	1	$80	None	$80	727	$58,160

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14626 (71 FR 34814, June 16, 2006) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2007–27011; Directorate Identifier 2006–NM–175–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 26, 2007.

Affected ADs

(b) This AD supersedes AD 2006–12–02.

Applicability

(c) This AD applies to all Airbus Model A318, A319, A320, and A321 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report that a fuel tank boost pump failed in service, due to a detached screw of the boost pump housing that created a short circuit between the stator and rotor of the boost pump motor and tripped a circuit breaker. We are issuing this AD to prevent electrical arcing in the fuel tank boost pump motor, which in the presence of a combustible air-fuel mixture in the fuel tank boost pump, could result in an explosion and loss of the airplane.

Compliance

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

Restatement of Requirements of AD 2006–12–02

Part and Serial Number Inspection

(f) Within 10 days after July 3, 2006 (the effective date of AD 2006–12–02), inspect to determine the part number (P/N) and serial number (S/N) of each fuel tank boost pump installed in the wing and center fuel tanks. A review of maintenance records may be performed instead of the required inspection if the P/N and S/N of the fuel boost pump can be conclusively determined from that review. Accomplishment of the inspection or records review as specified in Airbus Service Bulletin A320–28–1152, dated May 5, 2006; or Revision 01, dated July 17, 2006; is one approved method for conducting this inspection or records review. For any airplane not equipped with any Eaton Aerospace Limited (formerly FR-HITEMP Limited) fuel pump having P/N 568–1–27202–005 with S/N 6137 and subsequent: No further action is required by this AD for that airplane, except as described in paragraph (j) of this AD.

Revisions to the Airplane Flight Manual (AFM) and the Maintenance Program

(g) For airplanes equipped with one or more Eaton Aerospace Limited (formerly FR-HITEMP Limited) fuel boost pumps, having P/N 568–1–27202–005 with S/N 6137 and subsequent: Prior to further flight after accomplishing the inspection required by paragraph (f) of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, until the modification required by paragraph (h) of this AD has been done.

(1) Revise the Limitations section of the Airbus A318/A319/A320/A321 AFM and the FAA-approved maintenance program by incorporating the following. This may be accomplished by inserting copies of this AD into the AFM and the maintenance program.

''Apply the following procedure at each fuel loading:

Refueling: Before refueling, all pumps must be turned off, in order to prevent them from automatically starting during the refueling process.

Ground fuel transfer: For all aircraft, do not start a fuel transfer from any wing tank, if it contains less than 700 kg (1550 lb) of fuel.

For A318, A319, and A320 aircraft with a center tank, do not start a fuel transfer from the center tank, if it contains less than 2,000 kg (4,500 lb) of fuel.

If a tank has less than the required quantity, it is necessary to add fuel (via a transfer from another tank or refueling) to enable a transfer to take place.

Defueling: For all aircraft, when defueling the wings, do not start the fuel pumps if the fuel quantity in the inner tank (wing tank for A321) is below 700 kg (1,550 lb). If the fuel on the aircraft is not sufficient to achieve the required fuel distribution, then transfer fuel or refuel the aircraft to obtain the required fuel quantity in the wing tank.

For A318, A319, and A320 aircraft with a center tank, when performing a pressure defuel of the center tank, make sure that the center tank contains at least 2,000 kg (4,500 lb) of fuel. If it has less than the required quantity, then transfer fuel to the center tank. Defuel the aircraft normally, and turn OFF the center tank pumps immediately after the FAULT light on the corresponding pushbutton-switch comes on.''

(2) Revise the Limitations section of the AFM to incorporate the changes specified in Airbus Temporary Revision (TR) 4.03.00/28, dated May 4, 2006. This may be accomplished by inserting a copy of the TR into the AFM. When general revisions of the AFM have been issued that incorporate the revisions specified in the TR, the copy of the TR may be removed from the AFM, provided the relevant information in the general revision is identical to that in TR 4.03.00/28.

New Requirements of This AD

Terminating Action

(h) For airplanes equipped with one or more Eaton Aerospace Limited (formerly FR-HITEMP Limited) fuel boost pumps, having P/N 568–1–27202–005 with S/N 6137 and subsequent: At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, either modify or replace affected fuel boost pumps in accordance with Airbus Service Bulletin A320–28–1153, Revision 01, dated July 13, 2006. Modification or replacement of all affected fuel tank boost pumps on an airplane terminates the requirements of paragraph (g) of this AD, and the limitations required by paragraph (g) of this AD may be removed from the AFM and the maintenance program for that airplane.

(1) For the center tank fuel pumps: Within 1,000 flight hours or 3 months after the effective date of this AD, whichever occurs first.

(2) For the wing tank fuel pumps: Within 2,000 flight hours or 6 months after the effective date of this AD, whichever occurs first.

Note 1: Airbus Service Bulletin A320–28–1153 refers to Eaton Service Bulletin 8410–28–04, dated May 2, 2006, as an additional source of service information for the fuel pump modification.

Previous Accomplishment

(i) Modification of a fuel pump before the effective date of this AD in accordance with Airbus Service Bulletin A320–28–1153, dated May 5, 2006, is acceptable for compliance with the requirements of paragraph (h) of this AD for that pump only.

Parts Installation

(j) As of the effective date of this AD, no person may install a boost pump, P/N 568–1–27202–005, having any S/N 6137 and subsequent, on any airplane, unless the boost pump has been modified in accordance with this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(l) European Aviation Safety Agency airworthiness directive 2006–0222, dated July 20, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on January 12, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1093 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27010; Directorate Identifier 2006–NM–259–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Airplanes; Model A310 Airplanes; and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Airbus Model A300 airplanes and Model A310 airplanes, and certain Airbus Model

A300–600 series airplanes. The existing AD currently requires an inspection of the wing and center fuel tanks to determine if certain P-clips are installed and corrective action if necessary; an inspection of electrical bonding points of certain equipment in the center fuel tank for the presence of a blue coat and related investigative and corrective actions if necessary; and installation of new bonding leads and electrical bonding points on certain equipment in the wing, center, and trim fuel tanks, as necessary. This proposed AD would require, for certain airplanes, installation of bonding on an additional bracket. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to ensure continuous electrical bonding protection of equipment in the wing, center, and trim fuel tanks and to prevent damage to wiring in the wing and center fuel tanks, due to failed P-clips used for retaining the wiring and pipes, which could result in a possible fuel ignition source in the fuel tanks.

DATES: We must receive comments on this proposed AD by February 26, 2007.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2007–27010; Directorate Identifier 2006–NM–259–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On July 14, 2006, we issued AD 2006–15–09, amendment 39–14689 (71 FR 42026, July 25, 2006), for all Airbus Model A300 airplanes and Model A310 airplanes, and for certain Airbus Model A300–600 series airplanes. That AD requires an inspection of the wing and center fuel tanks to determine if certain P-clips are installed and corrective action if necessary. That AD also requires an inspection of electrical bonding points of certain equipment in the center fuel tank for the presence of a blue coat and related investigative and corrective actions if necessary. That AD also requires installation of new bonding leads and electrical bonding points on certain equipment in the wing, center, and trim fuel tanks, as necessary. That AD resulted from fuel system reviews conducted by the manufacturer. We issued that AD to ensure continuous electrical bonding protection of equipment in the wing, center, and trim fuel tanks and to prevent damage to wiring in the wing and center fuel tanks, due to failed P-clips used for retaining the wiring and pipes, which could result in a possible fuel ignition source in the fuel tanks.

Actions Since Existing AD Was Issued

Since we issued AD 2006–15–09, the manufacturer has issued new service information, described below, that specifies the additional work of installing bonding on the slat track 11 canister bracket for all Model A310 airplanes.

Relevant Service Information

Airbus has issued Service Bulletins A300–28–0079, Revision 01, dated June 6, 2006; and A310–28–2142, Revision 01, dated July 17, 2006. We referred to the original issues of these service bulletins in AD 2006–15–09 as the appropriate sources of service information for installing bonding leads and points for wing and center fuel tanks for all Model A300 and A310 airplanes. The procedures in these service bulletins are essentially the same as the procedures in the original issues of the service bulletins, except Revision 01 of Airbus Service Bulletin A310–28–2142 specifies the additional work of installing bonding on the slat track 11 canister bracket for all Model A310 airplanes.

The European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union, mandated the service bulletins and issued airworthiness directive 2006–0325, dated October 23, 2006, to ensure the continued airworthiness of these airplanes in the European Union. Since AD 2006–15–09 was issued, EASA has assumed responsibility for the airplane models subject to this AD. Therefore, this EASA airworthiness directive supersedes French airworthiness directive F–2006–031, dated February 1, 2006, which is the parallel French airworthiness directive to AD 2006–15–09.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued

Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2006–15–09 and would retain the requirements of the existing AD. This proposed AD would also require installing bonding on the slat track 11 canister bracket for all Model A310 airplanes.

Costs of Compliance

There are about 29 Model A300 airplanes, 63 Model A310 airplanes, and 102 Model A300–600 series airplanes of the affected design in the U.S. fleet. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this proposed AD. For some actions, the estimated work hours and cost of parts in the following table depend on the airplane configuration.

ESTIMATED COSTS

Model	Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
A300 airplanes ..	Inspect wing and center fuel tanks for P-clips (required by AD 2006–15–09).	40	(1)	$3,200	29	$92,800
	Install bonding leads/points in wing and center fuel tanks (required by AD 2006–15–09).	136–155	3,800–5,200	14,680–17,600	29	425,720–510,400
A310 airplanes ..	Inspect wing and center fuel tanks for P-clips (required by AD 2006–15–09).	40	(1)	3,200	63	201,600
	Install bonding leads/points in wing and center fuel tanks (required by AD 2006–15–09).	248–285	8,840–9,190	28,680–31,990	63	1,806,840–2,015,370
	Install bonding for slat track 11 canister bracket (new proposed action).	2	30	190	63	11,970
	Inspect and install bonding leads/points in the trim fuel tank (required by AD 2006–15–09).	53–61	50–70	4,290–4,950	63	270,270–311,850
A300–600 series airplanes.	Inspect wing and center fuel tanks for P-clips (required by AD 2006–15–09).	40	(1)	3,200	102	326,400
	Install bonding leads/points in wing and center fuel tanks (required by AD 2006–15–09).	157–185	8,840–9,190	21,400–23,990	102	2,182,800–2,446,980
	Inspect and install bonding leads/points in the trim fuel tank (required by AD 2006–15–09).	2–61	50–70	210–4,950	102	21,420–504,900

[1] None.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14689 (71 FR 42026, July 25, 2006) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2007–27010; Directorate Identifier 2006–NM–259–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 26, 2007.

Affected ADs

(b) This AD supersedes AD 2006–15–09.

Applicability

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

(1) All Model A300 airplanes and Model A310 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A300 C4–605R Variant F airplanes; except those airplanes identified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Airplanes not equipped with trim fuel tanks on which Airbus Modifications 12226, 12365, and 12308 have been incorporated in production.

(ii) Airplanes equipped with trim fuel tanks on which Airbus Modifications 12226, 12365, 12308, 12294, and 12476 have been incorporated in production.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to ensure continuous electrical bonding protection of equipment in the wing, center, and trim fuel tanks and to prevent damage to wiring in the wing and center fuel tanks, due to failed P-clips used for retaining the wiring and pipes, which could result in a possible fuel ignition source in the fuel tanks.

Compliance

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

Restatement of the Requirements of AD 2006–15–09

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the service bulletins identified in Table 1 of this AD, as applicable.

TABLE 1.—SERVICE BULLETIN REFERENCES

For Airbus—	And the actions specified in—	Use Airbus Service Bulletin—	Dated—
Model A300 airplanes	paragraph (g) of this AD	A300–28–0081	July 20, 2005.
	paragraph (h) of this AD	A300–28–0079	September 29, 2005; or Revision 01, dated June 6, 2006. After the effective date of this AD, only Revision 01 may be used.
Model A310 airplanes	paragraph (g) of this AD	A310–28–2143	July 20, 2005.
	paragraph (h) of this AD	A310–28–2142	August 26, 2005; or Revision 01, dated July 17, 2006. After the effective date of this AD, only Revision 01 may be used.
Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A300 C4–605R Variant F airplanes.	paragraph (i) of this AD	A310–28–2153	July 20, 2005.
	paragraph (g) of this AD	A300–28–6068	July 20, 2005.
	paragraph (h) of this AD	A300–28–6064	July 28, 2005.
	paragraph (i) of this AD	A300–28–6077	July 25, 2005.

Inspection and Corrective Actions

(g) Within 59 months after August 29, 2006 (the effective date of AD 2006–15–09): Do a general visual inspection of the right and left wing fuel tanks and center fuel tank, if applicable, to determine if any NSA5516–XXND- and NSA5516–XXNJ-type P-clips are installed for retaining wiring and pipes in any tank, and do all applicable corrective actions before further flight after the inspection, by accomplishing all the actions specified in the service bulletin.

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

Installation of Bonding Leads and Points for Wing and Center Fuel Tanks

(h) Within 59 months after August 29, 2006: Do the actions specified in paragraphs (h)(1) and (h)(2) of this AD, by accomplishing all the actions specified in the service bulletin.

(1) In the center fuel tank, if applicable, do a general visual inspection of the electrical bonding points of the equipment identified in the service bulletin for the presence of a blue coat, and do all related investigative and corrective actions before further flight after the inspection.

(2) In the left and right wing fuel tanks and center fuel tank, if applicable, install bonding leads and electrical bonding points on the equipment identified in the service bulletin.

Installation of Bonding Leads and Points for the Trim Fuel Tank

(i) For Model A310 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A300 C4–605R Variant F airplanes; equipped with a trim fuel tank: Within 59 months after August 29, 2006, install a new bonding lead(s) on the water drain system of the trim fuel tank and install electrical bonding points on the equipment identified in the service bulletin in the trim fuel tank, by accomplishing all the actions specified in the service bulletin, as applicable.

New Requirements of This AD

Installation of Bonding for Slat Track 11 Canister Bracket

(j) For Model A310 airplanes on which the actions specified in Airbus Service Bulletin A310–28–2142, dated August 26, 2005, have been done before the effective date of this AD: Within 50 months after the effective date of this AD, install bonding for slat track 11 canister bracket, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–28–2142, Revision 01, dated July 17, 2006.

Parts Installation

(k) As of August 29, 2006, no person may install any NSA5516–XXND- or NSA5516–XXNJ-type P-clip for retaining wiring and pipes in any wing, center, or trim fuel tank, on any airplane.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously in accordance with AD 2006–15–09, are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(m) European Aviation Safety Agency (EASA) airworthiness directive 2006–0325, dated October 23, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on January 12, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1092 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 15, 18, 150, 152 and 179

Office of the Secretary

43 CFR Parts 4 and 30

RIN 1076–AE59

Indian Trust Management Reform

AGENCY: Bureau of Indian Affairs, Office of the Secretary, Interior.

ACTION: Notice of reopening of comment period for proposed rule.

SUMMARY: On August 8, 2006, the Bureau of Indian Affairs (BIA) and the Office of the Secretary proposed to amend several of their regulations related to Indian trust management (see 71 FR 45173). The rule proposes to address Indian trust management issues in the areas of probate, probate hearings and appeals, tribal probate codes, life estates and future interests in Indian land, the Indian land title of record, and conveyances of trust or restricted land. The proposed rule also includes an ''Application for Consolidation by Sale'' form that is associated with one of these amendments. On November 1, 2006, the BIA and the Office of the Secretary reopened the comment period for an additional 60 days to January 2, 2007 (see 71 FR 64181).

This notice reopens the comment period an additional 45 days to March 12, 2007. The BIA and Office of Secretary again are extending the comment period by 45 days to ensure that all interested parties, including tribes and individual Indians, have the opportunity to review the proposed rule and prepare their comments.

DATES: The comment period for the proposed rule published on August 8, 2006 (71 FR 45173) is extended to March 12, 2007.

ADDRESSES: You may submit comments, identified by the number 1076–AE59, by any of the following methods:

—*Federal rulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
—Web site at *www.doitrustregs.com.*
—*E-mail: Michele_F_Singer@ios.doi.gov.* Include the number 1076–AE59 in the subject line of the message.
—*Fax:* (202) 208–5320. Include the number 1076–AE59 in the subject line of the message.
—*Mail:* U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 4141, Washington, DC 20240.
—*Hand delivery:* Michele Singer, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

Comments on the information collection burdens, including comments on or requests for copies of the ''Application for Consolidation by Sale'' form, are separate from those on the substance of the rule. Send comments on the information collection burdens to: Interior Desk Officer 1076–AE59, Office of Management and Budget, e-mail: *oira_docket@omb.eop.gov;* or (202) 395–6566 (fax). Please also send a copy of your comments to BIA at the location specified under the heading **ADDRESSES**.

FOR FURTHER INFORMATION CONTACT: Michele Singer, Counselor to the Assistant Secretary—Indian Affairs, Department of the Interior, 1849 C Street, NW., Mail Stop 4141, Washington, DC 20240, telephone (202) 273–4680.

Authority: Regulatory amendments to these parts are proposed under the general authority of the American Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. 4021 *et seq.*, and the Indian Land Consolidation Act of 2000, as amended by the American Indian Probate Reform Act of 2004, 25 U.S.C. 2201 *et seq.*

Dated: January 17, 2007.

Mike D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 07–325 Filed 1–24–07; 8:45 am]

BILLING CODE 4310–W7–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0716; FRL–8273–2]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Exemption From VOC Requirements for Sources Subject to the National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing or Reinforced Plastics Composites Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 17, 2006, the Indiana Department of Environmental Management (IDEM) submitted an amendment to its volatile organic compound (VOC) rules for new facilities for approval into the Indiana State Implementation Plan (SIP). This amended rule exempts facilities subject to the boat manufacturing and reinforced plastics composites production national emission standards for hazardous air pollutants (NESHAPS) from the Indiana SIP. This rule revision is approvable because the hazardous air pollutant covered by these NESHAPS rules is styrene, which is always used and is also a VOC. Therefore, the VOC control requirements in these rules are always applicable. In addition, the provisions in these rules are enforceable and result in a clearly defined level of VOC reductions dependent upon the specific type of operation.

DATES: Comments must be received on or before February 26, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0716, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov.*

3. *Fax:* (312)886–5824.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0716. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The 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 www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding legal holidays. We recommend that you telephone Steven Rosenthal at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What Should I Consider as I Prepare My Comments for EPA?
II. What Is the Purpose and Background for This Action?
III. What Is EPA's Analysis of Indiana's Rule Amendment?
IV. What Action Is EPA Taking Today?
V. Statutory and Executive Order Reviews

I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What Is the Purpose and Background for This Action?

Currently, new facilities not regulated by a provision in 326 IAC Article 8 (Indiana's VOC Rules) and which have potential emissions of 25 tons or more per year of VOC are required to reduce VOC emissions by using best available control technology (BACT) under 326 IAC 8–1–6 (new facilities: general reduction requirements). Establishing BACT is a case-by-case determination based on the maximum reduction that is technically feasible, while taking into account energy, environmental and economic impact. Establishing specific standards in place of case-by-case analyses improves the clarity, predictability, and timeliness of permit decisions that are currently subject to 326 IAC 8–1–6.

Styrene is classified as both a hazardous air pollutant (HAP) and a VOC and is the predominant regulated air pollutant from sources subject to 326 IAC 20–48, which incorporates by reference 40 CFR part 63, Subpart VVVV (Boat manufacturing), and 326 IAC 20–56, which incorporates by reference 40 CFR part 63, Subpart WWWW (Reinforced Plastics Composites production). Numerous case-by-case BACT analyses for sources subject to 326 IAC 20–48 or 326 IAC 20–56 have been submitted to, and approved by, IDEM. These analyses establish that the emission limitation in the applicable NESHAP satisfies the requirement for BACT. However, 326 IAC 8–1–6 requires the applicant to compile the energy, environmental, and economic analyses of alternative controls, and IDEM staff must review and approve those analyses. For sources subject to 326 IAC 20–48 or 326 IAC 20–56, this rulemaking will reduce the administrative burden for both the applicant and IDEM, since compliance with the applicable NESHAPS will assure that BACT requirements have been addressed and met.

Therefore, in order to make its BACT process more efficient, on July 17, 2006, Indiana submitted exemptions to its new facilities, general reduction requirements rule in 326 IAC 8–1–6.

III. What Is EPA's Analysis of Indiana's Rule Amendment?

This rule revision is approvable because the Hazardous Air Pollutant (styrene) covered by these NESHAPS

rules is a VOC, and the provisions in these rules are enforceable and result in specified VOC reductions dependent upon the specific type of operation.

IV. What Action Is EPA Taking Today?

EPA is proposing to approve Indiana's amendment to its SIP consisting of an amendment to 326 IAC 8–1–6, new facilities; general reduction requirements. This rule exempts boat manufacturers subject to 326 IAC 20–48, NESHAPS for boat manufacturing, or reinforced plastics composites manufacturers subject to 326 IAC 20–56, NESHAPS for reinforced plastics composites production facilities, from the requirement to do a BACT analysis, for the purposes of 326 IAC 8–1–6, provided they comply with the applicable NESHAPS.

However, any approval of this exemption to 326 IAC 8–1–6 would not address (or take action on) whether the boat manufacturing or reinforced plastics composites production NESHAPS represent reasonably available control technology, which is the level of control required by EPA for existing sources in ozone nonattainment areas. In addition, any approval would not address (or take action on) whether these NESHAPS regulations satisfy BACT as required by 326 IAC 2–2 (prevention of significant deterioration) or lowest achievable emission rate as required by 326 IAC 2–3 (nonattainment new source review).

VI. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under State law, and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the State to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 18, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7–1099 Filed 1–24–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Anticipated Delisting of Astragalus desereticus (Deseret milk-vetch) From the List of Endangered and Threatened Plants; Prudency Determination for Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advanced notice of proposed rulemaking; notice of critical habitat prudency determination.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our intention to conduct rulemaking under the Endangered Species Act (Act) of 1973 as amended (Act) (16 U.S.C. 1531 *et seq.*) for the purpose of removing

Astragalus desereticus (Deseret milk-vetch) from the List of Endangered and Threatened Plants in the near future. Specifically, we intend to propose delisting *A. desereticus* because threats to the species as identified in the final listing rule (64 FR 56590, October 20, 1999) are not as significant as earlier believed and are managed such that the species is not likely to become in danger of extinction throughout all or a significant portion of its range in the foreseeable future. Upon delisting, *A. desereticus* would be managed pursuant to a Conservation Agreement among the Service and Utah State agencies.

In response to a stipulated settlement agreement we have reconsidered whether designating critical habitat for *Astragalus desereticus* would be prudent based on this species' current status. We have determined that such a designation is not prudent because, as described in this advanced notice, we believe that designating critical habitat would not be beneficial to the species (50 CFR 424.12). This is because no area meets the definition of ''critical habitat'' (i.e., there are no areas essential to the conservation of the species which require special management considerations, and protections afforded by the species' current listing status appear to be no longer necessary).

DATES: Comments and information must be submitted before March 26, 2007.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of the following methods:

(1) You may mail or hand-deliver written comments and information to Field Supervisor, Utah Ecological Services Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119.

(2) You may electronic mail (e-mail) your comments to *deseretmilkvetch@fws.gov.* For directions on how to submit comments by e-mail, see the ''Public Comments Solicited'' section of this notice. In the event that our Internet connection is not functional, please submit your comments by mail, hand delivery, or fax to 801–975–3331.

FOR FURTHER INFORMATION CONTACT: Larry England, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119 (telephone 801–975–3330; fax 801–975–3331; e-mail *larry_england@fws.gov*).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

This notice announces the opening of a 60-day comment period on our advanced notice of proposed rulemaking. We encourage interested parties to provide comments on *A. desereticus* to the Project Leader, Utah Ecological Services Office (see **ADDRESSES**). We will base rulemaking on a review of the best scientific and commercial information available, including all such information received during the public comment period. Information regarding the following topics would be particularly useful: (1) Species biology, including but not limited to population trends, distribution, abundance, demographics, genetics, and taxonomy; (2) habitat conditions, including but not limited to amount, distribution, and suitability; (3) conservation measures that have been implemented that benefit the species; (4) threat status and trends; and (5) other new information or data. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the address indicated in the **ADDRESSES** section.

Please submit electronic comments in an ASCII or Microsoft Word file and avoid the use of any special characters or any form of encryption. Also, please include ''Attn: *Astragalus desereticus*'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described above.

Background

Astragalus desereticus is a perennial, herbaceous, subacaulescent (almost stemless) plant (Barneby 1989) in the legume family. It is approximately 2–6 inches (in) (5.1–15.2 centimeters (cm)) in height, and has pinnately compound leaves (feather-like arrangement with leaflets displayed on a central stalk) that are 2–4 inches (in) (5.1–10.2 cm) long with 11–17 leaflets. The flower petals are whitish except for pinkish wings and a lilac keel-tip, and seed pods are 0.4–0.8 in (1.0–2.0 cm) long and densely covered with lustrous hairs.

Astragalus desereticus habitat is narrowly restricted to steep, sandy bluffs (Barneby 1989) associated with south and west facing slopes (Franklin 1990) within the Moroni Formation at elevations between 5,400 and 5,600 feet (1,646 and 1,707 meters (m)) (Franklin 1990). The current known range of *A. desereticus* is limited to the Birdseye population (Stone 1992) which occupies an area approximately 1 mile (mi) (1.6 kilometers (km)) long by 0.3 mi (0.5 km) wide, or about 345 acres (ac) (139.6 hectares (ha)), in the Thistle Creek watershed immediately east of Birdseye, Utah. Approximately 230 ac (93 ha) are owned by the Utah Division of Wildlife Resources (UDWR) in the Birdseye Unit of the Northwest Manti Wildlife Management Area (WMA), 25 ac (10.1 ha) are owned by the Utah Department of Transportation (UDOT), and 90 ac (36.4 ha) are on private lands owned by several landowners. The WMA extends across the northern and central portions of the population. The mineral rights under the WMA and the majority of the mineral rights under the private lands are owned by the Utah School and Institutional Trust Lands Administration (SITLA).

Franklin (1990) estimated the population in May 1990 at fewer than 5,000 plants. Stone (1992) resurveyed the population in late May 1992 and reported more than 10,000 plants, indicating that a substantial seed bank existed in the soil. He reported that the northern portion of the population appeared the same as in 1990, but high densities of seedlings and young milk-vetch plants occurred locally in the southern portion. Observations of *Astragalus desereticus* on the WMA show that the species population increased by 31 percent from 2000–2005 (*Astragalus desereticus* monitoring plot data conducted by the Service, 2000 and 2005, USFWS, Salt Lake City, Utah; hereinafter cited as Service 2005).

Previous Federal Actions

Astragalus desereticus was listed as a threatened species due to small population size, restricted distribution, development, cattle grazing (including erosion and trampling), and impacts to pollinator habitat (64 FR 56590, October 20, 1999). At the time of listing, we determined that designating critical habitat for *A. desereticus* was not prudent due to the lack of benefit to the species. Specifically, we discussed application of sections 4 and 7 of the Act and management of the species' habitat by UDWR.

On July 5, 2005, the Center for Native Ecosystems, Forest Guardians, and the Utah Native Plant Society filed a complaint in the U.S. District Court for the District of Columbia challenging our determination that designating critical habitat was ''not prudent'' (*Center for Native Ecosystems, Forest Guardians, and Utah Native Plant Society* v. *Gale Norton* (05–CV–01336–RCL)). In a stipulated settlement agreement, we agreed to submit for publication in the **Federal Register** a new critical habitat determination for *Astragalus desereticus* by January 19, 2007.

This advance notice of proposed rulemaking (ANPR) announces our intent to remove *Astragalus desereticus* from the Federal list of Endangered and Threatened Plants, based on a combination of recovery and original data error, including: (1) The species' habitat remains intact and little changed from the early 1990s when monitoring activities were first initiated (UDWR *et al.* 2006); (2) the population has grown considerably since listing; and (3) threats are not as significant as we had anticipated at the time of listing, and they are adequately managed such that the species is not likely to become in danger of extinction throughout all or a significant portion of its range in the foreseeable future. This notice also constitutes our new prudency determination in fulfillment of the stipulated settlement agreement.

Review of Available Information

Section 4 of the Act and its implementing regulations (50 CFR part 424.11) set forth procedures for removing species from the Federal List of Endangered and Threatened Wildlife and Plants. Regulations at 50 CFR 424.11(d) state that the factors considered in delisting a species are the following, as they relate to the definitions of endangered or threatened species: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. A delisting must be supported by the best scientific and commercial data available to the Secretary after conducting a review of the status of the species. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons: (1) Extinction; (2) recovery; and (3) original data for classification in error.

When we listed *Astragalus desereticus*, we identified several threats to the species, all but one habitat related. These threats included primary and secondary effects of urban expansion, road construction, and cattle grazing (all identified pursuant to factors A and E). Factor D, inadequacy of existing regulatory mechanisms, was also identified as a threat. Information available at this time indicates that some of these threats did not materialize, and others are not as significant as we had anticipated. In addition, a recently completed Conservation Agreement (cited herein as UDWR *et al.* 2006) among the Service, UDWR, UDOT, and SITLA should adequately address our concerns pursuant to factor D. We are not aware of any new threats at this time that were not identified when the species was listed.

Although the species' distribution is still small and restricted, there has been little to no habitat disturbance in recent years and there are no foreseeable potential threats to the State-owned portion of the species' range (UDWR *et al.* 2006). Occupied habitat continues to be intact and little has changed since the early 1990s when Stone (1992) concluded that the population was not subject to any deterministic threats (*i.e.*, habitat destruction or attempts at eradication) (UDWR *et al.* 2006). One house has been built on private property within the species' range, affecting about 2 ac (0.8 ha), or less than 1 percent of occupied habitat. Residential development could directly affect up to about 10 percent of the species' habitat in the future (England 2006); however, this is not considered to be a significant threat, given that the majority of the species habitat would remain protected on the State WMA for the foreseeable future. We are not aware of any specific development plans at this time.

There are currently no plans for highway widening (West 2006). Should highway widening occur in the future, there is adequate right-of-way space to minimize impacts to *Astragalus desereticus* individuals. In addition, mineral development does not appear to be a significant threat because SITLA owns the mineral rights on most of the occupied habitat. These mineral rights have not been leased (Durrant 2006), and SITLA has agreed to work with lessees to ensure disturbances to occupied habitat are avoided or that unavoidable impacts are appropriately mitigated (UDWR *et al.* 2006).

Prior to state acquisition of the WMA, livestock grazing (primarily sheep) had occurred for over 100 years on occupied *Astragalus desereticus* habitat (England 2006). The WMA is now being managed as big game winter range and UDWR controls all grazing rights on the property. Cattle grazing has been used as a management tool by UDWR, but only on a limited basis. *A. desereticus* occupied habitat is largely unsuitable for cattle grazing (Green 2006). There is no evidence that current wildlife or livestock browsing levels are negatively impacting *A. desereticus* populations (UDWR *et al.* 2006).

A significant portion of the species' range (approximately 67 percent) is managed by UDWR as part of the Northwest Manti WMA. Plants occurring on the WMA constitute the core of the species' population, providing the seed source for reproduction and maintenance of the seed bank (UDWR *et al.* 2006). Historic data and recent observations indicate that the population has grown substantially since listing (Franklin 1990; Stone 1992; Service 2005). Plant density on the WMA , as measured by Service personnel, increased by 31 percent between 2000 and 2005 (Service 2005); therefore, the species and its habitat are considered stable (UDWR *et al.* 2006).

Natural events such as drought and fire may occur in the areas of *A. desereticus* habitat. However, we have no information to indicate that natural events have or may cause long-term population reductions. Vegetation within the species' range is an open to sparse woodland overstory, not prone to fire outbreaks (Franklin 1990, England 2006).

The Service, UDWR, UDOT, and SITLA signed a Conservation Agreement (CA) dated October 10, 2006, that was specifically developed to ensure long-term survival and conservation of *Astragalus desereticus* (UDWR *et al.* 2006). The CA is designed to formalize a program of conservation measures that address potential threats and maintain the species' specialized habitat. These measures are consistent with actions taken by UDWR and they have a proven

track record of protecting and enhancing the species. Measures include: (1) Habitat maintenance (including maintenance of the current pinyon-juniper woodland vegetation type with its current diverse understory of native shrubs, grasses and forbs; restricting habitat disturbing actions such as livestock grazing and road and mineral development; ensuring that the destruction of individual plants does not occur and that appropriate mitigation is provided for any unavoidable effects to individual plants or their habitat); (2) retention of *A. desereticus* habitat on the Birdseye Unit of the Northwest Manti WMA in State of Utah ownership under the management of the UDWR; and (3) avoidance of herbicide use in *A. desereticus* habitat, including along highway right-of-ways. The CA also includes an annual monitoring program and provides a mechanism to evaluate the feasibility of acquiring private lands to benefit *A. desereticus.*

Based on our evaluation, we conclude that the CA is sufficient to address potential future threats to the species on State of Utah lands, providing long-term protection and enhancement measures. In accordance with the CA, efforts will be made to work with adjacent private landowners to provide species conservation measures and easements. However, long-term species conservation can be achieved solely on the State of Utah WMA which provides the core of the species population, providing the seed source for reproduction, and maintenance of the seed bank (UDWR *et al.* 2006).

Prudency Determination

As mentioned above, we believe that designating critical habitat would not be beneficial to the species (50 CFR 424.12). Specifically, we believe that there are no habitat areas containing physical or biological features that are essential to the conservation of the species and that may require special management consideration or protection, and available information at the time of this determination indicates that the threats to the species identified at the time of listing are no longer significant or have never materialized.

Astragalus desereticus habitat does not require additional special management considerations or protection given proven and effective management strategies already implemented by the State of Utah. The recently signed CA (UDWR *et al.* 2006) provides assurances for continued management and protection of the species under these proven strategies, which should maintain habitat of sufficient quantity and quality to ensure viable populations for the foreseeable future. Available information indicates that the *A. desereticus* population has grown substantially since listing, and the species and its habitat are considered stable (UDWR *et al.* 2006). Because of the population growth, the Conservation Agreement and the fact that threats identified at the time of listing are no longer significant or have never materialized, available information indicates that habitat destruction is no longer a threat to the species.

Therefore, based on our regulations and the information available to us at this time, we find there are no areas that constitute critical habitat for *A. desereticus* because no areas meet the definition of critical habitat pursuant to section 3(5)(A) of the Act. Thus, critical habitat designation would not be beneficial to the species. Designation of critical habitat is, therefore, not prudent.

Effects of This Advance Notice of Proposed Rulemaking

This Advance Notice of Proposed Rulemaking announces our intent to propose rulemaking which may remove protections afforded *Astragalus desereticus* under the Act. This rule, if made final, would revise 50 CFR 17.12(h) to remove *A. desereticus* from the List of Endangered and Threatened Plants. Because no critical habitat was ever designated for this species, this rule would not affect 50 CFR 17.96.

If we make a final decision to delist *Astragalus desereticus*, the prohibitions and conservation measures provided by the Act would no longer apply to this species. Federal agencies would no longer be required to consult with us under section 7 of the Act to ensure that any action they authorize, fund, or carry out would not likely jeopardize the continued existence of *A. desereticus* or destroy or adversely modify designated critical habitat. Until *A. desereticus* is delisted, any Federal actions, or federally funded or permitted actions, must comply with the Act. If delisting occurs, we anticipate that the CA discussed above would guide *A. desereticus* management.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available, upon request, from the Utah Ecological Services Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Author

The primary author of this document is Larry England, Botanist, Utah Ecological Services Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 18, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–1062 Filed 1–24–07; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 72, No. 16
Thursday, January 25, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Annual Wildfire Summary Report

AGENCY: Forest Service, USDA.

ACTION: Notice of request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection; Annual Wildfire Summary Report.

DATES: Comments must be received in writing on or before March 26, 2007 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Karyn Wood, Assistant Director for Fire Operations, National Interagency Fire Center, Forest Service, USDA, 3833 S. Development Avenue, Boise, ID 83705.

Comments also may be submitted via facsimile to (208) 387–5971 or by e-mail to: *klwood@fs.fed.us.*

The public may inspect comments received at National Interagency Fire Center, 3833 S. Development Avenue, Boise, ID during normal business hours. Visitors are encouraged to call ahead to (208) 387–5604 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Karyn Wood, Assistant Director for Fire Operations, National Interagency Fire Center, (208) 387–5605. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Annual Wildfire Summary Report.

OMB Number: 0596–0025.

Expiration Date of Approval: June 30, 2007.

Type of Request: Extension of a currently approved collection.

Abstract: The Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101 (note) Sec. 10) requires the Forest Service to collect information about wildfire suppression efforts by state and local fire fighting agencies in order to support specific congressional funding requests for the Forest Service State and Private Forestry Cooperative Fire Program. The program provides supplemental funding for state and local fire fighting agencies. The Forest Service works cooperatively with state and local fire fighting agencies to support their fire suppression efforts.

State fire marshals use FS–3100–8 (Annual Wildfire Summary Report) to collect information for the Forest Service regarding state and local wildfire suppression efforts. Without this information, the Forest Service would be unable to assess the effectiveness of the State and Private Forestry Cooperative Fire Program. Forest Service managers evaluate the information to determine if the Cooperative Fire Program funds used by state and local fire agencies have improved fire suppression capabilities. The Forest Service shares the information with Congress as part of the annual request for funding for this program.

The information collected includes the number of fires responded to by state or local fire fighting agencies within a fiscal year, as well as the following information pertaining to such fires:

- Fire type (timber, structural, or grassland),
- Size (in acres) of the fires,
- Cause of fires (lightning, campfires, arson, etc.), and
- Suppression costs associated with the fires.

The data gathered is not available from other sources.

Estimate of Annual Burden: 30 minutes.

Type of Respondents: State fire marshals.

Estimated Annual Number of Respondents: 50.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 25 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Date: January 17, 2007.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. E7–1065 Filed 1–24–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Scriver Creek Integrated Restoration Project, Boise National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Emmett Ranger District of the Boise National Forest will prepare an environmental impact statement (EIS) for a resource management project in the Scriver Creek drainage. The entire project area is located in watersheds that drain into the Middle Fork Payette River. The 11,500-acre project area is located approximately 6 miles north of Crouch, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so interested and affected people are aware of how they

may participate and contribute to final decision. At this time, no public meetings to discuss the project are planned.

Proposed Action: Three purposes have been identified for the project: (1) Modify stand density, structure, species composition, and surface fuels to restore suitable white-headed woodpecker and flammulated owl habitat, in addition to providing forest conditions that are more resistant to insects, disease and wildfire; (2) initiate watershed restoration within the Scriver Creek 6th Field hydrologic unit (subwatershed) to improve watershed conditions and reduce long-term sedimentation caused by existing roads, in addition to reducing road-related impacts to wildlife, fish, soil, and water resources; (3) provide commercial timber that supports local and/or regional sawmills, employment, and economies.

The Proposed Action would implement silvicultural activities, including thinning of commercial trees on 2,826 acres (570 acres of commercial thinning, 1,445 acres of commercial thinning followed by prescribed fire, and 811 acres of commercial thinning followed by machine pile and burning). An estimated 928 acres would be harvested with off-road jammer/tractor, 870 acres would be skyline logged and a helicopter would harvest about 1,028 acres. The Proposed Action would employ silvicultural prescriptions including commercial thin, and thinning of submerchantable trees occurring naturally and within about 846 acres of existing plantations.

Approximately 16.5 miles of road would be decommissioned, of which an estimated 0.7 mile or road would be decommissioned while leaving the existing drainage and road prism sufficient for a future motorized trail. Approximately 16.1 miles of road improvement on National Forest System (NFS) roads 693, 6930, 695B, and 696 would take place. Roughly 2.4 miles of new specified road and approximately 1.1 miles of temporary road would be constructed to facilitate harvest activities. Approximately 3.8 miles of NFS roads 696 and 693B would be realigned to eliminate roads and road segments paralleling within Riparian Conservation Area (RCA) corridors, and 1.3 miles of NFS road 693A would be reconstructed. Fish passage would be restored by replacing or removing the existing culvert on NFS road 693A and two culverts on NFS roads 693 and 695 would be replaced with fish passable structures. All perennial crossings would have up to 300 feet of surface gravel applied on both sides of the crossing on those roads used in conjunction with timber harvest (except for roads to be decommissioned). Twelve helicopter landings would be developed. Except for administrative use, about 20.5 miles of authorized roads would be closed year-round to motorized use after vegetation treatments are complete.

Preliminary Issues: Preliminary concerns with the Proposed Action include potential impacts on water quality and terrestrial wildlife species.

Possible Alternatives to the Proposed Action: One alternative to the Proposed Action that has been discussed thus far is a No Action alternative. Other alternatives will likely be developed as issues are identified and information received.

Decisions to be Made: The Boise National Forest Supervisor will decide the following: (1) Should vegetation be managed within the project area at this time, and if so, which stands should be treated and what silvicultural systems applied? (2) Should roads be built at this time, and if so, how many miles should be built and where should they occur within the project area? (3) Should identified road maintenance activities occur at this time? (4) Should road decommissioning and realignment take place and which roads and how would this happen? (5) What design features, mitigation measures, and/or monitoring should be applied to the project?

DATES: Comments concerning the proposed project and analysis are encouraged and should be postmarked or received within 30 days following publication of this announcement in the **Federal Register.**

ADDRESSES: Comments should be addressed to the Emmett Ranger District, ATTN: Ann Roseberry, 1805 Highway 16, Room No. 5, Emmett, ID 83617; or sent electronically to *comments-intermtn-boise-emmett@fs.fed.us.* Electronic comments must be submitted in plain text or another format compatible with Microsoft Word. Comments may also be delivered to the above address during regular business hours of 8 a.m. to 4:30 p.m. Monday-Friday. Comments can also be submitted by phone at 208–365–7000 or fax to 208–365–7037. Comments received in response to this request will be available for public inspection and will be released in their entirety if requested pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Further information can be obtained from Ann Roseberry at the address mentioned above or by calling 208–365–7000.

Schedule: Draft Environmental Impact Statement (DEIS), July 2007. Final Environmental Impact Statement (FEIS), December 2007.

SUPPLEMENTARY INFORMATION: The entire project area drains into the Middle Fork Payette River and, although there are no 303(d)/305(b) listed streams within the project area, Scriver Creek drains to a segment of the Middle Fork Payette River, which is currently listed in Section 4a, Impaired Waterbodies with a TMDL complete for sediment (Idaho, State of, 1998a). A TMDL is currently in place and addresses the entire length of the Middle Fork Payette River.

The entire project area lies within Management Area 14 (Lower Middle Fork Payette River), discussed on pages III–254 through III–265 in the Boise National Forest Land and Resource Management Plan (Forest Plan). Several Management Prescription Categories (MPCs) apply within this management area. However, only MPC 5.2 occurs within the project area. The Proposed Action includes management activities within MPC 5.2 only.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1002 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the DEIS 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or

chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Richard A. Smith, Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, ID 83709.

Dated: January 18, 2007.

Richard A. Smith,

Forest Supervisor.

[FR Doc. 07–285 Filed 1–24–07; 8:45 am]

BILLING CODE 3410–11–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Wednesday, February 7, 2007, 9:30 a.m.–12 p.m.

PLACE: Corporation for National and Community Service, 8th Floor, 1201 New York Avenue, NW., Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Remarks.

II. Consideration of Prior Meeting's Minutes.

III. Committee Reports.

IV. CEO Report.

V. Panel on Engaging College Students in Community Service.

VI. Public Comment.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Monday, February 5, 2007.

FOR FURTHER INFORMATION CONTACT: David Premo, Public Affairs Associate, Public Affairs, Corporation for National and Community Service, 10th Floor, Room 10302E, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606–6717. Fax (202) 606–3460. *TDD:* (202) 606–3472. *E-mail: dpremo@cns.gov.*

Dated: January 22, 2007.

Frank R. Trinity,

General Counsel.

[FR Doc. 07–344 Filed 1–23–07; 3:22 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 26, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

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: January 18, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.

Title: Annual Performance Report for Title III and Title V Grantees.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 762.

Burden Hours: 15,334.

Abstract: Titles III and V of the HEA provide discretionary and formula grant programs that make competitive awards to eligible Institutions of Higher Education and organizations (Title III, Part E) to assist these institutions in expanding their capacity to serve minority and low-income students. Grantees submit a yearly performance report to demonstrate that substantial progress is being made towards meeting the objectives of their project. The driving force for these changes to the Annual Performance Report (APR) is the Government Accountability Office. The Government Accountability Office, in GAO–03–900 ''Distance Education: More Data Could Improve Education's Ability to Track Technology at Minority Serving Institutions,'' found that, ''the Department of Education can further refine its programs for monitoring technology usage at minority serving institutions.''

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3270. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–1084 Filed 1–24–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 26, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. 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: January 19, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: The Joint Application for the Special Leveraging Educational Assistance Partnership (SLEAP) and Leveraging Educational Assistance and Partnership (LEAP) Programs.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 112.

Abstract: The LEAP and SLEAP programs use matching Federal and State funds to provide a nationwide system of grants to assist postsecondary educational students with substantial financial need. On this application the states provide information the Department requires to obligate funds and for program management. The signed assurances legally bind the states to administer the programs according to regulatory and statutory requirements. With the clearance of this collection, the Department is seeking to automate the application for web-based applying for both the LEAP Program and the subprogram, SLEAP. There are no significant changes to the current LEAP form data elements. There are, however, some additional items pertaining to the SLEAP Program which combines the application into one form for both programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3261. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–1085 Filed 1–24–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend: Correction

January 17, 2007.

On January 22, 2007, the Commission published a notice of meeting pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b. This notice provides the correct time of the meeting.

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 24, 2007, 9:30 a.m.

PLACE: Room 2C, Commission Meeting Room, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public, Investigations and Inquiries, Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Kelliher and Commissioners Kelly, Spitzer, Moeller, and Wellinghoff voted to hold a closed meeting on January 24, 2007. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of his staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. E7–1054 Filed 1–24–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0120; FRL–8273–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings, EPA ICR Number 1765.04; OMB Control Number 2060–0353

AGENCY: Environmental Protection Agency.

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) with no changes to the ICR burden estimates. This ICR is scheduled to expire on Marcy 31, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Additional comments may be submitted on or before March 26, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. *EPA–HQ–OAR–2003–0120 by one of the following methods: Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

- *E-mail: a-and-rdocket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* U.S. Environmental Protection Agency EPA Docket Center (EPA/DC), Air and radiation Docket Information Center, 1200 Pennsylvania Avenue, NW., Mail Code: 6102T, Washington, DC 20460.
- *Hand Delivery:* To send comments or documents through a courier service, the address to use is: EPA Docket Center, Public Reading Room, EPA West, Room 334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation—8:30 a.m. to 4:30 p.m., Monday through Friday. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Electronic Docket ID No. EPA–HQ–OAR–2003–0120. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise to be protected through *www.regulations.gov* or e-mail. The 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 comment directly to us without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, 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 as a result of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses. For additional information about EPA public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets./htm.*

FOR FURTHER INFORMATION CONTACT: Warren Johnson, Office of Air and Radiation, Office of Air Quality Planning and Standards, Natural Resources and Commerce Group, Mail Code E143–03, Research Triangle Park, North Carolina 27711; *telephone number:* (919) 541–5124; *fax number:* (919) 541–3470; *e-mail address: johnson.warren@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0120 which is available either electronically at *www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 334, 1301 Constitution Avenue, NW., Washington, DC 20004. The normal business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone for the Reading Room is 202–566–1744, and the telephone for the Air Docket is 202–1742.

Use *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 Particularly Interests EPA?

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 of the first page of your response. You may also provide the name, date, and **Federal Register** citation.

To What Information Collection Activity or ICR Does This Apply?

Docket ID No. EPA–HQ–OAR–2003–0120.

Affected Entities: Entities potentially affected by this action as respondents are manufacturers and importers of automobile refinish coatings and coating components. Manufacturers of automobile refinish coatings and coating components fall within standard industrial classification (SIC) 2851, ''Paints, Varnishes, Lacquers, Enamels, and Allied Products'' and North American Industry Classification System (NAICS) code 325510, ''Paint and Coating Manufacturing.'' Importers of automobile refinish coatings and coating components fall within SIC 5198, ''Wholesale Trade: Paints, Varnishes, and Supplies,'' NAICS code 422950, ''Paint, Varnish and Supplies Wholesalers,'' and NAICS code 444120, ''Paint and Wallpaper Stores.''

Title: Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings (40 CFR part 59).

ICR number: EPA ICR Number 1765.04, OMB Control Number 2060–0353.

ICR status: This ICR is currently scheduled to expire on March 31, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The EPA is required under section 183(e) of the Clean Air Act to regulate volatile organic compound emissions from the use of consumer and commercial products. Pursuant to section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Automobile refinish coatings were included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart B. The reports required under the standards enable EPA to identify all coating and coating component manufacturers and importers in the United States and to determine which coatings and coating components are subject to the standards, based on dates of manufacture.

EPA provided notice and sought comments on the previous ICR renewal on July 8, 2003 (68 FR 40654), pursuant to 5 CFR 1320.8(d). The EPA received no comments to that notice.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 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 included the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 4.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: One or less per year.

Estimated total annual burden hours: 14.

Estimated total annual costs: $940. This includes an estimated burden cost of $0 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There are no changes being made to the estimates in this ICR from what EPA estimated in the earlier renewal (2003) of this ICR.

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: January 17, 2007.

Jenny Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Safeguards.

[FR Doc. 07–288 Filed 1–24–07; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8273–5]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (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 currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1061.10; NSPS for Phosphate Fertilizer Industry (Renewal); in 40 CFR part 60, subparts T, U, V, W and X; was approved 12/28/2006; OMB Number 2060–0037; expires 12/31/2009.

EPA ICR No. 0940.20; Ambient Air Quality Surveillance (Final Rule); in 40 CFR part 58 was approved 12/28/2006; OMB Number 2060–0084; expires 12/31/2009.

EPA ICR No. 1415.07; NESHAP for Perchlorethylene Dry Cleaning Facilities (Renewal); in 40 CFR part 63, subpart

M; was approved 12/28/2006; OMB Number 2060–0234; expires 12/31/2009.

EPA ICR No. 1969.03; NESHAP for Miscellaneous Organic Chemical Manufacturing (Renewal); in 40 CFR part 63, subpart FFFF; was approved 12/28/2006; OMB Number 2060–0533; expires 12/31/2009.

EPA ICR No. 1487.09; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions (Final Rule); in 40 CFR part 35, subpart O; was approved 12/26/2006; OMB Number 2050–0179; expires 12/31/2009.

EPA ICR No. 0328.13; Spill Prevention, Control and Countermeasures (SPCC) Plans (Final Rule); in 40 CFR 112.1–112.15; was approved 12/18/2006; OMB Number 2050–0021; expires 12/31/2009.

EPA ICR No. 0783.51; Fuel Economy Labeling of Motor Vehicles: Revisions to Improve Calculations of Fuel Economy Estimates; was approved 12/14/2006; OMB Number 2060–0104; expires 11/30/2008.

EPA ICR No. 2233.01; Reporting and Recordkeeping Requirements Under EPA's Water Efficiency Program; was approved 01/10/2007; OMB Number 2040–0272; expires 01/31/2010.

EPA ICR No. 1981.03; Distribution of Offsite Consequence Analysis Information under Section 112(r)(7)(H) of the Clean Act (CAA) (Renewal); was approved 01/11/2007; in 40 CFR Part 1400; OMB Number 2050–0172; expires 01/31/2010.

EPA ICR No. 2247.01; NESHAP for Perchloroethylene Dry Cleaning Facilities; in 40 CFR part 63, subpart M; was approved 01/11/2007; OMB Number 2060–0595; expires 01/31/2010.

Comment Filed

EPA ICR No. 0983.09; NSPS for Equipment Leaks of VOC in Petroleum Refineries (Proposed Rule); in 40 CFR part 60, subpart GGG; OMB filed comment on 12/28/2006.

EPA ICR No. 1854.05; Consolidated Federal Air Rule for SOCMI (Proposed Rule for Changes to Subpart VV); OMB filed comment on 12/28/2006.

EPA ICR No. 2245.01; NESHAP for Hospital Ethylene Oxide Sterilization (Proposed Rule); in 40 CFR part 63, subpart WWWWW; OMB filed comment on 12/28/2006.

EPA ICR No. 2237.01; NESHAP for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities, and Gasoline Dispensing Facilities (Proposed Rule); in 40 CFR part 63, subpart BBBBBB; OMB filed comment on 12/28/2006.

EPA ICR No. 2242.01; Renewable Fuels Standards (RFS) Program (Proposed Rule); in 40 CFR 80.1101; OMB filed comment on 12/27/2006.

EPA ICR No. 1230.16; ICR for Changes to the 40 CFR Parts 51 and 52 PSD and Nonattainment NSR: Debottlenecking, Aggregation, and Project Netting (Proposed Rule); in 40 CFR 51.160 to 51.166; 40 CFR 52.21; 40 CFR 52.24; OMB filed comments on 12/14/2006.

EPA ICR No. 2240.01; NESHAP for Area Sources: Polyvinyl Chloride and Copolymer Production, Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium (Proposed Rule); in 40 CFR part 63, §§ 11149(d)–(g), 11150(a)–(b), 11162(g), 11163(c)–(g), 11164(a)–(b), Table 1 to subpart GGGGG, EEEEEE, and FFFFFF; OMB filed comment on 12/14/2006.

Dated: January 16, 2007.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E7–1095 Filed 1–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2005–0012; FRL–8273–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Questionnaire for the Chlorine and Chlorinated Hydrocarbon Manufacturing Segments; EPA ICR No. 2214.01

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 26, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2005–0012, to (1) EPA online using www.regulations.gov (our preferred method), by e-mail to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Samantha Lewis, Office of Water, Engineering and Analysis Division, (4303T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–1058; fax number: 202–566–1053; e-mail address: *Lewis.Samantha@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 18, 2006 (71 FR 19887), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 4 comments during the comment period, which are addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2005–0012, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2422.

Use EPA's electronic docket and comment system at www.regulations.gov, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Questionnaire for the Chlorine and Chlorinated Hydrocarbon Manufacturing Segments.

ICR numbers: EPA ICR No. 2214.01.

ICR Status: This ICR is for a new information collection activity. 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: The U.S. Environmental Protection Agency is conducting a census of facilities that manufacture chlorine and/or certain chlorinated hydrocarbons (CCH) as part of its effort to review the effluent limitations guidelines and standards for these operations. EPA is considering revision of the Organic Chemicals, Plastics and Synthetic Fibers Point Source Category regulations at 40 CFR Part 414 for facilities that manufacture ethylene dichloride, vinyl chloride monomer, polyvinyl chloride and other chlorinated hydrocarbons. EPA is also considering revision of the Inorganic Chemicals Point Source Category regulations at 40 CFR Part 415 for facilities that manufacture chlorine as well as chlorine manufacturers not regulated under 40 CFR Part 415. The questionnaire seeks information on (1) Technical data, including general facility information, manufacturing process information, wastewater treatment and characterization information, and information on sampling data; and (2) financial and economic data, including ownership information, facility/company information, and corporate parent financial information. The technical data will be used to determine the industry production rates, water use for processes, rates of wastewater generation, pollution prevention, and the practices of wastewater management, treatment, and disposal. The financial and economic data will be used to characterize the economic status of the industry and to estimate the possible economic impacts of wastewater regulations. This questionnaire will be sent to all identified facilities engaged in CCH production. Completion of this one-time questionnaire will be mandatory pursuant to Section 308 of the Clean Water Act.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 435 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.

Respondents/Affected Entities: Facilities that manufacture chlorine and/or certain chlorinated hydrocarbons, including polyvinyl chloride.

Estimated Number of Respondents: 65.

Frequency of Response: One-time only.

Estimated Total Annual Hour Burden: 28,300.

Estimated Total Annual Cost: $1,082,000 includes $0 annualized capital expenditure and $3,810 Respondent O&M costs.

Dated: January 12, 2007.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E7–1096 Filed 1–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8273–3]

Clean Water Act Section 303(d): Final Agency Action on 10 Arkansas Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the final agency action on 10 TMDLs prepared by EPA Region 6 for waters listed in the State of Arkansas, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club, et al.* v. *Clifford, et al.*, No. LR–C–99–114. Documents from the administrative record files for the final 10 TMDLs, including TMDL calculations may be viewed at *http://www.epa.gov/region6/6wq/npdes/tmdl/index.htm.*

ADDRESSES: The administrative record files for these 10 TMDLs may be obtained by writing or calling Ms. Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Clifford, et al.*, No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner.

EPA Takes Final Agency Action on 10 TMDLs

By this notice EPA is taking final agency action on the following 10 TMDLs for waters located within the state of Arkansas:

Segment-reach	Waterbody name	Pollutant
08020203–625	Bear Creek Lake	Nutrient.
08020203	Horseshoe Lake	Nutrient.
08020204	Mallard Lake	Nutrient.
08020302	Frierson Lake	Turbidity.
08020303	Old Town Lake	Nutrient.
08040203–904	Big Creek	CBOD and Ammonia.
08050002	Grand Lake	Nutrient.
11110204	Spring Lake	Mercury.

Segment-reach	Waterbody name	Pollutant
11140201	First Old River Lake	Nutrient.

EPA requested the public to provide EPA with any significant data or information that might impact the 10 TMDLs at **Federal Register** Notice: Volume 71, Number 239, page 74907 (December 13, 2006). No comments were received.

Dated: January 16, 2007.

William K. Honker,

Deputy Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. E7–1094 Filed 1–24–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Proposed Implementation of Section 6053(b) of the Deficit Reduction Act for Fiscal Year 2008 FMAP

AGENCY: Office of the Secretary, HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period describes the procedure for implementing Section 6053(b) of the Deficit Reduction Act of 2005, Public Law 109–171 for fiscal year 2008. Section 6053(b) of the Deficit Reduction Act provides for a modification of the Federal Medical Assistance Percentages for any state which has a significant number of evacuees from Hurricane Katrina.

DATES: *Comment Date:* To be assured consideration, comment must be received at the address provided below, no later than 5 p.m. on February 26, 2007.

ADDRESSES: Because of staff and resource limitations, we can only accept comments by regular mail. You may mail written comments (one original and one copy) to the following address only: Department of Health and Human Services, Room 447D, Attention: FMAP Proposed Rule, 200 Independence Ave., SW., Washington, DC 20201.

Submitting Comments: We welcome comments from the public on all issues set forth in this rule with comment period to assist us in fully considering issues and developing policies. Please provide a reference to the section on which you choose to comment.

SUPPLEMENTARY INFORMATION:

A. Background: Federal Medical Assistance Percentages

Federal Medical Assistance Percentages are used to determine the amount of Federal matching for state expenditures for assistance payments for certain social services such as Temporary Assistance for Needy Families (TANF) Contingency Funds, matching funds for the Child Care and Development Fund, Title IV–E Foster Care Maintenance payments, Adoption Assistance payments, and state medical and medical insurance expenditures for Medicaid and the State Children's Health Insurance Program (SCHIP).

Sections 1905(b) and 1101(a)(8)(B) of the Social Security Act require the Secretary of Health and Human Services to publish the Federal Medical Assistance Percentages each year. The Secretary is to calculate the percentages, using formulas in sections 1905(b) and 1101(a)(8)(B), from the Department of Commerce's statistics of average income per person in each state and for the Nation as a whole. The percentages are within the upper and lower limits given in section 1905(b) of the Act. The percentages to be applied to the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are specified in statute, and thus are not based on the statutory formula that determines the percentages for the 50 states. The ''Federal Medical Assistance Percentages'' are for Medicaid.

Section 1905(b) of the Social Security Act specifies the formula for calculating Federal Medical Assistance Percentages as follows:

''Federal medical assistance percentage'' for any state shall be 100 per centum less the state percentage; and the state percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such state bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, (2) the Federal medical assistance percentage for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum.

Section 4725 of the Balanced Budget Act of 1997 amended section 1905(b) to provide that the Federal Medical Assistance Percentage for the District of Columbia for purposes of Title XIX and for the purposes of calculating the Enhanced Federal Medical Assistance Percentage under Title XXI shall be 70 percent. For the District of Columbia, we note under the table of Federal Medical Assistance Percentages the rate that applies in certain other programs calculated using the formula otherwise applicable, and the rate that applies in certain other programs pursuant to section 1118 of the Social Security Act. Section 2105(b) of the Social Security Act specifies the formula for calculating the Enhanced Federal Medical Assistance Percentages as follows:

The ''enhanced FMAP,'' for a state for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)) for the state increased by a number of percentage points equal to 30 percent of the number of percentage points by which (1) such Federal medical assistance percentage for the state, is less than (2) 100 percent; but in no case shall the enhanced FMAP for a state exceed 85 percent.

The ''Enhanced Federal Medical Assistance Percentages'' are for use in the State Children's Health Insurance Program under Title XXI, and in the Medicaid program for certain children for expenditures for medical assistance described in sections 1905(u)(2) and 1905(u)(3) of the Social Security Act.

On November 30, 2006, at 71 FR 69209, we published the FMAP and Enhanced FMAP rates for each state for October 1, 2007 through September 30, 2008 (fiscal year 2008). This notice describes the procedure we would use to modify the fiscal year 2008 FMAP rates to comply with the requirements of section 6053(b) of the DRA, which we discuss more fully below.

B. Section 6053(b) of the Deficit Reduction Act

Section 6053(b) of the Deficit Reduction Act (DRA) of 2005 requires that calculations used in computing the FMAPs disregard evacuees and any income attributable to them who were evacuated to and live in a state, other than their state of residence, as of October 1, 2005 as a result of Hurricane Katrina. The DRA defines ''evacuee'' as ''an affected individual who has been displaced to another state'' (Sec 6201(b)(3)). This provision applies to any state that the Secretary of HHS

determines has a significant number of Katrina evacuees.

The modification of the Federal Medical Assistance Percentages and the Enhanced Federal Medical Assistance Percentages under the Deficit Reduction Act affect only medical expenditure payments under Title XIX and expenditure payments for the State Children's Health Insurance Program under Title XXI. The Department believes that the percentages in this rule do not apply to payments under Title IV of the Social Security Act. In addition, the Title XIX statute provides separately for Federal matching of administrative costs, which is not affected by the subject Deficit Reduction Act provision.

Section 6053(b) applies to calculations for FMAPs for any year after 2006. The underlying data that serve as the basis for the FMAP calculations are produced by the Department of Commerce's Bureau of Economic Analysis (BEA). Section 1101(a)(8)(B) requires FMAP calculations to be determined using data from the Department of Commerce. Therefore, the standard practice in the calculation of the FMAPs is to utilize the most up-to-date BEA state per capita income data. The Fiscal Year 2008 FMAPs, which were published on November 30, 2006 use the state per capita income estimates for 2003–2005. The first year that the relevant data—state per capita personal income estimates—would show any impact related to Hurricane Katrina is 2005, since Hurricane Katrina occurred in August 2005. Therefore, this rule proposes to implement Section 6053 (b) of the DRA starting with the Fiscal Year 2008 FMAPs, since the 2008 FMAP calculation will be the first year that include 2005 data.

We believe the likely Congressional intent of this provision was to assist any state that took in a large number of Katrina evacuees. The statute instructs HHS to remove Katrina evacuees and their income from the FMAP calculation for any such state. This adjustment would protect such a state from an adverse fluctuation in its FMAP based on Katrina evacuees. This adjustment would also, however, remove any positive fluctuation in the FMAP based on Katrina evacuees. It is not clear that this latter impact was intended by Congress.

We believe that, because Katrina evacuees are likely to have lower income than the general population of the states to which they are evacuated, accurate data would probably result in no adverse fluctuation in FMAP for any state using the standard calculation methodology. Instead, there would probably be a positive fluctuation under the standard calculation that would be eliminated by the statutory adjustment. In other words, the statutory adjustment could result in that state having a higher per capita income (and lower FMAP) than if the adjustment was not made.

In many instances, evacuees either had lower incomes before or lost their employment and means of support after Katrina. Evacuees' per capita income, therefore, would be less than the per capita income of the general population of the state(s) to which they were evacuated. Eliminating persons of lower per capita income from any affected state would raise overall state per capita income, thus lowering its respective Federal FMAP percentage.

Moreover, the standard methodology used by BEA to calculate per capita income does not permit the attribution of all income sources to Katrina evacuees. That is, BEA does not possess the data necessary to count all sources of Katrina evacuees' income (see detailed discussion below), and as a result, we believe our approach offers the best possible calculation given the limited data available.

We propose in this rule a methodology for the adjustment that would take advantage of the way in which state population is usually calculated to comply with our understanding of Congressional intent in the first year, and raise the FMAP slightly for any affected state. But we are concerned that this methodology would have the expected effect of lowering the FMAP in future years compared to the calculation methodology.

We are also concerned that it will be more difficult to accurately disregard evacuee population and income in future years. It will also become increasingly difficult to isolate Katrina evacuees' income to adjust per capita state income calculations as BEA only captures aggregate state income, not evacuees' income.

C. Calculation of the Federal Medical Assistance Percentage

The Federal Medical Assistance Percentage (FMAP) is based on the percentage of low-income persons residing in a given state. By statute, it is no lower than 50% and no higher than 83%. The key variable in calculating the FMAP is the estimate of state per capita personal income. The state per capita income estimates are then plugged into the statutory FMAP formula. There are two components to the state per capita personal income estimates. The denominator is the Annual Population Estimate; the numerator is State Personal Income.

1. Modification to Population Estimate

The first adjustment that must take place under Section 6053(b) of the DRA is to the state population estimate. The state population estimate must be adjusted by removing all Katrina evacuees in each state that were evacuated across state lines.

Because the state population estimates used in the 2005 Per Capita Personal Income estimates are from July 1, 2005, which is prior to Hurricane Katrina, these Katrina evacuees do not appear in the data that is the basis for the state population estimates for any state covered by this provision. Thus, while Section 6053(b) of the DRA requires it, no adjustment to this data is required to disregard Katrina evacuees.

To ensure compliance with the statutory requirement to disregard Katrina evacuees, however, we explored the possibility of adjusting the population estimates to reflect the influx of evacuees, and then disregarding the actual number of Katrina evacuees. For this purpose, we used BEA estimates of the number of Katrina evacuees relocated to the various states based on FEMA data. We then used BEA's estimates of Katrina evacuees relocated to each state to adjust upward the population of those states to account for the influx of evacuees. We then considered whether the influx of evacuees may have displaced other individuals from the population of the affected state(s), but we found no evidence to support an adjustment based on this possibility. Following the requirements of Section 6053(b), we then would subtract these evacuees from their respective states to arrive at a state population prior to the effects of Hurricane Katrina. The resulting calculations arrive at the July 1, 2005 population figures reported by the Bureau of the Census for the time period just prior to Hurricane Katrina. This analysis confirmed that no adjustment is required to the population estimate used in the calculation of the state per capita personal income for 2005 to disregard Katrina evacuees.

2. Modification to State Personal Income Estimate

The second adjustment that must take place under Section 6053(b) of the DRA is to state personal income. State personal income must be adjusted by removing all income that is attributed to Katrina evacuees, and HHS has consulted with BEA at length on how to do so.

According to standard BEA methodology, state personal income consists of the sum of wages and

salaries, supplements to wages and salaries, proprietor's income, rental income, personal dividends, personal interest income, and transfer receipts less contributions for government social insurance. State personal income is the income that is received by, or on behalf of, all the persons living in a state. In addition, source data for wages and salaries, supplements to wages and salaries, and contributions for government social insurance (which are compiled on a place of work basis) are adjusted for persons who work in one state and live in another.

BEA published these data in ''State Personal Income for the Fourth Quarter of 2005 and Per Capita Income for 2005,'' which appeared in the April 2006 Survey of Current Business, and subsequently revised in the October 2006 Survey of Current Business. In Table D of the April 2006 article, BEA gives the adjustments it made to account for some of the economic effects of Hurricanes Katrina, Rita, and Wilma that are not reflected in the source data used to estimate state personal income for 2005. We will use these data as the basis for making the adjustments to the FMAPs required by the Deficit Reduction Act.

Implementing Section 6053(b) is complex because the data related to personal income are not detailed enough to fully conform to all of the provision's requirements. For example, BEA cannot isolate the fraction of a state's total wages and salaries that were paid to Katrina evacuees who moved there from another state. Therefore, HHS cannot remove income paid to Katrina evacuees for wages and salaries.

Further, HHS can only estimate some of the ''interstate income'' attributable to Katrina evacuees. For purposes of this rule, interstate income is personal income that was paid to Katrina evacuees in a different state than the state they were living in before Hurricane Katrina. Included in our estimate of interstate income are governmental transfer receipts that were paid to evacuees who may have moved across state lines. Governmental transfer receipts consist of all transfer payments, such as TANF or Medicaid, as well as transfers from business, such as net insurance settlements. Transfers such as Medicare or Medicaid are government payments made directly or through intermediaries to vendors for the care provided to individuals.

Below we discuss three types of transfer receipt adjustments included in Table D: FEMA disaster assistance, interstate population dispersal, and net insurance settlements.

a. FEMA Disaster Assistance

FEMA disaster assistance is one type of transfer payment included in personal income. For FEMA disaster assistance, payments are recorded at the location where the recipients are residing at the time of payment. Therefore, if the evacuees receiving FEMA disaster assistance were evacuated to another state, the FEMA disaster assistance payment would be counted as income in the state that they were evacuated to.

However, we can not know what proportion of the FEMA disaster assistance payments were made to interstate evacuees and what proportion were made to permanent residents of the states in question. For Texas, it is likely that the majority of the FEMA disaster assistance payments were made to interstate evacuees. For Alabama, the FEMA disaster assistance payments were likely made to both Alabama residents as well as interstate evacuees.

Although we cannot determine the extent to which the FEMA disaster assistance payments represent income to interstate evacuees as opposed to permanent residents, we propose to include the entire FEMA disaster assistance adjustment in the estimate of interstate income. We make this decision because we believe it is best to include as much countable income of the evacuees as possible in order to comply with the intent of the statute, especially given that we can not count all sources of income for the evacuees.

b. Interstate Population Dispersal

The interstate population dispersal adjustment is BEA's estimate of governmental transfer receipts that were paid to Hurricane Katrina evacuees while they were living in the states to which they had been evacuated. The transfer receipts included in the interstate population dispersal adjustment include payments such as Medicaid or TANF, as listed above. We propose to include the interstate population dispersal adjustment in our estimate of interstate income.

According to Table D, some states gained income due to this adjustment and some states lost income. A positive interstate population dispersal adjustment, such as the adjustment for Alabama, means that the state was estimated to receive an increase in transfer income because evacuees moved into that state from another state, and received transfer payments in their new state. A negative interstate population dispersal adjustment, such as the adjustment for Louisiana, means that the state was estimated to receive a decrease in transfer income because evacuees moved out of that state to another state, and received transfer payments in their new state.

BEA estimates these interstate population dispersal adjustments based on the evacuee population that moved across state lines after the hurricane, and the average transfer payment per evacuee. The evacuee population is based on the FEMA Current Location Report.

c. Net Insurance Settlements

Net insurance settlements are income derived from insurance payments made based on claims for lost or damaged property. For net insurance settlements, BEA records the payments as income in the state where the homes were destroyed.

Therefore, even if an evacuee received an insurance payment in a different state from where their property was damaged, it would be recorded as income in the state where the damage occurred. If an individual was evacuated from Louisiana to Texas because his or her home was destroyed in the hurricane, and he or she received an insurance payment while living in Texas, BEA would record this payment as income in the State of Louisiana, not the State of Texas.

Therefore, we propose not to include the net insurance settlements adjustment in our estimate of interstate income, because the income has already been re-allocated to the state where the evacuees lived before Hurricane Katrina.

The methodology described above details the FMAP adjustments that were made to accommodate the requirements of Section 6053(b) with the available data. The calculations this year result in a positive impact on any affected state, i.e., increasing FMAPs. As noted above, it is unclear what effect Section 6053 (b) will have on future years should this provision carry forward beyond fiscal year 2008. It is possible that any affected state will receive lower FMAP rates when updated data become available.

D. Affected States

According to Section 6053(b), the Secretary of HHS must apply this provision to any state that the Secretary determines has a significant number of Katrina evacuees. However, the statute provides HHS no guidance on how to determine what number of evacuees constitutes a ''significant number.'' As a result, HHS attempted to provide an objective means to determine a ''significant number'' of evacuees.

HHS has chosen to determine significance by calculating the numbers of evacuees beyond two standard

deviations from the mean of all states' number of evacuees. Measures of significance generally involve how observations vary in their distance from the average of all observations in their particular group. In this case, the observations are the number of evacuees relocated to each of the respective states. A measure used frequently to determine significance is the standard deviation from the mean or average. We propose to use as the measure of a significantly affected state those that incurred an influx of evacuees greater than twice the standard deviation from the mean of all states.

Using the BEA estimates for the number of evacuees relocated to each state (except as noted below for Louisiana) we calculated an average influx of evacuees for all states of 7,159. The distribution of evacuees into all states around this average produces a standard deviation of 22,375. Therefore, we propose to apply the provisions of Section 6053(b) to any state with an influx of evacuees greater than 51,909 (the mean plus two standard deviations). This methodology specifies only Texas, with 154,018 evacuees, having such a significant influx of evacuees.

Therefore, we propose to apply Section 6053(b) to Texas. Because the DRA defines ''evacuee'' as ''an affected individual who has been displaced to another state'' (section 6201 (b)(3)), we propose that Louisiana not be considered an affected state. Although there were intra-state evacuations within Louisiana, the provision is intended to apply only to any state that took in a significant number of evacuees from another state.

BEA has made available on its Web site a version of Table D that includes adjustments for all states. The Web site address is: *http://www.bea.gov/bea/regional/articles.cfm?section=articles* and the section is: State Personal Income: Fourth Quarter of 2005 and Per Capita Personal Income for 2005, Additional Tables.

E. Projected Effect of the Provision

Using the personal income estimates released by BEA, we have calculated FMAPs for 2008 and the revised FMAPs applying the methodology outlined above. The table below presents the 2008 FMAPs and the revised 2008 FMAPs with the proposed adjustment, and the 2008 EFMAPs and the revised 2008 EFMAPs.

Texas	Calculated 2008	2008 with proposed adjustment
FMAP	60.53	60.56
EFMAP	72.37	72.39

As seen in the tables above, applying the proposed adjustment increases the FMAP and EFMAP for Texas.

F. Time Frame for the Adjustment

The language of Section 6053(b) does not provide for a sunset of the FMAP adjustments. Therefore, the implication is that such adjustments would be made in perpetuity. Yet it seems unreasonable to assume that individuals who continue to reside in a state other than those directly impacted by Katrina would still be considered evacuees forever, even after they have established residency and obtained employment in their new state.

As previously mentioned, it is possible that this provision will have a negative impact on a qualifying state's FMAP in future years. The magnitude of this negative impact is not known at this time.

Additionally, it is technically difficult to perform the calculations for this provision because of numerous data limitations. Even under the calculation for FY 08, BEA was unable to completely account for all sources of income for evacuees. It is likely that BEA will continue to encounter these difficulties and produce limited income estimates in the future. Furthermore, BEA may also encounter difficulties in tracking evacuees, as it is uncertain whether such data will be available.

For the above reasons, we are proposing to define evacuees narrowly to ensure that an adjustment is made only to the extent warranted to address the sudden influx directly resulting from Hurricane Katrina, and not permanent changes in population level for host states. While we believe the most straightforward definition of an evacuee would be to consider individuals to be evacuees fro a time-limited period following displacement to another state, we have listed three approaches to define evacuees, and are soliciting public comment on the issue.

(1) The first alternative would establish a bright line test as to how long an individual would be considered an evacuee. Under this alternative, individuals would be considered to be Hurricane Katrina evacuees for up to 18 months following displacement to another state. This represents a substantial time frame during which the individual would likely have established residency in another state and become a functioning part of that state's economy.

(2) A second alternative approach is that individuals would be considered to be Hurricane Katrina evacuees while receiving FEMA Hurricane Katrina assistance. FEMA assistance is an available data source to identify the individuals. Receipt of FEMA assistance is an indication that individuals are not fully integrated into the economy of a new state, and expect to return to homes that were destroyed by Hurricane Katrina.

(3) The third alternative approach would be to consider individuals to be Hurricane Katrina evacuees while reliable data remains available and sufficient to identify evacuees and their income in order to carry out the provisions of the DRA. The statute does not authorize this Department to construct or develop its own data sources. Thus, we do not believe that Congress intended to require this adjustment to be made after reliable data is no longer available to support the adjustment.

We invite comments on the adoption for the definition of evacuee discussed above, or an alternate approach, to ensure that the effect of section 6053(b) of the DRA is limited to addressing sudden population influxes directly resulting from Hurricane Katrina.

G. Regulatory Impact Statement

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on state and local governments,

preempts state law, or otherwise has Federalism implications.

This rule announces the provisions of section 6053(b) of the Deficit Reduction Act of 2005. We do not estimate this regulation will have any significant effect on the economy. Nevertheless, we estimate the impact of the provision, once implemented, to be minimal. Our analysis suggests that the modification to the FMAPs will only affect Texas. The effect will likely be a minimal decrease in State Medicaid and SCHIP spending and a corresponding minimal increase in federal Medicaid and SCHIP spending.

In addition, the provisions only directly affect states. Therefore, there is no need to perform a regulatory flexibility analysis in accordance with section 603 of the Regulatory Flexibility Act.

H. Summary

We propose to adjust the fiscal year 2008 FMAP rate only for the State of Texas, by reducing the income estimates used in the FMAP calculation through the application of adjustments to reflect interstate population dispersal income and FEMA disaster assistance income for evacuees. Because this is the only income that can be attributed to Katrina evacuees based on BEA data, this income will be subtracted from the 2005 state personal income as published by BEA in October 2006 to obtain a new state personal income for Texas. This state personal income will be divided by the state population as of July 2005 to get a revised per capita personal income for each state. This revised 2005 per capita personal income will replace the 2005 per capita personal income in calculating the 2008 FMAPs.

Effective Dates: The percentages listed will be effective for each of the four (4) quarter-year periods in the period beginning October 1, 2007 and ending September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Thomas Musco or Robert Stewart, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D—Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.778: Medical Assistance Program; 93.767: State Children's Health Insurance Program)

Dated: January 19, 2007.

Michael O. Leavitt,

Secretary of Health and Human Services.

[FR Doc. E7–1174 Filed 1–24–07; 8:45 am]

BILLING CODE 4210–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. This meeting is open to the public. A description of the Council's functions is included with this notice.

DATES: February 27, 2007, 8 a.m. to 5 p.m., and February 28, 2007, 8 a.m. to 4 p.m.

ADDRESSES: Hubert H. Humphrey Building, 200 Independence Ave., SW., Room 705A, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Dana Ceasar, Program Assistant, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 733E, Washington, DC 20201; (202) 690–2470 or visit the Council's Web site at *http://www.pacha.gov*.

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the Secretary of Health and Human Services. The Council is composed of not more than 21 members. Council membership is determined by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV/AIDS.

The agenda for this Council meeting includes the following topics: HIV/AIDS prevention, treatment and care issues, both domestically and internationally. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to three (3) minutes per speaker.

Public attendance is limited to space available and pre-registration is required for both attendance and public comment. Any individual who wishes to participate should register at *http://www.pacha.gov*. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate in the comment section when registering.

Dated: January 16, 2007.

Anand K. Parekh,

Acting Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. E7–1125 Filed 1–24–07; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375) of the release of a report on residual contamination of facilities under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* The report is below. The report and appendices are also available at: *http://www.cdc.gov/niosh/ocas.*

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities

Prepared by: National Institute for Occupational Safety and Health

John Howard, M.D., Director, December 2006

I. Summary of Results

This update to the Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities is the second revision of the original study reported in November 2002 and revised in June 2004. The National Institute for Occupational Safety and Health (NIOSH) is required to submit this report by the National Defense Authorization Act for Fiscal Year 2005 (NDAA) (Pub. L. 108–375), which amended the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.*, as follows:

1. For each facility for which such report found that insufficient information was available to determine whether significant residual contamination was present;

2. For each facility for which such report found that significant residual contamination remained present as of the date of the report, determine the date on which such contamination ceased to be present;

3. For each facility for which such report found that significant residual contamination was present but for which the Director has been unable to determine the extent to which such contamination is attributable to atomic weapons-related activities, identify the specific dates of coverage attributable to such activities and, in so identifying, presume that such contamination is attributable to such activities until there is evidence of decontamination of residual contamination identified with atomic weapons-related activities;

4. For each facility for which such report found significant residual contamination, determine whether it is at least as likely as not that such contamination could have caused an employee who was employed at such facility only during the residual contamination period to contract a cancer or beryllium illness compensable under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000; and

5. If new information that pertains to the report has been made available to the Director since that report was submitted, identify and describe such information.

NIOSH found that there were 94 Atomic Weapons Employer (AWE) facilities and 65 Beryllium Vendors that required evaluation as described above. The documents reviewed did not indicate the existence of a current, unrecognized occupational or public health threat. NIOSH evaluated new information that had been identified since 2004. NIOSH also based findings on information posted on the Department of Energy (DOE) Office of Environment, Safety, and Health (ES&H) website as of July 31, 2006 (changes made to the DOE ES&H website after July 31, 2006 are not reflected in this report).

The following actions have been taken in this report:

1. A determination on the presence of significant residual radioactive or beryllium contamination has been made for all of the facilities for which the previous report found that insufficient information was available to determine whether significant residual contamination was present.

2. A determination on the date when significant residual contamination was no longer present has been made for many facilities for which the previous report found that significant residual contamination remained present as of the date of the report. However, many sites were determined to have significant residual contamination remaining as of the date of this report. This is described on a facility-by-facility basis.

3. For all facilities for which the previous report was unable to determine that significant residual contamination was attributable to atomic weapons-related activities, specific dates of coverage attributable to such activities have been determined and, when the source of such contamination was not clear, the contamination was presumed to be associated with atomic weapons-related activities.

4. All facilities for which significant residual contamination was determined to be present after the period of weapons related production are considered to have the potential of causing an employee who was employed at such facility only during the residual contamination period to contract a cancer or beryllium illness compensable under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000.

5. All information used in making the determinations in this report are referenced in the individual facility evaluations found in Appendices A–3 and B–3.

Individual results for the 94 AWEs evaluated as required by the NDAA are as follows:

- 18 of the 94 atomic weapons employer facilities have little potential for significant residual contamination outside of the periods in which weapons-related production occurred.
- 72 of the 94 atomic weapons employer facilities have the potential for significant residual contamination outside of the periods in which weapons-related production occurred.
- 4 of the 94 previously listed Atomic Weapons Employer facilities are no longer listed as Atomic Weapons Employers on the DOE ES&H Web site.

Individual results for the 65 Beryllium Vendor Facilities evaluated are required by the NDAA are as follows:

- 7 of the 65 beryllium vendor facilities have little potential for significant residual contamination outside of the periods in which weapons-related production occurred.
- 58 of the 65 beryllium vendor facilities evaluated have the potential for significant residual contamination outside of the periods in which weapons-related production occurred.

II. Background and Purpose

The Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.*, established a program to compensate individuals who developed illnesses as a result of their employment in nuclear weapons production-related activities at certain facilities in which radioactive materials or beryllium was processed. DOE was directed by Executive Order 13179 to publish in the **Federal Register** a list of facilities covered by the Act. On January 17, 2001, DOE published a list of AWEs, DOE facilities, and beryllium vendors, in the **Federal Register**; the list was revised on December 27, 2002, 67 FR 32690. Updates to the list (corrections, additions, and deletions) have been made periodically by DOE. This update to the Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities is the second revision to the original study reported in November of 2002 and revised in June of 2004.

The DOE ES&H Web site (*http://www.eh.doe.gov/advocacy*) provides a synopsis of the work performed at each facility, including a listing of periods during which DOE believes, based on current information, that weapons-related processing was conducted. In determining these periods, DOE has applied the definitions in EEOICPA to the known facts about the time and conditions of weapons-related processing at each facility. DOE changes the entries on its database as additional information is obtained. These periods are referred to in this report as ''Periods in which weapons-related production occurred.'' It must be noted that the Department of Labor (DOL) is responsible for determining actual periods of covered employment based

upon DOE's findings as well as information from claimants and other sources.

This study consisted primarily of an evaluation of documents pertaining to AWEs. These include documents compiled by DOE ES&H, documents obtained through NIOSH data capture efforts, and documents located on the Formerly Utilized Sites Remediation Action Program (FUSRAP) and U.S. Army Corps of Engineers Web sites. The quantity and quality of the information available for each site varied significantly. Examples of documentation reviewed include radiological surveys, descriptions of production operations, contractual agreements, and interoffice correspondence. In addition, interviews with current and past employees of these facilities were conducted to obtain information not contained in available documentation. When such interviews were used in the facility evaluation, they are listed in the individual site descriptions in Appendix B–3.

NIOSH believes that contamination levels at designated facilities in excess of those indicated in 10 CFR part 835, Appendix D (Occupational Radiation Protection, Surface Contamination Values) indicate that there is ''significant contamination'' remaining in those facilities. Documentation for each facility was reviewed, as available, to determine if there was an indication that residual radioactive contamination was present outside of the periods in which weapons-related production occurred. Those levels then were compared to current radiation protection limits as listed in 10 CFR part 835, to determine if there was ''significant contamination.'' If there was no documentation or limited documentation on radiation levels at specified facilities, NIOSH made a professional judgment regarding the residual contamination. If NIOSH determined there was ''the potential for significant contamination'' at a designated facility, then NIOSH determined, pursuant to NDAA, that such contamination ''could have caused or substantially contributed to the cancer of a covered employee with cancer.''

In the case of beryllium contamination, if there was no evidence that the beryllium areas had been decontaminated, it was determined that this material could have caused or substantially contributed to the beryllium illness of an employee. Because beryllium sensitization can occur at very low levels of exposure, the level of residual beryllium contamination remaining was not included in the determination.

Because the investigation involved evaluating potential radioactive contamination and beryllium contamination, the study was divided so that the required expertise could be devoted to the radiological facilities and the beryllium facilities. Appendices A–1 and B–1 provide synopses of the findings for the 159 facilities that were evaluated as required by NDAA: Appendix A–1 applies to 94 facilities evaluated for residual radioactive contamination while Appendix B–1 applies to 65 facilities evaluated for residual beryllium contamination.

Some of the periods in which weapons-related production occurred have been changed on the DOE ES&H Web site since the June 2004 report. Appendices A–2 and B–2 provide the current descriptions and evaluations for all AWE and Beryllium Vendor facilities, respectively. Appendices A–3 and B–3 provide descriptions of each facility, the data reviewed as a part of this evaluation, and the final findings.

Periods of Residual Contamination

The evaluations focused on determining whether the potential for significant residual contamination existed outside of the periods in which weapons-related production occurred. In many cases, no records of decontamination were found or surveys performed outside of the period in which weapons-related production occurred indicated the existence of significant residual contamination. However, some of the documentation provided dates of decontamination, dates of demolition of the facility, or descriptions of the radiological controls in place during operations. For sites that exhibited a potential for significant residual radioactive contamination outside of the periods in which weapons-related production occurred, and for which an indication of a more accurate period was available, this time period was provided. For sites that exhibited a potential for significant residual radioactive contamination outside of the periods in which weapons-related production occurred, and for which an indication of a more accurate period was not available, it was assumed that significant residual contamination existed until the time which the facility was demolished or until the present, defined as July 2006, when this report was written.

Some sites performed work with radioactive material and/or beryllium for commercial purposes, in addition to work for the Atomic Energy Commission (AEC)/DOE. When it was impossible to distinguish residual contamination resulting from AEC/DOE activities from those resulting from commercial purposes, it was assumed that the contamination was attributable to weapons-related activities.

III. Residual Radioactive Contamination Evaluation

This study consisted primarily of an evaluation of documents pertaining to AWEs. These include documents compiled by DOE ES&H, documents obtained through data capture efforts of NIOSH, and documents located on the FUSRAP and U.S. Army Corps of Engineers Web sites. In all cases, the individual site finding is based on the available information. The finding on any single site was based on the quantity and completeness of the information available regarding that site and professional judgment as necessary.

In this evaluation of residual radioactive contamination, as in the previous report, the following factors were considered:

(1) The radionuclides involved;

(2) The quantity of radioactive material processed;

(3) The physical form of the radioactive material processed (*i.e.*, solid, liquid, or gas);

(4) The operations performed and their potential for radiation/radioactivity exposure;

(5) Documented radiological control and monitoring programs that were in place during operations; and

(6) Documented decontamination of facilities

These factors were used to estimate the potential for radiation exposure both during operations and after production/processing had ceased. For example, a facility for which a decontamination survey was documented was classified as having little potential for residual radioactive contamination after the decontamination date, while a facility with a high potential for residual radioactive contamination during operations and no documented decontamination data was classified as having a potential for residual contamination after operations had ceased.

Each site was assigned to one of two categories:

1. *Documentation reviewed indicates there is little potential for significant residual contamination outside the period in which weapons-related production occurred.*

A site was assigned to this category if the documentation available for the facility indicated one or more of the following characteristics:

(a) The facility was decontaminated within the periods in which weapons-related production occurred,

(b) The facility had very little potential for residual contamination during actual operations, or

(c) The facility is still in operation and the end date is listed as ''present.''

2. *Documentation reviewed indicates there is a potential for significant residual contamination outside the period in which weapons-related production occurred.*

A site was assigned to this category if there was documentation indicating the following:

(a) Radioactive material was present in quantities or forms which could have caused or substantially contributed to the cancer of a covered employee, and

(b) Radioactive material was processed or present outside of the dates as listed on the DOE ES&H website.

This type of documentation often included FUSRAP surveys conducted after Manhattan Engineering District (MED)/AEC/DOE operations were complete, which indicated the presence of residual radioactive contamination that could be attributed to those activities.

In some cases, the facilities processed radioactive material for not only nuclear weapons production, but also commercial, non-DOE contracts. Sometimes the material processed for nuclear weapons production was indistinguishable from material processed for commercial purposes. Wherever residual radioactive contamination due to DOE operations was not clearly distinguishable from that resulting from commercial operations, it was assumed that the contamination was the result of weapons production activities. As a result, in these cases, the findings were that the potential for significant residual contamination existed outside of the periods in which weapons-related production occurred. For sites that exhibited a potential for significant residual radioactive contamination outside of the periods in which weapons-related production occurred, and for which an end date could not be determined, it was assumed that significant residual contamination existed until the time the facility was demolished or until the present, defined as the date this report was written.

Findings of Evaluation of Facilities for Residual Radioactive Contamination

The results of this study indicate that there are atomic weapons employer facilities for which the potential for significant residual radiological contamination exists outside of the periods in which weapons-related production occurred as listed on the DOE ES&H website.

Appendix A–1 lists the findings for the potential for significant residual radioactive contamination at the 94 facilities required for evaluation by NDAA. Appendix A–2 lists all of the AWE facilities and the findings for potential residual radioactive contamination. Appendix A–3 describes each facility evaluated for residual radioactive contamination, the data reviewed as a part of this evaluation, and the final findings.

IV. Residual Beryllium Contamination Evaluation

The primary sources of information used to evaluate each site were the individual facility files compiled by DOE ES&H. In addition, interviews with current and past employees of these facilities were conducted to obtain information not contained in available documentation.

The finding on any single site was based on the quantity and completeness of the information available regarding that site and professional judgment as necessary.

In this evaluation of residual radioactive contamination, as in the previous report, the following factors were considered:

(1) If beryllium was actually handled at the site.

(2) If there was evidence of decontamination of the facility.

These factors were used to estimate the potential for beryllium exposure both during operations and after production/processing had ceased. For example, a facility for which a decontamination survey was documented or for which personal interviews indicated that decontamination was performed, was classified as having little potential for residual beryllium contamination after the decontamination date; a facility without such evidence of decontamination was classified as having a potential for residual beryllium contamination after operations had ceased.

Each site was assigned to one of two categories:

1. Documentation reviewed indicates there is little potential for significant residual contamination outside the period in which weapons-related production occurred.

A site was assigned to this category if the documentation available for the facility indicated one or more of the following characteristics:

(a) Evidence of decontamination and/or beryllium contamination survey data,

(b) The facility had very little potential for residual contamination during actual operations, or

(c) The facility is still in operation and the end date is listed as ''present.''

2. Documentation reviewed indicates there is a potential for significant residual contamination outside the period in which weapons-related production occurred.

A site was assigned to this category if either of the following conditions existed:

(a) Documentation was available indicating that beryllium was processed or present outside of the dates listed on the DOE ES&H website that could have caused or substantially contributed to the beryllium illness of a covered employee.

(b) There was no evidence of a decontamination of the facility or area where beryllium was processed.

In some cases, the facilities processed beryllium material for not only nuclear weapons production, but also commercial, non-DOE contracts. Sometimes the material processed for nuclear weapons production was indistinguishable from material processed for commercial purposes. Wherever residual beryllium contamination due to DOE operations was not clearly distinguishable from that resulting from commercial operations, it was assumed that the contamination was the result of weapons production activities. As a result, in these cases, the findings were that the potential for significant residual contamination existed outside of the periods in which weapons-related production occurred. For sites that exhibited a potential for significant residual beryllium contamination outside of the periods in which weapons-related production occurred, and for which an end date could not be determined, it was assumed that significant residual contamination existed until the time the facility was demolished or until the present, defined as the date this report was written.

Findings of Evaluation of Facilities for Residual Beryllium Contamination

The results of this study indicate that there are Beryllium Vendor facilities for which the potential for significant residual beryllium contamination exists outside of the periods in which weapons-related production occurred as listed on the DOE ES&H website.

Appendix B–1 lists the findings for the potential for significant residual beryllium contamination at the 65 facilities required for evaluation by NDAA. Appendix B–2 lists all Beryllium Vendor facilities and the

findings for potential residual beryllium contamination. Appendix B–3 describes each facility evaluated for residual beryllium contamination, the data reviewed as a part of this evaluation, and the final findings.

V. Conclusions

The findings of this study are: (1) Some atomic weapons employer facilities and beryllium vendor facilities have the potential for significant residual radiological and beryllium contamination outside of the periods in which weapons-related production occurred. (2) For the purposes of this report, NIOSH believes that facilities having ''significant contamination'' had quantities of radioactive material that ''could have caused or substantially contributed to the cancer of a covered employee with cancer.'' (3) The documents reviewed did not indicate the existence of a current, unrecognized occupational or public health threat.

[FR Doc. E7–1157 Filed 1–24–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information (RFI): Guidance for Prioritization of Pre-pandemic and Pandemic Influenza Vaccine—Extension of Comment Period

AGENCY: Office of the Secretary, Department of Health and Human Service.

ACTION: Notice.

SUMMARY: On December 14, 2006, the Department of Health and Human Services (HHS) issued a notice in the **Federal Register** (FR Doc. Vol. 71, No. 240, Pages 75252–75253) to request input from the public on considerations in developing guidance for prioritization of the distribution and administration of both pre-pandemic and pandemic influenza vaccines based on various pandemic severity and vaccine supply scenarios. Specifically, HHS is seeking input on pandemic influenza vaccine prioritization considerations from all interested and affected parties, including but not limited to public health and health care individuals and organizations, as well as those from other sectors of the economy including, for example, travel and transportation, commerce and trade, law enforcement, emergency management and responders, other critical infrastructure sectors and the general public.

Previous reports relating to pandemic influenza vaccine prioritization issues are available at *http://www.pandemicflu.gov*.

The purpose of this notice is to inform all interested parties that the comment period originally identified in the December 14, 2006 **Federal Register** is now being extended to February 5, 2007.

DATES: Responses should be submitted to the Department of Health and Human Services on or before 5 p.m., EDT, February 5, 2007.

Instructions for Submitting Comments: Electronic responses are preferred and may be addressed to *PandemicFlu.RFI@hhs.gov*. Written responses should be addressed to the Department of Health and Human Services, Room 434E, 200 Independence Avenue, SW., Washington, DC 20201, Attention: Pandemic Influenza Vaccine Prioritization RFI. A copy of this RFI is also available on the PandemicFlu.Gov Web site and at *http://www.aspe.hhs.gov/PIV/rfi*. Please follow instructions for submitting responses.

FOR FURTHER INFORMATION CONTACT: Ben Schwartz, Office of Public Health and Science, (404) 639–8953.

SUPPLEMENTARY INFORMATION: Extensive information on Federal government strategic and implementation plans for pandemic flu is available at *http://www.pandemicflu.gov*.

Dated: January 19, 2007.

John O. Agwunobi,

Assistant Secretary of Health, Office of Public Health and Science, Department of Health and Human Services.

[FR Doc. 07–323 Filed 1–24–07; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH), Safety and Occupational Health Study Section (SOHSS); Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned committee meeting.

Times and Dates: 8 a.m.–5 p.m., February 20, 2007. 8 a.m.–5 p.m., February 21, 2007.

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia, 22314, telephone 703.684.5900, fax 703.684.1403.

Status: Open 8 a.m.–8:30 a.m., February 20, 2007. Closed 8:30 a.m.–5 p.m., February 20, 2007. Closed 8 a.m.–5 p.m., February 21, 2007.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant applications received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that the research funded will promote these program goals.

Matters to be Discussed: The meeting will convene an open session from 8–8:30 a.m. on February 20, 2007, to address matters related to the conduct of SOHSS business. The remainder of the meeting will proceed in closed session. The purpose of the closed session is for the study section to consider safety and occupational health-related grant applications. These portions of 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, Centers for Disease Control and Prevention, pursuant to Section 10(d) Pub. L. 92–463. Agenda items are subject to change as priorities dictate.

For Further Information Contact: Price Connor, Ph.D., NIOSH Health Scientist, 1600 Clifton Road, NE., Mailstop E–20, Atlanta, Georgia 30333, telephone 404.498.2511, fax 404.498.2571.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–1083 Filed 1–24–07; 8:45 am]

BILLING CODE 4163–18–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 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, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Substance Abuse Prevention and Treatment (SAPT) Block Grant Uniform Application Guidance and Instructions FY 2008–2010 (OMB No. 0930–0080)—Revision

Sections 1921 through 1935 of the Public Health Service Act (U.S.C. 300x–21 to 300x–35) provide for annual allotments to assist States to plan, carry out and evaluate activities to prevent and treat substance abuse and for related activities. Under the provisions of the law, States may receive allotments only after an application is submitted and approved by the Secretary, HHS. For the Federal fiscal year 2008–2010 SAPT Block Grant application cycles, the Substance Abuse and Mental Health Services Administration (SAMHSA) will provide States with revised application guidance and instructions to implement changes made in accordance with the recommendations of the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART) analysis. In addition, SAMHSA has incorporated recommendations from the National Association of State Alcohol and Drug Abuse Directors and their member States in the revisions and clarification of data reporting requirements and instructions. Revisions to the previously-approved application resulting from such stakeholder input reflect the following changes: (1) In Section I, Form 2, ''Table of Contents,'' was revised to appropriately enumerate the specific items within each section; (2) In Section II, the Narrative description of certain maintenance of effort and expenditure base calculations was simplified to require submission of such information only if it represented a revision from previous years' submissions. This section was also moved to its more appropriate place in the application immediately preceding reporting on maintenance of efforts; (3) In Section II, Form 4, ''Substance Abuse State Agency Spending Report,'' was amended to use consistent language for services expenditure reporting and planning across Forms 4, 6, and 11. On Form 4 and Form 11, Row 1, the activity to be reported on is entitled: SAPT Block Grant funds for Substance Abuse Prevention (other than primary prevention) and Treatment Services to be consistent with the terminology used in Form 6, Column 5; (4) In Section II, Form 6, Entity Inventory, instructions were clarified to communicate that information on all substance abuse prevention and treatment service providers funded through the Single State Agency (SSA) was sought; (5) In section II, Form 7A, ''Treatment Utilization Matrix,'' instructions were clarified to communicate that information on persons admitted and served within the specific reporting period was sought to enable the SAPT Block Grant Program to address the recommendations of the FY 2003 OMB PART analysis; (6) In Section II, Form 7B, ''Number Of Persons Served (Unduplicated Count) For Alcohol And Other Drug Use In State Funded Services,'' instructions were clarified in a similar manner as Form 7a and a separate data cell was added to accommodate States' desires to report on clients admitted in a prior reporting period but also continuing to be served within the current reporting period; (7) In Section II, Table I (Maintenance), ''Single State Agency (SSA) Expenditures for Substance Abuse'' was amended to reflect the appropriate State fiscal year and the corresponding instructions were amended; (8) In Section II, Table II (Maintenance), ''Statewide Non-Federal Expenditures for Tuberculosis Services to Substance Abusers in Treatment,'' was amended to reflect the appropriate State fiscal year and the corresponding instructions were amended; (9) In Section II, Table III (Maintenance), ''Statewide Non-Federal Expenditures for HIV Early Intervention Services to Substance Abusers in Treatment,'' was amended to allow States to enter the appropriate State fiscal year and the corresponding instructions were amended; (10) In Section II, Table IV (Maintenance), ''SSA Expenditures for Women's Services,'' was amended to reflect the appropriate fiscal year and the corresponding instructions were amended; (11) In Section III, Form 11, ''Intended Use Plan,'' was amended to use consistent language for services expenditure reporting and planning; (12) In Section IV, subpart IV–A, ''Voluntary Treatment Performance Measures,'' the general instructions were amended to implement mandatory reporting on performance measure forms T1–T7 and a narrative requirement is proposed to collect information on States internal practices to use performance measure data to manage their systems; (13) In Section IV–A, ''Treatment Performance Measures'' Forms T1–T7 data specifications replaced State detail sheet narrative requirements for forms T1–T7 to reduce the burden of reporting and improve the uniformity of data quality information being collected; (14) In Section IV–A, ''Voluntary Treatment Performance Measures,'' T6 on infectious disease control efforts was deleted because it was determined to be duplicative of information requirements in Section II of the application; (15) In Section IV, subpart IV–B, Voluntary Prevention Performance Measures,'' Forms P5 and P6 were removed, P1–P15 were substituted for the previous Forms P1–P4 and the instructions were amended to address pre-population of prevention performance data.

The total annual reporting burden estimate is shown below:

	Number of respondents	Responses per respondent	Number of hours per response	Total hours
Sections I–III—States and Territories	60	1	470.00	28,200
Section IV–A	60	1	40.00	2,400
Section IV–B	60	1	42.75	2,565

	Number of respondents	Responses per respondent	Number of hours per response	Total hours
Total	60			33,165

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 19, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–1090 Filed 1–24–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1676–DR]

Missouri; 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 Missouri (FEMA–1676–DR), dated January 15, 2007, and related determinations.

EFFECTIVE DATE: January 15, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Missouri resulting from severe winter storms and flooding beginning on January 12, 2007, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Missouri.

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 assistance for debris removal and emergency protective measures (Categories A and B), under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate, subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 C.F.R. 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, Department of Homeland Security, under Executive Order 12148, as amended, Michael L. Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster:

Barry, Barton, Callaway, Camden, Christian, Cole, Crawford, Dade, Dallas, Dent, Franklin, Gasconade, Greene, Hickory, Jasper, Laclede, Lawrence, Lincoln, Maries, McDonald, Miller, Montgomery, Newton, Osage, Phelps, Polk, Pulaski, St. Charles, St. Clair, St. Louis, Stone, Warren, Webster, and Wright Counties, and the independent City of St. Louis for Public Assistance Categories A and B (debris removal and emergency protective measures), including direct Federal assistance.

All jurisdictions within the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–1122 Filed 1–24–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3272–EM]

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–3272–EM), dated January 14, 2007, and related determinations.

EFFECTIVE DATE: January 14, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 14, 2007, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Oklahoma resulting from severe winter storms and flooding beginning on January 12, 2007, 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. §§ 5121–5206 (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, protect property and public health and safety, and 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), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be 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 to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, Department of Homeland Security, under Executive Order 12148, as amended, Kenneth Clark, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared emergency:

All 77 counties in the State of Oklahoma for Public Assistance Category B (emergency protective measures), including direct Federal assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–1123 Filed 1–24–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2395–06; DHS Docket No. USCIS–2006–0052]

RIN 1615–ZA41

Direct Mail Program for Submitting Form N–565, Application for Replacement Naturalization/ Citizenship Document

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) is expanding its Direct Mail Program to provide that filings of Form N–565, Application for Replacement Naturalization/Citizenship Document, be filed at a designated Service Center for processing. Applicants were previously required to file at a USCIS field office having jurisdiction over their place of current residence. The Direct Mail Program allows U.S. Citizenship and Immigration Services to more efficiently process applications by eliminating duplicative work, maximizing staff productivity, and introducing better information management tools. USCIS intends for this Direct Mail process to be implemented on February 26, 2007 and it will affect all applicants filing Form N–565.

DATES: This notice is effective February 26, 2007.

FOR FURTHER INFORMATION CONTACT: Leah Torino, HQ Adjudications Officer, Office of Field Operations, or Deanna Garner, Adjudications Officer, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529, Telephone (202) 272–1001 or (202) 272–1688.

Background

What is the Direct Mail program?

Under the Direct Mail program, applicants for certain immigration benefits mail the designated application or petition directly to a U.S. Citizenship and Immigration Services (USCIS) Service Center instead of submitting it to their local USCIS office. The purpose and strategy of the Direct Mail program have been discussed in detail on previous rulemakings and Notices (see 59 FR 33903 and 59 FR 33985).

What is Form N–565?

The Form N–565 is an application for replacement naturalization or citizenship documents. This form is used by individuals seeking a replacement Naturalization Certificate, Certificate of Citizenship, Declaration of Intention, or Repatriation Certificate, or to apply for a special certificate of naturalization as a U.S. citizen to be recognized by a foreign country.

Interested individuals may find eligibility requirements for Form N–565 as well as all other applications at the USCIS Web site: *http://www.uscis.gov.*

Explanation of Changes

Does this Notice change an alien's eligibility for issuance of a replacement naturalization or citizenship document?

No. This Notice only changes the filing location for these applications. These forms, previously filed at several locations nationwide, will now be filed under the Direct Mail Program at specified Service Centers.

What is the new filing location for Form N–565?

Effective February 26, 2007, those applicants residing in Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, North Carolina, South Carolina, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, Tennessee, Texas, Virginia, Virgin Islands, Vermont and West Virginia, will forward their application to the Texas Service Center at: DHS/USCIS, Texas Service Center, PO Box 851182, Mesquite, TX 75185–1182.

Those individuals residing in Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin and Wyoming, will forward their application to the Nebraska Service Center at: DHS/USCIS, Nebraska Service Center, PO Box 87565, Lincoln, NE 68501–7565.

What will happen to Form N–565s that are filed at the wrong address?

USCIS will have a 30-day transition period, beginning February 26, 2007, through March 26, 2007, during which USCIS will automatically forward any locally filed Form N–565 to the correct designated Service Centers.

After March 26, 2007, all local USCIS offices will no longer accept any Form N–565 filings. Applications received by

a local USCIS office after March 26, 2007, or received by an incorrect designated Service Center, will be returned to the applicant with accompanying fees for resubmission at the proper filing location.

Which version of the Form N–565 will USCIS accept?

As of February 26, 2007, USCIS will accept Form N–565 (edition date 09/29/06, OMB Control No. 1615–0091). Any prior versions submitted after March 26, 2007 will be returned to the applicant with accompanying fees for resubmission of the proper form edition.

Does this Direct Mail Notice affect Form N–565s that have already been filed with USCIS?

No. Applications received by a local USCIS office prior to February 26, 2007 will remain within the jurisdiction of that office for the completion of processing. Therefore, it is not necessary for individuals who previously filed an application at a local USCIS office to file a new application in connection with this change of procedure.

Paperwork Reduction Act

USCIS will be amending the instructions to the Form N–565 to reflect the new filing instructions. Accordingly, USCIS will provide the Office of Management and Budget with a copy of the amended form through the automated Regulatory Office Combined Information System (ROCIS). Changing the filing instructions will not have any affect on the reporting burden hours.

Dated: November 21, 2006.

Emilio T. Gonzalez,

Director, U.S. Citizenship and Immigration Services.

[FR Doc. E7–1131 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–09]

Notice of Submission of Proposed Information Collection to OMB; Fair Housing Initiatives Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is required by the grant application to assist the Department in selecting the highest ranked applicants to receive funds under the Fair Housing Initiatives Program and carry out fair housing enforcement and/or education and outreach activities under the following initiatives; Private Enforcement, Education and Outreach, and Fair Housing Organizations. The information collected from quarterly and final progress reports and enforcement log will enable the Department to evaluate the performance of agencies that receive funding and determine the impact of the program on preventing and eliminating discriminatory housing practices.

DATES: *Comments Due Date:* February 26, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2529–0033) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Fair Housing Initiatives Program.

OMB Approval Number: 2529–0033.

Form Numbers: Forms HUD–904–A, HUD–904–B, and HUD–904–C, SF–424, SF–424–Supplement, SF–269–A, SF–LLL, HUD–2880, HUD–2990, HUD–2991, HUD–2993, HUD–424–CB, HUD–424CBW, HUD–2994–A, HUD–22081, HUD–96010, HUD–27061, and HUD–96011.

Description of the Need for the Information and Its Proposed Use: This information is required by the grant application to assist the Department in selecting the highest ranked applicants to receive funds under the Fair Housing Initiatives Program and carry out fair housing enforcement and/or education and outreach activities under the following initiatives; Private Enforcement, Education and Outreach, and Fair Housing Organizations. The information collected from quarterly and final progress reports and enforcement log will enable the Department to evaluate the performance of agencies that receive funding and determine the impact of the program on preventing and eliminating discriminatory housing practices.

Frequency of Submission: On occasion, Quarterly, Semi-annually, Annually, Other as required by application and award documents.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	400	0.31		38.38		48,444

Total Estimated Burden Hours: 48,444.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 19, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–1179 Filed 1–24–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4878–N–03]

Final Guidance on Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons: Announcement of Meeting

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice; announcement of meeting.

SUMMARY: On January 22, 2007, HUD published in the **Federal Register** final guidance on ''Federal Financial Assistance Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons'' (LEP Final Guidance). This guidance becomes effective on February 21, 2007. This notice announces that HUD will hold a meeting at HUD Headquarters on February 13, 2007, to brief interested members of the public on the LEP Final Guidance and respond to questions about the guidance.

DATES: HUD will conduct the meeting on LEP Final Guidance on February 13, 2007.

ADDRESSES: The LEP Guidance meeting will be held from 2 p.m. to 4 p.m. (Eastern time) on February 13, 2007, at HUD Headquarters for which the address is the Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Members of the public who are interested in attending this meeting in person must submit a request to HUD by sending an e-mail to *limitedenglishproficiency@hud.gov.* The e-mail must contain the participant's name, contact information, and basis for interest in this meeting. In addition, participants who require a reasonable accommodation must identify the accommodation they need to attend and fully participate in this meeting. The deadline for submitting requests is Friday, February 9, 2007.

HUD will strive to honor requests on a first-come first-serve basis. However, HUD reserves the right to select participants so as to ensure that there is adequate representation of the various sectors affected by the LEP Final Guidance.

FOR FURTHER INFORMATION CONTACT: Pamela D. Walsh, Director, Program Standards Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development 451 Seventh Street, SW, Room 5246, Washington, DC 20410–0500; telephone (202) 708–2288 (this is not a toll-free number). Persons with hearing or speech disabilities may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

To Request Participation in the Meeting: A request to participate in the meeting must be submitted to the following e-mail address: *limitedenglishproficiency@hud.gov.* The deadline for submitting requests is Friday, February 9, 2007.

SUPPLEMENTARY INFORMATION

Background

On January 22, 2007, HUD published in the **Federal Register** final guidance to help recipients of federal financial assistance take reasonable steps to meet their regulatory and statutory obligations to ensure that LEP persons have meaningful access to HUD programs and activities. Under Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, recipients of federal financial assistance have a responsibility to ensure meaningful access to programs and activities by LEP persons.

Executive Order 13166, issued on August 11, 2000, and published in the **Federal Register** on August 16, 2000 (65 FR 50121), directs each federal agency that extends assistance, which is subject to the requirements of Title VI, to publish guidance for its respective recipients clarifying this obligation. The Department of Justice (DOJ) issued the first LEP guidance as a model for other federal agencies. HUD's guidance adheres to the federal-wide compliance standards and framework detailed in the DOJ model LEP Guidance, published on June 18, 2002 (67 FR 41455). HUD's guidance follows the established format used in the DOJ model. Specific examples set out in HUD's guidance explain and/or highlight how federal-wide compliance standards are applicable to recipients of HUD's federal financial assistance.

The January 22, 2007, LEP Final Guidance was preceded by proposed guidance published on December 19, 2003 (68 FR 70968) for which HUD solicited public comment. The LEP Final Guidance takes into consideration the public comments received on the December 19, 2003, proposed guidance. There are no significant changes between the proposed guidance and the final guidance. However, for purposes of clarification, several minor changes were made in Appendix A, and a new Appendix B has been added to the Guidance. Appendix B, ''Questions and Answers (Q&A),'' responds to frequently asked questions (FAQs) related to providing meaningful access to LEP persons. HUD's LEP Final Guidance can be found at *http://www.hud.gov/offices/fheo/promotingfh/lep.cfm.*

February 13, 2007 Meeting

In consideration of widespread interest in HUD's LEP Final Guidance, HUD will hold a meeting on the guidance on February 13, 2007, and interested members of the public are invited to attend this meeting.

Members of the public who are interested in attending the meeting in person must submit a request to HUD by sending an e-mail to *limitedenglishproficiency@hud.gov.* The email must contain the participant's name, contact information, and basis for interest in this meeting. In addition, participants who require a reasonable accommodation must identify the accommodation they need to attend and fully participate in this meeting.

The deadline for submitting requests is Friday, February 9, 2007.

HUD will strive to honor requests on a first-come first-serve basis. However, HUD reserves the right to select participants so as to ensure that there is adequate representation of the various sectors affected by LEP Final Guidance.

HUD will respond to requests to participate in this meeting and will provide participants with information on attending the February 13, 2007, meeting prior to the meeting date. HUD advises participants that they must comply with security procedures when visiting the HUD building.

Please send any questions regarding the meeting to the above email address. HUD will respond to your questions by e-mail.

Dated: January 19, 2007.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. E7–1178 Filed 1–24–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Proposed Information Collection

AGENCY: Office of the Secretary, Take Pride in America Program.

ACTION: Notice and request for comments.

SUMMARY: A proposal to extend the collection of information listed below (OMB Control Number 1093–0004) has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Public comments on this submission are solicited.

DATES: OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days. Therefore, public comments should be submitted to OMB by February 26, 2007, in order to be assured of consideration.

ADDRESSES: Send your written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention, Department of the Interior Desk Officer, by fax to 202–395–6566, or by e-mail to *oira_docket@omb.eop.gov.* Please send a copy of your written comments to the Office of the Secretary, Information Collection Clearance Officer, Sue Ellen Sloca, 1951 Constitution Avenue, NW., MS 120 SIB, Washington, DC 20240, or via e-mail to *sue_ellen_sloca@nbc.gov.* Individuals providing comments should reference OMB Control Number 1093–0004, ''Take Pride in America National Awards Application/Nomination Process.''

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address, or call Sue Ellen Sloca, on 202–208–6045, or e-mail her on *sue_ellen_sloca@nbc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

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 existing information collection activity that the Office of the Secretary has submitted to OMB for extension.

Under the Take Pride in American Program Act (the ACT), 16 U.S.C. Sec 46–01–4608, the Secretary of the Interior is to: (1) ''conduct a national awards program to honor those individuals and entities which, in the opinion of the Secretary * * * have distinguished themselves in activities'' under the purposes of the Act; and also to (2) ''establish and maintain a public awareness campaign in cooperation with public and private organizations and individuals—(A) to install in the public the importance of the appropriate use of, and appreciation for Federal, State and local lands, facilities, and natural and cultural resources; (B) to encourage an attitude of stewardship and responsibility towards these lands, facilities, and resources; and (C) to promote participation by individuals, organizations, and communities of a conservation ethic in caring for these lands, facilities, and resources.'' The Act states that ''[t]he Secretary is authorized * * * generally to do any and all lawful acts necessary or appropriate to further the purposes of the TPIA Program.''

If this information were not collected from the public, Take Pride in America (TPIA) awards would be limited to individuals and organizations nominated by Federal agencies based on projects within their sphere of influence. This would effectively block many worthy individuals and organizations from being considered for these awards. The TPIA program was re-activated on December 10, 2001 with the stated intent of honoring the best in the nation, without restriction. It would reflect poorly on the Department and on the President if only volunteers to Federal agencies could be honored for their service to America.

II. Data

(1) *Title:* Take Pride in America National Awards, Application/ Nomination Process.

OMB Control Number: 1093–0004.

Current Expiration Date: 01/31/2007.

Type of Review: Information Collection: Renewal.

Affected Entities: Individuals or households, businesses and other for profit institutions, not-for-profit institutions, State, Local, and Tribal Governments.

Estimated annual number of public respondents: 74.

Frequency of response: Annual.

(2) *Annual reporting and record keeping burden.*

Estimated number of public responses annually: 174.

Estimated burden per response: 1 hour.

Total annual reporting: 174 hours.

(3) *Description of the need and use of the information:* The statutorily-required information is needed to provide the Office of the Secretary with a vehicle to collect the information needed to include individuals and organizations nominated by the public in applicant pools for TPIA National Awards and to recognize them for the valuable contributions that they make in support of the stewardship of America's lands, facilities, and cultural and natural resources.

III. Request for Comments

An initial opportunity for the public to comment on the Office of the Secretary's proposal to extend this information collection was announced in the **Federal Register** on August 8, 2006. The Office of the Secretary received no comments in response to its 60-day notice and request for comments. The public now has a second opportunity to comment on this proposal.

The Department of the Interior invites comments on:

(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 the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other 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. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train

personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: January 19, 2007.

Gary Smith,

Director of External/Intergovernmental Affairs, Office of the Secretary.

[FR Doc. E7–1063 Filed 1–24–07; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Request for Comments on Information Collection for Leases and Permits

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed renewal of an information collection.

SUMMARY: The Bureau of Indian Affairs (BIA) is seeking comments on the proposed renewal of the information collection, Leases and Permits, 1076–0155. This action is required by the Paperwork Reduction Act.

DATES: Submit comments on or before March 26, 2007.

ADDRESSES: Send comments to Ben Burshia, Chief, Division of Real Estate Services, Office of the Deputy Bureau Director, Trust Services, Bureau of Indian Affairs, 1849 C Street NW., Mail Stop 4639–MIB, Washington, DC 20240. Submissions by facsimile should be sent to (202) 219–1065. Electronic submission of comments is not available at this time.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the proposed information collection request from Ben Burshia at (202) 219–1195.

SUPPLEMENTARY INFORMATION: This collection of information is being renewed with substantially no change. No changes have been made to Subparts B, C, D or F. We are also adding the filing fee which was omitted during the last clearance.

Request for Comments

The Bureau of Indian Affairs requests your comments on this collection concerning:

(a) The necessity of this information collection 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 the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 4641, during the hours of 7 a.m. to 4 p.m., EST Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

Information Collection Abstract

OMB Control Number: 1076–0155.

Type of review: Renewal.

Title: Leases and Permits, 25 CFR 162.

Brief Description of collection: Generally trust and restricted land may be leased by Indian land owners, with the approval of the Secretary of the Interior, except when specified by a specific statute. The Secretary requests information on the documentation collection initiated when processing a lease on land held in trust or restricted status by an individual Indian or tribe. The Secretary requires the information necessary to satisfy 25 CFR 162, the information used to determine approval of a lease, amendment, assignment, sublease, mortgage or related document. No specific form is used; however, in order to satisfy the Federal law, regulation and policy the respondents supply information and data, in accordance with 25 CFR 162.

Respondents: Possible respondents include: Land owners of trust or restricted Indian land, both tribal and individual, wanting to lease their land or someone wanting to lease trust or restricted Indian land.

Number of Respondents: 14,500.

Estimated Time per Response: The time per response varies from 15 minutes to 4 hours.

Frequency of Response: This is a one-time collection per lease approval.

Total Annual Responses: 121,140.

Total Annual Burden to Respondents: 106,065.

Total Annual Fees from Respondents: BIA collects fees for processing submitted documents, as set forth in sections 162.241 or 162.616. The minimum administrative fee is $10.00 and the maximum administrative fee is $500.00. The average total administrative fees collected is $250.00, which is collected approximately 7,500 times, totaling $1,813,000.

Dated: January 22, 2007.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E7–1117 Filed 1–24–07; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–KC–P; F–14844–A]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Ahtna, Incorporated, successor in interest to Cantwell Yedatene-Na Corporation.

The lands are in the vicinity of Cantwell, Alaska, and are located in: U.S. Survey No. 3229, Alaska.

Containing 5.00 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until February 26, 2007 to file an appeal.

2. Parties receiving notice of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Jennifer L. Noe,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–1091 Filed 1–24–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0051 and 1029–0120

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for two forms: technical training program nominations for non-Federal personnel form (OSM 105) and the travel and per diem form (OSM 140); and for 30 CFR Part 840, State Regulatory Authority: Inspection and Enforcement. The collections described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection requests but may respond after 30 days. Therefore, public comments should be submitted to OMB by February 26, 2007 in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov*. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests and explanatory information, contact John A. Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov*. You may also review the information collection requests online at *http://www.reginfo.gov*. Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR Part 1320, which implement provisions of 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)]. OSM has submitted requests to OMB to approve the collection of information for: (1) 30 CFR Part 840, State Regulatory Authority: Inspection and Enforcement (OMB control number 1029–0051); and (2) OSM Technical Training Program's Nominations for Non-Federal Personnel Form (OSM 105) and Travel and Per Diem Form (OSM 140) (OMB control number 1029–0120). OSM is requesting a 3-year term of approval for this information collection activity.

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 these collections of information are found in 840.10 for the State inspection and enforcement procedures, and are located on Training forms OSM 105 and OSM 140.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on September 11, 2006 (71 FR 53476). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: 30 CFR Part 840, State Regulatory Authority: Inspection and Enforcement.

OMB Control Number: 1029–0051.

Abstract: This provision requires the regulatory authority to conduct periodic inspections of coal mining activities, and prepare and maintain inspection reports for public review. This information is necessary to meet the requirements of the Surface Mining Control and Reclamation Act of 1977 and its public participation provisions. Public review assures that the State is meeting the requirements for the Act and approved State regulatory program.

Bureau Form Number: None.

Frequency of Collection: Once, monthly, quarterly, and annually.

Description of Respondents: State Regulatory Authorities.

Total Annual Responses: 79,510.

Total Annual Burden Hours: 530,404.

Total Non-wage Costs: $960.

Title: Technical Training Program Course Nomination and Payment for Travel and Per Diem Forms.

OMB Control Number: 1029–0120.

Summary: The information is used to identify and evaluate the training courses requested by students to enhance their job performance, to calculate the number of classes and instructors needed to complete OSM's technical training mission, and to estimate costs to the training program.

Bureau Form Numbers: OSM 105, OSM 140

Frequency of Collection: Once.

Description of Respondents: State and Tribal regulatory and reclamation employees and industry personnel.

Total Annual Responses: 2,400.

Total Annual Burden Hours: 200 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control numbers in all correspondence.

Dated: November 14, 2006.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 07–321 Filed 1–24–07; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'')

Notice is hereby given that, on December 27, 2006, a proposed Consent Decree (''Consent Decree'') in *United*

States v. *A.O. Corporation, et al.,* Civil Action No. 04–5918, was lodged with the United States District Court for the District of New Jersey.

In this action, the United States sought reimbursement of response costs incurred in connection with the release and threatened release of hazardous substances at the A.O. Polymer Superfund Site (''Site''), comprising 4.18 acres more or less located in Sparta Township, New Jersey. The United States has incurred at least $1,700,000 in unreimbursed past response costs relating to the Site, and estimates future response costs at $200,000. The Consent Decree resolves the United States' *in rem* claim under the Verified Complaint, and results in a recovery by the United States of 85% of the sales proceeds of the Site at a public sale. The Consent Decree also sets forth the terms that will govern the sale.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, 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. *A.O. Corporation, et al.,* D.J. Ref. 90–11–3–07174/1.

The Consent decree may be examined at the Office of the United States Attorney, District of New Jersey, Peter Rodino Federal Building, 970 Broad Street, 7th Floor, Newark, New Jersey 07102 (contact Assistant United States Attorney Susan Steele), and at U.S. EPA Region II, 290 Broadway, New York, New York 10007–1866 (contact Assistant Regional Counsel Frances Maria Zizila). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–304 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to 28 CFR 50.7, notice is hereby given that on January 12, 2007, a proposed Consent Decree in *United States* v. *Leon A. Balthaser,* Civil Action No. 07–cv–0156, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this civil action under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), the United States seeks recovery of response costs from Leon A. Balthaser, in connection with the Peach Alley Parking Lot Superfund Site in Hamburg, Berks County, Pennsylvania (''Peach Alley Site'' or ''Site''). The proposed Consent Decree resolves the liability of Mr. Balthaser, who is the owner of the Peach Alley Site, under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for response costs incurred and to be incurred at the Site. The Consent Decree requires Mr. Balthaser to make a cash payment of $20,000 in reimbursement of response costs incurred by the United States in connection with the Site, and to provide access to, and restrict use of, the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Please address comments to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and refer to *United States* v. *Leon A. Balthaser,* D.J. Ref. 90–11–3–08820.

The Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/consent_decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 07–302 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of First Amendment To Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on January 11, 2007, a First Amendment to the Consent Decree entered in the case of *United States, et al.* v. *ConocoPhillips Company*, Civil Action No. H–05–0258, was lodged with the United States District Court for the Southern District of Texas.

Under the original Consent Decree, the ConocoPhillips Company (''COPC'') agreed to implement innovative pollution control technologies to reduce emissions of nitrogen oxides, sulfur dioxide, and particulate matter from refinery process units at nine refineries owned and operated by COPC. COPC also agreed to adopt facility-wide enhanced benzene waste monitoring and fugitive emission control programs. COPC still is so obligated, but under the First Amendment, COPC will install additional pollution control technology, including, in one instance, a new electrostatic precipitator, in consideration for deadline extensions. In addition, COPC will be entitled to numerous deadline extensions at COPC's refinery in Belle Chasse, Louisiana, because of damage that refinery suffered from Hurricane Katrina. In the First Amendment, the United States is joined by the State of Illinois, the State of Louisiana, the State of New Jersey, the Commonwealth of Pennsylvania, and the Northwest Clean Air Agency in the State of Washington.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the First Amendment. Comments should be addressed to the Assistant Attorney General,

Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *ConocoPhillips Company*, D.J. Ref. No. 90–5–2–1–06722/1.

The First Amendment may be examined at the Office of the United States Attorney, 919 Milam St., Suite 1500, Houston, Texas 77208, and at U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. During the public comment period, the First Amendment may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the First Amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov)*, fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury, or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–303 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 22 CFR 50.7, notice is hereby given that on January 8, 2007, a proposed consent decree in *United States* v. *Electra Realty Co. and Electra Products Co., Inc.,* Civil Action No. 06–2238, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States is seeking to recover response costs incurred by the United States pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* in connection with the Electra Property (located at 200 West 5th Street, Lansdale, PA 19446) at the North Penn Area Six Superfund Site (''Site''), which consists of a contaminated groundwater plume and a number of separate parcels of property located within and adjacent to the Borough of Lansdale, Montgomery County, Pennsylvania. The proposed consent decree will resolve the United States' claims against Electra Realty Co. and Electra Products Co., Inc. (''Settling Defendants'') in connection with the Site. Under the terms of the proposed consent decree, Settling Defendants will either (A) pay the EPA Hazardous Substance Superfund $350,000.00 in partial reimbursement of the United States' response costs, or (B) elect the option to sell the Electra Property and comply with the terms set forth in Section VI of the proposed consent decree. Settling Defendants will receive a covenant not to sue by the United States with regard to the Site.

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, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Electra Realty Co., et al.,* D.J. Ref. 90–11–2–06024/15.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.75 (25 cents per page reproduction cost). Checks should be made payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–307 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Under the Clean Air Act

Notice is hereby given that, on December 22, 2006, a proposed settlement in *U.S.* v. *Johnson & Johnson, et al.*, Civil Action No. 06–6077, was lodged with the United States District Court for the District of New Jersey.

In this action the United States seeks a judgment of liability against eleven defendants and an order requiring the defendants to perform certain response actions selected by EPA as a remedial action at the Atlantic Resources Corporation Superfund Site (''ARC Site'') and the Horseshoe Road Drum Dump (''HRDD Site'') portion of the Horseshoe Road Superfund Site in Sayreville, Middlesex County, New Jersey. The United States also seeks reimbursement of EPA's past and future response costs incurred or to be incurred in connection with the two Sites. The eleven defendants (''Defendants'') and one federal potentially responsible party, the Department of Defense (''Settling Federal Agency''), are parties to the Consent Decree. Pursuant to the Consent Decree, the Defendants will perform and the Settling Federal Agency will provide its share of the funding for a Remedial Design and a Remedial Action at the ARC Site, and a Remedial Design at the HRDD Site. The Consent Decree requires the Defendants and the Settling Federal Agency to reimburse EPA its past costs incurred at the ARC Site, in the amount of $863,579.41, as well as certain of the United States' future costs incurred or to be incurred at the two Sites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Johnson & Johnson, et al.*, D.J. Ref. 90–11–3–480/2.

The settlement may be examined at the Office of the United States Attorney, 970 Broad Street, Suite 700, Newark, NJ 07102, and at the Region II Office of the U.S. Environmental Protection Agency, Region II Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866. During the public comment period, the settlement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the settlement may also be obtained by mail

from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $41.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–306 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *Winchester Municipal Utilities*, Civ. No. 06–102–KSF, was lodged on January 16, 2007, with the United States District Court for the Eastern District of Kentucky, Central Division.

The proposed Consent Decree would resolve certain claims under Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1251, *et seq.,* against the City of Winchester (''the City'') and Winchester Municipal Utilities (''WMU''), through the performance of injunctive measures, the payment of a civil penalty, and the performance of a Supplemental Environmental Project (''SEP''). The United States and the Commonwealth of Kentucky allege that the City and WMU are liable as persons who discharged a pollutant from a point source to navigable waters of the United States without a permit.

The proposed Consent Decree would resolve the liability of the City and WMU for the violations alleged in the amended complaint filed in this matter. To resolve these claims, the City and WMU would perform injunctive measures valued at over $79 million and described in the proposed Consent Decree; would pay a civil penalty of $75,000 to the United States Treasury; and would perform a SEP valued at $230,000, which is designed to abate stormwater runoff pollution to an impaired waterway.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044 and should refer to *United States* v. *Winchester Municipal Utilities,* DJ No. 90–5–1–1–08806.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of Kentucky, 110 West Vine Street, Suite 400, Lexington KY 40507–1671, and at the Region 4 Office of the Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta GA 30303. During the public comment period, the decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $65.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. The check should refer to *United States* v. *Winchester Municipal Utilities,* DJ No. 90–5–1–1–00806.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 07–305 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 001–2007]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Department of Justice proposes to modify all of its systems of records, as identified in the list below.

On October 30, 2006, the Department modified all of its systems of records to include a new routine use that allows disclosure to appropriate persons and entities for purposes of response and remedial efforts in the event that there has been a breach of the data contained in the systems. 71 FR 63,354 (October 30, 2006).

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public was given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, required a 40-day period in which to conclude its review of the systems.

As a result of comments received, the Department is making a minor modification to the language of the routine use in order to provide greater clarity. A concern was raised that the condition set forth in clause (1) of the routine use (''when (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised'') does not clearly identify precisely who has to suspect or confirm the compromise. While it was the intent of the drafters that it be the Department of Justice that must suspect or confirm the compromise, because that intent is expressed only implicitly in the routine use, the Department is modifying the language of the first condition to provide additional clarity.

A description of the modification to the Department's systems of records is provided below. In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress. The new routine use will be effective January 25, 2007.

Dated: January 22, 2007.

Lee J. Lofthus,

Assistant Attorney General for Administration.

Department of Justice Privacy Act notices and citations follow. An asterisk (*) designates the last publication of the complete document in the **Federal Register**.

DOJ–001	Accounting Systems for the Department of Justice	06–03–04 * 01–03–06	69 FR 31406 * 71 FR 142
DOJ–002	DOJ Computer Systems Activity & Access Records	12–30–99	64 FR 73585
DOJ–003	Correspondence Management Systems for the Department of Justice; Corrections.	06–04–01 * 06–29–01 10–25–02	66 FR 29992 * 66 FR 34743 67 FR 65598

DOJ–004	Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests and Administrative Appeals; Corrections.	06–04–01 * 06–29–01	66 FR 29994* 66 FR 34743
DOJ–005	Nationwide Joint Automated Booking System (JABS)	09–07–06	71 FR 52821
DOJ–006	Personnel Investigation and Security Clearance Records for the Department of Justice.	09–24–02 * 11–10–04	67 FR 59864 * 69 FR 65224
DOJ–007	Reasonable Accommodations for the Department of Justice	05–16–02	67 FR 34955
DOJ–008	Department of Justice Grievance Records	10–29–03 * 08–04–04	68 FR 61696 * 69 FR 47179
DOJ–009	Emergency Contact Systems for the Department of Justice	01–12–04	69 FR 1762
DOJ–010	Leave Sharing Systems	04–26–04 * 08–04–04	69 FR 22557 * 69 FR 47179
DOJ–011	Access Control System (ACS)	12–03–04	69 FR 70279
DOJ–012	Department of Justice Regional Data Exchange System (RDEX)	07–11–05 * 12–02–05	70 FR 39790 * 70 FR 72315
ASG–001	General Files System of the Office of the Associate Attorney General	04–27–04	69 FR 22872
ATF–001	Administrative Record System	01–24–03	68 FR 3551, 52
ATF–003	Criminal Investigation Report System	01–24–03	68 FR 3551, 53
ATF–006	Internal Security Record System	01–24–03	68 FR 3551, 55
ATF–007	Personnel Record System	01–24–03	68 FR 3551, 56
ATF–008	Regulatory Enforcement Record System	01–24–03	68 FR 3551, 58
ATF–009	Technical and Scientific Services Record System	01–24–03	68 FR 3551, 60
ATF–010	Training and Professional Development Record System	01–24–03	68 FR 3551, 62
ATR–001	Antitrust Division Expert Witness File	10–13–89	54 FR 42061
ATR–003	Index of Defendants in Pending and Terminated Antitrust Cases	10–10–95	60 FR 52690
ATR–004	Statements by Antitrust Division Officials (ATD Speech File)	10–10–95	60 FR 52691
ATR–005	Antitrust Management Information System (AMIS)—Time Reporter	10–17–88	53 FR 40502
ATR–006	Antitrust Management Information System (AMIS)—Monthly Report	02–20–98 * 03–29–01	63 FR 8659* 66 FR 17200
ATR–007	Antitrust Division Case Cards	10–10–95	60 FR 52692
ATR–009	Public Complaints and Inquiries File	11–17–80	45 FR 75902
ATR–009	Consumer Inquiry Index	09–30–77	42 FR 53396
ATR–014	Civil Investigative Demand (CID) Tracking System	10–10–95	60 FR 52694
BIA–001	Decisions of the Board of Immigration Appeals	02–04–83	48 FR 5331
BIA–002	Roster of Organizations and their Accredited Representatives Recognized by the Board of Immigration Appeals.	11–17–80	45 FR 75908
BOP–001	Prison Security and Intelligence Record System	06–18–02	67 FR 41449
BOP–004	Inmate Administrative Remedy Record System	09–09–02	67 FR 57244
BOP–005	Inmate Central Records System	05–09–02	67 FR 31371
BOP–006	Inmate Trust Fund Accounts and Commissary Record System	03–15–02	67 FR 11711
BOP–007	Inmate Physical and Mental Health Record System	03–15–02	67 FR 11712
BOP–008	Inmate Safety and Accident Compensation Record System	06–18–02	67 FR 41452
BOP–009	Administrative Claims Record System	06–18–02	67 FR 41453
BOP–010	Access Control Entry/Exit System	04–08–02	67 FR 16760
BOP–011	Telephone Activity Record System	04–08–02* 02–24–06	67 FR 16762* 71 FR 9606
BOP–012	Office of Internal Affairs Investigative Records	02–28–02	67 FR 9321
BOP–013	Inmate Electronic Message Record System	11–06–05	70 FR 69594
BOP–014	Employee Assistance Program (EAP) Record System	7–31–00	65 FR 46739
BOP–015	Outside Employment Requests Records System	04–08–02	67 FR 16763
BOP–101	The National Institute of Corrections Technical Resource Provider Record System.	03–02–00	65 FR 11342
BOP–103	National Institute of Corrections Academy Record System	12–16–99	64 FR 70286
BOP–104	National Institute of Corrections Mailing List & Information Center Contacts Records System.	12–16–99	64 FR 70287
CIV–001	Civil Division Case File System	02–20–98* 03–29–01 07–12–01	63 FR 8659* 66 FR 17200 66 FR 36593
CIV–002	Civil Division Case File System: Customs Litigation	01–10–80	45 FR 2217
CIV–003	Office of Alien Property File System	09–30–77	42 FR 53324
CIV–004	Swine Flu Administrative Claim File System	09–28–78	43 FR 44708
CIV–005	Annuity Brokers List System	04–09–03	68 FR 17401
CIV–006	Consumer/Inquiry Investigatory System	10–17–88	53 FR 40506
CIV–008	September 11th Victim Compensation Fund of 2001 File System	12–21–01	66 FR 65991
COPS–001	Police Corps System	01–08–97	62 FR 1131
CRM–001	Central Criminal Division Index File and Associated Records	02–20–98* 03–29–01	63 FR 8659* 66 FR 17200
CRM–002	Criminal Division Witness Security File	12–11–87	52 FR 47186
CRM–003	File of Names Checked to Determine if those Individuals Have Been the Subject of an Electronic Surveillance.	12–11–87	52 FR 47187
CRM–004	General Crimes Section, Criminal Division, Central Index File and Associated Records.	12–11–87	52 FR 47190
CRM–005	Index to Names of Attorneys Employed by the Criminal Division, U.S. Department of Justice, Indicating the Subject of the Memoranda on Criminal Matters They Have Written.	12–11–87	49 FR 47191
CRM–006	Information File on Individuals and Commercial Entities Known or Suspected of Being Involved in Fraudulent Activities.	09–30–77	42 FR 53336

CRM–007	Name Card File on Criminal Division Personnel Authorized to have Access to the Central Criminal Division Records.	12–11–87	52 FR 47192
CRM–008	Name Card File on Department of Justice Personnel Authorized to have Access to the Classified Files of the Department of Justice.	12–11–87	52 FR 47193
CRM–012	Organized Crime and Racketeering Section, General Index File and Associated Records.	11–26–90 * 03–29–01	55 FR 49147 * 66 FR 17200
CRM–014	Organized Crime and Racketeering Section, Intelligence and Special Services Unit, Information Request System.	09–30–77	42 FR 53343
CRM–017	Registration and Propaganda Files Under the Foreign Agents Registration Act of 1938, As Amended.	5–11–88	53 FR 16794
CRM–018	Registration Files of Individuals Who Have Knowledge of or Have Received Instruction or Assignment in Espionage, Counterespionage, or Sabotage Service or Tactics of a Foreign Government or of a Foreign Political Party.	12–11–87	52 FR 47197
CRM–019	Requests to the Attorney General for Approval of Applications to Federal Judges for Electronic Interceptions.	12–11–87	52 FR 47198
CRM–021	The Stocks and Bonds Intelligence Control Card File System	12–11–87	52 FR 47199
CRM–022	Witness Immunity Records	12–11–87	52 FR 47200
CRM–023	Weekly Statistical Report	01–10–80	45 FR 2195
CRM–025	Tax Disclosure Index File and Associated Records	12–11–87	52 FR 47202
CRM–026	International Prisoner Transfer Case Files/International Prisoner Transfer Tracking System.	04–29–03	68 FR 22739
CRM–027	Office of Special Investigation (OSI) Displaced Persons Listings	12–11–87	52 FR 47204
CRM–028	Organized Crime Drug Enforcement Task Force Fusion Center System.	10–18–04	69 FR 61403
CRS–001	Operational Data Information System	01–10–80	45 FR 2220
CRT–001	Central Civil Rights Division Index File and Associated Records	08–11–03 * 07–29–05	68 FR 47610, 11 70 FR 43904
CRT–003	Civil Rights Interactive Case Management System	08–11–03	68 FR 47610, 13
CRT–004	Registry of Names of Interested Persons Desiring Notifications of Submissions Under Section 5 of the Voting Rights Act.	08–11–03	68 FR 47610, 14
CRT–007	Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission.	08–11–03	68 FR 47610, 15
CRT–009	Civil Rights Division Travel Reports	08–11–03	68 FR 47610, 16
DAG–003	Drug Enforcement Task Force Evaluation Reporting System	03–10–92	57 FR 8473
DAG–005	Master Index File of Names	10–21–85	50 FR 42606
DAG–006	Presidential Appointee Candidate Records System	10–21–85	50 FR 42607
DAG–007	Presidential Appointee Records System	10–21–85	50 FR 42608
DAG–008	Special Candidates for Presidential Appointments and Noncareer SES Positions Records System.	8–31–94	59 FR 45005
DAG–009	Summer Intern Program Records System	10–21–85	50 FR 42611
DAG–010	United States Judge and Department of Justice Presidential Appointee Records.	10–21–85	50 FR 42612
DAG–011	Miscellaneous Attorney Personnel Records	10–21–85	50 FR 42613
DAG–013	General Files System	3–10–92	57 FR 8475
DEA–001	Air Intelligence Program	12–11–87	52 FR 47206
DEA–INS–111	Automated Intelligence Records System (Pathfinder)	11–26–90	55 FR 49182
DEA–002	Clandestine Laboratory Seizure System (CLSS)	01–27–03	68 FR 3894
DEA–003	Automated Records and Consolidated Orders System/Diversion Analysis and Detection System (ARCOS/DADS).	08–17–04	69 FR 51104
DEA–005	Controlled Substances Act Registration Records (CSA)	12–11–87	52 FR 47208
DEA–008	Investigative Reporting and Filing System	10–17–96	61 FR 54219
DEA–010	Planning and Inspection Division Records	12–11–87	52 FR 47213
DEA–011	Operations Files	12–11–87	52 FR 47214
DEA–012	Registration Status/Investigation Records	12–11–87	52 FR 47215
DEA–013	Security Files	12–11–87	52 FR 47215
DEA–015	Training Files	12–11–87	52 FR 47217
DEA–017	Grants of Confidentiality Files (GCF)	12–11–87	52 FR 47218
DEA–020	Essential Chemical Reporting System	12–11–87	52 FR 47219
DEA–021	DEA Aviation Unit Reporting System	04–28–00	65 FR 24986
DEA–022	El Paso Intelligence Center (EPIC) Seizure System (ESS)	06–26–06	71 FR 36362
ENRD–001	Appraisers, Approved Attorneys, Abstractors and Title Companies Files Database System.	02–23–00 * 10–20–05	65 FR 8989 * 70 FR 61159
ENRD–003	Environment & Natural Resources Division Case & Related Files System.	02–23–00 * 10–20–05	65 FR 8990 * 70 FR 61159
EOIR–001	Records and Management Information System	05–11–04	66 FR 26179
EOIR–003	Practitioner Complaint/Disciplinary Files	09–10–99	64 FR 49237
FBI–001	National Crime Information Center (NCIC)	09–28–99	64 FR 52343
FBI–002	The FBI Central Records System	2–20–98* 03–29–01	63 FR 8671* 66 FR 17200
FBI–003	Bureau Mailing Lists	02–14–05	70 FR 7513
FBI–006	Electronic Surveillance (ELSUR) Indices	02–14–05	70 FR 7513, 14
FBI–007	FBI Automated Payroll System	10–05–93	58 FR 51874
FBI–008	Bureau Personnel Management System	10–5–93	58 FR 51875
FBI–009	Fingerprint Identification Records System (FIRS)	09–28–99	64 FR 52347
FBI–010	Employee Travel Vouchers and Individual Earning Records	12–11–87	52 FR 47248

FBI–011	Employee Health Records	10–5–93	58 FR 51875
FBI–012	Time Utilization Record-Keeping (TURK) System	10–5–93	58 FR 51876
FBI–013	Security Access Control System (SACS)	02–14–05	70 FR 7513, 16
FBI–014	FBI Alcoholism Program	12–11–87	52 FR 47251
FBI–015	National Center for the Analysis of Violent Crime (NCAVC)	10–05–93	58 FR 51879
FBI–016	FBI Counterdrug Information Indices System (CIIS)	06–09–94	59 FR 29824
FBI–017	National DNA Index System (NDIS)	07–18–96	61 FR 37495
FBI–018	National Instant Criminal Background Check System (NICS)	11–25–98*	63 FR 65223*
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		01–22–01	66 FR 6676
		03–01–01	66 FR 12959
FBI–019	Terrorist Screening Records System	07–28–05*	70 FR 43715*
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FBI Blanket Routine Uses	FBI established ten ''blanket'' routine uses (BRUs) to be applicable to more than one FBI system of records.	06–22–01*	66 FR 33558*
		02–14–05	70 FR 7513
FTTTF–001	Flight Training Candidates File System	06–10–02*	67 FR 39839*
		07–19–02	67 FR 47570
INTERPOL–001	INTERPOL-United States National Central Bureau (USNCB) Records System.	04–10–02	67 FR 17464
JMD–002	Controlled Substances Act Nonpublic Records	07–20–01	66 FR 38000
JMD–003	Department of Justice Payroll System	01–02–04	69 FR 107
JMD–006	Debt Collection Management System	11–12–93	58 FR 60055
JMD–009	Debt Collection Offset Payment System	06–19–97	62 FR 33438
JMD–016	Employee Assistance Program (EAP) Counseling and Referral Records.	06–09–00*	65 FR 36718*
		09–01–04	69 FR 53469
JMD–017	Department of Justice (DOJ) Employee Transportation Facilitation System.	04–24–01	66 FR 20683
JMD–022	Department of Justice Consolidated Asset Tracking System (CATS)	05–19–06	71 FR 29170
JMD–023	Federal Bureau of Investigation Whistleblower Case Files	09–07–05	70 FR 53253
JMD–024	Attorney Student Loan Repayment Program Applicant Files	11–03–06	71 FR 64740
NDIC–001	National Drug Intelligence Center Data Base	04–26–93	58 FR 21995
OAG–001	General Files System	09–12–85	50 FR 37294
OIG–001	Office of the Inspector General Investigative Records System	03–10–92*	57 FR 8476*
		05–22–00	65 FR 32125
		04–29–03	68 FR 22741
OIG–004	OIG Employee Training Records	12–07–99	64 FR 68375
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OIPR–001	Policy and Operational Records System	01–26–84	49 FR 3281
OIPR–002	Foreign Intelligence Surveillance Act Records System	01–26–84	49 FR 3282
OIPR–003	Litigation Records System	01–26–84	49 FR 3284
OJP–001	Equipment Inventory	10–05–93	58 FR 51879
OJP–004	Grants Management Information System	10–17–88	53 FR 40526
OJP–006	Congressional and Public Affairs System	12–11–87	52 FR 47276
OJP–007	Public Information System	11–17–80	45 FR 75936
OJP–008	Civil Rights Investigative System	10–17–88	53 FR 40528
OJP–009	Federal Advisory Committee Membership Files	10–17–88	53 FR 40529
OJP–010	Technical Assistance Resource Files	10–17–88	53 FR 40430
OJP–011	Registered Users File—National Criminal Justice Reference Service (NCJRS).	10–05–93	58 FR 51879
OJP–012	Public Safety Officers Benefits System	05–10–99	64 FR 25070
OJP–013	Denial of Federal Benefits Clearinghouse System (DEBAR)	05–10–99	64 FR 25071
OJP–014	Victims of International Terrorism Expense Reimbursement Program	08–07–06	71 FR 44709
OLC–001	Attorney Assignment Reports	09–04–85	50 FR 35879
OLC–002	Office of Legal Counsel Central File	09–04–85	50 FR 35878
OLP–002	United States Judges Records System	07–25–85	50 FR 30309
OLP–003	General Files System	09–12–85	50 FR 37299
OPA–001	Executive Clemency Case Files/Executive Clemency Tracking System	10–31–02	67 FR 66417
OPR–001	Office of Professional Responsibility Records Index	12–10–98*	63 FR 68299*
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OSCW–001	Caselink Document Database for Office of Special Counsel—Waco	09–05–00	65 FR 53749
PAO–001	News Release, Document and Index System	09–30–77	42 FR 53364
PRC–001	Docket, Scheduling and Control	12–11–87	52 FR 47281
PRC–003	Inmate and Supervision Files	03–10–88	53 FR 7313
PRC–004	Labor and Pension Case, Legal File and General Correspondence System.	10–17–88	53 FR 40533
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PRC–006	Statistical, Educational and Developmental System	12–11–87	52 FR 47287
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USA–003	Citizen Complaint Files	10–13–89	54 FR 42088
USA–005	Civil Case Files	02–20–98*	63 FR 8659
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USA–006	Consumer Complaints	10–13–89	54 FR 42090
USA–007	Criminal Case Files	02–20–98*	63 FR 8659*
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USA–009	Kline District of Columbia and Maryland Stock and Land Fraud Interrelationship Filing System.	10–13–89	54 FR 42093
USA–010	Major Crimes Division Investigative Files	10–13–89	54 FR 42094
USA–011	Prosecutor's Management Information System (PROMIS)	10–13–89	54 FR 42095
USA–012	Security Clearance Forms for Grand Jury Reporters	02–04–83	48 FR 5386
USA–013	U.S. Attorney, District of Columbia Superior Court Division, Criminal Files.	10–13–89	54 FR 42097
USA–014	Pre-Trial Diversion Program Files	08–23–83	48 FR 38344
USA–015	Debt Collection Enforcement System	07–25–06	71 FR 42118
USA–016	Assistant United States Attorney Applicant Records System	03–10–92	57 FR 8487
USA–017	Appointed Assistant United States Attorneys Personnel System	03–10–92	57 FR 8488
USA–018	United States Attorneys' Office Giglio Information Files	12–01–00	65 FR 75308
USA–020	Employee Assistance Program (EAP) Counseling and Referral Records.	03–20–01	66 FR 15755
USM–001	United States Marshals Service Badge and Credentials File	11–08–99	64 FR 60832, 33
USM–002	United States Marshals Service Internal Affairs System	11–08–99	64 FR 60832, 34
USM–003	United States Marshals Service Prisoner Transportation System	09–06–91	56 FR 44101
USM–004	Special Deputation Files	11–08–99	64 FR 60832, 35
USM–005	U.S. Marshals Service Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS).	04–28–04	69 FR 23213
USM–006	United States Marshals Service Training Files	11–08–99	64 FR 60832, 38
USM–007	Warrant Information Network (WIN)	11–08–99	64 FR 60832, 39
USM–008	Witness Security Files Information System	11–08–99	64 FR 60832, 40
USM–009	Inappropriate Communications/Threat Information System	11–08–00	64 FR 60832, 41
USM–010	Judicial Facility Security Index System	11–08–99	64 FR 60832, 42
USM–011	Judicial Protection Information System	11–08–99	64 FR 60832, 43
USM–013	U.S. Marshals Service Administration Proceedings, Claims and Civil Litigation Files.	11–08–99	64 FR 60832, 45
USM–015	U.S. Marshals Service (USMS) Employee Assistance Program (EAP) Records.	11–08–99	64 FR 60832, 47
USM–016	U.S. Marshals Service (USMS) Key Control Record System	11–08–99	64 FR 60832, 48
USM–017	Judicial Security Staff Inventory	11–08–99	64 FR 60849, 50
USM–018	Alternative Dispute Resolution (ADR) Files and Database Tracking System.	11–08–99	64 FR 60849, 51
USM–019	Merit Promotion Open Season Records System (MPOS)	05–23–06	71 FR 29668
UST–001	Bankruptcy Case Files and Associated Records	10–11–06	71 FR 59818, 19
UST–002	Bankruptcy Trustee Oversight Records	10–11–06	71 FR 59818, 22
UST–003	U.S. Trustee Program Timekeeping Records	10–11–06	71 FR 59818, 24
UST–004	United States Trustee Program Case Referral System	10–11–06	71 FR 59818, 25
UST–005	Credit Counseling and Debtor Education Files and Associated Records.	10–11–06	71 FR 59818, 27

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To appropriate agencies, entities, and persons when (1) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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[FR Doc. E7–1176 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on December 12, 2006 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 14 U.S.C. 4301 *et seq.* (''the Act''), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Apple, Cupertino, CA; Konan Technology, Inc., Seoul, REPUBLIC OF KOREA; and SADiE, Cambridge, UNITED KINGDOM have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on October 6, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 22, 2006 (71 FR 67642).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–320 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International—Standards

Notice is hereby given that, on December 14, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. (''the Act''), ASTM International—Standards (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between September 2006 and December 2006, designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on September 28, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 20, 2006 (71 FR 34644).

For additional information, please contact: Thomas B. O'Brien, Jr., General Counsel, at 100 Barr Harbor Drive, West Conshohocken, PA 19428, telephone 610–832–9597, e-mail address *tobrien@astm.org.*

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–317 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on December 19, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Blaupunkt GmbH, Hildesheim, GERMANY; Chinachip Electronics Technology Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Commtech Technology Macao Commercial Offshore Ltd., Macau, PEOPLE'S REPUBLIC OF CHINA; Dailystar Technology Limited, Hong Kong, HONG KONG-CHINA; Dongguan SIMON Technology Co., Ltd., Guangdon, PEOPLE'S REPUBLIC OF CHINA; Dvation Co., Ltd., Seoul, REPUBLIC OF KOREA; GM Records Marek Grela, Warsaw, POLAND; Le Hong Po Company Limited, Hong Kong, HONG KONG-CHINA; Optical Disc Solutions, Inc., Richmond, IN; Polar Frog Digital, Scottsdale, AZ; Protocall Technologies Incorporated, Commack, NY; Shenzhen Xing Feng Industry Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Skypine Electronics (Shenzhen) Co., Ltd., Shenzhen City, PEOPLE'S REPUBLIC OF CHINA; VTV nv, West Vlaanderen, BELGIUM; and Yuban & Co., Taipei, TAIWAN have been added as parties to this venture. Also, Toshiba-EMI Limited, Tokyo, JAPAN; and Yuxing Electronics Company Limited, Tortola, BRITISH VIRGIN ISLANDS have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on September 21, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 27, 2006 (71 FR 63035).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–318 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ManyCore Collaboration Project

Notice is hereby given that, on October 23, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the ManyCore Collaboration Project (''ManyCore Collaboration'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Intel Corporation, Santa Clara, CA; and Microsoft Corporation, Redmond, WA. The general area of the ManyCore Collaboration's planned activity is the creation of new technologies in the area of ManyCore memory technology. Through the venture, the parties will work to develop hardware and 36+software functional elements that better enable the effective use of parallelism.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–315 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Biodiesel Accreditation Commission

Notice is hereby given that, on January 3, 2007, pursuant to Section 6(a) of the National Cooperative Research and production Act of 1993, 15 U.S.C. 4301 et seq. (''the Act''), National Biodiesel Accreditation Commission (''NBAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or change to it standards development activities. the notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damage under specified circumstances. Specifically, NBAC has amended various aspects of its BQ–9000 standard in several ways, including but not limited to: Lengthening the certification period; requiring an annual surveillance audit; requiring six months of full operation before an applicant may apply; amending the requirements of a desk audit; requiring the applicant to maintain a Document Status form; to track amendments to applicant's Quality Manual; lengthening the period of required recordkeeping; and separating the marketer and producer standards.

On August 27, 2004, NBAC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in **Federal Register** pursuant to Section 6(b) of the act on October 4, 2004 (69 FR 59269).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–314 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Conference of Public Officials, Inc.

Notice is hereby given that, on December 11, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Conference of Public Officials, Inc. (''NCOPO'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: National Conference of Public Officials, Inc., Philadelphia, PA. The nature and scope of NCOPO's standards development activities are: To develop, plan, establish, coordinate and publish voluntary consensus standards applicable to the fields of government ethics, accountability and productivity. Specifically, NCOPO, a nonprofit corporation consisting of elected and appointed public officials as voting members and attorneys, government contractors, nonprofit organizations engaged in public advocacy, political parties and other stakeholders as non-voting members, develops, plans, establishes, coordinates and publishes voluntary consensus standards in the form of model uniform codes and standards for adoption with or without modification by any Federal, State or municipal governmental unit as statutes, ordinances, administrative codes and regulations, or court rules of procedures covering nine topical subjects, consisting of (1) Ethics and standards of conduct for public and political officeholders; (2) public safety, Homeland and national security; (3) prosecution, public defenders, legal aid societies, and other court and judicial matters; (4) public accessibility to government, campaign financing, voting accessibility, elections and administration of political parties and campaign committees; (5) administrative and regulator processes; (6) land use, planning, zoning, environmental protection and energy conservation; (7) public infrastructure, public property, transportation and public transit; (8) delivery of healthcare and social relief and welfare services, public education; and (9) other miscellaneous matters not covered by the aforementioned topics.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–316 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on December 8, 2006, pursuant to Section 69a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Vezer's PIC, Suisun, CA has become an Associate Member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on July 10, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 9, 2006 (71 FR 45581).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–313 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on December 21, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were

filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Keithley Instruments, Inc., Solon, OH; and PLX Technology, Sunnyvale, CA have been added as parties to this venture. Also, Mapsuka Industries Co., Ltd., Taipei, TAIWAN has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on march 8, 2001 (66 FR 13971).

The last notification was filed with the Department on October 5, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 22, 2006 (71 FR 67642).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–319 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Correction to Notice of Application

The Drug Enforcement Administration (DEA) is hereby correcting a notice of application that appeared in the **Federal Register** on January 23, 2006 (71 FR 3545). That document announced the application of Cody Laboratories, Inc., to be registered as an importer of raw opium, poppy straw, and concentrate of poppy straw.

The January 23, 2006, notice of application incorrectly stated that ''[a]ny manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.'' Correctly stated, under the Controlled Substances Act (CSA) and DEA regulations, applications to import narcotic raw materials, including raw opium, poppy straw, and concentrate of poppy straw, are not required to be published in the **Federal Register**. Further, the notice of application, although not required to be published at all, should have stated that ''bulk manufacturers'' of raw opium, poppy straw, or concentrate of poppy straw may file a written request for a hearing. As explained in the Correction to Notice of Application pertaining to Rhodes Technologies published today, since there are no domestic bulk manufacturers of narcotic raw materials registered with DEA, no registrant has a statutory or regulatory right to a hearing on the application. For the reasons set forth therein, I correct the Notice of Application dated January 23, 2006. I direct the Administrative Law Judge to remove from the agency's administrative docket the hearing on the application of Cody Laboratories, Inc. to be registered as an importer of narcotic raw materials.

Dated: January 18, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–1052 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Correction to Notice of Application

The Drug Enforcement Administration (DEA) is hereby correcting a notice of application that appeared in the **Federal Register** on April 17, 2006 (71 FR 20729). That document announced the application of Rhodes Technologies to be registered as an importer of raw opium and concentrate of poppy straw. This is the second correction to the original notice of application. This document augments the correction which was published in the **Federal Register** on May 22, 2006 (71 FR 29354).

The April 17, 2006, notice of application incorrectly stated that ''[a]ny manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.'' Correctly stated, under the Controlled Substances Act (CSA) and DEA regulations, applications to import narcotic raw materials, including raw opium and concentrate of poppy straw, are not required to be published in the **Federal Register**. Further, the notice of application, although not required to be published at all, should have stated that ''bulk manufacturers'' of raw opium or concentrate of poppy straw may file a written request for a hearing. As explained below, since there are no domestic bulk manufacturers of narcotic raw materials registered with DEA, no registrant has a statutory or regulatory right to a hearing on the application.

In response to the notice, several importers of narcotic raw materials who also hold manufacturing registrations (but not as ''bulk manufacturers'' of narcotic raw materials) requested a hearing on the application. DEA's Administrative Law Judge (ALJ) accepted the requests for hearings and placed the case on DEA's administrative hearing docket. This correction notifies the applicant, the public, and those importers/manufacturers that requested a hearing that DEA is denying the requests for hearing and dismissing the case on the agency's administrative docket.

Statutory and Regulatory Provisions

As set forth in 21 U.S.C. 958(i), the Attorney General (by delegation, the Administrator and Deputy Administrator of DEA) [1] shall, prior to issuing an importer registration to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a) authorizing the importation of such a substance, provide ''manufacturers holding registrations for the *bulk manufacture of the substance* an opportunity for a hearing.'' (Emphasis added.) Thus, the CSA contemplates that only ''bulk manufacturers'' shall be entitled to hearing on an application to import a schedule I or II controlled substance and, further, that only those who are registered to bulk manufacture the particular substance that the applicant seeks to import. Accordingly, if no one is registered to bulk manufacture the substance that the applicant seeks to import, no one is entitled to a hearing on that application.

DEA's registration database confirms that no person holds a registration as a bulk manufacturer of raw opium, concentrate of poppy straw, or any of the other narcotic raw materials listed in 21 U.S.C. 952(a)(1).[2] Accordingly, the

[1] 21 U.S.C. 871(a); 28 CFR 0.100(b) and 0.104, appendix to subpart R, sec. 12.

[2] When applying for registration, manufacturers are required to complete DEA Form-225, which

Continued

CSA provides no right to a hearing to any person seeking to challenge the application of another to become registered to import such narcotic raw materials.

Consistent with the CSA, the DEA regulations provide that the only persons who are entitled to a hearing on an application for a registration to import a schedule I or II controlled substance are those who are either ''registered as a bulk manufacturer of that controlled substance'' or an ''applicant therefor.'' 21 CFR 1301.34(a).[3]

In sum, neither the CSA nor the DEA regulations provide a right to a hearing for anyone seeking to contest the application of Rhodes Technologies to import narcotic raw material.

Historical Agency Practice and Other Statutory Considerations

DEA is aware that the agency has, in some prior cases of applications to import narcotic raw materials, granted requests for hearings made by persons that were not bulk manufacturers of the narcotic raw material—despite the fact that no such hearing right is contemplated by the governing statute or implementing regulations. *See, e.g., Penick Corp.; Importation and Manufacture of Controlled Substances, Objections, Requests for Hearing, and Hearing,* 42 FR 82760 (1980); *Mallinckrodt, Inc.; Approval of Registration,* 46 FR 24747 (1981); *Johnson Matthey, Inc.; Conditional Grant of Registration to Import Schedule II Substances,* 67 FR 39041 (2002); *Penick Corporation, Inc.; Grant of Registration to Import Schedule II Substances,* 68 FR 6947, 6948 (2003); *Chattem Chemicals, Inc.; Grant of Registration to Import Schedule II Substances,* 71 FR 9834 (2006). In these past cases, the agency did not state that such non-bulk-manufacturers were entitled to a hearing under 21 U.S.C. 958(i) or 21 CFR 1301.34(a). Rather, the agency either granted the hearing without explanation or did so based on what it termed its ''discretionary authority.'' *See, e.g., Penick Corporation, Inc.; Grant of Registration to Import Schedule II Substances,* 68 FR 6947, 6948 (2003). Without addressing whether the agency indeed has the theoretical legal authority to grant such hearing requests, I now conclude that the most sound reading of the statute and regulations is that which limits the right to a hearing to those situations in which Congress expressly provided such a right.

As stated above, 21 U.S.C. 958(i), by its plain terms, gives the right to request a hearing *not* in the case of all applications for a registration to import, but only in those in which the applicant for the import registration is a ''bulk manufacturer'' and only where the person seeking the hearing is a ''bulk manufacturer'' of the substance the applicant is seeking to import. Because there are no registered bulk manufacturers of narcotic raw materials,[4] the facts triggering the right to a hearing under section 958(i) are not present in cases in which the applicant for an import registration is seeking to import narcotic raw materials under section 952(a)(1). In contrast, the facts needed to invoke the hearing right of section 958(i) will be present when the applicant is seeking to import the substances referred to in section 952(a)(2), since there are registered bulk manufacturers of the substances referred to in section 952(a)(2) (substances which are not narcotic raw materials).[5]

Congress could have extended the hearing right under 958(i) to importers of narcotic raw materials. That it instead chose to limit that right to bulk manufacturers indicates a determination on its part that extending the hearing right to others is not necessary to advance the goals of the CSA. Among other considerations, invocation of the hearing right by a competitor can add considerable time (months and sometimes years) to the process by which the agency determines whether to grant the application. An existing registrant could ask for a hearing simply to delay a competitor's entry into the market—particularly given that DEA has not promulgated any criteria for deciding whether to grant these types of hearing requests. Such a delay would tend to run counter to the obligation of an agency under the Administrative Procedure Act requires to conclude adjudications ''with due regard to the convenience and necessity of the parties * * * and within a reasonable time.'' 5 U.S.C. 555(b). Moreover, if DEA were to maintain a policy (not contemplated by the CSA) whereby a competitor could simply request a hearing without making any showing that the hearing either would assist the agency in deciding whether to grant the application or otherwise advance the goals of the CSA, it would be difficult to envision how the agency could act on such hearing requests other than on arbitrary basis. Basic principles of fairness dictate against such an outcome.

Of course, the consideration of delay to the applicant also exists when a *bulk manufacturer* seeks a hearing on the application of a potential competitor as allowed under section 958(i). However, that Congress expressly provided for a hearing right in such circumstances indicates that Congress weighed the consideration of delay and, on balance, determined the goals of the CSA were advanced by providing a hearing right in such circumstances. Again, that Congress expressed clear criteria as to when the hearing right applied reflects a clear delineation by Congress as to when such hearing right does—or does not—advance the overall goals of the Act.

The mere fact that the agency has followed a procedural practice in the past does not, by itself, compel that the agency repeat the procedure in perpetuity. Finding no valid justification for the past practice, and finding such practice inconsistent with the particular criteria for a hearing rights set forth in the CSA and implementing regulations, I decline to follow this practice.

It should be emphasized, however, that this decision to disallow a hearing right beyond that stated in the statute or regulations by no means should be construed as an indication that this application will be approved without the appropriate scrutiny. As mandated by the CSA, DEA will—prior to deciding whether to issue an order to show cause to deny this application—evaluate the application in accordance with the applicable statutory criteria (21 U.S.C. 952(a)(1) and 958(a)). Section 958(a) requires DEA to evaluate the application under the six public interest factors set forth in 21 U.S.C. 823(a). *See Penick Corporation,* 68 FR 6947 (2003); *Roxane Laboratories, Inc.,* 63 FR 55891 (1998).

requires the applicant to specify the nature of the proposed manufacturing activity. The categories include, among others, ''bulk synthesis/extraction'' and ''dosage form manufacture.'' Likewise, the registration database maintained by DEA indicates the specific type of manufacturing activity that is authorized by each registration.

[3] Moreover, as set forth in 21 CFR 1301.34(a), the right to a hearing is limited to cases in which the applicant is seeking to import a controlled substance pursuant to 21 U.S.C. 952(a)(2)(B).

[4] Since well before the CSA was enacted (beginning with the Narcotic Drugs Import and Export Act of 1922), it has been the policy of the United States (reflected in legislation enacted by Congress) to favor the importation of narcotic raw materials for conversion in the United States into finished narcotic drug products over domestic production of the raw materials and over the importation of processed narcotic materials and finished narcotic products. This is currently reflected in part by in 21 U.S.C. 952(a) and, in particular, by comparing subsection 952(a)(1) with subsection 952(a)(2) (the latter being more restrictive than the former).

[5] Section 958(i) expressly excludes from the hearing right applications pursuant to section 952(a)(2)(A) (emergency situations).

Conclusion

For the reasons and in the manner set forth above, I correct the Notice of Application dated April 17, 2006. I direct the ALJ to remove from the agency's administrative docket the hearing on the application of Rhodes Technologies to register as an importer of narcotic raw materials.

Dated: January 18, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–1053 Filed 1–24–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,627]

Advanced Technology Corp., Geneva, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 18, 2006 in response to a worker petition filed by the United Steelworkers, Local 905L on behalf of workers of Advanced Technology Corp., Geneva, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 17th day of January, 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–1075 Filed 1–24–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of January 1 through January 5, 2007.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–60,534; Ceramaspeed, Inc., Maryville, TN: December 4, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section

222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,511; Saturday Knight Limited, Cincinnati, OH: November 27, 2005.

TA–W–60,576; Schnadig Corporation, Corona, CA #16, Corona, CA: November 30, 2005.

TA–W–60,576A; Schnadig Corporation, Belmont, MS #15, Belmont, MS: November 30, 2005.

TA–W–60,621; Lighting By Renee, West Memphis, AR: December 13, 2005.

TA–W–60,636; Fencemaster, A Subsidiary of Radio Systems Corp., Jackson, TN: December 14, 2005.

TA–W–60,691; Baxter Corporation (The), Shelby, NC: January 2, 2006.

TA–W–60,489; Roseburg Forest Products, Plywood Plant #4, Riddle, OR: November 21, 2005.

TA–W–60,497; Bruard's, Inc., Conover, NC: November 27, 2005.

TA–W–60,525; Special Tool and Engineering, Inc., Fraser, MI: November 29, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,466; International Textile Group, Burlington Worldwide, Richmond Plant, Cordova, NC: December 23, 2006.

TA–W–60,518; DeSoto Mills LLC, A Subsidiary of Russell Corp., Fort Payne, AL: December 1, 2005.

TA–W–60,523; Brunswick Family Boat Group, U.S. Marine Division, Plant One, Cumberland, MD: December 1, 2005.

TA–W–60,537; Plastex Extruders, Inc., Fort Payne, AL: December 1, 2005.

TA–W–60,539; Moll Industries, Inc., New Braunfels, TX: December 5, 2005.

TA–W–60,599; Swak, LLC, Formerly Known as E.S. Sutton, Ridgewood, NY: December 8, 2005.

TA–W–60,655; David Brooks Company, Costa Mesa, CA: December 20, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,590; Unifi, Inc., Plant 4, Reidsville, NC: December 8, 2005.

TA–W–60,630; Bloomsburg Mills, Inc., A Subsidiary of Penn Columbia Corp., Bloomsburg Location, Bloomsburg, PA: December 15, 2005.

TA–W–60,635; Mastercraft Fabrics, LLC, Lakewood Dyed Yarns Division, Cramerton, NC: December 16, 2006.

TA–W–60,638; Acme Face Veneer Co., Inc., Lexington, NC: December 13, 2005.

TA–W–60,660; Reynolds Wheels International Virginia, Doing Business as Alcoa Wheel Products, Lebanon, VA: December 21, 2005.

TA–W–60,670; Jeld-Wen Millwork Mfg., Klamath Falls, OR: December 20, 2005.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–60,534; Ceramaspeed, Inc., Maryville, TN.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,540; MII, Inc., Lundia Division, Jacksonville, IL.

TA–W–60,600; Creative Apparel Associates, Eastport Plant, Eastport, ME.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

None.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–60,473; R.G. Barry Corporation, Pickerington, OH.

*TA–W–60,566; E*Trade Mortgage Corporation, Coraopolis, PA.*

TA–W–60,674; New York—New Jersey Joint Board of UNITE, Union City, NJ.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of January 1 through January 5, 2007. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be

mailed to persons who write to the above address.

Dated: January 11, 2007.

Ralph Dibattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–1067 Filed 1–24–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 5, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 5, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 17th day of January, 2007.

Ralph Dibattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 1/8/07 and 1/12/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60715	Conair (Wkrs)	Franklin, PA	01/08/07	01/05/07
60716	A.O. Smith Corporation (Comp)	Mebane, NC	01/08/07	01/04/07
60717	Lear Corporation (Wkrs)	Romulus, MI	01/08/07	01/05/07
60718	Renfro Charleston, LLC (Comp)	Cleveland, TN	01/09/07	01/02/07
60719	Avondale Mills, Inc.—Townsend Plant (Wkrs)	Graniteville, SC	01/09/07	01/08/07
60720	Delphi Connections Systems/Specialty Electronics (Comp).	Landrum, SC	01/09/07	01/08/07
60721	Future Tool and Die (Wkrs)	Grandville, MI	01/09/07	01/04/07
60722	Kirchner Corporation (Wkrs)	Golden Valley, MN	01/09/07	01/08/07
60723	Pechiney Plastic Packaging (Comp)	Washington, NJ	01/09/07	01/08/07
60724	General Electric—Conneaut Base Plant (UE)	Conneaut, OH	01/09/07	01/09/07
60725	Birds Eye Food, Inc. (Comp)	Watsonville, CA	01/10/07	01/09/07
60726	CNI Duluth, LLC (Wkrs)	Duluth, MN	01/10/07	01/02/07
60727	Johnson Controls, Inc. (Comp)	Chesapeake, VA	01/10/07	01/09/07
60728	Johnson Controls (State)	Oklahoma City, OK	01/10/07	12/13/06
60729	G.C.C. Drum (Wkrs)	Franklin Park, IL	01/10/07	12/29/06
60730	Jabil (Comp)	Auburn Hills, MI	01/10/07	01/09/07
60731	Best Manufacturing (Comp)	Menlo, GA	01/10/07	01/09/07
60732	Trend Tool, Inc. (Comp)	Livonia, MI	01/10/07	12/19/06
60733	L and R Knitting, Inc. (Comp)	Hickory, NC	01/10/07	01/08/07
60734	Pearson Artworks (Wkrs)	York, PA	01/10/07	01/09/07
60735	Waterloo Industries, Inc. (State)	Pocahontas, AR	01/10/07	01/09/07
60736	Cooper Power System (State)	Fayetteville, AR	01/10/07	01/09/07
60737	Atwood Mobile Products (UAW)	LaGrange, IN	01/10/07	01/03/07
60738	Georgia Pacific Corp—Crossett Paper (Wkrs).	Crossett, AR	01/11/07	01/09/07
60739	Mega Brands (Wkrs)	Woodridge, NJ	01/11/07	12/16/06
60740	Classic Picture Company, Inc. (Comp)	Dallas, TX	01/11/07	01/10/07
60741	E. J. Victor, Inc. (Comp)	Morganton, NC	01/11/07	01/10/07
60742	Jordan Alexander, Inc. (Comp)	Granite Falls, NC	01/11/07	01/10/07
60743	Atotech USA, Inc. (Comp)	Rock Hill, SC	01/11/07	01/09/07
60744	Worthington Precision Metals (Comp)	Franklin, TN	01/11/07	01/10/07
60745	Bush Industries, Inc. (Erie Facility) (Comp)	Erie, PA	01/11/07	01/10/07
60746	D J, Inc. (Comp)	El Paso, TX	01/11/07	01/05/07
60747	Aerotek (Comp)	Charlevoix, MI	01/11/07	01/08/07
60748	Eljer, Inc. (Comp)	Ford City, PA	01/11/07	01/11/07
60749	Narrow Fabric Industries Corp. (Wkrs)	West Reading, PA	01/11/07	01/09/07
60750	White Rodgers (State)	Batesville, AR	01/12/07	01/11/07
60751	Reel Quick, Inc. (Comp)	Lincoln, NE	01/12/07	01/11/07
60752	Alcoa Engineered Plastic Components (Comp).	El Paso, TX	01/12/07	01/11/07
60753	Cerf Brothers Bag Company (State)	Earth City, MO	01/12/07	02/10/07
60754	Page Foam Cushioned Products (Comp)	Johnstown, PA	01/12/07	01/11/07
60755	ITW Paslode (Comp)	Portage, WI	01/12/07	01/11/07

APPENDIX—Continued

[TAA petitions instituted between 1/8/07 and 1/12/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60756	Eramet Marietta (USW)	Marietta, OH	01/12/07	01/11/07
60757	Alan White (Wkrs)	Shannon, MS	01/12/07	01/11/07
60758	Bosch Security System (IBEW)	Lancaster, PA	01/12/07	01/10/07
60759	Charter Communications (Wkrs)	Irwindale, CA	01/12/07	01/08/07
60760	Ahlstrom, LLC (USW)	Mt. Holly Springs, PA	01/12/07	01/11/07
60761	Doyle Enterprises, Inc. (Comp)	Rock Mount, VA	01/12/07	01/11/07

[FR Doc. E7–1073 Filed 1–24–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,301]

D–M–E Company, Charlevoix Plant, a Subsidiary of Milacron, Inc., Including On-Site Leased Workers of Aerotek, Charlevoix, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 8, 2006, applicable to workers of D–M–E Company, Charlevoix Plant, a subsidiary of Milacron, Inc., Charlevoix, Michigan. The notice was published in the **Federal Register** on November 28, 2006 (71 FR 68844).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of pins and sleeves (*i.e.,* tooling for plastics).

New information shows that leased workers of Aerotek were employed on-site at the Charlevoix, Michigan location of D–M–E Company, Charlevoix Plant, a subsidiary of Milacron, Inc.

Based on these findings, the Department is amending this certification to include leased workers of Aerotek working on-site at D–M–E Company, Charlevoix Plant, a subsidiary of Milacron, Inc., Charlevoix, Michigan.

The intent of the Department's certification is to include all workers employed at D–M–E Company, Charlevoix Plant, a subsidiary of Milacron, Inc., Charlevoix, Michigan who were adversely affected by increased company imports.

The amended notice applicable to TA–W–60,301 is hereby issued as follows:

All workers of D–M–E Company, Charlevoix Plant, a subsidiary of Milacron, Inc., including on-site leased workers of Aerotek, Charlevoix, Michigan, who became totally or partially separated from employment on or after October 25, 2005, through November 8, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of January, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–1074 Filed 1–24–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,077]

Oxford Collections, Inc., a Wholly Owned Subsidiary of Millwork Trading Co., Ltd D/B/A/ Li & Fung USA, Including On-Site Leased Workers of Ambrose Employer Group, LLC, New York, NY and Gaffney, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 24, 2006, applicable to workers of Oxford Collections, Inc., Women's Catalog Division, New York, New York and Gaffney, South Carolina. The notice was published in the **Federal Register** on November 16, 2006 (71 FR 66799).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of ladies' apparel, such as women's sportswear separates, coordinated outerwear, dresses and swimwear.

New information shows that as of May 5, 2006, the correct name of the subject firm should read Oxford Collections, Inc. a wholly owned subsidiary of Millwork Trading Co., Ltd, d/b/a Li & Fung USA, including on-site leased workers of Ambrose Employer Group, LLC, New York, New York and Gaffney, South Carolina.

Information also shows that all workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Ambrose Employer Group, LLC.

Accordingly, the Department is amending the certification to properly reflect these matters.

The intent of the Department's certification is to include all workers of Oxford Collections, Inc., a wholly owned subsidiary of Millwork Trading Co., Ltd, d/b/a Li & Fung USA, New York, New York and Gaffney, South Carolina who were adversely affected by increased customer imports.

The amended notice applicable to TA–W–60,077 and TA–W–60,077A are hereby issued as follows:

All workers of Oxford Collections, Inc., a wholly owned subsidiary of Millwork Trading Co., Ltd, d/b/a Li & Fung USA, including on-site leased workers of Ambrose Employers Group, LLC, New York, New York (TA–W–60,077) and Oxford Collections, Inc., a wholly owned subsidiary of Millwork Trading Co., Ltd, d/b/a Li & Fung USA, including on-site leased workers of Ambrose Employers Group, LLC, Gaffney, South Carolina (TA–W–60,077A), who became totally or partially separated from employment on or after August 25, 2005, through October 24, 2008, are eligible to apply for adjustment assistance under

Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 11th day of January 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–1068 Filed 1–24–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,136]

Owens-Brockway, Inc., Global Glass Technologies Division, a Division of Owens-Illinois, Inc., Including On-Site Leased Workers of Manpower, Inc. and Availability, Godfrey, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 3, 2006, applicable to workers of Owens-Brockway, Inc., Global Glass Technologies Division, a division of Owens-Illinois, Inc., including on-site leased workers of Manpower, Inc., Godfrey, Illinois. The notice was published in the **Federal Register** on October 31, 2006 (71 FR 63800).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of machined parts for glass forming machines.

New information shows that leased workers of Availability were employed on-site at the Godfrey, Illinois location of Owens-Brockway, Inc., Global Glass Technologies Div., a division of Owens-Illinois, Inc.

Based on these findings, the Department is amending this certification to include leased workers of Availability working on-site at Owens-Brockway, Inc., Global Glass Technologies Division, a division of Owens-Illinois, Inc., Godfrey, Illinois.

The intent of the Department's certification is to include all workers employed at Owens-Brockway, Inc., Global Glass Technologies Division, a division of Owens-Illinois, Inc. who were adversely affected by a shift in production to the United Kingdom, Colombia, South America, Mexico and China.

The amended notice applicable to TA–W–60,136 is hereby issued as follows:

All workers of Owens-Brockway, Inc., Global Glass Technologies Division, a division of Owens-Illinois, Inc., including on-site leased workers of Manpower, Inc. and Availability, Godfrey, Illinois, who became totally or partially separated from employment on or after September 25, 2005, through October 3, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 16th day of January, 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–1069 Filed 1–24–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of January 8 through January 12, 2007.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A), all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B), both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits, and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20

percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–60,620; Point Technologies, A Subsidiary of Angiotech Pharmaceuticals, Wheeling, IL: November 17, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,535; Broyhill Furniture Industries, Inc., Lenoir Furniture Corporation, Lenoir, NC: September 11, 2006.

TA–W–60,545; Nice Systems, Inc., Public Safety Division, Shelton, CT: December 5, 2005.

TA–W–60,585; A.M. Todd Company, Botanical Therapeutics, Eugene, OR: December 11, 2005.

TA–W–60,588; Clayson Knitting Company, Inc., Star, NC: October 26, 2006.

TA–W–60,601; Weyerhaeuser Company, Mountain Pine, AR: December 12, 2005.

TA–W–60,605; Robetex, Inc., Lumberton, NC: October 2, 2005.

TA–W–60,645; Diamond Back, Inc., A Subsidiary of Cortland Line Co., Morrisville, VT: December 15, 2005.

TA–W–60,673; Manthei, Inc., Petoskey, MI: December 27, 2005.

TA–W–60,240; Georgia Pacific Corporation, Consumer Products Division, Camas, WA: October 10, 2005.

TA–W–60,482; Du-Co Ceramics Co., Saxonburg, PA: December 3, 2005.

TA–W–60,509; K–C Fish Company, Inc., Blaine, WA: November 29, 2005.

TA–W–60,521; P.H. Precision Products Corp., Pembroke, NH: November 28, 2005.

TA–W–60,532; Auburn Apparel, Inc., Auburn, PA: December 6, 2005.

TA–W–60,547; Enterprise Tool and Die, Grandville, MI: November 29, 2005.

TA–W–60,563; General Chemical Performance Products, Gibbstown, NJ: December 6, 2005.

TA–W–60,579; Dana Corporation, Including On-Site Leased Workers of Adecco, Danville, KY: November 22, 2005

TA–W–60,602; Photocircuits Corporation, Glen Cove, NY: December 2, 2005.

TA–W–60,348; Del Monte Fresh Produce (Hawaii) Inc., Kunia, HI: October 30, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,389; Starkey Laboratories, Inc., Glencoe Division, Glencoe, MN: January 5, 2007.

TA–W–60,463; Cott Beverages Wyomissing, Inc., Wyomissing, PA: November 20, 2005.

TA–W–60,543; Edscha Jackson, Inc., Leased Workers of Autotek, Bartech and Accountemps, Jackson, MI: December 5, 2005.

TA–W–60,553; Graftech International, A Division of UCAR Carbon Company, Clarksville, TN: December 7, 2005.

TA–W–60,587; Federal Mogul Corporation, Sealing Systems Division, Van Wert, OH: December 11, 2005.

TA–W–60,615; York Group Metal Casket Assembly (The), Matthews Casket Division, Marshfield, MO: December 12, 2005.

TA–W–60,632; Pfizer, Inc., Global Manufacturing Division, Holland, MI: December 15, 2005.

TA–W–60,643; Hutchings Automotive Products, Inc., Grand Blanc, MI: December 14, 2005.

TA–W–60,661; Lear Corporation, Seating Systems Division, Janesville Plant, Janesville, WI: December 21, 2005.

TA–W–60,708; Hooven Allison, LLC, Madison, GA: December 29, 2005.

TA–W–60,716; A.O. Smith Corporation, Electrical Products Division, Mebane, NC: January 4, 2006.

TA–W–60,559; ESCO Company Limited Partnership, Muskegon, MI: December 7, 2005.

TA–W–60,593; Paul Lavitt Mills, Inc., Lincolnton, NC: December 12, 2005.

TA–W–60,613; Stanley Furniture Company, Robbinsville Plant, Robbinsville, NC: December 13, 2005.

TA–W–60,666; Spaulding Composites, Inc., DeKalb, IL: December 21, 2005.

TA–W–60,692; Anaheim Manufacturing Co., A Subsidiary of Western Industries, Anaheim, CA: September 25, 2006.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,459; Sandusky Athol International, Sandusky Limited, Sandusky, OH: November 20, 2005.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,552; American Specialty Cars (ASC), Inc., Livonia 04, Livonia, MI: December 5, 2005.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–60,620; Point Technologies, a Subsidiary of Angiotech Pharmaceuticals, Wheeling, IL.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–60,485; Lockheed Martin, Operations Manufacturing Group, Orlando, FL.

TA–W–60,595; Berkline Benchcraft, LLC, Blue Mountain, MS.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,549; Blue Holdings, Inc., Commerce, CA.

TA–W–60,693; Continental Connector Co., A Subsidiary ASC Group, Inc., Bloomfield, NJ.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–59,974; Delphi Corporation, Automotive Holdings Group, New Brunswick, NJ.

TA–W–60,229; City Machine Tool and Die Co., Inc., Muncie, IN.

TA–W–60,420; Mesick Precision Co., Inc., Mesick, MI.

TA–W–60,519; Sun Chemical Corporation, Flush Department, Muskegon, MI.

TA–W–60,524; Eaton Paperboard Convertors, Booneville, MS.

TA–W–60,614; Weyerhaeuser Bardcor, CBPR Division, West Memphis, AR.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

None.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–60,477; American Uniform Company, Headquarters Cleveland, Cleveland, TN.

TA–W–60,551; Haggar Clothing Company, Technical Design Division, Dallas, TX.

TA–W–60,558; Supervalu, Inc., Pleasant Prairie Distribution Center, Pleasant Prairie, WI.

TA–W–60,574; Finegood Moldings, Inc., Carson, CA.

TA–W–60,581; Jeanne Skin Care Cosmetics, Ltd., New York, NY.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of January 8 through January 12, 2007. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 18, 2007.

Ralph Dibattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–1070 Filed 1–24–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,751]

Reel Quick, Inc., Lincoln, NE; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 12, 2007 in response to a worker petition filed by a company official on behalf of workers at Reel Quick, Inc., Lincoln, Nebraska.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 17th day of January, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–1072 Filed 1–24–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,608]

Valley Mills, Inc., Valley Head, AL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 15, 2006 in response to a worker petition filed by a company official on behalf of workers at Valley Mills, Inc., Valley Head, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 17th day of January, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–1071 Filed 1–24–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

America's Job Bank

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor's (USDOL) Employment and

Training Administration (ETA) intends to provide hyperlinks to Web sites to aid customers to find an alternative job bank when America's Job Bank (AJB) is phased out on June 30, 2007. ETA is issuing this notice to solicit information from private-sector job bank Web sites interested in applying to be included in the list of Web links.

DATES: All interested parties are asked to submit the information requested in this notice at the Web site: *http://www.ajbtransition.org.* Information must be submitted no later than February 26, 2007.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *ajbtransition@dol.gov*; or transmit via fax at 202–693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number 202–693–2650 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: ETA's transition plan for the phase-out of AJB includes developing the ability to direct employers and job seekers to both public and private sector job banks. This will be accomplished by providing a 'list of Web links' to qualified Web sites during the AJB phase-out period. The 'list of Web links' (to include all state workforce agency job banks) will be available for a period of time both before and after the phase-out of AJB on June 30, 2007. ETA will select Web sites to be included in the list of links from applications meeting the requirements of this notice. ETA reserves the right to use the listings for multiple Federal purposes, to edit, and to remove the 'list of Web links' at its sole discretion.

Solicitation for Information About Private, and Non-Profit Sector Job Banks

Organizations that operate private and/or non-profit sector job banks or bulletin boards that wish to be considered for inclusion on the 'list of Web links' are invited to provide information about the services they provide.

1. *Mandatory Requirements.* ETA will only consider for inclusion on this list, a job bank or bulletin board that provides information about the following mandatory requirements:

- Is available via the Internet;
- Is national in scope, accepting job orders and resumes from all employers and job seekers in all States and Territories and accepting job orders from all occupational categories and industries;
- Has been in the business of providing job bank services over the Internet for at least the past 18 months;
- Does not require a registration fee or membership fee for job seekers to search for jobs;
- Has a state or federal employer identification number (EIN); and
- Offers functionality similar to that currently provided by AJB:
- Accepts job orders from employers;
- Accepts resumes from job seekers at no cost;
- Provides matching capability between job seeker resumes and employer job postings at no cost to the job seeker;
- Provides the ability for a 'geographical location or area specific' search;
- Monitors job postings to assure there are no discriminatory language or requirements; and
- Provides feedback to job posting organizations that their jobs have been accepted and posted to the Web site.

2. *Additional Information.* To help job seekers and employers understand the services offered, private and non-profit job bank or bulletin board organizations must provide additional information. To be included in the list of Web hyperlinks a job bank or bulletin board must provide information about the availability of the services listed below:

- Machine language translation services for Spanish speakers;
- ''Job Scout'' capability;
- Compliance with section 508 of the Americans with Disabilities Act; and
- Specialized service to:
  - Veterans, transitioning military service members and military spouses;
  - Youth;
  - Mature workers;
  - Migrant and seasonal farmworkers; and
  - Other (please specify).

In order to be considered for inclusion on the 'list of Web links', an organization operating a job bank or bulletin board must meet all mandatory requirements and must respond to all of the ''additional information'' questions. Submittals that do not address the mandatory requirements and the additional information functionality questions will not be considered for inclusion. Please note, however, that the information provided regarding the ''additional information'' questions is not used to disqualify a site, but will be used to provide helpful information to those seeking information about alternatives to AJB. Information must be submitted at the *www.ajbtransition.org* web site no later than close of business February 26, 2007. State workforce agencies need not respond to this notice to be included in the job bank listing. States have already submitted information to ETA and the State's AJB transition coordinator can provide updated information at any time.

Solicitation for Information About Internet Gateway or Portal Sites

Organizations that operate portal or gateway Web sites that provide information about Job Banks (Public, Private, National, Regional, Niche); Recruiting Services and Directories; and Recruiters are invited to provide information about the services they provide.

1. Mandatory Requirements. To be considered for inclusion on the 'list of Web links', a portal site must:

- Be available via the Internet;
- Be national in scope;
- Have been in business providing job bank portal information services over the Internet for at least the past 18 months;
- Not require a registration fee or membership fee for job seekers to search for job search assistance;
- Have a state or federal employer identification number; and

2. Additional Information. To help job seekers and employers navigate the many portal sites included in the 'list of Web links', portal sites must provide additional information including, but not limited to, the following:

- Machine language translation services for Spanish speakers;
- Compliance with section 508 of the Americans with Disabilities Act;
- Specialized service to:
  - Veterans, transitioning military service members and military spouses;
  - Youth;
  - Mature workers;
  - Migrant and seasonal farmworkers;
  - Business/Trade Associations or organizations; and
  - Other (please specify).

In order to be considered for inclusion on the 'list of Web links', an organization operating a portal or gateway site must meet all mandatory requirements and must respond to all of the ''additional information'' questions. Submittals that do not address the mandatory requirements and the additional information functionality questions will not be considered for inclusion. Please note, however, that the information provided to the ''additional information'' questions is not used to disqualify a site, but will be used to provide helpful information to those seeking information about alternatives to AJB. Information must be submitted

at the *www.ajbtransition.org* Web site no later than close of business February 26, 2007.

Each submittal from either a job board or portal site organization must include an attestation that the information provided is true and accurate. This attestation must be from an organizational representative who has the authority to represent the organization. The attestation must clearly identify the name, title, e-mail address, and phone number of the attester. Failure to include a complete attestation statement will result in the submittal not being considered for inclusion.

At this time ETA anticipates listing all organizations offering job banks/bulletin boards or portal/gateway sites that meet the standards set forth in this notice. However, if the response to this notice is greater that anticipated, ETA reserves the right to limit the list to a manageable size.

Signed at Washington, DC, this 17th day of January, 2006.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. E7–1106 Filed 1–24–07; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–003)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described in ARC–15205–1, entitled ''Biochemical Sensors Using Carbon Nanotube Arrays'', to Early Warning, Inc., having its principal place of business in Newark, Delaware. This license may be field of use restricted. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000. (650) 604–5104; Fax (650) 604–2767.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Chief Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000. (650) 604–5104; Fax (650) 604–2767. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/.*

Dated: January 19, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management

[FR Doc. E7–1055 Filed 1–24–07; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–272]

PSEG Nuclear Llc, Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–70 issued to PSEG Nuclear LLC (the licensee) for operation of the Salem Nuclear Generating Station (Salem), Unit No. 1, located in Salem County, New Jersey.

The amendment request proposes a one-time change to the Technical Specifications (TSs) regarding the steam generator (SG) tube inspection and repair required for the portion of the SG tubes passing through the tubesheet region. Specifically, for Salem Unit No. 1 refueling outage 18 (planned for spring 2007) and the subsequent operating cycle, the proposed TS changes would limit the required inspection (and repair if degradation is found) to the portions of the SG tubes passing through the upper 17 inches of the approximate 21-inch tubesheet region.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Of the accidents previously evaluated, the proposed changes only affect the steam generator tube rupture (SGTR) event evaluation and the postulated steam line break (SLB) accident evaluation. Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this amendment request. Another faulted load consideration is a safe shutdown earthquake (SSE); however, the seismic analysis of Model F steam generators has shown that axial loading of the tubes is negligible during an SSE.

At normal operating pressures, leakage from primary water stress corrosion cracking (PWSCC) below 17 inches from the top of the tubesheet is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region.

For the SGTR event, the required structural margins of the steam generator tubes will be maintained by the presence of the tubesheet. Tube rupture is precluded for cracks in the

hydraulic expansion region due to the constraint provided by the tubesheet. Therefore, the performance criteria of NEI [Nuclear Energy Institute] 97–06, Rev. 2, ''Steam Generator Program Guidelines'' and the Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR [pressurized-water reactor] Steam Generator Tubes,'' margins against burst are maintained during normal and postulated accident conditions. The limited inspection length of 17 inches supplies the necessary resistive force to preclude pullout loads under both normal operating and accident conditions. The contact pressure results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet and from the differential pressure between the primary and secondary side. Therefore, the proposed change does not result in a significant increase in the probability or consequence of a[n] SGTR.

The probability of a[n] SLB is unaffected by the potential failure of a SG tube as the failure of a tube is not an initiator for a[n] SLB event. SLB leakage is limited by leakage flow restrictions resulting from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of crack face opening compared to free span indications. The leak rate during postulated accident conditions would be expected to be less than twice that during normal operation for indications near the bottom of the tubesheet (including indications in the tube end welds) based on the observation that while the driving pressure increases by about a factor of two, the flow resistance increases with an increase in the tube-to-tubesheet contact pressure. While such a decrease is rationally expected, the postulated accident leak rate is bounded by twice the normal operating leak rate if the increase in contact pressure is ignored. Since normal operating leakage is limited to 0.10 gpm [gallons per minute] (150 gpd [gallons per day]), the attendant accident condition leak rate, assuming all leakage to be from indications below 17 inches from the top of the tubesheet would be bounded by 0.187 gpm. This value is bounded by the 0.35 gpm leak rate assumed in Section 15.4.2, ''Major Secondary System Pipe Rupture'' of the Salem Unit 1 Updated FSAR [Final Safety Analysis Report (UFSAR)].

Based on the above, the performance criteria of NEI–97–06, Rev. 2 and draft RG 1.121 continue to be met and the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon implementation of the limited tubesheet inspection depth methodology. The proposed changes do not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change maintains the required structural margins of the steam generator tubes for both normal and accident conditions. NEI 97–06, Rev. 2 and RG 1.121 are used as the basis in the development of the limited tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC staff for meeting General Design Criteria 14, 15, 31, and 32 by reducing the probability and consequences of an SGTR. RG 1.121 concludes that by determining the limiting safe conditions of tube wall degradation beyond which tubes with unacceptable cracking, as established by inservice inspection, should be removed from service or repaired, the probability and consequences of a[n] SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the ASME [American Society of Mechanical Engineers Boiler and Pressure Vessel] Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, Reference 1 [Westinghouse Report WCAP–16640–P, ''Steam Generator Alternate Repair Criteria for Tube Portion Within the Tubesheet at Salem Unit 1,'' August 2006] defines a length of non-degraded expanded tube in the tubesheet that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factors applied). Application of the limited tubesheet inspection depth criteria will not result in unacceptable primary-to-secondary leakage during all plant conditions.

Plugging of the steam generator tubes reduces the reactor coolant flow margin for core cooling. Implementation of the 17[-]inch inspection length at Salem Unit 1 will result in maintaining the margin of flow that may have otherwise been reduced by tube plugging.

Based on the above, it is concluded that the proposed changes do not result in any reduction of margin with respect to plant safety as defined in the [UFSAR] or bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309,

which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly-available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i) through (viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated January 18, 2007, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly-available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of January, 2007.

For the Nuclear Regulatory Commission.

Richard B. Ennis,

Senior Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–1087 Filed 1–24–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NRC Enforcement Policy; Proposed Plan for Major Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed revision; solicitation of written comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is examining its Enforcement Policy (Enforcement Policy or Policy) and plans a major revision to clarify use of enforcement terminology and address enforcement issues in areas currently not covered in the Policy, including, for example, the agency's use of Alternative Dispute Resolution (ADR) in enforcement cases. The NRC requests comments on (1) what specific topics, if any, should be added or removed from the Policy; and (2) what topics currently addressed in the Policy, if any, require additional guidance. The NRC is soliciting written comments from

interested parties including public interest groups, states, members of the public and the regulated industry, i.e., both reactor and materials licensees, vendors, and contractors. This request is intended to assist the NRC in its review of the Enforcement Policy; NRC does not intend to modify its emphasis on compliance with NRC requirements.

DATES: The comment period expires March 26, 2007. This time period allows for the public to respond to the specific questions posed above in this notice as well as the opportunity to provide general comments on the revision of the Policy. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments on this proposed revision submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including information such as social security numbers or other sensitive personal information in your submission. You may submit comments by any one of the following methods:

Mail comments to: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E-mail comments to: nrcrep@nrc.gov.

Hand deliver comments to: 11555 Rockville Pike, Rockville, MD 20852, between the hours of 7:45 am and 4:15 pm, Federal workdays.

FOR FURTHER INFORMATION CONTACT: Maria E. Schwartz, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; *mes@nrc.gov,* (301) 415–1888.

SUPPLEMENTARY BACKGROUND:

I. Background

The NRC Enforcement Policy contains the enforcement policy and procedures that the U.S. Nuclear Regulatory Commission (NRC) uses to initiate and review enforcement actions in response to violations of NRC requirements. The primary purpose of the Enforcement Policy is to support the NRC's overall safety mission, i.e., to protect the public health and safety and the environment, and to assure the common defense and security. Because it is a policy statement and not a regulation, the Commission may deviate from this statement of policy as appropriate under the circumstances of a particular case.

The Enforcement Policy was first published in the **Federal Register** on October 7, 1980 (46 FR 66754), as an interim policy. The Commission published a final version of the Policy on March 9, 1982 (47 FR 9987). The Enforcement Policy has been modified on a number of occasions to address changing requirements and additional experience and on June 30, 1995 (60 FR 34381), a major revision of the Policy was published. The NRC maintains the Enforcement Policy on its Web site at *http://www.nrc.gov;* select What We Do, Enforcement, then Enforcement Policy.

The goal of the Policy is to support the NRC's safety mission by emphasizing the importance of compliance with regulatory requirements, and encouraging prompt identification, and prompt, comprehensive correction of violations. Revisions to the Policy have consistently reflected this commitment: For example, in 1998, the NRC changed its inspection procedures to address the Reactor Oversight Process (ROP) initiative. This has been reflected in the Policy's use of risk insights to assess the significance of violations whenever possible. While this may result in fewer Notices of Violation being issued (because of a greater emphasis on the use of non-cited violations), it has not reduced the agency's emphasis on the importance of compliance with NRC requirements. Another example involves the NRC's development of a pilot program in 2005 which focuses on the use of Alternative Dispute Resolution (ADR) for certain kinds of enforcement cases. The NRC enforcement staff has used ADR to resolve reactor, fuel facility, and materials enforcement cases. While the use of ADR in enforcement raises unique issues, it emphasizes creative, cooperative approaches to handling conflicts in lieu of adversarial procedures.

The NRC is again considering a major revision of its Enforcement Policy. As discussed above, since it was first published in 1980, sections of the Policy have been updated and additional sections have been included. Terms used under conventional enforcement are now associated with the significance determination process (SDP) performed under the ROP as well; therefore, the use of these terms must be clarified. In addition, there are areas that are not directly addressed in the Supplements of the Enforcement Policy, such as the enforcement issues associated with combined licenses for the proposed new reactors and the construction phase of proposed fuel facilities as well as recently promulgated requirements in the safeguards and security area. These areas must be addressed either by adding them to the text of the existing Policy and Supplements or by revising the Policy and developing new Supplements. Finally, the format of the Enforcement Policy may need to be reorganized to reflect the changes that have been made to it.

II. Proposed Plan

The NRC envisions revising the Enforcement Policy so that the policy statement and Supplements addressing conventional enforcement would be followed by sections addressing the enforcement processes that differ in some way from conventional enforcement. For example, currently the discussion in the Policy addressing Predecisional Enforcement Conferences (PECs) contains information regarding attendance by a whistle blower. In fact, third party (whistle blower) invitations are unique to discrimination cases and could reasonably be addressed, along with all of the other unique discrimination issues, in a self-contained section addressing discrimination enforcement cases. Providing self-contained sections would make it easier to add (and potentially delete) them in the future, if necessary. Under this approach, the ROP would be the first ''variation'' on conventional enforcement. If the agency takes this approach, Sections IV through VII or VIII of the current Enforcement Policy could be combined in the conventional enforcement process which would be followed by the NRC's policy regarding the use of the ROP in enforcement, etc.

The following draft Table of Contents would be consistent with the approach outlined above:

Preface

Background and Definitions

I. Introduction and Purpose.
II. Statutory Authority and Procedural Framework.
III. Responsibilities.
IV. The Enforcement Process.
- A. Assigning Severity Level (Remove section IV.5 which discusses ROP).
- B. Severity Level vis-a-vis Activity Areas.
- C. Predecisional Enforcement Conferences (Remove discussion involving discrimination cases).
- D. Disposition of Violations (Remove section VI.A.1 and combine reactor non-cited violations (NCVs) with all other NCVs such that there is one discussion of NCVs. Put the reactor cases associated with ROP in the ROP section.)
  1. Wrongdoing.
  2. Inaccurate and Incomplete Information.
- E. Formal Enforcement Sanctions.
  1. Notices of Violation.
  2. Civil Penalties.
  3. Orders.

F. Administrative Enforcement Sanctions.
1. Demands for Information.
2. Confirmatory Action Letters.
3. Letters of Reprimand.
G. Exercise of Enforcement Discretion.
1. Escalation of Enforcement Sanctions.
2. Mitigation of Enforcement Sanctions.
3. Notices of Enforcement Discretion (NOEDs) for Power Reactors and Gaseous Diffusion Plants.
4. The Use of Discretion During the Adoption of New Requirements.
H. Public Disclosure of Enforcement Actions (existing Sections XII).
I. Reopening Closed Enforcement Actions, (existing Section XIII).
V. Enforcement and the Reactor Oversight Process (ROP): Operating Reactors.
VI. Enforcement Actions Involving Individuals (Incorporate existing Section XI, ''Referrals to the Department of Justice'' into this Section.)
VII. Discrimination.
VIII. Alternative Dispute Resolution (ADR).
IX. Follow up with any additional subject areas that may warrant a few paragraphs segregated from the main policy discussion, e.g., security/safeguards, the lost source policy, interim enforcement regarding certain fire protection issues.
X. Supplements.
A. Health Physics.
B. Reactors.
1. Operating reactors.
2. Part 50 Facility Construction.
3. Part 52 Combined Licenses.
4. Fitness for Duty.
C. Facility Security and Safeguards—
1. Physical Protection of Plants and Materials.
2. Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.
D. Fuel Cycle and Materials Operations.
1. Gaseous Diffusion Plants.
2. Gas Centrifuge Uranium Recovery Facilities.
3. Mixed Oxide (MOX) Fuel Fabrication Facility.
E. Materials Safeguards.
F. Emergency Preparedness.
G. Transportation.
H. Waste Disposal.
I. Miscellaneous Matters.

The Commission is aware that enforcement actions deliver regulatory messages. Based on this tenet, the goals of this revision are to ensure that the Enforcement Policy (1) continues to reflect the Commission's focus on safety, i.e., the need for licensees to identify and correct violations, to address root causes, and to be responsive to initial opportunities to identify and prevent violations; (2) appropriately addresses the various subject areas that the NRC regulates; and (3) provides a framework that supports consistent implementation, recognizing that each enforcement action is dependent on the specific circumstances of the case.

Dated at Rockville, MD this 17th day of January, 2007.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E7–1088 Filed 1–24–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a Planning and Procedures meeting on February 15, 2007, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Thursday, February 15, 2007—8:30 a.m.–9:30 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Antonio F. Dias (Telephone: 301/415–6805) between 8:15 a.m. and 5 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: January 18, 2007.

Antonio F. Dias,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E7–1086 Filed 1–24–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of January 29, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

ADDITIONAL MATTERS TO BE CONSIDERED

Week of January 29, 2007

Tuesday, January 30, 2007

1:30 p.m.
Discussion of Security Issues (Closed—Ex. 1).

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 22, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–337 Filed 1–23–07; 12:53 pm]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Final Bulletin for Agency Good Guidance Practices

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Final bulletin.

SUMMARY: The Office of Management and Budget (OMB) is publishing a final Bulletin entitled, ''Agency Good Guidance Practices,'' which establishes policies and procedures for the development, issuance, and use of significant guidance documents by Executive Branch departments and agencies. This Bulletin is intended to increase the quality and transparency of agency guidance practices and the significant guidance documents produced through them.

On November 23, 2005, OMB proposed a draft Bulletin for public comment. 70 FR 71866 (November 30, 2005). Upon request, OMB extended the public comment period from December 23, 2005 to January 9, 2006. 70 FR 76333 (December 23, 2005). OMB received 31 comments on the proposal from diverse public and private stakeholders (see *http://www.whitehouse.gov/omb/inforeg/good_guid/c-index.html*) and input from Federal agencies. The final Bulletin includes refinements developed through the public comment process and interagency deliberations.

DATES: The effective date of this Bulletin is 180 days after its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Margaret Malanoski, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., New Executive Office Building, Room 10202, Washington, DC 20503. Telephone (202) 395–3122.

SUPPLEMENTARY INFORMATION:

Introduction

As the scope and complexity of regulatory programs have grown, agencies increasingly have relied on guidance documents to inform the public and to provide direction to their staffs. As the impact of guidance documents on the public has grown, so too, has the need for good guidance practices—clear and consistent agency practices for developing, issuing, and using guidance documents.

OMB is responsible both for promoting good management practices and for overseeing and coordinating the Administration's regulatory policy. Since early in the Bush Administration, OMB has been concerned about the proper development and use of agency guidance documents. In its 2002 draft annual Report to Congress on the Costs and Benefits of Regulations, OMB discussed this issue and solicited public comments regarding problematic guidance practices and specific examples of guidance documents in need of reform.[1] OMB has been particularly concerned that agency guidance practices should be more transparent, consistent and accountable. Such concerns also have been raised by other authorities, including Congress and the courts.[2]

In its 2002 Report to Congress, OMB recognized the enormous value of agency guidance documents in general. Well-designed guidance documents serve many important or even critical functions in regulatory programs.[3] Agencies may provide helpful guidance to interpret existing law through an interpretive rule or to clarify how they tentatively will treat or enforce a governing legal norm through a policy statement. Guidance documents, used properly, can channel the discretion of agency employees, increase efficiency, and enhance fairness by providing the public clear notice of the line between permissible and impermissible conduct while ensuring equal treatment of similarly situated parties.

Experience has shown, however, that guidance documents also may be poorly designed or improperly implemented. At the same time, guidance documents may not receive the benefit of careful consideration accorded under the procedures for regulatory development and review.[4] These procedures include: (1) Internal agency review by a senior agency official; (2) public participation, including notice and comment under the Administrative Procedure Act (APA); (3) justification for the rule, including a statement of basis and purpose under the APA and various analyses under Executive Order 12866 (as further amended), the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act; (4) interagency review through OMB; (5) Congressional oversight; and (6) judicial review. Because it is procedurally easier to issue guidance documents, there also may be an incentive for regulators to issue guidance documents in lieu of regulations. As the D.C. Circuit observed in *Appalachian Power:*

> The phenomenon we see in this case is familiar. Congress passes a broadly worded statute. The agency follows with regulations containing broad language, open-ended phrases, ambiguous standards and the like. Then as years pass, the agency issues circulars or guidance or memoranda, explaining, interpreting, defining and often expanding the commands in regulations. One guidance document may yield another and then another and so on. Several words in a regulation may spawn hundreds of pages of text as the agency offers more and more detail regarding what its regulations demand of regulated entities. Law is made, without notice and comment, without public participation, and without publication in the **Federal Register** or the Code of Federal Regulations.[5]

[1] U.S. Office of Management and Budget, *Draft Report to Congress on the Costs and Benefits of Federal Regulations,* 67 FR 15,014, 15,034–35 (March 28, 2002).

[2] *See, e.g.,* Food and Drug Administration Modernization Act of 1997, 21 U.S.C. § 371(h) (establishing FDA good guidance practices as law); ''Food and Drug Administration Modernization and Accountability Act of 1997,'' S. Rep. 105–43, at 26 (1997) (raising concerns about public knowledge of, and access to, FDA guidance documents, lack of a systematic process for adoption of guidance documents and for allowing public input, and inconsistency in the use of guidance documents); House Committee on Government Reform, ''Non-Binding Legal Effect of Agency Guidance Documents,'' H. Rep. 106–1009 (106th Cong., 2d Sess. 2000) (criticizing ''back-door'' regulation); the Congressional Accountability for Regulatory Information Act, H.R. 3521, 106th Cong., § 4 (2000) (proposing to require agencies to notify the public of the non-binding effect of guidance documents); *Gen. Elec. Co.* v. *EPA,* 290 F.3d 377 (D.C. Cir. 2002) (striking down PCB risk assessment guidance as legislative rule requiring notice and comment); *Appalachian Power Co.* v. *EPA,* 208 F.3d 1015 (D.C. Cir. 2000) (striking down emissions monitoring guidance as legislative rule requiring notice and comment); *Chamber of Commerce* v. *Dep't of Labor,* 174 F.3d 206 (D.C. Cir. 1999) (striking down OSHA Directive as legislative rule requiring notice and comment); Administrative Conference of the United States, Rec. 92–2, 1 C.F.R. 305.92–2 (1992) (agencies should afford the public a fair opportunity to challenge the legality or wisdom of policy statements and to suggest alternative choices); *American Bar Association, Annual Report Including Proceedings of the Fifty-Eighth Annual Meeting,* August 10–11, 1993, Vol. 118, No. 2, at 57 (''the American Bar Association recommends that: Before an agency adopts a nonlegislative rule that is likely to have a significant impact on the public, the agency provide an opportunity for members of the public to comment on the proposed rule and to recommend alternative policies or interpretations, provided that it is practical to do so; when nonlegislative rules are adopted without prior public participation, immediately following adoption, the agency afford the public an opportunity for post-adoption comment and give notice of this opportunity.''); 3 American Bar Association, ''Recommendation on Federal Agency Web Pages'' (August 2001) (agencies should maximize the availability and searchability of existing law and policy on their Web sites and include their governing statutes, rules and regulations, and all important policies, interpretations, and other like matters on which members of the public are likely to request).

[3] *See* U.S. Office of Management and Budget, *Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local and Tribal Entities,* 72–74 (2002) (hereinafter ''2002 Report to Congress'').

[4] *Id.,* at 72.

[5] *Appalachian Power,* 208 F.3d at 1019.

Concern about whether agencies are properly observing the notice-and-comment requirements of the APA has received significant attention. The courts, Congress, and other authorities have emphasized that rules which do not merely interpret existing law or announce tentative policy positions but which establish new policy positions that the agency treats as binding must comply with the APA's notice-and-comment requirements, regardless of how they initially are labeled.[6] More general concerns also have been raised that agency guidance practices should be better informed and more transparent, fair and accountable.[7] Poorly designed or misused guidance documents can impose significant costs or limit the freedom of the public. OMB has received comments raising these concerns and providing specific examples in response to its proposed Bulletin,[8] its 2002 request for comments on problematic guidance [9] and its other requests for regulatory reform nominations in 2001 [10] and 2004.[11] This Bulletin and recent amendments to Executive Order 12866 respond to these problems.[12]

This Bulletin on ''Agency Good Guidance Practices'' sets forth general policies and procedures for developing, issuing and using guidance documents. The purpose of Good Guidance Practices (GGP) is to ensure that guidance documents of Executive Branch departments and agencies are: Developed with appropriate review and public participation, accessible and transparent to the public, of high quality, and not improperly treated as legally binding requirements. Moreover, GGP clarify what does and does not constitute a guidance document to provide greater clarity to the public. All offices in an agency should follow these policies and procedures.

There is a strong foundation for establishing standards for the initiation, development, and issuance of guidance documents to raise their quality and transparency. The former Administrative Conference of the United States (ACUS), for example, developed recommendations for the development and use of agency guidance documents.[13] In 1997, the Food and Drug Administration (FDA) created a guidance document distilling its good guidance practices (GGP).[14] Congress then established certain aspects of the 1997 GGP document as the law in the Food and Drug Administration Modernization Act of 1997 (FDAMA; Public Law No. 105–115).[15] The FDAMA also directed FDA to evaluate the effectiveness of the 1997 GGP document and then to develop and issue regulations specifying FDA's policies and procedures for the development, issuance, and use of guidance documents. FDA conducted an internal evaluation soliciting FDA employees' views on the effectiveness of GGP and asking whether FDA employees had received complaints regarding the agency's development, issuance, and use of guidance documents since the development of GGP. FDA found that its GGP had been beneficial and effective in standardizing the agency's procedures for development, issuance, and use of guidance documents, and that FDA employees had generally been following GGP.[16] FDA then made some changes to its existing procedures to clarify its GGP.[17] The provisions of the FDAMA and FDA's implementing regulations, as well as the ACUS recommendations, informed the development of this government-wide Bulletin.

Legal Authority for This Bulletin

This Bulletin is issued under statutory authority, Executive Order, and OMB's general authorities to oversee and coordinate the rulemaking process. In what is commonly known as the Information Quality Act, Congress directed OMB to issue guidelines to ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, utility, objectivity and integrity of information disseminated by Federal agencies.[18] Moreover, Executive Order 13422, ''Further Amendment to Executive Order 12866 on Regulatory Planning and Review,'' recently clarified OMB's authority to oversee agency guidance documents. As further amended, Executive Order 12866 affirms that ''[c]oordinated review of agency rulemaking is necessary to ensure that regulations and guidance documents are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order,'' and the Order assigns that responsibility to OMB.[19] E.O. 12866 also establishes OMB's Office of Information and Regulatory Affairs as ''the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency.'' [20] Finally, OMB has additional authorities to oversee the agencies in the administration of their programs.

The Requirements of the Final Bulletin and Response to Public Comments

A. Overview

This Bulletin establishes: a definition of a significant guidance document; standard elements for significant guidance documents; practices for developing and using significant guidance documents; requirements for agencies to enable the public to comment on significant guidance documents or request that they be created, reconsidered, modified or rescinded; and ways for making guidance documents available to the public. These requirements should be interpreted and implemented in a manner that, consistent with the goals of improving the quality, accountability and transparency of agency guidance documents, provides sufficient flexibility for agencies to take those

[6] *See, e.g., Appalachian Power; Gen. Elec. Co.; Chamber of Commerce;* House Committee on Government Reform, ''Non-Binding Legal Effect of Agency Guidance Documents''; ACUS Rec. 92–2, *supra* note 2; Robert A. Anthony, ''Interpretive Rules, Policy Statements, Guidances, Manuals and the Like—Should Federal Agencies Use Them to Bind the Public?'' 41 Duke L.J. 1311 (1992).

[7] *See, e.g.,* note 2, *supra.*

[8] U.S. Office of Management and Budget, ''Proposed Bulletin for Good Guidance Practices,'' 70 FR 76333 (Dec. 23, 2005).

[9] *See* note 1, *supra.*

[10] U.S. Office of Management and Budget, *Draft Report to Congress on the Costs and Benefits of Federal Regulations,* 66 FR 22041 (May 2, 2001).

[11] U.S. Office of Management and Budget, *Draft Report to Congress on the Costs and Benefits of Federal Regulations,* 69 FR 7987 (Feb. 20, 2004); *see also* U.S. Office of Management and Budget, *Validating Regulatory Analysis: 2005 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local and Tribal Entities* 107–125 (2005).

[12] President Bush recently signed Executive Order 13422, ''Further Amendment to Executive Order 12866 on Regulatory Planning and Review.'' Among other things, E.O. 13422 addresses the potential need for interagency review of certain significant guidance documents by clarifying OMB's authority to have advance notice of, and to review, agency guidance documents.

[13] *See, e.g.,* note 2, *supra.*

[14] Notice, ''The Food and Drug Administration's Development, Issuance, and Use of Guidance Documents,'' 62 FR 8961 (Feb. 27, 1997).

[15] 21 U.S.C. 371(h).

[16] *See* FDA, ''Administrative Practices and Procedures; Good Guidance Practices,'' 65 FR 7321, 7322–23 (proposed Feb. 14, 2000).

[17] 21 CFR 10.115; 65 FR 56468 (Sept. 19, 2000).

[18] Pub. L. 106–554, § 515(a) (2000). The Information Quality Act was developed as a supplement to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, which requires OMB, among other things, to ''develop and oversee implementation of policies, principles, standards, and guidelines to—(1) Apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and (2) promote public access to public information and fulfill the purposes of this subchapter, including through the effective use of information technology.'' 44 U.S.C. 3504(d).

[19] Executive Order 12866, as further amended, § 2(b).

[20] *Id.*

actions necessary to accomplish their essential missions.

B. Definitions

Section I provides definitions for the purposes of this Bulletin. Several terms are identical to or based on those in FDA's GGP regulations, 21 CFR 10.115; the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.; Executive Order 12866, as further amended; and OMB's Government-wide Information Quality Guidelines, 67 FR 8452 (Feb. 22, 2002).

Section I(1) provides that the term ''Administrator'' means the Administrator of the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

Section I(2) provides that the term ''agency'' has the same meaning as it has under the Paperwork Reduction Act, 44 U.S.C. 3502(1), other than those entities considered to be independent agencies, as defined in 44 U.S.C. 3502(5).

Section I(3) defines the term ''guidance document'' as an agency statement of general applicability and future effect, other than a regulatory action (as defined in Executive Order 12866, as further amended), that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue. This definition is used to comport with definitions used in Executive Order 12866, as further amended. Nothing in this Bulletin is intended to indicate that a guidance document can impose a legally binding requirement.

Guidance documents often come in a variety of formats and names, including interpretive memoranda, policy statements, guidances, manuals, circulars, memoranda, bulletins, advisories, and the like. Guidance documents include, but are not limited to, agency interpretations or policies that relate to: the design, production, manufacturing, control, remediation, testing, analysis or assessment of products and substances, and the processing, content, and evaluation/approval of submissions or applications, as well as compliance guides. Guidance documents do not include solely scientific research. Although a document that simply summarizes the protocol and conclusions of a specific research project (such as a clinical trial funded by the National Institutes of Health) would not qualify as a guidance document, such research may be the basis of a guidance document (such as the HHS/USDA ''Dietary Guidelines for Americans,'' which provides guidance to Americans on what constitutes a healthy diet).

Some commenters raised the concern that the term ''guidance document'' reflected too narrow a focus on written materials alone. While the final Bulletin adopts the commonly used term ''guidance document,'' the definition is not limited only to written guidance materials and should not be so construed. OMB recognizes that agencies are experimenting with offering guidance in new and innovative formats, such as video or audio tapes, or interactive web-based software. The definition of ''guidance document'' encompasses all guidance materials, regardless of format. It is not the intent of this Bulletin to discourage the development of promising alternative means to offer guidance to the public and regulated entities.

A number of commenters raised concerns that the definition of ''significant guidance document'' in the proposed Bulletin was too broad in some respects. In particular, the proposed definition included guidance that set forth initial interpretations of statutory and regulatory requirements and changes in interpretation or policy. The definition in the proposed Bulletin was adapted from the definition of ''Level 1 guidance documents'' in FDA's GGP regulations.

Upon consideration of the comments, the need for clarity, and the broad application of this Bulletin to diverse agencies, the definition of ''significant guidance document'' has been changed. Section I(4) defines the term ''significant guidance document'' as a guidance document disseminated to regulated entities or the general public that may reasonably be anticipated to: (i) Lead to 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; or (ii) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or (iii) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (iv) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866, as further amended. Under the Bulletin, significant guidance documents include interpretive rules of general applicability and statements of general policy that have the effects described in Section I(4)(i)–(iv).

The general definition of ''significant guidance document'' in the final Bulletin adopts the definition in Executive Order 13422, which recently amended Executive Order 12866 to clarify OMB's role in overseeing and coordinating significant guidance documents. This definition, in turn, closely tracks the general definition of ''significant regulatory action'' in E.O. 12866, as further amended. One advantage of this definition is that agencies have years of experience in the regulatory context applying the parallel definition of ''significant regulatory action'' under E.O. 12866, as further amended. However, a few important changes were made to the definition used in E.O. 12866, as further amended, to make it better suited for guidance. For example, in recognition of the non-binding nature of guidance the words ''may reasonably be anticipated to'' preface all four prongs of the ''significant guidance document'' definition. This prefatory language makes clear that the impacts of guidance often will be more indirect and attenuated than binding legislative rules.

Section I(4) also clarifies what is not a ''significant guidance document'' under this Bulletin. For purposes of this Bulletin, documents that would not be considered significant guidance documents include: Legal advisory opinions for internal Executive Branch use and not for release (such as Department of Justice Office of Legal Counsel opinions); briefs and other positions taken by agencies in investigations, pre-litigation, litigation, or other enforcement proceedings; speeches; editorials; media interviews; press materials; Congressional correspondence; guidances that pertain to a military or foreign affairs function of the United States (other than guidance on procurement or the import or export of non-defense articles and services); grant solicitations; warning letters; case or investigatory letters responding to complaints involving fact-specific determinations; purely internal agency policies; guidances that pertain to the use, operation or control of a government facility; and internal operational guidances directed solely to other Federal agencies (including Office of Personnel Management personnel issuances, General Services Administration Federal Travel Regulation bulletins, and most of the National Archives and Records Administration's records management bulletins). The Bulletin also exempts speeches of agency officials.

Information collections, discretionary grant application packages, and compliance monitoring reports also are not significant guidance documents. Though the Bulletin does not cover

guidance documents that pertain to the use, operation, or control of a Federal facility, it does cover generally applicable instructions to contractors. Section I(4) also provides that an agency head, in consultation and concurrence with the OIRA Administrator, may exempt one or more categories of significant guidance documents from the requirements of the Bulletin.

The definition of guidance document covers agency statements of ''general applicability'' and ''future effect,'' and accordingly, the Bulletin does not cover documents that result from an adjudicative decision. We construe ''future effects'' as intended (and likely beneficial) impacts due to voluntary compliance with a guidance document. Moreover, since a significant guidance document is an agency statement of ''general applicability,'' correspondence such as opinion letters or letters of interpretation prepared for or in response to an inquiry from an individual person or entity would not be considered a significant guidance document, unless the correspondence is reasonably anticipated to have precedential effect and a substantial impact on regulated entities or the public. Thus, this Bulletin should not inhibit the beneficial practice of agencies providing informal guidance to help specific parties. If the agency compiles and publishes informal determinations to provide guidance to, and with a substantial impact on, regulated industries, then this Bulletin would apply. Guidance documents are considered ''significant'' when they have a broad and substantial impact on regulated entities, the public or other Federal agencies. For example, a guidance document that had a substantial impact on another Federal agency, by interfering with its ability to carry out its mission or imposing substantial burdens, would be significant under Section I(4)(ii) and perhaps could trigger Section I(5) as well.

In general, guidance documents that concern routine matters would not be ''significant.'' Among an agency's internal guidance documents, there are many categories that would not constitute significant guidance documents. There is a broad category of documents that may describe the agency's day-to-day business. Though such documents might be of interest to the public, they do not fall within the definition of significant guidance documents for the purposes of this Bulletin. More generally, there are internal guidance documents that bind agency employees with respect to matters that do not directly or substantially impact regulated entities. For example, an agency may issue guidance to field offices directing them to maintain electronic data files of complaints regarding regulated entities.

Section I(5) states that the term ''economically significant guidance document'' means a significant guidance document that ''may reasonably be anticipated to lead to'' an annual effect on the economy of $100 million or more or adversely affect in a material way the economy or a sector of the economy. The relevant economic impacts include those that may be imposed by Federal agencies, State, or local governments, or foreign governments that affect the U.S. economy, as well as impacts that could arise from private sector conduct. The definition of economically significant guidance document tracks only the part of the definition of significant guidance document in Section I(4)(i) related to substantial economic impacts. This clarifies that the definition of ''economically significant guidance document'' includes only a relatively narrow category of significant guidance documents. This definition enables agencies to determine which interpretive rules of general applicability or statements of general policy might be so consequential as to merit advance notice-and-comment and a response-to-comments document—and which do not. Accordingly, the definition of economically significant guidance document includes economic impacts that rise to $100 million in any one year or adversely affect the economy or a sector of the economy.

The definition of economically significant guidance document also departs in other ways from the language describing an economically significant regulatory action in Section 3(f)(1) of E.O. 12866, as further amended. A number of commenters on the proposed Bulletin raised questions about how a guidance document—which is not legally binding—could have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy or a sector of the economy. As other commenters recognized, although guidance may not be legally binding, there are situations in which it may reasonably be anticipated that a guidance document could lead parties to alter their conduct in a manner that would have such an economically significant impact.

Guidance can have coercive effects or lead parties to alter their conduct. For example, under a statute or regulation that would allow a range of actions to be eligible for a permit or other desired agency action, a guidance document might specify fast track treatment for a particular narrow form of behavior but subject other behavior to a burdensome application process with an uncertain likelihood of success. Even if not legally binding, such guidance could affect behavior in a way that might lead to an economically significant impact. Similarly, an agency might make a pronouncement about the conditions under which it believes a particular substance or product is unsafe. While not legally binding, such a statement could reasonably be anticipated to lead to changes in behavior by the private sector or governmental authorities such that it would lead to a significant economic effect. Unless the guidance document is exempted due to an emergency or other appropriate consideration, the agency should observe the notice-and-comment procedures of section IV.

In recognition of the non-binding nature of guidance documents, the Bulletin's definition of economically significant guidance document differs in key respects from the definition of an economically significant regulatory action in section 3(f)(1) of E.O. 12866, as further amended. First, as described above, the words ''may reasonably be anticipated to'' are included in the definition. Second, the definition of economically significant guidance document contemplates that the guidance document could ''lead to'' (as opposed to ''have'') an economically significant effect. This language makes clear that the impacts of guidance documents often will be more indirect and dependent on third-party decisions and conduct than is the case with binding legislative rules. This language also reflects a recognition that, as various commenters noted, guidance documents often will not be amenable to formal economic analysis of the kind that is prepared for an economically significant regulatory action. Accordingly, this Bulletin does not require agencies to conduct a formal regulatory impact analysis to guide their judgments about whether a guidance document is economically significant.

The definition of ''economically significant guidance document'' excludes guidance documents on Federal expenditures and receipts. Therefore, guidance documents on Federal budget expenditures (*e.g.,* entitlement programs) and taxes (the administration or collection of taxes, tax credits, or duties) are not subject to the requirements for notice and comment and a response to comments document in § IV. However, if such guidance documents are ''significant,'' then they are subject to the other requirements of

this Bulletin, including the transparency and approval provisions.

Section I(6) states that the term ''disseminated'' means prepared by the agency and distributed to the public or regulated entities. Dissemination does not include distribution limited to government employees; intra-or interagency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.[21]

Consistent with Executive Order 12866, as further amended, Section I(7) defines the term ''regulatory action'' as any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final regulation, including notices of inquiry, advance notices of inquiry and notices of proposed rulemaking.

Section I(8) defines the term ''regulation,'' consistent with Executive Order 12866, as further amended, as an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.

C. Basic Agency Standards

Section II describes basic agency standards for significant guidance documents.

1. Agency Approval Procedures

Section II(1)(a) directs each agency to develop or have written procedures for the internal clearance of significant guidance documents no later than the effective date of this Bulletin. Those procedures should ensure that issuance of significant guidance documents is approved by appropriate agency officials. Currently at FDA the Director in a Center or an Office of Regulatory Affairs equivalent or higher approves a significant guidance document before it is distributed to the public in draft or final form. Depending on the nature of specific agency guidance documents, these procedures may require approval or concurrence by other components within an agency. For example, if guidance is provided on compliance with an agency regulation, we would anticipate that the agency's approval procedures would ensure appropriate coordination with other agency components that have a stake in the regulation's implementation, such as the General Counsel's office and the component responsible for development and issuance of the regulation.

Section II(1)(b) states that agency employees should not depart from significant agency guidance documents without appropriate justification and supervisory concurrence. It is not the intent of this Bulletin to inhibit the flexibility needed by agency officials to depart appropriately from significant guidance documents by rigidly requiring concurrence only by very high-level officials. Section II(1)(a) also is not intended to bind an agency to exercise its discretion only in accordance with a general policy where the agency is within the range of discretion contemplated by the significant guidance document.

Agencies are to follow GGP when providing important policy direction on a broad scale. This includes when an agency communicates, informally or indirectly, new or different regulatory expectations to a broad public audience for the first time, including regulatory expectations different from guidance issued prior to this Bulletin.[22] This does not limit the agency's ability to respond to questions as to how an established policy applies to a specific situation or to answer questions about areas that may lack established policy (although such questions may signal the need to develop guidance in that area). This requirement also does not apply to positions taken by agencies in litigation, pre-litigation, or investigations, or in any way affect their authority to communicate their views in court or other enforcement proceedings. This requirement also is not intended to restrict the authority of agency General Counsels or the Department of Justice Office of Legal Counsel to provide legal interpretations of statutory and regulatory requirements.

Agencies also should ensure consistent application of GGP. Employees involved in the development, issuance, or application of significant guidance documents should be trained regarding the agency's GGP, particularly the principles of Section II(2). In addition, agency offices should monitor the development, issuance and use of significant guidance documents to ensure that employees are following GGP.

2. Standard Elements

Section II(2) establishes basic requirements for significant guidance documents. They must: (i) Include the term ''guidance'' or its functional equivalent; (ii) Identify the agenc(ies) or office(s) issuing the document; (iii) Identify the activity to which and the persons to whom the document applies; (iv) Include the date of issuance; (v) Note if it is a revision to a previously issued guidance document and, if so, identify the guidance that it replaces; (vi) Provide the title of the guidance and any document identification number, if one exists; and (vii) include the citation to the statutory provision or regulation (in Code of Federal Regulations format) which it applies to or interprets.

In implementing this Bulletin, particularly Section II(2)(e), agencies should be diligent to identify for the public whether there is previous guidance on an issue, and, if so, to clarify whether that guidance document is repealed by the new significant guidance document completely, and if not, to specify what provisions in the previous guidance document remain in effect. Superseded guidance documents that remain available for historical purposes should be stamped or otherwise prominently identified as superseded. Draft significant guidance documents that are being made available for pre-adoption notice and comment should include a prominent ''draft'' notation. As existing significant guidance documents are revised, they should be updated to comply with this Bulletin.

Finally, Section II(2)(h) clarifies that, given their legally nonbinding nature, significant guidance documents should not include mandatory language such as ''shall,'' ''must,'' ''required'' or ''requirement,'' unless the agency is using these words to describe a statutory or regulatory requirement, or the language is addressed to agency staff and will not foreclose consideration by the agency of positions advanced by affected private parties.[23] For example, a guidance document may explain how the agency believes a statute or

[21] *See* U.S. Office of Management and Budget's Government-wide Information Quality Guidelines, 67 FR 8452, 8454, 8460 (Feb. 22, 2002).

[22] *See* FDA's Good Guidance Practices, 21 CFR 10.115(e): ''Can FDA use means other than a guidance document to communicate new agency policy or a new regulatory approach to a broad public audience? The agency must not use documents or other means of communication that are excluded from the definition of guidance document to informally communicate new or different regulatory expectations to a broad public audience for the first time. These GGPs must be followed whenever regulatory expectations that are not readily apparent from the statute or regulations are first communicated to a broad public audience.''

[23] As the courts have held, *see supra* note 2, agencies need to follow statutory rulemaking requirements, such as those of the APA, to issue documents with legally binding effect, i.e., legislative rules. One benefit of GGP for an agency is that the agency's review process will help to identify any draft guidance documents that instead should be promulgated through the rulemaking process.

regulation applies to certain regulated activities. Before a significant guidance document is issued or revised, it should be reviewed to ensure that improper mandatory language has not been used. As some commenters noted, while a guidance document cannot legally bind, agencies can appropriately bind their employees to abide by agency policy as a matter of their supervisory powers over such employees without undertaking pre-adoption notice and comment rulemaking. As a practical matter, agencies also may describe laws of nature, scientific principles, and technical requirements in mandatory terms so long as it is clear that the guidance document itself does not impose legally enforceable rights or obligations.

A significant guidance document should aim to communicate effectively to the public about the legal effect of the guidance and the consequences for the public of adopting an alternative approach. For example, a significant guidance document could be captioned with the following disclaimer under appropriate circumstances:

''This [draft] guidance, [when finalized, will] represent[s] the [Agency's] current thinking on this topic. It does not create or confer any rights for or on any person or operate to bind the public. You can use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach (you are not required to do so), you may contact the [Agency] staff responsible for implementing this guidance. If you cannot identify the appropriate [Agency] staff, call the appropriate number listed on the title page of this guidance.''

When an agency determines it would be appropriate, the agency should use this or a similar disclaimer. Agency staff should similarly describe the legal effect of significant guidance documents when speaking to the public about them.

D. Public Access and Feedback

Section III describes public access procedures related to the development and issuance of significant guidance documents.

1. Internet Access

Section III directs agencies to ensure that information about the existence of significant guidance documents and the significant guidance documents themselves are made available to the public in electronic form. Section III(1) enables the public to obtain from an agency's Web site a list of all of an agency's significant guidance documents. Under section III(1)(a), agencies will maintain a current electronic list of all significant guidance documents on their Web sites in a manner consistent with OMB policies for agency public Web sites and information dissemination.[24] To assist the public in locating such electronic lists, they should be maintained on an agency's Web site—or as a link on an agency's Web site to the electronic list posted on a component or subagency's Web site—in a quickly and easily identifiable manner (e.g., as part of or in close visual proximity to the agency's list of regulations and proposed regulations). New documents will be added to this list within 30 days from the date of issuance. The agency list of significant guidance documents will include: the name of the significant guidance document, any docket number, and issuance and revision dates. As agencies develop or revise significant guidance documents, they should organize and catalogue their significant guidance documents to ensure users can easily browse, search for, and retrieve significant guidance documents on their Web sites.

The agency shall provide a link from the list to each significant guidance document (including any appendices or attachments) that currently is in effect. Many recently issued guidance documents have been made available on the Internet, but there are some documents that are not now available in this way. Agencies should begin posting those significant guidance documents on their Web sites with the goal of making all of their significant guidance documents currently in effect publicly available on their Web sites by the effective date of this Bulletin.[25] Other requirements of this Bulletin, such as section II(2) (Standard Elements), apply only to significant guidance documents issued or amended after the effective date of the Bulletin. For such significant guidance documents (including economically significant guidance documents), agencies should provide, to the extent appropriate and feasible, a Web site link from the significant guidance document to the public comments filed on it. This would enable interested stakeholders and the general public to understand the various viewpoints on the significant guidance documents.

Under section III(1)(b), the significant guidance list will identify those significant guidance documents that were issued, revised or withdrawn within the past year. Agencies are encouraged, to the extent appropriate and feasible, to offer a list serve or similar mechanism for members of the public who would like to be notified by e-mail each time an agency issues its annual update of significant guidance documents. To further assist users in better understanding agency guidance and its relationship to current or proposed Federal regulations, agencies also should link their significant guidance document lists to Regulations.gov.[26]

2. Public Feedback

Section III(2) requires each agency to have adequate procedures for public comments on significant guidance documents and to address complaints regarding the development and use of significant guidance documents. Not later than 180 days from the publication of this Bulletin, each agency shall establish and clearly advertise on its Web site a means for the public to submit electronically comments on significant guidance documents, and to request electronically that significant guidance documents be issued, reconsidered, modified or rescinded. The public may state their view that specific guidance documents are ''significant'' or ''economically significant'' and therefore are subject to the applicable requirements of this Bulletin. At any time, the public also may request that an agency modify or rescind an existing significant guidance document. Such requests should specify why and how the significant guidance document should be rescinded or revised.

Public comments submitted under these procedures on significant guidance documents are for the benefit of the agency, and this Bulletin does not require a formal response to comments (of course, agencies must comply with any applicable statutory requirements to respond, and this Bulletin does not alter those requirements). In some cases, the agency, in consultation with the Administrator of OMB's Office of Information and Regulatory Affairs, may in its discretion decide to address public comments by updating or altering the significant guidance document.

[24] U.S. Office of Management and Budget, Memorandum M–05–04, ''Policies for Federal Agency Public Web sites'' (Dec. 17, 2004), available at: *http://www.whitehouse.gov/omb/memoranda/fy2005/m05–04.pdf;* U.S. Office of Management and Budget, Memorandum M–06–02, ''Improving Public Access to and Dissemination of Government Information and Using the Federal Enterprise Architecture Data Reference Model'' (Dec. 16, 2005), available at: *http://www.whitehouse.gov/omb/memoranda/fy2006/m06–02.pdf.*

[25] In this regard, we note that under the Electronic Freedom of Information Act Amendments of 1996, agencies have been posting on their Web sites statements of general policy and interpretations of general applicability. *See* 5 U.S.C. 552(a)(2).

[26] Regulations.gov is available at *http://www.Regulations.gov/fdmspublic/component/main.*

Although this Bulletin does not require agencies to provide notice and an opportunity for public comment on all significant guidance documents before they are adopted, it is often beneficial for an agency to do so when they determine that it is practical. Pre-adoption notice-and-comment can be most helpful for significant guidance documents that are particularly complex, novel, consequential, or controversial. Agencies also are encouraged to consider observing notice-and-comment procedures for interpretive significant guidance documents that effectively would extend the scope of the jurisdiction the agency will exercise, alter the obligations or liabilities of private parties, or modify the terms under which the agency will grant entitlements. As it does for legislative rules, providing pre-adoption opportunity for comment on significant guidance documents can increase the quality of the guidance and provide for greater public confidence in and acceptance of the ultimate agency judgments. For these reasons, agencies sometimes follow the notice-and-comment procedures of the APA even when doing so is not legally required.[27] Of course, where an agency provides for notice and comment before adoption, it need not do so again upon issuance of the significant guidance document.[28]

Many commenters expressed the desire for a better way to resolve concerns about agency guidance documents and adherence to good guidance practices. To help resolve public concerns over problematic guidance documents, section III(2)(b) requires each agency to designate an office (or offices) to receive and address complaints by the public that the agency is not following the procedures in this Bulletin or is improperly treating a guidance document as a binding requirement. The public also could turn to this office to request that the agency classify a guidance as ''significant'' or ''economically significant'' for purposes of this Bulletin. The agency shall provide the name and contact information for the office(s) on its Web site.

E. Notice and Comment on Economically Significant Guidance Documents

Under section IV, after the agency prepares a draft of an economically significant guidance document, the agency must publish a notice in the **Federal Register** announcing that the draft guidance document is available for comment. In a manner consistent with OMB policies for agency public Web sites and information dissemination, the agency must post the draft on its Web site, make it publicly available in hard copy, and ensure that persons with disabilities can reasonably access and comment on the guidance development process.[29] If the guidance document is not in a format that permits such electronic posting with reasonable efforts, the agency should notify the public how they can review the guidance document. When inviting public comments on the draft guidance document, the agency will propose a period of time for the receipt of comments and make the comments available to the public for review. The agency also may hold public meetings or workshops on a draft guidance document, or present it for review to an advisory committee or, as required or appropriate, to a peer review committee.[30] In some cases, the agency may, in its discretion, seek early public input even before it prepares the draft of an economically significant guidance document. For example, the agency could convene or participate in meetings or workshops.

After reviewing comments on a draft, the agency should incorporate suggested changes, when appropriate, into the final version of the economically significant guidance document. The agency then should publish a notice in the **Federal Register** announcing that the significant guidance document is available. The agency must post the significant guidance document on the Internet and make it available in hard copy. The agency also must prepare a robust response-to-comments document and make it publicly available. Though these procedures are similar to APA notice-and-comment requirements, this Bulletin in no way alters (nor is it intended to interpret) the APA requirements for legislative rules under 5 U.S.C. 553.

Prior to or upon announcing the availability of the draft guidance document, the agency should establish a public docket. Public comments submitted on an economically significant guidance document should be sent to the agency's docket. The comments submitted should identify the docket number on the guidance document (if such a docket number exists), as well as the title of the document. Comments should be available to the public at the docket and, when feasible, on the Internet. Agencies should provide a link on their Web site from the guidance document to the public comments as well as the response to comments document.

After providing an opportunity for comment, an agency may decide, in its discretion, that it is appropriate to issue another draft of the significant guidance document. The agency may again solicit comment by publishing a notice in the **Federal Register**, posting a draft on the Internet and making the draft available in hard copy. The agency then would proceed to issue a final version of the guidance document in the manner described above. Copies of the **Federal Register** notices of availability should be available on the agency's Web site. In addition, the response-to-comments document should address the additional comments received on the revised draft.

An agency head, in consultation and concurrence with the OIRA Administrator, may identify a particular significant guidance document or class of guidance documents for which the procedures of this Section are not feasible and appropriate. Under § IV, the agency is not required to seek public comment before it implements an economically significant guidance document if prior public participation is not feasible or appropriate. It may not be feasible or appropriate for an agency to seek public comment before issuing an economically significant guidance document if there is a public health, safety, environmental or other emergency requiring immediate issuance of the guidance document, or there is a statutory requirement or court order that requires immediate issuance. Another type of situation is presented by guidance documents that, while important, are issued in a routine and frequent manner. For example, one commenter raised concerns that the National Weather Service not only frequently reports on weather and air conditions but also gives consumers guidance, such as heat advisories, on the best course of action to take in

[27] For example, in developing its guidelines for self-evaluation of compensation practices regarding systemic compensation discrimination, the Department of Labor provided for pre-adoption notice and opportunity for comment. *See* Office of Federal Contract Compliance Programs, ''Guidelines for Self-Evaluation of Compensation Practices for Compliance with Nondiscrimination Requirements of Executive Order 11246 with Respect to Systemic Compensation Discrimination,'' 69 FR 67,252 (Nov. 16, 2004).

[28] *See, e.g.,* Office of Federal Procurement Policy Act, 41 U.S.C. 418(b) (providing for pre-adoption notice and comment for procurement policies with a significant effect or cost).

[29] Federal agency public Web sites must be designed to make information and services fully available to individuals with disabilities. For additional information, see: *http://www.access-board.gov/index.htm*; *see also* Rehabilitation Act, 29 U.S.C. 701, 794, 794d.

[30] *See* U.S. Office of Management and Budget, ''Final Information Quality Bulletin For Peer Review,'' 70 FR 2664 (Jan. 14, 2005).

severe weather conditions. Even if such notices or advisories had an economically significant impact, subjecting them to the notice-and-comment procedures of Section IV would not be feasible or appropriate. An agency may discuss with OMB other exceptions that are consistent with section IV(2).

Though economically significant guidance documents that fall under the exemption in section IV(2) are not required to undergo the full notice-and-comment procedures, the agency should: (a) Publish a notice in the **Federal Register** announcing that the guidance document is available; (b) post the guidance document on the Internet and make it available in hard copy (or notify the public how they can review the guidance document if it is not in a format that permits such electronic posting with reasonable efforts); and (c) seek public comment when it issues or publishes the guidance document. If the agency receives comments on an excepted guidance document, the agency should review those comments and revise the guidance document when appropriate. However, the agency is not required to provide post-promulgation notice-and-comment if such procedures are not feasible or appropriate.

F. Emergencies

In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with this Bulletin. For those significant guidance documents that are governed by a statutory or court-imposed deadlines, the agency shall, to the extent practicable, schedule its proceedings so as to permit sufficient time to comply with this Bulletin.

G. Judicial Review

This Bulletin is intended to improve the internal management of the Executive Branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies or other entities, its officers or employees, or any other person.[31]

H. Effective Date

The requirements of this Bulletin shall take effect 180 days after publication in the **Federal Register** except that agencies will have 210 days to comply with requirements for significant guidance documents promulgated on or before the date of publication of this Bulletin.

Bulletin for Agency Good Guidance Practices

I. Definitions

For purposes of this Bulletin—

1. The term ''Administrator'' means the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (OIRA).

2. The term ''agency'' has the same meaning it has under the Paperwork Reduction Act, 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

3. The term ''guidance document'' means an agency statement of general applicability and future effect, other than a regulatory action (as defined in Executive Order 12866, as further amended, section 3(g)), that sets forth a policy on a statutory, regulatory or technical issue or an interpretation of a statutory or regulatory issue.

4. The term ''significant guidance document''—

a. Means (as defined in Executive Order 12866, as further amended, section 3(h)) a guidance document disseminated to regulated entities or the general public that may reasonably be anticipated to:

(i) Lead to 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;

(ii) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(iii) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(iv) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866, as further amended.

b. Does not include legal advisory opinions for internal Executive Branch use and not for release (such as Department of Justice Office of Legal Counsel opinions); briefs and other positions taken by agencies in investigations, pre-litigation, litigation, or other enforcement proceedings (nor does this Bulletin in any other way affect an agency's authority to communicate its views in court or in other enforcement proceedings); speeches; editorials; media interviews; press materials; Congressional correspondence; guidance documents that pertain to a military or foreign affairs function of the United States (other than guidance on procurement or the import or export of non-defense articles and services); grant solicitations; warning letters; case or investigatory letters responding to complaints involving fact-specific determinations; purely internal agency policies; guidance documents that pertain to the use, operation or control of a government facility; internal guidance documents directed solely to other Federal agencies; and any other category of significant guidance documents exempted by an agency head in consultation with the OIRA Administrator.

5. The term ''economically significant guidance document'' means a significant guidance document that may reasonably be anticipated to lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the economy or a sector of the economy, except that economically significant guidance documents do not include guidance documents on Federal expenditures and receipts.

6. The term ''disseminated'' means prepared by the agency and distributed to the public or regulated entities. Dissemination does not include distribution limited to government employees; intra- or interagency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar laws.

7. The term ''regulatory action'' means any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final regulation, including notices of inquiry, advance notices of inquiry and notices of proposed rulemaking (see Executive Order 12866, as further amended, section 3).

8. The term ''regulation'' means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency (see Executive Order 12866, as further amended, section 3).

II. Basic Agency Standards for Significant Guidance Documents

1. *Approval Procedures:*

[31] The provisions of this Bulletin, and an agency's compliance or noncompliance with the Bulletin's requirements, are not intended to, and should not, alter the deference that agency interpretations of laws and regulations should appropriately be given.

a. Each agency shall develop or have written procedures for the approval of significant guidance documents. Those procedures shall ensure that the issuance of significant guidance documents is approved by appropriate senior agency officials.

b. Agency employees should not depart from significant guidance documents without appropriate justification and supervisory concurrence.

2. *Standard Elements:* Each significant guidance document shall:

a. Include the term ''guidance'' or its functional equivalent;

b. Identify the agenc(ies) or office(s) issuing the document;

c. Identify the activity to which and the persons to whom the significant guidance document applies;

d. Include the date of issuance;

e. Note if it is a revision to a previously issued guidance document and, if so, identify the document that it replaces;

f. Provide the title of the document, and any document identification number, if one exists;

g. Include the citation to the statutory provision or regulation (in Code of Federal Regulations format) which it applies to or interprets; and

h. Not include mandatory language such as ''shall,'' ''must,'' ''required'' or ''requirement,'' unless the agency is using these words to describe a statutory or regulatory requirement, or the language is addressed to agency staff and will not foreclose agency consideration of positions advanced by affected private parties.

III. Public Access and Feedback for Significant Guidance Documents

1. *Internet Access:*

a. Each agency shall maintain on its Web site—or as a link on an agency's Web site to the electronic list posted on a component or subagency's Web site—a current list of its significant guidance documents in effect. The list shall include the name of each significant guidance document, any document identification number, and issuance and revision dates. The agency shall provide a link from the current list to each significant guidance document that is in effect. New significant guidance documents and their Web site links shall be added promptly to this list, no later than 30 days from the date of issuance.

b. The list shall identify significant guidance documents that have been added, revised or withdrawn in the past year.

2. *Public Feedback:*

a. Each agency shall establish and clearly advertise on its Web site a means for the public to submit comments electronically on significant guidance documents, and to submit a request electronically for issuance, reconsideration, modification, or rescission of significant guidance documents. Public comments under these procedures are for the benefit of the agency, and no formal response to comments by the agency is required by this Bulletin.

b. Each agency shall designate an office (or offices) to receive and address complaints by the public that the agency is not following the procedures in this Bulletin or is improperly treating a significant guidance document as a binding requirement. The agency shall provide, on its Web site, the name and contact information for the office(s).

IV. Notice and Public Comment for Economically Significant Guidance Documents

1. *In General:* Except as provided in Section IV(2), when an agency prepares a draft of an economically significant guidance document, the agency shall:

a. Publish a notice in the **Federal Register** announcing that the draft document is available;

b. Post the draft document on the Internet and make it publicly available in hard copy (or notify the public how they can review the guidance document if it is not in a format that permits such electronic posting with reasonable efforts);

c. Invite public comment on the draft document; and

d. Prepare and post on the agency's Web site a response-to-comments document.

2. *Exemptions:* An agency head, in consultation with the OIRA Administrator, may identify a particular economically significant guidance document or category of such documents for which the procedures of this Section are not feasible or appropriate.

V. Emergencies

In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with this Bulletin. For those significant guidance documents that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule its proceedings so as to permit sufficient time to comply with this Bulletin.

VI. Judicial Review

This Bulletin is intended to improve the internal management of the Executive Branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies or other entities, its officers or employees, or any other person.

VII. Effective Date

The requirements of this Bulletin shall take effect 180 days after its publication in the **Federal Register** except that agencies will have 210 days to comply with requirements for significant guidance documents promulgated on or before the date of publication of this Bulletin.

Dated: January 18, 2007.

Steven D. Aitken,

Acting Administrator, Office of Information and Regulatory Affairs.

[FR Doc. E7–1066 Filed 1–24–07; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27668; 812–13201]

Hercules Technology Growth Capital, Inc.; Notice of Application

January 19, 2007.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant, Hercules Technology Growth Capital, Inc. (''HTGC''), requests an order approving a proposal to issue options to purchase HTGC's common stock (''Common Stock'') to directors who are not officers or employees of HTGC (''Eligible Directors'') pursuant to HTGC's 2006 Non-employee Director Plan (the ''Plan'').

FILING DATES: The application was filed on June 21, 2005 and amended on December 12, 2006.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 13, 2007, and

should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicant, c/o Manuel A. Henriquez, Chairman of the Board, President and Chief Executive Officer, Hercules Technology Growth Capital, Inc., 400 Hamilton Avenue, Suite 310, Palo Alto, CA 94301.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 551–6868, or Nadya Roytblat, 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 is available for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicant's Representations

1. HTGC, a Maryland corporation, is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] HTGC is a specialty finance company that provides debt and equity growth capital to technology-related and life-science companies at all stages of development. Applicant's business and affairs are managed under the direction of its board of directors (''Board''). Applicant does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving the Plan for Eligible Directors.[2] Applicant has a four member Board, three of whom are Eligible Directors. The Plan was approved on May 30, 2006 by the Board and HTGC's shareholders. The Plan will not become effective until the date the Commission issues an order on the application (''Order Date'').

3. As of October 20, 2006, HTGC had outstanding 16,188,402 shares of Common Stock. Applicant has in place an equity compensation plan for executive officers, directors and other key employees (''2004 Plan''). Under the 2004 Plan, options to purchase 1,889,346 shares of the Common Stock are outstanding. Eligible Directors are not eligible to participate in the 2004 Plan. Applicant also has outstanding warrants to purchase 673,223 shares of Common Stock, of which 56,551 were issued under the 2004 Plan to HTGC's officers, directors and employees. Applicant has no other warrants, options or rights to purchase its voting securities outstanding.

4. Under the Plan, options may be granted up to a maximum of 1,000,000 shares of Common Stock. Each Eligible Director will receive an initial grant on the Order Date of options to purchase 20,000 shares of Common Shares and an annual grant on each anniversary of the Eligible Director's election to the Board of an option to purchase 20,000 shares of Common Stock, which will vest over two years, in equal installments, on each anniversary date of the grant. The Plan provides that the exercise price of the options will not be less than the current market value of, or if no market value exists, the current net asset value of, the Common Stock as determined in good faith by the Board on the date of grant.

5. The Plan also provides that it will terminate on the tenth anniversary of its adoption and no additional grants of options may be made under the Plan after that date. The Plan further provides that the options may not be transferred except for disposition by gift, will or laws of descent and distribution.

6. As of October 20, 2006, 16,188,402 shares of Common Stock were outstanding. The total number of shares that would result from the exercise of all outstanding options and warrants issued to HTGC's officers, directors and employees is 1,980,733, or approximately 12.24% of HTGC's outstanding voting securities. The total number of shares that would result from the exercise of all of HTGC's outstanding options, warrants or rights is approximately 15.83% of HTGC's outstanding voting securities.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of section 205(b)(2); and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that the terms of the Plan meet all of the requirements of section 61(a)(3) of the Act. HTGC states that the Board, including the Eligible Directors, actively oversees applicant's affairs and applicant relies on the judgment and experience of the Board. Applicant states that the Eligible Directors provide advice on financial and operational issues, credit and underwriting policies, asset valuation, strategic direction, as well as serve on various committees. Applicant states that the professional experiences and expertise of the Eligible Directors make them valuable resources for management. HTGC states that the options that will be granted to the Eligible Directors under the Plan will provide significant incentives to the

[1] Section 2(a)(48) generally defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] For their services on the Board and its committees, Eligible Directors currently receive cash compensation in the form of annual fees, fees for service on the committees, and reimbursement of reasonable out-of-pocket expenses incurred in attending Board meetings.

Eligible Directors to remain on the Board and to devote their best efforts to the success of HTGC's business and the enhancement of stockholder value. Applicant states that the options granted under the Plan will provide a means for the Eligible Directors to increase their ownership interests in HTGC, thereby ensuring close identification of their interests with those of HTGC and its stockholders. Applicant asserts that by providing incentives in the form of options under the Plan, HTGC would be better able to retain and attract qualified persons to serve as Eligible Directors.

4. Applicant submits that the terms of the Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. Applicant asserts that the exercise of the options pursuant to the Plan will not have a substantial dilutive effect on the net asset value of applicant's Common Stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55117; File No. SR–Amex–2006–101]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval to a Proposed Rule Change as Modified by Amendments No. 1 and 2 Thereto Relating to the Listing and Trading of Shares of Funds of the ProShares Trust

January 17, 2007.

I. Introduction

On October 24, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] On November 22, 2006, Amex filed Amendment No. 1 to the proposed rule change.[3] On December 8, 2006, Amex filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 27, 2006 for a 15-day comment period.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendments No. 1 and 2, on an accelerated basis.

II. Description of the Proposal

Amex Rules 1000A *et seq.* provide standards for the listing of Index Fund Shares, which are securities issued by an open-end management investment company for exchange trading.[6] Index Fund Shares are registered under the Investment Company Act of 1940 (''1940 Act''), as well as under the Act. Under Amex Rule 1000A(b)(2), the Exchange proposes to list and trade Index Fund Shares that seek to provide investment results that exceed the performance of an underlying securities index by a specified multiple or that seek to provide investment results that correspond to a specified multiple of the inverse or opposite of the index's performance.

Pursuant to these rules, the Exchange proposes to list the shares (the ''Shares'') of eighty-one (81) new funds (the ''Funds'') of the ProShares Trust (the ''Trust''). In its proposal, the Exchange provided detailed descriptions regarding the Underlying Indexes,[7] as well as the structure and operation of the Funds and the listing and trading of the Shares. Key features of the proposal are noted below.

Product Description

The Funds are based on the following equity securities indexes: (1) S&P Small Cap 600 Index; (2) S&P 500/Citigroup Value Index; (3) S&P 500/Citigroup Growth Index; (4) S&P MidCap 400/Citigroup Value Index; (5) S&P MidCap 400/Citigroup Growth Index; (6) S&P SmallCap 600/Citigroup Value Index; (7) S&P SmallCap 600/Citigroup Growth Index; (8) Dow Jones U.S. Basic Materials Index; (9) Dow Jones U.S. Consumer Services Index; (10) Dow Jones U.S. Consumer Goods Index; (11) Dow Jones U.S. Oil and Gas Index; (12) Dow Jones U.S. Financials Index; (13) Dow Jones U.S. Health Care Index; (14) Dow Jones U.S. Industrials Index; (15) Dow Jones U.S. Real Estate Index; (16) Dow Jones U.S. Semiconductor Index; (17) Dow Jones U.S. Technology Index; (18) Dow Jones U.S. Utilities Index; (19) Russell 2000® Index; (20) Russell Midcap® Index; (21) Russell Midcap® Growth Index; (22) Russell Midcap® Value Index; (23) Russell 1000® Index; (24) Russell 1000® Growth Index; (25) Russell 1000® Value Index; (26) Russell 2000® Growth Index; and (27) Russell 2000® Value Index (each index individually referred to as the ''Underlying Index,'' and all Underlying Indexes collectively referred to as the ''Underlying Indexes'').

Each of the Funds is designated as an Ultra Fund, Short Fund, or UltraShort Fund, based on its investment objective. Each Ultra Fund or ''Bullish Fund'' seeks a daily investment result, before fees and expenses, which corresponds to twice (200%) the daily performance of its Underlying Index. Accordingly, the NAV of the Shares of each Ultra Fund, if successful in meeting its objective, should increase, on a percentage basis, approximately twice as much as the corresponding Underlying Index gains when the prices of the securities in such Underlying Index increase on a given day, and should decrease approximately twice as much as the respective Underlying Index loses when such prices decline on a given day. The Bullish Funds generally will hold at least 85% of their assets in the component equity securities of the relevant Underlying Index. The remainder of assets will be devoted to certain financial instruments[8] and money market instruments[9] that are intended to create the additional needed exposure to such Underlying Index necessary to pursue its investment objective.

Each Short Fund seeks a daily investment result, before fees and expenses, that corresponds to the inverse or opposite of the daily performance (−100%) of its Underlying Index. Accordingly, the NAV of the Shares of each Short Fund should increase approximately as much, on a percentage basis, as the corresponding

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supersedes and replaces the original filing in its entirety.

[4] Amendment No. 2 supersedes and replaces Amendment No. 1 in its entirety.

[5] *See* Securities Exchange Act Release No. 54961 (December 18, 2006), 71 FR 77823 (''Notice'').

[6] Index Fund Shares are defined in Amex Rule 1000A(b)(1) as securities based on a portfolio of stocks or fixed income securities that seek to provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index.

[7] *See* Notice, *supra* note 5, 71 FR at 77825–77827 (describing the general design and composition of each Underlying Index).

[8] The financial instruments to be held by any of the Funds may include stock index futures contracts, options on futures contracts, options on securities and indices, equity caps, collars and floors, as well as swap agreements, forward contracts, repurchase agreements, and reverse repurchase agreements (the ''Financial Instruments'').

[9] Money market instruments include U.S. government securities and repurchase agreements (the ''Money Market Instruments''). Repurchase agreements held by the Funds will be consistent with Rule 2a-7 of the 1940 Act, *i.e.*, remaining maturities of 397 days or less and rated investment-grade.

Underlying Index loses when the prices of the securities in the Underlying Index decline on a given day, or should decrease approximately as much as that Underlying Index gains when the prices of the securities in the Underlying Index rise on a given day.

Finally, each UltraShort Fund seeks a daily investment result, before fees and expenses, that corresponds to twice the inverse (−200%) of the daily performance of its Underlying Indexes. Accordingly, the NAV of the Shares of each UltraShort Fund should increase approximately twice as much, on a percentage basis, as the corresponding Underlying Index loses when the prices of the securities in the Underlying Index decline on a given day, or should decrease approximately twice as much as that Underlying Index gains when the prices of the securities in the Underlying Index rise on a given day.

The Short Funds and UltraShort Funds each have investment objectives that seek investment results corresponding to an inverse performance of the Underlying Indexes and are collectively referred to as the ''Bearish Funds.'' Each of these Bearish Funds will not invest directly in the component securities of the relevant Underlying Index, but instead, will create short exposure to such Underlying Index. Each Bearish Fund will rely on establishing positions in Financial Instruments that provide, on a daily basis, the inverse or opposite of, or twice the inverse or opposite of, as the case may be, the performance of the relevant Underlying Index. Normally, 100% of the value of the portfolios of each Bearish Fund will be devoted to Financial Instruments and Money Market Instruments.[10]

As advisor to the Funds, ProShare Advisors LLC (the ''Advisor'') will implement a mathematical investment strategy known or ''Portfolio Investment Methodology,'' to establish an investment exposure in each portfolio corresponding to each Fund's investment objective. The Portfolio Investment Methodology takes into account a variety of specified criteria and data, the most important of which are: (1) Net assets (taking into account creations and redemptions) in each Fund's portfolio at the end of each trading day; (2) the amount of required exposure to the Underlying Index; and (3) the positions in equity securities, Financial Instruments, and/or Money Market Instruments at the beginning of each trading day. Each day, the methodology will determine for each Fund, the end-of-day positions to establish the required amount of exposure to the Underlying Index (the ''Solution''), which will consist of equity securities, Financial Instruments, and/or Money Market Instruments. The difference between the start-of-day positions and the required end-of-day positions is the actual amount of equity securities, Financial Instruments, and/or Money Market Instruments that must be bought or sold for the day. The Solution represents the required exposure and, when necessary, is converted into an order or orders to be filled that same day.[11]

The Funds are expected to have a daily tracking error of less than 5% (500 basis points) relative to the specified multiple or inverse multiple of the performance of the relevant Underlying Index.

Creation and Redemption of Shares

Fund Shares will be issued and redeemed on a continuous basis at a price equal to the NAV per Share next determined after an order is received in proper form. Only certain qualified entities (''Authorized Participants'') may create or redeem Shares, and each Fund will issue and redeem Shares only in aggregations of at least 50,000 (''Creation Units''). Additional information about the creation and redemption process is included in Amex's proposal.[12]

In summary, to create Bullish Fund Shares, an Authorized Participant must properly place a creation order and typically make an in-kind deposit of a basket of equity securities (''Deposit Securities'') consisting of the securities selected by the Advisor from among those securities contained in the Fund's portfolio,[13] together with an amount of cash specified by the Advisor (the ''Balancing Amount''), *plus* the applicable transaction fee (together, the ''Creation Deposit'').

The Bullish Funds reserve the right to permit or require an Authorized Participant to substitute an amount of cash and/or a different security to replace any prescribed Deposit Security. In certain limited instances, a Bullish Fund may require a purchasing investor to purchase a Creation Unit entirely for cash. For example, on days when a substantial rebalancing of a Fund's portfolio is required, the Advisor might prefer to receive cash rather than in-kind stocks so that it has liquid resources on hand to make the necessary purchases.

Similarly, Bullish Fund Shares in Creation Unit-size aggregations will be redeemable on any day on which the New York Stock Exchange is open in exchange for a basket of securities (''Redemption Securities''), a list of which will be available to Authorized Participants on each business day prior to the opening of trading. To redeem Shares in a Bullish Fund, an Authorized Participant must properly place a redemption order and deliver the Redemption Securities, any required Balancing Amount, and applicable transaction fee.[14]

Notably, the Balancing Amount may, at times, represent a significant portion of the aggregate purchase price or, in the case of redemptions, the redemption proceeds. This may occur because the mark-to-market value of the Financial Instruments held by the Bullish Funds, if any, is included in the Balancing Amount.

The Bearish Funds will be purchased and redeemed entirely for cash (''All-Cash Payments''). The use of an All-Cash Payment for the purchase and redemption of Creation Unit aggregations of the Bearish Fund Shares is due to the limited transferability of Financial Instruments.

Dividends and Distributions

As described more fully in the Notice, dividends, if any, from net investment income will be declared and paid at least annually by each Fund in the same manner as by other open-end investment companies. Distributions of realized securities gains, if any,

[10] To the extent, applicable, each Fund will comply with the requirements of the 1940 Act with respect to ''cover'' for Financial Instruments and thus may hold a significant portion of its assets in liquid instruments in segregated accounts.

[11] Generally, portfolio trades effected pursuant to the Solution are reflected in the NAV on the first business day (T+1) after the date the relevant trade is made. Therefore, the NAV calculated for a Fund on a given day should reflect the trades executed pursuant to the prior day's Solution. For example, trades pursuant to the Solution calculated on a Monday afternoon are executed on behalf of the Fund in question on that day. These trades will then be reflected in the NAV for that Fund that is calculated as of 4 p.m. Eastern Time (''ET'') on Tuesday.

[12] *See* Notice, *supra* note 5, 71 FR at 77829–77831.

[13] The Trust will make available through the Depository Trust Company or SEI Investments Distribution Company (the ''Distributor'') on each business day, prior to the opening of trading on the Exchange, the list of names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Bullish Fund (''Deposit List''). In accordance with the Advisor's Code of Ethics, personnel of the Advisor with knowledge about the composition of a Creation Deposit will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public.

[14] A Bullish Fund has the right to make redemption payments in cash, in kind, or a combination of each, provided that the value of its redemption payments equals the NAV of the Shares tendered at the time of tender.

generally will be declared and paid once a year.

Arbitrage

In its proposal, the Exchange stated that it did not expect the Shares to trade at a material discount or premium to the underlying securities held by a Fund based on potential arbitrage opportunities. As is the case for other exchange traded derivative products, the arbitrage process should provide market participants the opportunity to profit from differences in the price of Shares and their underlying value, mitigating the occurrence of material discounts or premiums.

Dissemination of Underlying Index Information

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index will be publicly available on various Internet Web sites, such as at *http://www.bloomberg.com.* Data regarding each Underlying Index is also available from the respective Underlying Index provider to subscribers. Several independent data vendors also package and disseminate Underlying Index data in various value-added formats (including vendors displaying both securities and index levels and vendors displaying index levels only).

The value of each Underlying Index will be updated intra-day on a real time basis as its individual component securities change in price. These intra-day values of each Underlying Index will be disseminated at least every 15 seconds throughout the trading day by Amex or another organization authorized by the relevant Underlying Index provider in accordance with Commentary .02(c) to Amex Rule 1000A.

Availability of Information Regarding the Shares

1. Indicative Intra-Day Fund Values

During the Exchange's regular trading hours, Amex will calculate and disseminate at least every 15 seconds through the facilities of the Consolidated Tape Association (''CTA''), an Indicative Intra-Day Value (''IIV'') for each of the Funds on a per Share basis, representing an estimate of the NAV per Share for each Fund. The Exchange will also make the IIV available on its Web site at *http://www.amex.com.*

For each Bullish Fund, the designated IIV Calculator (Amex) will determine the IIV by: (i) Calculating the estimated current value of equity securities held by such Fund by (a) calculating the percentage change in the value of the Deposit Securities indicated on the Deposit List (as provided by the Trust) and applying that percentage value to the total value of the equity securities in the Fund as of the close of trading on the prior trading day (as provided by the Trust) or (b) calculating the current value of all of the equity securities held by the Fund (as provided by the Trust); (ii) calculating the mark-to-market gains or losses from the Fund's total return equity swap exposure based on the percentage change to the Underlying Index and the previous day's notional values of the swap contracts, if any, held by such Fund (which previous day's notional value will be provided by the Trust); (iii) calculating the mark-to-market gains or losses from futures, options, and other Financial Instrument positions by taking the difference between the current value of those positions held by the Fund, if any (as provided by the Trust), and the previous day's value of such positions; (iv) adding the values from (i), (ii), and (iii) above to an estimated cash amount provided by the Trust (which cash amount will include the swap costs), to arrive at a value; and (v) dividing that value by the total Shares outstanding (as provided by the Trust) to obtain current IIV.

For each Bearish Fund, the Exchange will determine the IIV by: (i) Calculating the mark-to-market gains or losses from the Fund's total return equity swap exposure based on the percentage change to the Underlying Index and the previous day's notional values of the swap contracts, if any, held by such Fund (which previous day's notional value will be provided by the Trust); (ii) calculating the mark-to-market gains or losses from futures, options, and other Financial Instrument positions by taking the difference between the current value of those positions held by the Fund, if any (as provided by the Trust), and the previous day's value of such positions; (iii) adding the values from (i) and (ii) above to an estimated cash amount provided by the Trust (which cash amount will include the swap costs), to arrive at a value; and (iv) dividing that value by the total Shares outstanding (as provided by the Trust) to obtain current IIV.

2. Other Information

Amex will disseminate for each Fund on a daily basis through the facilities of the CTA and CQ High Speed Lines and on its Web site at *http://www.amex.com* the following information:

- Daily trading volume;
- the closing prices of each Fund's Shares and corresponding NAV; and
- the final dividend amounts to be paid for each Fund.

The Exchange will also make available information with respect to recent NAV, Shares outstanding, and the estimated cash amount and total cash amount per Creation Unit.

Additionally, the Trust's Internet Web site *(http://www.proshares.com)*, which is and will be publicly accessible at no charge, will contain the following information for each Fund's Shares: (a) The prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (b) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts; (c) its prospectus and product description; and (d) other quantitative information, such as daily trading volume.

The Web site for the Trust and/or the Exchange will also disclose each Fund's total portfolio composition on a daily basis, including, as applicable, the names and number of shares held of each specific equity security, the specific types of Financial Instruments and characteristics of such Financial Instruments, and the cash equivalents and amount of cash held in the portfolio of each Fund. Importantly, this public Internet Web site disclosure of the portfolio composition of each Fund will coincide with the disclosure by the Advisor of the ''IIV File'' and the portfolio composition file (''PCF'') to Authorized Participants. Therefore, the same portfolio information (including accrued expenses and dividends) will be provided to all market participants at the same time.

Also, as explained in Amex's proposal, beneficial owners of Shares (''Beneficial Owners'') will receive all of the statements, notices, and reports required under the 1940 Act and other applicable laws.[15]

[15] The Application requests relief from Section 24(d) of the 1940 Act, which would permit dealers to sell Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933. Additionally, if a product description is being provided in lieu of a prospectus, Commentary .03 of Amex Rule 1000A requires that Amex members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time of confirmation of the first transaction in such series is delivered to such purchaser. Furthermore, any

Criteria for Initial and Continued Listing

The Shares are subject to the criteria for initial and continued listing of Index Fund Shares under Amex Rule 1002A. Pursuant to Amex Rule 1002A(a)(ii), the Exchange has stated that it will obtain a representation from the Trust (for each Fund), prior to listing, that the NAV per Share for each Fund will be calculated daily and made available to all market participants at the same time.

The continued listing criteria provides for the delisting or removal from listing of the Shares under any of the following circumstances:

- If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Index Fund Shares, there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; or
- If the value of the applicable Underlying Index or portfolio is no longer calculated or available on at least a 15-second delayed basis through one or more major market data vendors during the time the Shares trade on the Exchange; or
- The IIV is no longer made available on at least a 15-second delayed basis; or
- If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Additionally, the Exchange will file a proposed rule change pursuant to Rule 19b–4 under the Act seeking approval to continue trading the Shares of a Fund and, unless approved, the Exchange will commence delisting the Shares of such Fund if:

- The Underlying Index provider substantially changes either the Underlying Index component selection methodology or the weighting methodology; or
- A successor or substitute index is used in connection with the Shares.[16]

Furthermore, Amex Rule 1002A(b)(ii) establishes that, if the IIV or the Underling Index value applicable to that series of Index Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Underlying Index value occurs. If the interruption to the dissemination of the IIV or the Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

For each Fund, a minimum of two Creation Units (at least 100,000 Shares) will be required to be outstanding at the commencement of trading on the Exchange. The initial value of a Share for each of the Funds is expected to be in the range of $50–$250.

This minimum number of Shares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity.

The Exchange represents that the Trust is required to comply with Section 803 of the Amex *Company Guide* and Rule 10A–3 under the Act for the initial and continued listing of the Shares.[17]

Amex Trading Rules

The Shares are equity securities subject to Amex rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, and account opening and customer suitability (Amex Rule 411). The Shares of the Funds will trade on the Exchange until 4:15 p.m. ET each business day and will trade with a minimum price variation of $.01.

Trading Halts

Trading in Shares of the Funds will be halted if the circuit breaker parameters under Amex Rule 117 have been reached. The Exchange may also halt trading in consideration of other factors, such as those set forth in Amex Rule 918C(b). These factors include, but are not limited to: (1) The extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments of a Fund; [18] or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Amex Rule 1002A(b)(ii) sets forth the trading halt parameters with respect to Index Fund Shares. Importantly, if the IIV or the Underlying Index value applicable to that series of Index Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Underlying Index value occurs. If the interruption to the dissemination of the IIV or the Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Suitability and Information Circular

Prior to commencement of trading, the Exchange will issue an Information Circular to its members and member organizations providing guidance with regard to member firm compliance responsibilities (including suitability obligations) when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares as well as applicable Exchange rules. In particular, the Information Circular will inform Amex members and member organizations that the procedures for purchases and redemptions of Shares, and that Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations or multiples thereof. In addition, prior to the commencement of trading, the Exchange will inform members and member organizations in such Information Circular of the application of Commentary .03 of Amex Rule 1000A to the Funds. The Circular will further inform members and member organizations of the prospectus and/or product description delivery requirements that apply to the Funds.

This Information Circular will set forth the requirements relating to Commentary .05 to Amex Rule 411 (Duty to Know and Approve Customers). Specifically, the Information Circular will remind members of their obligations in recommending transactions in the Shares so that members have a reasonable basis to believe that (1) The recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information

sales material will reference the availability of such circular and the prospectus.

[16] If the Trust uses a successor or substitute index, the Exchange's filing will address, among other things, the listing and trading characteristics of the successor or substitute index and the Exchange's surveillance procedures applicable thereto.

[17] Telephone conversation between Nyieri Nazarian, Assistant General Counsel, Amex, and Edward Cho, Special Counsel, Division of Market Regulation (''Division''), Commission, on January 9, 2007 (clarifying that the Trust is required to comply with Rule 803 of the Amex *Company Guide*).

[18] In the case of the Financial Instruments held by a Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the Advisor is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. Notification from the Advisor will be made by phone, facsimile, or e-mail. The Exchange would then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Shares.

Circular will also provide that members make reasonable efforts to obtain the following information: (a) The customer's financial status; (b) the customer's tax status; (c) the customer's investment objectives; and (d) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares and to deter and detect violations of applicable rules.[19] Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

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.[20] In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,[21] which requires, among other things, that the Exchange's rules 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.

A. Surveillance

The Commission notes that the Exchange has represented that its surveillance procedures are adequate to monitor the trading of the Shares. The shares based on the Underlying Indexes are almost all currently listed and/or traded on the Exchange. Amex stated that it would rely on its existing surveillance procedures governing Index Fund Shares. The Commission believes that these procedures provide a framework for Amex to monitor fraudulent and manipulative practices in the trading of the Shares.

In addition, the Exchange represents that, if a Fund uses a successor or substitute index, or an Underlying Index provider substantially changes either the Underlying Index component selection methodology or the weighting methodology, Amex will file with the Commission a proposed rule change, which addresses, among other things, applicable surveillance procedures. Unless approved by the Commission, the Exchange will commence delisting of the Shares.

B. Dissemination of Information

The Commission believes that sufficient venues exist for obtaining reliable information so that investors in the Shares can monitor the values of the Underlying Indexes relative to the IIV of their Shares.

The Exchange has represented that it will calculate and publish the value of the Underlying Indexes at least every 15 seconds during Amex trading hours through the facilities of the CTA in accordance with Commentary .02(c) to Amex Rule 1000A. The Commission notes that the daily closing index value and the percentage change in the daily closing index value for each Underlying Index will be publicly available on various Internet Web sites, such as at *http://www.bloomberg.com*, from the respective Underlying Index provider to subscribers, and from various independent data vendors that package and disseminate Underlying Index data in various value-added formats.

Likewise, the Exchange has represented that it will calculate and publish the IIV for each Fund on a per-Share basis at least every 15 seconds during Amex trading hours through the facilities of the CTA and on its Web site at *http://www.amex.com*. The Commission believes that dissemination of the IIV provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the Shares trading on the Exchange, and the creation and redemption of the Shares. The Commission believes that publication of such information should promote transparency with regard to the Shares.

The Exchange will make additional information available on its Internet Web site at *http://www.amex.com*, including daily trading volume, the closing price, the NAV, and the final dividend amounts to be paid for each Fund. The Trust's Web site (*http://www.proshares.com*), which is and will be publicly accessible at no charge, will also contain trading and other information pertaining to the Shares of each Fund. Notably, each Fund's total portfolio composition will be disclosed on the Trust's Web site (or another relevant Internet Web site as determined by the Trust) and/or Amex's Web site (*http://www.amex.com*).

In sum, the Commission believes that the availability of information about the Underlying Indexes, the composition and valuation of each Fund, and the Shares should facilitate transparency with respect to the proposed Shares to allow for the maintenance of fair and orderly markets.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the Shares are consistent with the Act. The Shares will trade as equity securities subject to Amex rules including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening, and customer suitability requirements.

The Commission believes that the listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Additionally, the Commission finds that Amex Rule 1000A and Commentary thereto are reasonably designed to govern trading in the Shares. Finally, the Commission notes that the Information Circular distributed by the Exchange will inform members and member organizations about the terms, characteristics, and risks in trading the Shares, including their prospectus delivery obligations.

D. Accelerated Approval

The Commission finds good cause to approve the proposed rule change, as modified by Amendments No. 1 and 2 thereto, prior to the thirtieth day after publication for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[22] Accelerating approval of this proposed rule change should benefit investors who desire to participate, through the Shares of the ProShares Trust Funds, in an investment based on specified investment objectives which correspond to a multiple of the performance, or the inverse performance, of a particular equity securities benchmark index.

[19] Telephone conversation between Nyieri Nazarian, Assistant General Counsel, Amex, and Edward Cho, Special Counsel, Division, Commission, on January 9, 2007 (confirming that the Exchange's surveillance procedures are capable of detecting and deterring violations of applicable rules).

[20] In approving this proposed 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).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(2).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2006–101), as modified by Amendments No. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Nancy M. Morris,

Secretary.

[FR Doc. E7–1057 Filed 1–24–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55122; File No. SR–Amex–2006–116]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Amending Associate Member Fees

January 18, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. On January 16, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex's Member Fees to eliminate the Associate Members' Initiation Fee and the Financial Regulation Fee, to reduce the Electronic Access Fee paid by Associate Members, and to increase the Associate Member Nominee initiation fee of $1,500 currently charged to $2,000 and re-designate such fee as an application fee (in order to conform this fee to the application fee charged to all members).

The text of the proposed rule change is available on the Exchange's Web site (*http://www.amex.com/atamex/ruleFilings/2006/SR_Amex_2006_116_initial.pdf*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

Amex currently charges a one-time initiation fee (the ''Initiation Fee'') to Associate Members that is equivalent to 5% of the price of the last completed regular membership sold. The Exchange proposes to eliminate this Initiation Fee, which has become disproportionate to the cost of other types of seat-based, Regular, Option Principal, and Limited Trading Permit Memberships. The Exchange believes that the Initiation Fee may act as a deterrent for firms seeking to apply for membership.

Associate Members are also currently required to pay a financial regulation fee (''Financial Regulation Fee'') which is imposed in instances where the Exchange is the Designated Examining Authority (''DEA''). This fee may be waived by demonstrating to the Exchange's Financial Regulatory Services Department that 10% of the firm's volume is transacted on the floor of the Exchange. The Financial Regulation Fee is $4,000 a month for associate member firms and $3,000 annually for individual Associate Members. The Exchange submits that this fee does not generate significant income, and further acts as an impediment to expanding Associate Memberships. Associate Members, however, will continue to be subject to Regulatory Fees that are applicable to all members, as set forth in the Exchange's Examination Fees section of the Member Fees.

The Exchange is also proposing to reduce the current Electronic Access Fee from $30,000 to $15,000, to reflect the current prices of seats and the prices to lease a seat.

The Exchange notes that Associate Member firms will continue to be subject to Annual Membership dues of $1,500. In addition, the Exchange proposes to amend the Amex Constitution to charge Nominees of Associate Firms a $2,000 Application Processing fee to replace the Initiation Fee of $1,500. A $2,000 Application Processing fee is currently charged to all Members.

The Exchange believes that elimination of the Initiation Fee and the Financial Regulation Fee and the reduction of the Electronic Access Fee will help to adjust an imbalance in membership costs, and encourage firms to utilize this type of Membership. The Exchange represents that the foregoing fee adjustments will accordingly place the Associate Member status on a comparable level with the cost of floor memberships.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the 1934 Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using facilities. The Exchange asserts that the proposal is equitable as required by Section 6(b)(4) of the Act in that it places Associate Member Fees on the same level as Regular, Option Principal, and Limited Trading Permit Memberships.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] In Amendment No. 1, the Exchange made clean-up changes to its proposed rule text and added text to its discussion section.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) thereunder[9] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

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–Amex–2006–116 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Amex–2006–116. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of Amex. 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–Amex–2006–116 and should be submitted on or before February 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1110 Filed 1–24–07; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 19b–4(f)(2).

[10] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on January 16, 2007, the date on which the Exchange filed Amendment No. 1.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55139; File No. SR–BSE–2007–01]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Effective Date of a Previous Rule Change Relating to Information Contained in a Directed Order on the Boston Options Exchange

January 19, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 16, 2007, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the BSE. The BSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to extend the effective date of the amended rule governing the Exchange's Directed Order process on the Boston Options Exchange (''BOX'') from January 31, 2007 to July 31, 2007.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 20, 2006 the BSE proposed an amendment to its rules governing its Directed Order process on the BOX.[5] The rules were amended to clearly state that the BOX Trading Host identifies to an Executing Participant (''EP'') the identity of the firm entering a Directed Order. The amended rule was to be effective until June 30, 2006, while the Commission considered a corresponding Exchange proposal[6] to amend its rules to permit EPs to choose the firms from which they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

On June 30, 2006, the Exchange proposed extending the effective date of the amended rule governing its Directed Order process on the BOX from June 30,

[5] See Securities Exchange Act Release No. 53516 (March 20, 2006), 71 FR 15232 (March 27, 2006) (SR–BSE–2006–14).

[6] See Securities Exchange Act Release No. 53357 (February 23, 2006), 71 FR 10730 (March 2, 2006) (SR-BSE–2005–52).

2006 to September 30, 2006[7] while the Commission continued to consider the corresponding Exchange proposal to amend its rules to permit EPs to choose the firms from which they would accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order and, on September 11, 2006, the Exchange again proposed extending the effective date of the amended rule governing its Directed Order process on the BOX from September 30, 2006 to January 31, 2007.[8]

The Exchange now proposes another extension of the effective date of the amended rule governing its Directed Order process on the BOX from January 31, 2007, to July 31, 2007. In the event the Commission reaches a decision with respect to the corresponding Exchange proposal to amend its rules before July 31, 2007, the amended rule governing the Exchange's Directed Order process on the BOX will cease to be effective at the time of that decision.

This filing proposes to extend the effective date of the amended rule governing the Exchange's Directed Order process on the BOX from January 31, 2007 to July 31, 2007.[9]

2. Statutory Basis

The amended rule is designed to clarify the information contained in a Directed Order. This proposed rule filing seeks to extend the amended rule's effectiveness from January 31, 2007 to July 31, 2007. This extension will afford the Commission the necessary time to consider SR-BSE–2005–52 which would amend the BOX rules on a permanent basis to permit EPs to choose the firms from which they will accept Directed Orders while providing complete anonymity of the firm entering a Directed Order. Accordingly, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[10] in general, and Section 6(b)(5) of the Act,[11] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The BSE requests that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[16] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 5-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would continue to conform the BOX rules with BOX's current practice and clarify that Directed Orders on BOX are not anonymous.[17] Accordingly, the Commission designates that the proposed rule change effective and operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-BSE–2007–01 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-BSE–2007–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the BSE.

All comments received will be posted without change; the Commission does

[7] See Securities Exchange Act Release No. 54082 (June 30, 2006), 71 FR 38913 (July 10, 2006) (SR-BSE–2006–29).

[8] See Securities Exchange Act Release 54469 (September 19, 2006), 71 FR 56201 (September 26, 2006) (SR–BSE–2006–38).

[9] In the event that the issue of anonymity in the Directed Order process is not resolved by July 31, 2007, the Exchange intends to submit another filing under Rule 19b–4(f)(6) under the Act extending this rule and system process.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE–2007–01 and should be submitted on or before February 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1103 Filed 1–24–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55134; File No. SR–FICC–2006–14]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of Proposed Rule Change Relating To Returning Excess Clearing Fund Collateral

January 19, 2007.

I. Introduction

On September 22, 2006, the Fixed Income Clearing Corporation (''FICC'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FICC's Government Securities Division's (''GSD'') rules to permit GSD members to request the return of their excess clearing fund collateral held on deposit with FICC on a more frequent basis than is currently allowed under GSD's rules. The proposed rule change was published for comment in the **Federal Register** on November 27, 2006.[3] No comment letters were received on the proposal. This order approves the proposal.

II. Description of the Proposal

Prior to this rule change, GSD members were permitted to request the return of excess clearing fund collateral once per month.[4] In addition, on any business day, if a GSD member had exceeded its required clearing fund obligation by $5 million or more, the member could request the return of the excess deposit provided that, among other requirements, the return would not result in the member having a clearing fund deposit amount of less than the greater of (1) 110 percent of the member's clearing fund requirement or (2) $1 million more than its required clearing fund deposit.

In an effort to harmonize GSD's process with respect to the return of excess collateral with the processes of other Depository Trust & Clearing Corporation (''DTCC'') subsidiary clearing agencies, FICC is changing GSD's rules to give GSD the discretion to return excess clearing fund more frequently and without regard to the limitations noted above.[5] Although the rule change will enable GSD members to request the return of excess clearing fund on a daily basis, GSD will retain the right to deny the return of some or all of a member's excess collateral if: (i) The member has an outstanding payment obligation to FICC; (ii) the member's funds-only settlement amounts or net settlement positions over the upcoming 90 days may reasonably be expected to be materially different than those of the preceding 90 days; (iii) the member is on the watch list; or (iv) the return of excess clearing fund will cause the member to be in violation of another GSD rule. In addition, excess clearing fund would not be returned to a member if doing so would reduce a member's cross-guaranty repayment deposit or cross-margining repayment deposit to the clearing fund below the required amount.[6]

III. Discussion

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 registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),[7] which, among other things, requires the rules of a clearing agency to assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible. Although the rule change will enable FICC members to request and receive an earlier return of excess clearing fund collateral, FICC will retain explicit rights to deny such return requests when doing so would subject FICC to undue risks. Accordingly, the proposed rule change will assure FICC's ability to safeguard securities and funds in its possession or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–FICC–2006–14) be, and hereby is, approved.[10]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1107 Filed 1–24–07; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 54787 (Nov. 20, 2006), 71 FR 68664.

[4] Excess clearing fund is the amount of collateral held on deposit at GSD that is greater than a member's required clearing fund deposit as set forth in GSD Rule 4 (Clearing Fund, Watch List and Loss Allocation).

[5] The rules of the National Securities Clearing Corporation (''NSCC'') and FICC's Mortgage Backed Securities Division (''MBSD'') permit their respective members to request under normal circumstances the return of their excess clearing fund.

[6] Under GSD's rules, a ''cross-guaranty repayment deposit'' is a deposit to the clearing fund required to be made by a cross-guaranty beneficiary member pursuant to Rule 41, Section 4 of GSD's Rules. A ''cross-margining repayment deposit'' is a deposit to the clearing fund required to be made by a cross-margining beneficiary participant pursuant to Rule 43, Section 6 of GSD's Rules.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(2).

[10] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55138; File Nos. SR–Amex–2006–119; SR–BSE–2006–55; SR–CBOE–2006–109; SR–ISE–2006–73; and SR–NYSEArca–2007–01]

Self-Regulatory Organizations; International Securities Exchange, Inc.: Order Approving Proposed Rule Change; American Stock Exchange LLC; Chicago Board Options Exchange, Incorporated; and NYSEArca, Inc.: Order Granting Accelerated Approval to Proposed Rule Changes; and Boston Stock Exchange, Inc.: Order Granting Accelerated Approval to a Proposed Rule Change, as Amended, Relating to the Definition of ''Complex Trade'' as Applied to Trades Through the Options Intermarket Linkage

January 19, 2007.

I. Introduction

On December 4, 2006, the International Securities Exchange, Inc. (''ISE'') 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 proposal to amend ISE Rule 1900(3) to revise the definition of ''Complex Trade'' as applied to trades through the Intermarket Options Linkage (''Linkage''). The proposed rule change was published for comment in the **Federal Register** on December 20, 2006.[3] The Commission received no comments regarding the ISE's proposal.

On December 13, 2006, December 21, 2006, December 28, 2006, and January 3, 2007, the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Incorporated (''CBOE''), the American Stock Exchange LLC (''Amex''), and NYSE Arca, Inc. (''NYSEArca'') (with the ISE, collectively, the ''Options Exchanges''), respectively, filed proposals to amend their rules[4] to revise the definition of ''Complex Trade'' as applied to trades through the Linkage. The BSE filed Amendment No. 1 to its proposal on December 27, 2006. The proposals, including the BSE's proposal, as amended, were published for comment in the **Federal Register** on January 5, 2007,[5] January 8, 2007,[6] and January 16, 2007.[7]

This order approves the ISE's proposal and approves the proposals of the Amex, CBOE, NYSEArca, and BSE, as amended, on an accelerated basis.

II. Description of the Proposals

The proposals will revise the rules of each of the Options Exchanges to provide that, for purposes of trades through the Linkage, a ''Complex Trade'' includes a spread, straddle, or combination order where the number of contracts on the legs of the spread, straddle, or combination order differs by any ratio equal to or greater than one-to-three and less than or equal to three-to-one. There is no Trade-Through liability for Complex Trades.[8] The proposed definition of ''Complex Trade'' is generally consistent with the definitions of ''ratio order'' contained in the rules of the Options Exchanges and used for purposes other than Linkage.[9]

III. Discussion

The Commission finds that the proposed rule changes by the Amex, the CBOE, the ISE, and NYSEArca, and the BSE's proposal, as amended, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission finds that the proposals are consistent with Section 6(b)(5) of the Act[11] in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that by defining a ''Complex Trade'' for Linkage purposes to include spreads, straddles, and combination orders with ratios equal to or greater than one-to-three and less than or equal to three-to-one, and by providing a consistent definition of ''Complex Trade'' in the rules of the Options Exchanges, the proposals could facilitate the execution of complex orders.

The Commission finds good cause for approving the proposals of the Amex, the CBOE, and NYSEArca, and the BSE's proposal, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposals of the Amex, the BSE, the CBOE, and NYSEArca propose definitions of ''Complex Trade'' that are identical to the definition proposed by the ISE. The ISE's proposal was subject to a 21-day comment period and the Commission received no comments regarding the ISE's proposal. Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b) of the Act, to approve the proposals of the Amex, the CBOE, and NYSEArca, and the BSE's proposal, as amended, on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the ISE's proposed rule change (SR–ISE–2006–73), is approved, that the proposed rule changes of the Amex (SR–Amex–2006–119), the CBOE (SR–CBOE–2006–109), and NYSEArca (SR–NYSEArca–2007–01) are approved on an accelerated basis, and that the BSE's proposed rule change (SR–BSE–2006–55), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1109 Filed 1–24–07; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54923 (December 12, 2006), 71 FR 76399.

[4] *See* Amex Rule 940(b)(3); BOX Rules, Chapter XII, Section 1(c); CBOE Rule 6.80(4); and NYSEArca Rule 6.92(a)(4).

[5] *See* Securities Exchange Act Release No. 55012 (December 27, 2006), 72 FR 599 (notice of filing of File No. SR–CBOE–2006–109).

[6] *See* Securities Exchange Act Release No. 55015 (December 28, 2006), 72 FR 811 (notice of filing of File No. SR–BSE–2006–55).

[7] *See* Securities Exchange Act Release Nos. 55048 (January 5, 2007), 72 FR 1784 (notice of filing of File No. SR–Amex–2006–119); and 55051 (January 5, 2007), 72 FR 1796 (notice of filing of File No. SR–NYSEArca–2007–01).

[8] *See* Amex Rule 942(b)(7); BOX Rules, Chapter VII, Section 3(b)(vii); CBOE Rule 6.83(b)(7); ISE Rule 1902(b)(7); and NYSEArca Rule 6.94(b)(7).

[9] *See* Amex Rule 950—ANTE(e)(vii); CBOE Rule 6.53C(a)(5); ISE Rule 722(a)(6); and NYSEArca Rule 6.62(k). Unlike the rules of the Amex, the CBOE, the ISE, and NYSEArca, which permit ratio orders with ratios equal to or greater than one-to-three and less than or equal to three-to-one, the BOX Rules permit ratio orders with ratios equal to or greater than one-to-two. *See* BOX Rules, Chapter V, Section 27(a)(vi).

[10] In approving the proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55137; File No. SR–NASDAQ–2006–068]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for Nasdaq Members Using the Nasdaq Market Center

January 19, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for its members using the Nasdaq Market Center. Nasdaq proposes to implement the rule change on January 2, 2007. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and *http://nasdaq.complinet.com/file_store/pdf/rulebooks/SR–NASDAQ–2006–068.pdf.*[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This filing adopts a simplified pricing schedule for trading Nasdaq-listed securities through the Nasdaq Market Center. As is currently the case, the fee schedule reflects the volume of a member's use of the Nasdaq Market Center and also the ITS/CAES and Inet systems operated by Nasdaq and its affiliates as facilities of NASD, in determining applicable fees.[6] Order execution and routing fees will be as follows:

- $0.0027 per share executed for market participants that (i) Add more than 30 million shares of liquidity per day during the month and route or remove more than 50 million shares of liquidity per day during the month, or (ii) add more than 20 million shares of liquidity per day during the month and route or remove more than 60 million share of liquidity per day during the month;
- $0.0028 per share executed for market participants that add more than 20 million shares of liquidity per day during the month and route or remove more than 35 million shares of liquidity during the month;
- $0.003 per share executed for other market participants;
- $0.003 per share executed for routed orders that do not attempt to execute in the Nasdaq Market Center prior to routing;
- A liquidity provider credit of $0.0025 per share executed for market participants adding more than 30 million shares of liquidity per day during the month, and a credit of $0.002 for other market participants; and
- As is currently the case for Nasdaq-listed securities, a fee of 0.1% of total transaction cost, and no liquidity provider credit, for executions against quotes/orders in the Nasdaq Market Center at less than $1.00 per share.

The proposed rule change also updates the text of Rule 7018 by replacing references to the ''Nasdaq Facilities'' with the term ''Nasdaq Market Center'' to reflect Nasdaq system integration, and by deleting certain obsolete references to Brut and Inet.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Sections 6(b)(4) of the Act,[8] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Nasdaq believes that the fees are reasonably allocated among members based on their usage of the trading systems operated by Nasdaq, and are generally consistent with fees charged by other market centers for comparable services.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(ii) of the Act [9] and subparagraph (f)(2) of Rule 19b–4 thereunder [10] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Changes to the text of the proposed rule change are marked to the rule text that appears in the electronic Nasdaq Manual found at *nasdaq.complinet.com/nasdaq/display/index.html,* as further proposed to be amended by Securities Exchange Act Release No. 55042 (Jan. 4, 2007), 72 FR 1569 (Jan. 12, 2007) (SR–NASDAQ–2006–055).

[6] The consideration of volumes through ITS/CAES and Inet is a function of the phased transition of Nasdaq from an operator of NASD facilities to a separate national securities exchange. As such, NASD fee schedules will be amended to remove all references to Nasdaq at or shortly after the time when Nasdaq begins to trade non-Nasdaq exchange-listed securities as an exchange. NASD is submitting a comparable filing to establish fees for non-Nasdaq exchange-listed securities, which likewise considers trading volumes through the Nasdaq Market Center. *See* File No. SR–NASD–2006–137.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2006–068 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2006–068. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2006–068 and should be submitted on or before February 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1105 Filed 1–24–07; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55128; File No. SR–NASD–2006–074]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to the Application of NASD Rule 2790 to Issuer-Directed Securities

January 18, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. 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

NASD is proposing to amend NASD Rule 2790 to expand the exemption for securities that are directed by the issuer to include offerings sold entirely on a non-underwritten basis, where no broker-dealer solicits or sells any new issue securities in the offering, and where no broker-dealer has any involvement or influence, directly or indirectly, in the issuer's allocation decisions with respect to any of the new issue securities in the offering. NASD also is proposing to amend Rule 2790 to prohibit the allocation of issuer-directed securities to broker-dealers. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

2790. Restrictions on the Purchase and Sale of Initial Equity Public Offerings

(a) through (c) No Change.

(d) Issuer-Directed Securities.

The prohibitions on the purchase and sale of new issues in this rule shall not apply to securities that:

(1) Are specifically directed by the issuer to persons that are restricted under the rule; provided, however, that securities directed by an issuer may not be sold to or purchased by:

(A) A broker-dealer; or

(B) An account in which any restricted person specified in subparagraphs (i)(10)(B) or (i)(10)(C) of this rule has a beneficial interest, unless such person, or a member of his or her immediate family, is an employee or director of the issuer, the issuer's parent, or a subsidiary of the issuer or the issuer's parent. Also, for purposes of this paragraph (d)(1) only, a parent/subsidiary relationship is established if the parent has the right to vote 50% or more of a class of voting security of the subsidiary, or has the power to sell or direct 50% or more of a class of voting security of the subsidiary;

(2) Are specifically directed by the issuer and are part of an offering in which no broker-dealer:

(A) Underwrites any portion of the offering;

(B) Solicits or sells any new issue securities in the offering; and

(C) Has any involvement or influence, directly or indirectly, in the issuer's allocation decisions with respect to any of the new issue securities in the offering;

(3) [(2)] Are part of a program sponsored by the issuer or an affiliate of the issuer that meets the following criteria:

(A) The opportunity to purchase a new issue under the program is offered to at least 10,000 participants;

(B) Every participant is offered an opportunity to purchase an equivalent number of shares, or will receive a specified number of shares under a predetermined formula applied uniformly across all participants;

(C) If not all participants receive shares under the program, the selection of the participants eligible to purchase shares is based upon a random or other non-discretionary allocation method; and

(D) The class of participants does not contain a disproportionate number of restricted persons as compared to the investing public generally; or

(4) [(3)] Are directed to eligible purchasers who are otherwise restricted under the rule as part of a conversion offering in accordance with the standards of the governmental agency or instrumentality having authority to regulate such conversion offering.

(e) through (j) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. NASD Rule 2790 protects the integrity of the public offering process by ensuring that: (1) Members make *bona fide* public offerings of securities at the offering price; (2) members do not withhold securities in a public offering for their own benefit or use such securities to reward persons who are in a position to direct future business to members; and (3) industry insiders, including members and their associated persons, do not take advantage of their insider position to purchase new issues for their own benefit at the expense of public customers.

NASD Rule 2790 provides that, except as otherwise permitted under the Rule, a member (or an associated person) may not sell a new issue to an account in which a restricted person has a beneficial interest, a member (or an associated person) may not purchase a new issue in any account in which such member or associated person has a beneficial interest, and a member may not continue to hold new issues acquired as an underwriter, selling group member, or otherwise.

Exemption for Issuer-Directed Non-Underwritten Offerings. NASD has long recognized that an issuer's ability to direct shares to investors is a valuable tool in employee development and retention (often an integral part of the employer-employee relationship), and often furthers the legitimate business interests of the issuer. As such, NASD historically has provided a tailored exemption for securities that are specifically directed by the issuer.

Currently, Rule 2790(d)(1) states that the prohibitions on the purchase and sale of new issues in the Rule do not apply to new issue securities that are specifically directed by the issuer to restricted persons as defined in the Rule, provided that issuer-directed securities are not sold to or purchased by an account in which broker-dealer personnel, finders and fiduciaries, or certain members of their immediate family have a beneficial interest,[3] unless such persons, or members of their immediate family, are employees or directors of the issuer, the issuer's parent, or a subsidiary of the issuer or the issuer's parent. The inclusion of these heightened requirements in Rule 2790(d)(1) is designed to ensure that such persons, who typically have the greatest potential to influence the IPO allocation process, have a demonstrated basis for being selected to purchase shares in the IPO. The issuer-directed exemption is applicable only when shares are in fact directed by an issuer (that is, a member cannot seek to have an issuer direct securities to restricted persons on the member's behalf under the exemption).

NASD recently received two requests for exemptive relief related to the issuer-directed exemption.[4] Both requests came from banks that were eligible to offer their own securities pursuant to an exemption from registration under Section 3(a)(2) of the Securities Act of 1933. Both of these offerings were entirely on a non-underwritten basis,[5] and all decisions regarding the allocation of shares in the offerings were determined at the sole discretion of the respective issuers. These issuers argued, and NASD staff agreed, that the heightened requirements of Rule 2790(d)(1) would impair their ability to attract capital and served no regulatory purpose in light of the fact that no broker-dealer was underwriting or otherwise involved in allocating any of the shares that were being offered. Further, Rule 2790 generally is predicated on a member's involvement in the allocation process. As such, NASD staff granted an exemption from Rule 2790 in connection with both offerings.

NASD is proposing to codify this position by amending Rule 2790(d) to provide that the prohibitions on the purchase and sale of new issues in Rule 2790 do not apply to securities that are specifically directed by the issuer to restricted persons, provided that a broker-dealer: (1) Does not underwrite any portion of the offering; (2) does not solicit or sell any new issue securities in the offering; and (3) has no involvement or influence, directly or indirectly, in the issuer's allocation decisions with respect to any of the new issue securities in the offering.

Prohibition of Issuer-Directed Allocations to Broker-Dealers. NASD also is proposing to amend the issuer-directed provision in Rule 2790(d)(1) to prohibit expressly issuer-directed allocations of new issues to a broker-dealer. NASD believes that issuer-directed allocations to a broker-dealer run contrary to the purposes of the Rule. As discussed above, Rule 2790(d)(1) permits allocations of new issue securities by the issuer to an account in which broker-dealer personnel, finders or fiduciaries, or certain members of their immediate family have a beneficial interest, if such persons, or members of their immediate family, are employees or directors of the issuer, the issuer's parent, or a subsidiary of the issuer or the issuer's parent. However, NASD does not see any corresponding basis to justify new issue allocations from the issuer to a broker-dealer. The conditions in Rule 2790(d)(1) generally are inapplicable to a broker-dealer. Moreover, we have noted under the current Rule that to the extent that broker-dealer personnel have a beneficial interest in a broker-dealer, the broker-dealer would be subject to the limitations in Rule 2790(d)(1). The proposed rule change would establish a more direct prohibition against purchases of new issues by broker-dealers.

NASD will announce the effective date of the proposed rule change in a *Notice to Members* (''*NTM*'') to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *NTM* announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change strikes the correct

[3] The term broker-dealer personnel includes, among others, any officer, director, general partner, associated person, and employee of a broker-dealer, as well as certain immediate family members of such persons. The term finders and fiduciaries, with respect to the security being offered, includes a finder or any person acting in a fiduciary capacity to the managing underwriter, including, but not limited to, attorneys, accountants, and financial consultants, as well as certain immediate family members of such persons. *See* NASD Rules 2790(i)(10)(B) and (i)(10)(C).

[4] *See* Letter to Noel M. Gruber, Kennedy & Barris, LLP, from Afshin Atabaki, NASD, dated October 18, 2005 (''Gruber Letter'') (*available at: http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_015421&PrinterFriendly=1*), and Letter to Bruce E. Lee from Afshin Atabaki, NASD, dated February 3, 2006 (''Lee Letter'') (*available at: http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_016098&PrinterFriendly=1*).

[5] Although a member was involved in one of these offerings, the member's involvement in the offering was mandated under state law and limited solely to ministerial functions.

[6] 15 U.S.C. 78o–3(b)(6).

balance between providing issuers with flexibility to direct shares and improving the capital raising process while at the same time preserving the objectives of the Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–074 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASD–2006–074. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

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–NASD–2006–074 and should be submitted on or before February 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1060 Filed 1–24–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55127; File No. SR–NASD–2003–168]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Amendment No. 6 and Order Granting Accelerated Approval to Proposed Rule Change Relating to the Release of Information Through NASD's BrokerCheck

January 18, 2007.

I. Introduction

On November 21, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Interpretive Material (''IM'') 8310–2 (as proposed, ''NASD BrokerCheck Disclosure'') and add IM–8310–3 (''Release of Disciplinary Complaints, Decisions and Other Information''). NASD filed Amendment Nos. 1, 2, and 3 to the proposed rule change on September 28, 2004, March 8, 2005, and April 12, 2005, respectively. The proposed rule change, as amended by Amendment Nos. 1, 2 and 3, was published for comment in the **Federal Register** on June 30, 2005.[3] In response to the First Notice, the Commission received eight comment letters.[4] On June 6, 2006, NASD submitted a response to the comment letters[5] and filed Amendment No. 4 to the proposed rule change. On June 22, 2006, NASD filed Amendment No. 5 to the proposed rule change. The Commission published the proposed rule change, as further amended by Amendment Nos. 4 and 5, for comment in the **Federal Register** on July 5, 2006.[6] In response to the Second Notice, the Commission received four comment letters.[7] On August 30, 2006, NASD submitted a response to the additional comment letters[8] and filed

[7] 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. 51915 (June 23, 2005), 70 FR 37880 (''First Notice'').

[4] *See* Letters from Barry Augenbraun, Senior Vice President and Corporate Secretary, Raymond James Financial, Inc., dated July 8, 2005 (''Raymond James Letter''); Joseph D. Fleming, Managing Director and Chief Compliance Officer, Piper Jaffray & Co., dated July 13, 2005 (''Piper Jaffray Letter''); Ronald C. Long, Senior Vice President, Regulatory Policy and Administration, Wachovia Securities, LLC, dated July 18, 2005 (''Wachovia Letter''); Mario Di Trapani, President, Association of Registration Management, dated July 19, 2005 (''ARM Letter I''); John S. Simmers, CEO, ING Advisors Network, dated July 19, 2005 (''ING Letter''); Coleman Wortham III, President and CEO, Davenport & Company LLC, dated July 20, 2005 (''Davenport Letter''); Jill Gross, Director of Advocacy, and Rosario M. Patane, Student Intern, Pace Investor Rights Project, dated July 21, 2005 (''Pace Letter); and Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association, dated July 27, 2005 (''SIA Letter I'') to Jonathan G. Katz, Secretary, Commission.

[5] *See* Letter from Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 6, 2006 (''NASD Response Letter I'').

[6] *See* Securities Exchange Act Release No. 54053 (June 27, 2006), 71 FR 38196 (''Second Notice'').

[7] *See* Letters from Pamela S. Fritz, Chief Compliance Officer, MWA Financial Services, Inc., dated July 18, 2006 (''MWA Financial Letter''); Eileen O'Connell Arcuri, Executive Committee Member, ARM, dated July 20, 2006 (''ARM Letter II''); Stuart J. Kaswell, Senior Vice President and General Counsel, SIA, dated July 20, 2006 (''SIA Letter II''); and Patricia D. Struck, NASAA President, Wisconsin Securities Administrator, North American Securities Administrators Association, Inc. (''NASAA''), dated July 20, 2006 (''NASAA Letter I'') to Nancy M. Morris, Secretary, Commission.

[8] *See* Letter from Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and

Continued

Amendment No. 6 to the proposed rule change.[9] The Commission received one comment letter on NASD Response Letter II.[10]

This order grants accelerated approval to the proposed rule change, as amended by Amendment Nos. 1 through 6 and solicits comments from interested persons on the filing as amended by Amendment No. 6.

II. Description of Proposed Rule Change

A. Background

NASD established NASD BrokerCheck (''BrokerCheck'') in 1988 to provide investors with information on the professional background, business practices, and conduct of NASD members and their associated persons. In 1990, Congress passed legislation requiring NASD to establish and maintain a toll-free telephone number to receive inquiries regarding its members and their associated persons. In 1998, NASD began providing certain administrative information, such as approved registrations and employment history, online via NASD's Web site. In 2000, NASD amended IM–8310–2(a) which amendment: (1) Established a two-year period for disclosure of information about persons formerly registered with NASD; (2) authorized release of information about terminated persons and firms that is provided on the Form U6 (the form regulators use to report disciplinary actions), if such matters would be required to be reported on Form U4 (''Uniform Application for Securities Industry Registration or Transfer'') or Form BD (''Uniform Application for Broker-Dealer Registration''); and (3) provided for delivery of automated disclosure reports, which include information as reported by filers on the uniform forms. In 2002, NASD initiated a comprehensive review of the information that NASD makes publicly available under IM–8310–2, which included an evaluation of BrokerCheck from the perspective of public investors regarding their experience in obtaining information, as well as their assessment of the value of the information they received. NASD subsequently issued *Notice to Members* 02–74 in November 2002, seeking comment on, among other things, the possible expansion of information that NASD makes available to the public and *Notice to Members* 03–76 in December 2003, seeking comment on proposed enhancements to the existing approach for the electronic delivery of written reports used by BrokerCheck.[11]

B. Proposed Rule Change

Information NASD Proposes To Release

While all disclosures would be subject to certain exceptions as described more fully below, NASD proposes to release through BrokerCheck certain information as applicable regarding current or former members, associated persons, or persons who were associated with a member within the preceding two years. Under proposed IM–8310–2, NASD would release any information reported on the most recently filed Form U4, Form U5 (''Uniform Termination Notice for Securities Industry Registration''), Form U6, Form BD, and Form BDW (''Uniform Request for Broker-Dealer Withdrawal'') (collectively, ''Registration Forms'').

NASD also proposes to release currently approved registrations, summary information about certain arbitration awards against a member involving a securities or commodities dispute with a public customer,[12] information with respect to qualification examinations passed by the person and the date passed,[13] and, in response to telephonic inquiries via the BrokerCheck toll-free telephone listing, whether a member is subject to the provisions of NASD Rule 3010(b)(2), the Taping Rule. In addition, NASD proposes to release the name and succession history for current or former members.

The proposed rule change also would address the reporting of Historic Complaints, defined by NASD as the information last reported on Registration Forms relating to customer complaints that are more than two years old and that have not been settled or adjudicated, and customer complaints, arbitrations, or litigations that have been settled for an amount less than $10,000 and which are no longer reported on a Registration Form.[14] NASD proposes to release Historic Complaints only if all three of the following conditions have been met: (1) Any such matter became a Historic Complaint on or after the implementation date of this proposed rule change; [15] (2) the most recent Historic Complaint or currently reported customer complaint, arbitration, or litigation is less than ten years old; and (3) the person has a total of three or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations, or litigations, or Historic Complaints (subject to the limitation that they became a Historic Complaint on or after the implementation date of this proposed rule change), or any combination thereof. Once all these conditions have been met, NASD would release all information regarding the person's Historic Complaints, again provided they became Historic Complaints on or after the implementation date of this proposed rule change.

NASD also proposes to provide persons with the opportunity to submit a brief comment, in the form and in accordance with procedures established by NASD, which would be included in the information NASD releases through BrokerCheck. Only comments relating to the information provided through BrokerCheck would be included.[16] Persons who were associated with a member within the preceding two years but who are no longer registered with a member that wish to submit a comment

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Disclosure, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated August 30, 2006 (''NASD Response Letter II'').

[9] *See* Partial Amendment dated August 30, 2006. In Amendment No. 6, NASD indicated that it is amending its initial proposal which would have changed the manner in which it will measure the two-year time frame for customer complaint disclosures to begin on the date on which the member received the complaint. Accordingly, for purposes of disclosure pursuant to IM–8310–2, NASD will continue to disclose complaints through BrokerCheck for 24 months, beginning on the date that the complaint is reported to the Central Registration Depository (''CRD®'' or ''CRD System''), regardless of the date on which the member received the complaint. In addition, NASD clarified that it currently releases summary information concerning arbitration awards issued by NASD arbitrators and will continue to work with other regulators regarding disclosure of arbitration awards issued in other forums. In conjunction with this clarification, NASD proposed to amend the text of proposed IM–8310–2(b)(3) to correct the placement of the word ''certain'' so that it modifies ''arbitration awards'' rather than ''summary information.''

[10] *See* Letter from Patricia D. Struck, NASAA President, Wisconsin Securities Administrator, NASAA, to Nancy Morris, Secretary, Commission, dated September 7, 2006.

[11] *See* First Notice for a discussion on the comments received on *Notice to Members* 02–74 (November 2002) and *Notice to Members* 03–76 (December 2003).

[12] NASD currently releases summary information concerning arbitration awards issued by NASD arbitrators and will continue to work with other regulators regarding disclosure of arbitration awards issued in other forums. *See* Amendment No. 6, *supra* note 9.

[13] NASD would not, however, release information regarding examination scores or examinations that the person failed.

[14] NASD does not currently make Historic Complaints available to the public.

[15] NASD has indicated that the implementation date of this proposed rule change would be no later than 90 days following Commission approval.

[16] Consistent with current practice, NASD would reserve the right to reject comments or redact information from a comment or a report, on a case-by-case basis, that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns, which concerns are not outweighed by investor protection concerns. NASD, in rare circumstances, has excluded or redacted information in cases involving stalking or terrorist threats.

would be required to submit a signed, notarized affidavit in the form specified by NASD.[17] Persons who are currently registered with a member firm would continue to be required to amend Form U4, where possible, instead of submitting a separate comment.[18] These comments also would be made available through the CRD system to participating regulators, and to any member firms that the person who submitted the comment is associated with or is seeking to be associated with.[19]

NASD also proposes that, upon written request, NASD could provide a compilation of information about NASD members, subject to terms and conditions established by NASD, and after execution of a licensing agreement prepared by NASD. NASD expects to charge commercial users of such compilations reasonable fees as determined by NASD.[20] Such compilations of information would consist solely of information selected by NASD from Forms BD and BDW and would be limited to information that is otherwise publicly available from the Commission.

Information NASD Proposes Not To Release

Notwithstanding information that NASD proposes to release above, NASD would not release Social Security numbers, residential history information, physical description information, information that NASD is otherwise prohibited from releasing under Federal law or information provided solely for use by regulators. Additionally, NASD proposes to reserve the right to exclude, on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language, or information that raises significant identity theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns.

NASD also proposes not to release information about current or former members, associated persons or persons who were associated with a member within the preceding two years that has been reported on the Registration Forms relating to regulatory investigations or proceedings if the reported regulatory investigation or proceeding was vacated or withdrawn by the instituting authority. Additionally, NASD proposes not to release the most recent information reported on the Registration Forms if: (1) NASD has determined that the information was reported in error by a member, regulator, or other appropriate authority; or (2) the information has been determined by regulators, through amendments to the uniform Registration Forms, to be no longer relevant to securities registration or licensure, regardless of the disposition of the event or the date the event occurred.

With respect to information reported on the Form U5, NASD proposes not to release Form U5 information for 15 days following the filing of such information with NASD, in order to give persons on whose behalf the Form U5 was submitted an opportunity to file a Form U4 or submit a separate comment to NASD for inclusion with the information released pursuant to BrokerCheck, regarding disclosure information reported on Form U5 and any amendments thereto. NASD would then release both the Form U5 disclosure and the person's comment, if any, to a requestor. However, NASD proposes to continue its current practice of not releasing ''Internal Review Disclosure'' information reported by members, associated persons, or regulators on Section 7 of Form U5[21] or the ''Reason for Termination'' information reported on Section 3 of Form U5. Nonetheless, under IM–8310–2, as proposed, information regarding certain terminations for cause (*i.e.*, those that meet the criteria in current Question 7F on Form U5) would be disclosed through BrokerCheck. Finally, NASD currently does not release information reported on Schedule E of the Form BD.[22] Under the proposed rule change, NASD would continue not to release this information.

Electronic Delivery of Written Reports

Currently, NASD makes written reports available to the public by U.S. mail in printed form and by email in an electronic format upon receipt of a request via email or the established toll-free number. Due to a number of practical issues that have arisen regarding email delivery, NASD plans to replace the current delivery approach with a link to a controlled-access server that would allow access to the requested report through a secure Internet session in response to inquiries via email or through the established toll-free number. Access to the information would be limited to the written report requested, and only the individual making the request would be granted access to the database. A requestor also would be able to view investor education materials that would aid him or her in understanding the written report. NASD also would continue to provide hard copy reports to those requesting hard copies.

Other Changes

NASD also proposes to make conforming changes to IM–8310–2, including making various numbering and lettering changes, moving former subsections (b) through (m) into new IM–8310–3, and updating references to ''the Association'' and ''NASD Regulation, Inc.''

III. Comment Summary and NASD's Response

As noted above, the Commission received eight comment letters with respect to the First Notice and four comment letters with respect to the Second Notice.[23] After the First and Second Notices, NASD filed two response letters, respectively, to address the concerns raised by the commenters.[24] The Commission then

[17] NASD would publish instructions for submitting comments on its Web site for such persons. NASD would review the affidavit to confirm relevance and compliance with the established instructions and, if it met the criteria, would add the comment to the written report provided through BrokerCheck. The person submitting the comment would be able to replace or delete the comment in the same way.

[18] NASD indicated that it would include instructions on how firms could amend archived disclosures in a Notice to Members announcing approval of this proposed rule change and also would post frequently asked questions and answers about this process on NASD's Web site. *See* NASD Response Letter I.

[19] The availability of comments submitted by persons who were associated with a member within the preceding two years but who are no longer registered with a member through the CRD system would parallel the availability of a report on a broker through BrokerCheck. For example, such comments would no longer be available through the CRD system if the broker has been out of the industry for more than two years.

[20] The Commission notes that such proposed fees would need to be filed with the Commission pursuant to Section 19(b)(2) of the Act.

[21] Although the response to the internal review question and related information reported on the associated disclosure reporting page would not be released, if the matter subject to the internal review is or becomes reportable under the investigation, termination, or other disclosure questions, the disclosure made pursuant to these other disclosure questions would be released.

[22] The Commission notes the Division has granted no-action relief indicating that it will not recommend enforcement action to the Commission under Rules 15b1–1, 15b3–1, 15Ba2–2, and 15Ca2–1 under the Act for broker-dealers that file the Uniform Branch Office Registration Form (''Form BR''), and do not complete Schedule E, or file amendments to Schedule E, of the Form BD, as of the date on which the transition to the Form BR began and the CRD® no longer accepted Schedule E filings, which occurred in October 2005. *See* Letter from Catherine McGuire, Chief Counsel, Division, Commission, to Patrice M. Gliniecki, Senior Vice President and Deputy General Counsel, NASD, dated September 30, 2005.

[23] *See supra* notes 4 and 7.

[24] *See* NASD Response Letters I and II.

received a second comment letter addressing NASD Response Letter II.[25]

Generally, the initial set of commenters took issue with the portion of the proposed rule change regarding disclosure of an individual's Historic Complaints, which includes information last reported on the Registration Forms relating to customer complaints that are more than two years old and that have not been settled or adjudicated and customer complaints, arbitrations, or litigations that have been settled for an amount less than $10,000 and are no longer reported on a Registration Form. Although one commenter suggested that all Historic Complaints should be disclosed to customers,[26] most of the commenters argued that the proposed changes to NASD's rules relating to Historic Complaints would have harmful effects on member firms and investors, with several of the commenters requesting that the Commission not approve the proposed rule change because of this provision.[27] For instance, several of the commenters believed that the release of a broker's Historic Complaints would give too much weight to unproven allegations and complaints and thereby could unfairly harm the broker's reputation.[28] These commenters argued that disclosure of all the complaints could be misleading to investors and invite them to form conclusions based on allegations that may not have merit and are not necessarily representative of a pattern of misconduct.[29] Two commenters also argued that disclosing archived complaints to the public would ignore the fact that this type of information was originally reported for regulatory purposes in connection with registration and licensing matters.[30] Similarly, another commenter indicated that since the reporting process was ''first and foremost a regulatory tool and not a public disclosure tool,'' firms had often reported events that were not clearly reportable. This commenter believed that the proposed rule change would now have the effect of discouraging firms from reporting questionable matters.[31]

Furthermore, several commenters expressed concern that NASD's proposal would inhibit firms from settling minor claims, since these could be publicly disclosed, and thereby create an incentive for firms to litigate customer complaints more often.[32] Some of these commenters asserted that the settlement of customer complaints does not necessarily indicate an acknowledgement of improper behavior by the broker, but rather is frequently the result of a cost/benefit analysis or an effort to maintain client goodwill.[33] Accordingly, several of the commenters believed that the adverse impact on settlements would not serve the interest of investors or advance the public interest.[34] Additionally, believing that the proposal would encourage a broker to litigate customer complaints in order to protect its record, some commenters maintained that the increase in cost and time spent on customer complaints would adversely affect member firms and investors alike.[35]

A few commenters also opposed NASD's proposed threshold which would trigger the release of all Historic Complaints, *i.e.*, if the person has three or more currently disclosable regulatory actions, currently reported customer complaint, arbitration, or litigation disclosures, or Historic Complaint disclosures, and the most recent Historic Complaint or currently reported customer complaint, arbitration, or litigation is less than 10 years old.[36] While most of these commenters appeared to incorrectly understand NASD's proposed application of the ten-year condition,[37] these commenters generally believed that three disclosures over ten years would not necessarily be indicative of a pattern of conduct by the registered representative because it could include frivolous and baseless complaints filed against the representative.[38] Three of these commenters suggested that the threshold for reporting Historic Complaints should be amended to be five reportable events within a three-year period,[39] with one commenter also recommending that the look back for Historic Complaints should be limited to ten years.[40] One commenter also believed that certain types of complaints should be excluded from the list of disclosable events that would trigger reporting of Historic Complaints, such as certain complaints filed by joint or related account holders, operational complaints or those alleging primarily a product failure or poor performance.[41] Other commenters suggested that denied or unsubstantiated claims[42] and unadjudicated regulatory allegations[43] should not be counted towards the threshold requirement for disclosing Historic Complaints.

As part of their argument regarding the proposed rule's unfairness in disclosing trivial or frivolous claims, three commenters asserted that NASD's proposal to allow brokers to provide a brief commentary in response to the disclosed information would not provide an adequate safeguard for

[25] *See* NASAA Letter II.

[26] *See* Pace Letter.

[27] *See, e.g.,* Davenport Letter, Piper Jaffray Letter, Raymond James Letter, and Wachovia Letter. *See also* SIA Letter I (objecting to the proposed release of archived Historic Complaints).

[28] *See, e.g.,* ARM Letter I, Davenport Letter, ING Letter, Piper Jaffray Letter, Raymond James Letter, SIA Letter I, and Wachovia Letter. One commenter believed this emphasis on unsubstantiated and unadjudicated customer complaints to be ''fundamentally unfair'' and that NASD's proposal ''significantly erodes'' due process and undermines the customer arbitration process. This commenter also asserted that registered representatives should have the opportunity to defend against regulatory allegations before such allegations are used as the basis of expanded adverse disclosure. *See* Davenport Letter. Another commenter argued that, unlike the current system, NASD's proposal would make it possible for frivolous claims to remain reportable as a Historic Complaint potentially for years to come and could allow a ''vexatious complainant'' to place a broker in the continuous status of having all of its Historic Complaints disclosed by repeatedly making frivolous claims to meet the ''three or more'' standard. *See* Wachovia Letter.

[29] *See, e.g.,* ARM Letter I, Davenport Letter, ING Letter, Piper Jaffray Letter, Raymond James Letter, SIA Letter I and Wachovia Letter. *See also* SIA Letter II.

[30] *See* ARM Letter I and SIA Letter I (arguing that the disclosure of Historic Complaints ignores the inherent differences between the CRD system, which is used by regulators, and the BrokerCheck system, which discloses to the public a subset of the information contained within the CRD system). *See also* ING Letter.

[31] *See* ING Letter.

[32] *See, e.g.,* ARM Letter I, Davenport Letter, ING Letter, Piper Jaffray Letter, Raymond James Letter, SIA Letters I and II, and Wachovia Letter. *See also* ARM Letter II.

[33] *See, e.g.,* ARM Letter I, Davenport Letter, ING Letter, Piper Jaffray Letter, Raymond James Letter, SIA Letter I and Wachovia Letter.

[34] *See, e.g.,* ING Letter, Piper Jaffray Letter, Raymond James Letter, SIA Letter I and Wachovia Letter.

[35] *See, e.g.,* ARM Letter I, ING Letter and Wachovia Letter. One commenter predicted that NASD Dispute Resolution would be overwhelmed by having to handle cases which otherwise would have been settled. *See* SIA Letter I.

[36] *See, e.g.,* ING Letter, MWA Financial Letter, SIA Letter I and Wachovia Letter. *But see* Pace Letter (arguing that the ''three or more'' disclosed incident threshold for reporting all Historic Complaints was too high and that BrokerCheck should disclose all Historic Complaints to customers).

[37] The Commission notes that most of these commenters misunderstood NASD's proposal, believing that NASD would release all Historic Complaint information, regardless of age, if the registered person has a total of three of more disclosures within a ten-year period. The Commission clarifies that the ten-year condition of NASD's proposal would require that only the most recent of the Historic Complaint or currently reported customer complaint, arbitration, or litigation must be less than ten years old, which would trigger disclosure of all Historic Complaints, if the other conditions are met.

[38] *See, e.g.,* ING Letter, MWA Financial Letter, and SIA Letter I. *See also* Wachovia Letter.

[39] *See* ING Letter, MWA Financial Letter, and SIA Letter I.

[40] *See* ING Letter.

[41] *See* SIA Letter I.

[42] *See* ARM Letter I.

[43] *See* Davenport Letter.

brokers.[44] As evidence of the proposed rule's imbalance against brokers, these commenters pointed to the procedural obstacles that brokers would have to overcome in order to submit a comment.[45]

In addition, to address the harm of disclosing potentially misleading information to investors and to protect against potential abuses by disgruntled customers, a few commenters suggested adding certain protections to the proposal,[46] including changing the proposal so that Historic Complaints, by default, would not be disclosed unless NASD reviewed the matter to determine whether to disclose the Historic Complaints.[47] To assist investors in evaluating information regarding unadjudicated claims and de minimis settlements, the same commenter suggested that NASD insert a clarifying statement indicating that a matter may have been unadjudicated because the customer declined to pursue the matter or that it was settled for a modest amount to avoid litigation and should not be considered an admission of liability or responsibility.[48] Another commenter suggested that NASD require customers and their counsel to attest that they have a reasonable, good-faith basis for naming a registered person and that NASD provide to customers who are preparing to file claims additional investor education material explaining the implications of naming a particular registered person and the potential damaging implications.[49]

To address these concerns, NASD indicated that it has developed an educational component to the proposed BrokerCheck report and Web site that NASD believes would put Historic Complaints in the appropriate context and enable investors to give them appropriate weight when evaluating a particular firm or registered person.[50] Specifically, NASD noted that there would be an introductory section preceding the BrokerCheck report explaining that certain reported items may involve pending actions or allegations that may be contested and not resolved or proven, and that these items may be withdrawn or dismissed, resolved in favor of the registered person, or concluded through a negotiated settlement with no admission or conclusion of wrongdoing. In addition, NASD noted that the BrokerCheck report would include certain status information for each Historic Complaint that would indicate whether or not the complaint was settled. NASD also indicated that it would advise readers through the BrokerCheck report and its Web site that they should not rely solely on the information available through BrokerCheck and should consult other sources to the extent possible for information about the registered person.

In response to commenter's criticisms against the brief commentary mechanism that individuals can use to respond to disclosed information, NASD emphasized that registered persons would be able to submit information providing context and perspective about any event, including Historic Complaints. NASD noted that individuals typically provide such information in a comment section on the Form U4 at the time the event is reported, and that the registered individual can add to its previously submitted comment or comment for the first time through its firm using the CRD system.[51] In addition, NASD noted that individuals who are no longer registered would be able to provide comment through a signed affidavit to CRD. NASD also represented that it would not edit the comments, except that it reserved the right to reject or redact comments that contain confidential customer information, offensive or potentially defamatory language, or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns.[52]

Furthermore, a few commenters expressed concern over the fairness of retroactively altering the rules regarding the disclosure of Historic Complaints, including the disclosure of settlements after such settlements have been made, since registered persons often agree to settlements based on the assumption that the settlement information would not become part of the public record or have long-term negative effects on their reputations or business relationships.[53] Two commenters suggested that NASD should prospectively implement its proposed rules regarding the disclosure of Historic Complaints and only disclose complaints reported after the effective date of the proposed rule change.[54]

In response to commenter's concerns that firms and registered persons may have made certain decisions relating to customer complaints, arbitrations, or litigations based on the current rules under which the CRD system and BrokerCheck operate, NASD proposed in Amendment Nos. 4 and 5 to provide that only Historic Complaints that become Historic Complaints on or after the implementation date of the proposed rule change (*i.e.*, those that are archived on or after the implementation date) would be eligible for disclosure through BrokerCheck.[55] NASD stated that such a change would be in the public interest. Under this proposed modification, NASD would disclose through BrokerCheck all of an individual's Historic Complaints that became Historic Complaints on or after the implementation date of the proposed rule change if: (1) The most recent Historic Complaint or currently reported customer complaint, arbitration, or litigation is less than ten years old, and (2) the person has a total of three or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations, or litigations, or Historic Complaints (subject to the limitation that they became a Historic Complaint on or after the implementation date of the proposed rule) or any combination thereof. According to NASD, the revised approach would strike a fair balance between public investors' interests in the background of the individuals with

[44] *See* Piper Jaffray Letter, Raymond James Letter, and Wachovia Letter. *See also* ARM Letter I and SIA Letter I (criticizing the expungement process as a viable remedy for a registered person to remove meritless claims from its record).

[45] For instance, two of these commenters believed that the comment process would be administered by a ''skeptical NASD staff'' that would have the right to reject any brief comment. *See* Piper Jaffray Letter and Raymond James Letter. The other commenter criticized the signed, notarized affidavit that certain brokers would have to provide in order to submit a comment. *See* Wachovia Letter. *But see* Pace Letter. This commenter supported NASD's proposed comment process for associated persons to respond to disclosed material and believed it provided an opportunity for them to explain any information they perceive to be incomplete.

[46] *See, e.g.,* SIA Letter I and Wachovia Letter.

[47] *See* Wachovia Letter. The commenter believed that, if brokers were aware that NASD would exercise discretion and judgment in determining when Historic Complaints should be disclosed, then brokers would have less of an incentive to litigate. *Id.*

[48] *Id.*

[49] *See* SIA Letter I.

[50] *See* NASD Response Letter I.

[51] If the proposed rule change is approved by the Commission, NASD represented that it will provide instructions in a Notice to Members on how firms may amend archived disclosures and will also post frequently asked questions and answers about this process on NASD's Web site. *See* NASD Response Letter I.

[52] According to NASD, each person, whether registered or formerly registered, will be responsible for ensuring that a Historic Complaint that is not currently disclosed through BrokerCheck adequately reflects its comment about the matter in the event such matter becomes disclosed to the public. *Id.*

[53] *See, e.g.,* ARM Letters I and II, ING Letter and SIA Letters I and II.

[54] *See* ING Letter and SIA Letter I. *See also* ARM Letter II, discussed further below (requesting that NASD not apply the new guidelines to any matters that are currently pending as well).

[55] *See* NASD Response Letter I. *See also* Amendment No. 4.

whom they do business and the concerns of participants in the securities industry.

In reaction to NASD's proposed changes in Amendment Nos. 4 and 5, the Commission received four additional comment letters. After the Second Notice, two commenters expressed support for this recent change by NASD to provide that Historic Complaints will not be eligible for disclosure if the matter became a Historic Complaint before the implementation date of the proposed rule change.[56] Another commenter wanted NASD to go even further by recommending that the new BrokerCheck program disclose only those matters that commence following the rule change and not include any matters that are currently pending.[57] According to this commenter, current matters entered into before the rule change should be archived after two years as the current guidelines allow.[58]

However, one commenter expressed serious reservations regarding the proposed limitation on the disclosure of Historic Complaints.[59] Specifically, this commenter argued that the effect of the recent amendment is that Historic Complaint information that currently exists within CRD would never be released to the public through BrokerCheck, while the only Historic Complaints that would be disclosed are those that become Historic Complaints after the proposal's effective date. This commenter was not persuaded by other commenters' arguments that the proposed rule should be implemented prospectively because firms and registered persons might have relied on the current rules under which CRD and BrokerCheck operate when they decided to settle certain customer complaints, arbitrations, or litigations. First, the commenter maintained that these other commenters did not substantiate their argument with any specific cases, surveys, or studies in which registered representatives actually settled customer disputes because they would not be publicly disclosed after two years.[60] Second, the commenter disagreed with other commenters' assertions that NASD members had settled matters without the knowledge that the rules might change in the future. In support of its argument, the commenter indicated that NASD's *Notice to Members 02–74* that was issued in 2002 put NASD members on notice that the rules regarding the public disclosure of customer complaints and, more specifically, the rules regarding Historic Complaints might be revised and modified.[61] This commenter asserted that if NASD wanted to strike a balance between the industry and investors, NASD should have considered that its membership was aware of the proposed changes to BrokerCheck since its Notice to Members in 2002 and should have proposed the earlier date as the date for measuring which complaints would fall within the definition of Historic Complaints under the proposed rule change. Furthermore, this commenter argued that, if the proposal were implemented as proposed in Amendment No. 4, more comprehensive information could be available for the same financial services professional in the Investment Adviser Public Disclosure—Individual (''IAPDI'') system, which is currently being developed, than in BrokerCheck. The commenter maintained that this would go against NASD's original intent of providing the same level of information through BrokerCheck that the states provide and could lead to investor confusion.[62] Finally, this commenter took issue with NASD's proposal to alter the way it would measure the two-year reporting and disclosure period for customer complaints. While NASD currently calculates the two-year period for disclosure of customer complaints as of the date the complaint was reported on Forms U4 and U5, NASD had proposed to consider this two-year period to begin on the date on which the member received the complaint, both for purposes of reportability on Forms U4 and U5 and for disclosure purposes. This commenter believed this change could encourage registered persons and their firms to manipulate the amount of time the complaint would be publicly disclosed by delaying the reporting or perhaps withholding the reporting of customer complaints while the two-year period is running.

In response to this commenter's objection to NASD's proposal to disclose a Historic Complaint only if the item became a Historic Complaint on or after the implementation date of the proposal, NASD maintained that its proposal is an evenhanded approach that would provide investors with additional information about brokers who have demonstrated a pattern of conduct of accumulating complaints, regulatory actions, arbitrations, or litigations, and that would also address the fairness concerns of participants in the securities industry by not retroactively changing the rules governing the disclosure of such events.[63] To address the commenter's concern over measuring the two-year time period for disclosing customer complaints through BrokerCheck from the date the complaint is filed with the firm, rather than the date the complaint is reported to the CRD system, NASD stated that, to the extent a firm may not timely amend a registered person's Form U4 to report a customer complaint, the event should still be disclosed through BrokerCheck for two years. Accordingly, NASD decided not to amend the manner in which it currently measures the two-year time frame for complaint disclosures and provided that complaints will continue to be disclosed through BrokerCheck for 24 months beginning on the date that the complaint is reported to the CRD system.[64]

IV. Discussion and Commission's Findings

After careful consideration of the proposal, the comment letters, and NASD's responses to the comment letters, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[65] The Commission believes that the proposed rule change, as amended, is consistent with Section 15A(b) of the Act,[66] in general, and furthers the objectives of Section 15A(b)(6),[67] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to

[56] *See* MWA Financial Letter and SIA Letter II.

[57] *See* ARM Letter II.

[58] *Id.*

[59] *See* NASAA Letter I.

[60] The commenter criticized NASD for agreeing with other commenters that ''stockbrokers would rather litigate customer disputes than settle them because the complaint would be publicly disclosed.'' *Id.*

[61] The commenter cited to the 58 plus comment letters that NASD received in response to this *Notice to Members* as evidence that NASD's membership was aware that the rules regarding the release of historic information might change. *Id.*

[62] The commenter was concerned that the same person would be treated differently for disclosure purposes depending on which system, BrokerCheck or IAPDI, an investor searches, and that the public would have to check multiple sources for disclosure on the same person. *Id.*

[63] *See* NASD Response Letter II and Amendment No. 6. *But see* NASAA Letter II. Continuing to object to NASD's proposal to disclose only those items that become a Historic Complaint after the implementation date, the commenter criticized NASD Response Letter II in failing to specifically respond to issues the commenter raised in its initial comment letter and urged the Commission to not approve the proposed rule change.

[64] *See* NASD Response Letter II.

[65] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[66] 15 U.S.C. 78*o*–3(b).

[67] 15 U.S.C. 78*o*–3(b)(6).

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. In addition, the Commission believes that the proposed rule change, as amended, is consistent with Section 15A(i) of the Act,[68] which requires that NASD establish and maintain a toll-free telephone listing, and a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding registration information on its members and their associated persons.

The Commission believes that investors must be given the information necessary to make an informed decision about whether or not to conduct business with a particular broker-dealer or associated person. At the same time, the Commission recognizes that broker-dealers and their associated persons have legitimate concerns related to the harm their reputations could suffer from inaccurate or misleading information being made available to the public, as well as from the release of confidential personal information. The Commission believes that the proposed rule change would adequately balance the needs of investors with the interests of broker-dealers and their associated persons by increasing the amount of information available through BrokerCheck, while adopting certain protections for broker-dealers and their associated persons. For instance, under the proposed rule change, NASD would not release certain confidential personal information or other information about an associated person or a member which is irrelevant or misleading.

Many of the commenters expressed concern regarding the release of Historic Complaints. Commenters argued, among other things, that the proposal would give too much weight to unproven allegations and complaints and could be misleading to investors, that the proposed threshold for disclosure of Historic Complaints is too low and over-inclusive, and that firms would be inhibited from settling minor claims, which are often settled as the result of a cost/benefit analysis or in an effort to maintain client goodwill, since they could be publicly disclosed.

The Commission notes that NASD has protections in place that should address the issues raised by the commenters. First, NASD would allow associated persons to submit relevant comments for inclusion with the information provided by BrokerCheck. While some of the commenters disputed the protections that the ''brief comment'' process would provide, the Commission notes that, as NASD reiterated in its response to comments, NASD would only reject or redact comments in very limited circumstances and, furthermore, would only do so if the concerns raised by the comments are not outweighed by investor protection concerns. In addition, NASD will include an introductory section preceding the BrokerCheck report that would provide a context within which to consider complaints, status information in the report that would make clear whether or not a Historic Complaint was settled, and advisories in the BrokerCheck report and on the Web site that would indicate that the reader should not rely solely on the information available through BrokerCheck.

Some commenters were concerned that altering the rules regarding disclosure of settlements after such settlements had been made would be unfair. The Commission believes NASD's decision to only release information on Historic Complaints that become Historic Complaints on or after the implementation date of the proposed rule change is a reasonable response to that concern. For instance, under the proposal, as amended, persons entering into new settlements would be fully aware that, if such settlements were for less than $10,000 and are no longer reported on a Registration Form, they would be disclosed as Historic Complaints if the threshold requirements for disclosure were met.

One commenter argued strongly against NASD's proposal to only release Historic Complaints that become Historic Complaints on or after the implementation date of the proposed rule change. This commenter asserted, among other things, that there had been sufficient notice of this proposal since November 2002 and that a better approach would be to release Historic Complaints that became Historic Complaints on or after that date. The Commission recognizes that differing judgments could be made as to the relevance of various Historic Complaints and the appropriate balance between the informational needs of investors and the interests of broker-dealers and their associated persons in assuring misleading information about them is not disseminated. The Commission believes NASD has struck a reasonable balance, and notes that, even using the implementation date as the ''cutoff'' for disclosure of Historic Complaints, the amount of information that would be disclosed through BrokerCheck would increase under this proposed rule change.

The same commenter argued that NASD should not change the way in which it measures the two-year disclosure period for customer complaints, which currently begins on the date the member reports the complaint. This commenter was concerned that, if complaints were only disclosed for two years from the date they were received by the member, there would be an incentive to delay or even withhold the reporting of customer complaints in order to shorten the disclosure period. The Commission notes that in Amendment No. 6 NASD has withdrawn this portion of its proposal. Accordingly, customer complaints will continue to be disclosed for two years from the date on which they are reported.

With regard to all other issues raised by the commenters, the Commission is satisfied that NASD has adequately addressed the commenters' concerns. The Commission further notes NASD's planned electronic distribution system should provide NASD with the flexibility to provide a report delivery solution that is more user-friendly, and that more efficiently meets investors' needs in light of changing technology, while still providing safeguards against data piracy.

While BrokerCheck is a valuable tool for an investor to use to get information about a firm or a registered person with whom the investor is considering doing business, the Commission would urge investors to check with each state where the firm has done business or where the sales person has been registered to obtain a complete picture of his or her disciplinary history.

Accelerated Approval

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[69] In Amendment No. 6, NASD: (i) indicated that it was withdrawing its original proposal to change the start date of the two-year period for disclosure of a customer complaint to the date on which the member receives the complaint; and (ii) clarified that it currently releases summary information concerning certain arbitration awards issued by NASD arbitrators and will continue to work with other regulators regarding disclosure of arbitration awards issued in other forums, and made a corresponding change to the proposed rule text. The Commission

[68] 15 U.S.C. 78*o*–3(i).

[69] 15 U.S.C. 78s(b)(2).

notes that NASD's amendments were largely in response to comments that the Commission received. The Commission believes that Amendment No. 6 adequately responds to commenters' concerns and notes that the proposed changes raise no new issues of regulatory concern. Accordingly, the Commission believes that granting accelerated approval to the filing is appropriate.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the filing, including whether the filing 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–NASD–2003–168 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASD–2003–168. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. 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–NASD–2003–168 and should be submitted on or before February 15, 2007.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities association, and, in particular, Section 15A(b)(6) of the Act[70] and 15A(i) of the Act.[71]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[72] that the proposed rule change (SR–NASD–2003–168) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[73]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1108 Filed 1–24–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55125; File No. SR–NYSEArca–2006–87]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Trade Shares of 81 Funds of the ProShares Trust Pursuant to Unlisted Trading Privileges

January 18, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 13, 2006, NYSE Arca, Inc. (''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On January 11, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as amended, and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through NYSE Arca Equities, proposes to trade pursuant to unlisted trading privileges (''UTP'') shares (''Shares'') of 81 funds (''Funds'') of the ProShares Trust (''Trust'') based on numerous underlying securities indexes.

The text of the proposed rule change is available on the Exchange's Web site at (*http://www.nysearca.com*), at the Exchange's Office of the Secretary, and at the Commission.

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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to trade the Shares of the 81 Funds pursuant to UTP under NYSE Arca Equities Rule 5.2(j)(3).[3] The Commission has approved the original listing and trading of the Shares on the American Stock Exchange LLC (''Amex'').[4]

The Funds are referred to as the Ultra Funds, Short Funds, and UltraShort Funds, as described more fully below. Each Fund would attempt, on a daily basis, to achieve its investment objective by corresponding to a specified multiple of the performance, or the inverse performance, of a particular equity securities index that underlies that Fund (each an ''Underlying Index'').

Ultra Funds:

Certain Funds seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Underlying Indexes (''Ultra Funds'').[5] If such Funds meet

[70] 15 U.S.C. 78*o*–3(b)(6).

[71] 15 U.S.C. 78*o*–3(i).

[72] 15 U.S.C. 78s(b)(2).

[73] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under NYSE Arca Equities Rule 5.2(j)(3) the Exchange may propose to list and/or trade pursuant to UTP ''Investment Company Units.''

[4] *See* Securities Exchange Act Release No. 55117 (January 17, 2007) (SR–Amex–2006–101).

[5] The Commission has previously approved trading certain Ultra Funds, Short Funds, and

their objective, the net asset value (the ''NAV'')[6] of the Shares of each Fund should increase (on a percentage basis) approximately twice as much as the Fund's Underlying Index when the prices of the securities in such Index increase on a given day, and should lose approximately twice as much when such prices decline on a given day. The Short Funds and UltraShort Funds (as described below) each have investment objectives that seek investment results corresponding to an inverse performance of the Underlying Indexes.

The Ultra Funds are (1) Ultra Russell 2000, (2) Ultra S&P SmallCap 600, (3) Ultra S&P500/Citigroup Value, (4) Ultra S&P500/Citigroup Growth, (5) Ultra S&P MidCap 400/Citigroup Value, (6) Ultra S&P MidCap 400/Citigroup Growth, (7) Ultra S&P SmallCap 600/Citigroup Value, (8) Ultra S&P SmallCap 600/Citigroup Growth, (9) Ultra Basic Materials, (10) Ultra Consumer Goods, (11) Ultra Consumer Services, (12) Ultra Financials, (13) Ultra Health Care, (14) Ultra Industrials, (15) Ultra Oil & Gas, (16) Ultra Real Estate, (17) Ultra Semiconductors, (18) Ultra Technology, (19) Ultra Utilities, (20) Ultra Russell Midcap Index, (21) Ultra Russell Midcap Growth Index, (22) Ultra Russell Midcap Value Index, (23) Ultra Russell 1000 Index, (24) Ultra Russell 1000 Growth Index, (25) Ultra Russell 1000 Value Index, (26) Ultra Russell 2000 Growth Index, and (27) Ultra Russell 2000 Value Index.

Short Funds

The Exchange also proposes to trade Shares of certain Funds that seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (−100%) of the Underlying Indexes (''Short Funds''). If such a Fund is successful in meeting its objective, the NAV of the corresponding Shares should increase approximately as much (on a percentage basis) as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately as much as the respective Index gains when prices in the Index rise on a given day.

The Short Funds are (1) Short Russell 2000, (2) Short S&P SmallCap 600, (3) Short S&P500/Citigroup Value, (4) Short S&P500/Citigroup Growth, (5) Short S&P MidCap 400/Citigroup Value, (6) Short S&P MidCap 400/Citigroup Growth, (7) Short S&P SmallCap 600/Citigroup Value, (8) Short S&P SmallCap 600/Citigroup Growth, (9) Short Basic Materials, (10) Short Consumer Goods, (11) Short Consumer Services, (12) Short Financials, (13) Short Health Care, (14) Short Industrials, (15) Short Oil & Gas, (16) Short Real Estate, (17) Short Semiconductors, (18) Short Technology, (19) Short Utilities, (20) Short Russell Midcap Index, (21) Short Russell Midcap Growth Index, (22) Short Russell Midcap Value Index, (23) Short Russell 1000 Index, (24) Short Russell 1000 Growth Index, (25) Short Russell 1000 Value Index, (26) Short Russell 2000 Growth Index, and (27) Short Russell 2000 Value Index.

Ultra-Short Funds

The Exchange also proposes to trade Shares of certain Funds that seek daily investment results, before fees and expenses, that correspond to twice the inverse (−200%) of the daily performance of the Underlying Indexes (''UltraShort Funds''). If such a Fund is successful in meeting its objective, the NAV of the corresponding Shares should increase approximately twice as much (on a percentage basis) as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when such prices rise on a given day.

The UltraShort Funds include (1) UltraShort Russell 2000, (2) UltraShort S&P SmallCap 600, (3) UltraShort S&P500/Citigroup Value, (4) UltraShort S&P500/Citigroup Growth, (5) UltraShort S&P MidCap 400/Citigroup Value, (6) UltraShort S&P MidCap 400/Citigroup Growth, (7) UltraShort S&P SmallCap 600/Citigroup Value, (8) UltraShort S&P SmallCap 600/Citigroup Growth, (9) UltraShort Basic Materials, (10) UltraShort Consumer Goods, (11) UltraShort Consumer Services, (12) UltraShort Financials, (13) UltraShort Health Care, (14) UltraShort Industrials, (15) UltraShort Oil & Gas, (16) UltraShort Real Estate, (17) UltraShort Semiconductors, (18) UltraShort Technology, (19) UltraShort Utilities, (20) UltraShort Russell Midcap Index, (21) UltraShort Russell Midcap Growth Index, (22) UltraShort Russell Midcap Value Index, (23) UltraShort Russell 1000 Index, (24) UltraShort Russell 1000 Growth Index, (25) UltraShort Russell 1000 Value Index, (26) UltraShort Russell 2000 Growth Index, and (27) UltraShort Russell 2000 Value Index.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Amex would disseminate for each Fund on a daily basis by means of Consolidated Tape Association (''CTA'') and CQ High Speed Lines information with respect to an Indicative Intra-Day Value (''IIV'') (as defined and discussed below), quotations for and last sale information concerning the shares, recent NAV, shares outstanding, and estimated and total cash amount per Creation Unit. Amex would make available on its Web site daily trading volume, closing price, NAV and final dividend amounts to be paid for each Fund. The NAV of each Fund is calculated and determined each business day at the close of regular trading, typically 4 p.m. Eastern Time (''ET''). The NAV would be calculated and disseminated at the same time to all market participants.[7]

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index would be publicly available on various Web sites such as *http://www.bloomberg.com.* Data regarding each Underlying Index is also available from the respective index provider to subscribers. Several independent data vendors also package and disseminate index data in various value-added formats (including vendors displaying both securities and index levels and vendors displaying index levels only).

The value of each Underlying Index would be updated intra-day on a real-time basis as its individual component securities change in price, and the intra-day values of each Underlying Index would be disseminated at least every 15 seconds throughout Amex's trading day (*i.e.*, the Exchange's Core Trading Session) by Amex or another organization authorized by the relevant Underlying Index provider.

To provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, Amex would disseminate through the facilities of the CTA: (1) Continuously throughout Amex's trading day (*i.e.*, the Exchange's Core Trading session), the market value of a Share; and (2) at least every 15 seconds throughout Amex's trading day (*i.e.*, the Exchange's Core Trading session), the IIV as calculated

UltraShort Funds of the ProShares Trust on the Exchange pursuant to UTP under NYSE Arca Equities Rule 5.2(j)(3). *See* Securities Exchange Act Release No. 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR–PCX–2005–115).

[6] NAV per Share of each Fund is computed by dividing the value of the net assets of such Fund (*i.e.*, the value of its total assets less total liabilities) by its total number of Shares outstanding. Expenses and fees are accrued daily and taken into account for purposes of determining NAV.

[7] Amex has represented that if the NAV is not disseminated to all market participants at the same time, it would halt trading in the shares of the Funds. If Amex halts trading for this reason, then the Exchange would do so as well.

by the Amex. Comparing these two figures helps an investor to determine whether, and to what extent, the Shares may be selling at a premium or a discount to NAV.

Shares would trade on the NYSE Arca Marketplace from 9:30 a.m. ET until 8 p.m. ET, even if the IIV is not disseminated from 4:15 p.m. ET to 8 p.m. ET.[8] The Exchange has appropriate rules to facilitate transactions in the Shares during these trading sessions.

Each investor would have access to the current portfolio composition of each Fund through the Trust's Web site (*http://www.proshares.com*) [9] and/or at Amex's Web site (*http://www.amex.com).*

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising an Underlying Index and/or the Financial Instruments of a Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares would be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule [10] or by the halt or suspension of trading of the underlying securities.

Moreover, the Exchange represents that it would cease trading the Shares of a Fund if the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12. UTP trading in the Shares is also governed by the trading halts provisions of NYSE ARCA Equities Rule 7.34 relating to temporary interruptions in the calculation or wide dissemination of the IIV or the value of the underlying index.

Shares would be deemed ''Eligible Listed Securities,'' as defined in NYSE Arca Equities Rule 7.55, for purposes of the Intermarket Trading System (''ITS'') Plan and therefore would be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

Unless exemptive or no-action relief is available, the Shares would be subject to the short sale rule, Rule 10a–1, and Regulation SHO under the Act. If exemptive or no-action relief is provided, the Exchange would issue a notice detailing the terms of the exemption or relief.

Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin would discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

The Information Bulletin would reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin would also discuss any exemptive, no-action, interpretive relief granted by the Commission from any rules under the Act. The Information Bulletin would disclose that the NAV for the Shares would be calculated after 4 p.m. ET each trading day.

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules. The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. Finally, the Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) [13] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In addition, the Exchange believes that the proposed rule change is consistent with Rule 12f–5 [14] under the Act because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[8] Because NSCC does not disseminate the new basket amount to market participants until approximately 6 p.m. to 7 p.m. ET, an updated IIV is not possible to calculate during the Exchange's late trading session (from 4:15 p.m. to 8 p.m. ET). The Exchange also states that the official index sponsors for the Underlying Indexes currently do not calculate updated index values during the Exchange's late trading session; however, if the index sponsors do so in the future, the Exchange would not trade this product unless such official index value is widely disseminated.

[9] The Trust's Web site is publicly accessible at no charge, and contains the following information for each Fund's Shares: (1) The prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (2) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts; (3) its prospectus and product description; and (4) other quantitative information such as daily trading volume. The prospectus and/or product description for each Fund would inform investors that the Trust's Web site has information about the premiums and discounts at which the Fund's Shares have traded.

[10] *See* NYSE Arca Equities Rule 7.12.

[11] For a list of the current members and affiliate members of ISG, *see http://www.isgportal.com.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 240.12f–5.

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–87 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2006–87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of 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–NYSEArca–2006–87 and should be submitted on or before February 15, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[17] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[18] The Commission notes that it previously approved the listing and trading of the Shares on Amex.[19] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[20] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. Furthermore, the IIV, updated to reflect changes in currency exchange rates, will be calculated by Amex and published via the facilities of the Consolidated Tape Association on a 15-second delayed basis throughout the Exchange's Core Trading Session. In addition, if the listing market halts trading when the IIV is not being calculated or disseminated, the Exchange would halt trading in the Shares. The Exchange has represented that it would follow the procedures with respect to trading halts set forth in NYSE Arca Equities Rule 7.34.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

2. Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

3. Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NYSEArca–

[15] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78*l*(f).

[18] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[19] *See supra* note 4.

[20] 17 CFR 240.12f–5.

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[22] 15 U.S.C. 78s(b)(2).

2006–87), as amended, be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Nancy M. Morris,

Secretary.

[FR Doc. E7–1058 Filed 1–24–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55124; File No. SR–OCC–2006–20]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Accelerate the Expiration Date of American-Style Equity Options That Have Been Adjusted To Call for Cash-Only Delivery

January 18, 2007.

I. Introduction

On October 26, 2006, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2006–20 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on November 29, 2006.[2] The Commission received no comment letters. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

In a cash-out merger, the common equity of the acquired company (''Security'') is converted into a right to receive a fixed amount of cash. On the day after the announced consummation date for the merger, the stock exchanges on which the Security is traded suspend all trading in the Security. Concurrently, the options exchanges discontinue trading in options overlying the Security. If a customer does not liquidate an out-of-the money option position before the exchange halts trading, its broker must carry the position until it expires. With increasing volume and the proliferation of options with long expiration dates, clearing members' cost and operational overhead of carrying these positions is significant.

In an effort to reduce these costs, OCC seeks to modify its rules to accelerate the expiration date of American-style equity options that are adjusted to call for a cash deliverable to the earliest practicable regular expiration date.[3] The exercise by exception price threshold for the adjusted contracts will be $.01 per share of the amount of the cash deliverable.[4]

OCC will implement the foregoing rule changes on January 1, 2008, to allow clearing members and customers sufficient time to prepare for the change of methodology. OCC will not implement the rule changes until definitive copies of an appropriate revision of or supplement to the options disclosure document, *Characteristics and Risks of Standardized Options,* are available for distribution.

III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[5] Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[6] The Commission finds that OCC's rule change is consistent with these requirements because by accelerating the expiration date of American-style equity options that are adjusted to call for a cash deliverable OCC makes procedures for clearance and settlement of these options more efficient and thereby reduces unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors. As such, the proposed rule change should better enable OCC to promote the prompt and accurate clearance and settlement of securities transactions.[7]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–OCC–2006–20) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1059 Filed 1–24–07; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before February 26, 2007. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov*, fax number 202–395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, *jacqueline.white@sba.gov* (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Pro-Net.

Form No: N/A.

Frequency: On Occasion.

Description of Respondents: Small Firms.

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[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 54793 (November 20, 2006), 71 FR 69172.

[3] OCC rules currently contain a provision for acceleration of the expiration date of European-style equity options that have been converted to a cash deliverable.

[4] Every option contract that has an exercise price below (in the case of a call) or above (in the case of a put) the amount of the cash deliverable by $.01 or more will be deemed to have been exercised immediately prior to the accelerated expiration time unless the clearing member directs otherwise. OCC also is making a conforming change to Rule 1106.

[5] 15 U.S.C. 78s(b).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

Annual Responses: 10,000.
Annual Burden: 2,500.

Title: SBA Express Information Collection.
Form No's: 1919, 2236, 2238, 1920SX.
Frequency: On Occasion.
Description of Respondents: Express Lenders.
Annual Responses: 20,000.
Annual Burden: 17,500.

Title: Quarterly Loan Loss Reserve Report and PCLP Guarantee Request.
Form No's: 2233, 2234A/B/C.
Frequency: On Occasion.
Description of Respondents: PCLP Lenders.
Annual Responses: 886.
Annual Burden: 832.

Title: HUBZone Application Data Update.
Form No: N/A.
Frequency: On Occasion.
Description of Respondents: Small Business Concerns.
Annual Responses: 6,000.
Annual Burden: 3,000.

Title: Disaster Survey Worksheet.
Form No: 987.
Frequency: On Occasion.
Description of Respondents: Applicants who warrant Disaster Declaration.
Annual Responses: 2,640.
Annual Burden: 219.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E7–1076 Filed 1–24–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10678 and #10679]

Hawaii Disaster Number HI–00005

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Hawaii (FEMA–1664–DR), dated 10/23/2006.

Incident: Kiholo Bay Earthquake.

Incident Period: 10/15/2006 and continuing through 01/15/2007.

Effective Date: 01/15/2007.

Physical Loan Application Deadline Date: 12/22/2006.

EIDL Loan Application Deadline Date: 07/23/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Hawaii, dated 10/23/2006 is hereby amended to establish the incident period for this disaster as beginning 10/15/2006 and continuing through 01/15/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–1102 Filed 1–24–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10746]

Hawaii Disaster Number HI–00007

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Hawaii (FEMA–1664–DR), dated 10/23/2006.

Incident: Kiholo Bay Earthquake.

Incident Period: 10/15/2006 and continuing through 01/15/2007.

Effective Date: 01/15/2007.

Physical Loan Application Deadline Date: 12/22/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Hawaii, dated 10/23/2006, is hereby amended to establish the incident period for this disaster as beginning 10/15/2006 and continuing through 01/15/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–1104 Filed 1–24–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10787]

Missouri Disaster # MO–00008

AGENCY: U.S. Small Business Administration

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA–1676–DR), dated 01/15/2007.

Incident: Severe Winter Storms and Flooding.

Incident Period: 01/12/2007 and continuing.

Effective Date: 01/15/2007.

Physical Loan Application Deadline Date: 03/16/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/15/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Barry, Barton, Callaway, Camden, Christian, Cole, Crawford, Dade, Dallas, Dent, Franklin, Gasconade, Greene, Hickory, Jasper, Laclede, Lawrence, Lincoln, Maries, McDonald, Miller, Montgomery, Newton, Osage, Phelps, Polk, Pulaski, Saint Clair, St. Charles, St. Louis, St. Louis (City), Stone, Warren, Webster, Wright.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10787.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–1098 Filed 1–24–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10789 and #10790]

West Virginia Disaster #WV–00004

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of West Virginia dated 01/19/2007.

Incident: Fire.

Incident Period: 01/13/2007.

Effective Date: 01/19/2007.

Physical Loan Application Deadline Date: 03/20/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 10/19/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cabell.

Contiguous Counties:

Ohio: Gallia, Lawrence.

West Virginia: Lincoln, Mason, Putnam, Wayne.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	6.000
Homeowners Without Credit Available Elsewhere	3.000
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10789 5 and for economic injury is 10790 0.

The States which received an EIDL Declaration # are West Virginia and Ohio.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: January 19, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–1100 Filed 1–24–07; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974.

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Farm Self-Employment Questionnaire—20 CFR 404.1095—0960–0061.* Section 211(a) of the Social Security Act requires the existence of a trade or business as a prerequisite for determining whether an individual or partnership may have ''net earnings from self-employment.'' Form SSA–7156 elicits the information necessary to determine the existence of an agricultural trade or business and subsequent covered earnings for Social Security entitlement purposes. The respondents are applicants for Social Security benefits, whose entitlement depends on whether the worker has covered earnings from self-employment as a farmer.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 47,500.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 7,917 hours.

2. *Accelerated Benefits Demonstration Project—0960–NEW.* The Accelerated Benefits Demonstration Project is a multi-phase study designed to assess whether providing new Social Security Disability Insurance (SSDI) recipients with certain benefits will stabilize or improve their health and help them return to work early. In this long-term study, new SSDI disability recipients (*i.e.*, those who have just begun receiving benefits and who have at least 18 months remaining before they qualify for Medicare) will be divided into three groups: (1) A control group that will just receive their regular SSDI benefits; (2) a treatment group that will receive immediate access to health care benefits; and (3) a treatment group that will receive health care benefits and additional care management, employment, and benefits services and support. The study, which will be

conducted for SSA by research contractors and health care experts, will assess if the accelerated benefits help new beneficiaries improve and return to work earlier and if there is a difference between the treatment groups. The respondents are beneficiaries who have just begun receiving SSDI disability benefits and are not yet eligible for Medicare health benefits.

Type of Request: New information collection.

Total Estimated Annual Burden: 1,570 hours.

Part of Study	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Focus Groups	40	1	120	80
Pilot Survey	500	1	30	250
Actual Survey/Assessment of Treatment Efficacy (''Baseline Survey'')	2,000	1	30	1,000
Three-Month Follow-Up Survey (''Early Use Survey'')	480	1	30	240
Total	3,020			1,570

Please Note: This Notice was originally published on January 8, 2007, at 72 FR 834. At that time, there was an inadvertent error. In places where we stated ''SSI,'' we meant to say ''SSDI.'' This notice corrects that error; all other information remains unchanged.

3. *Authorization to Disclose Information to the Social Security Administration—20 CFR Subpart O, 404.1512 and Subpart I, 416.912—0960–0623.* SSA must obtain sufficient medical evidence to make eligibility determinations for the SSDI benefits and Supplemental Security Income (SSI) payments. For SSA to obtain medical evidence, an applicant must authorize his or her medical source(s) to release the information to SSA. The applicant may use form SSA–827 to provide consent for release of information. Generally, the State DDS completes the form(s) based on information provided by the applicant, and sends the form(s) to the designated medical source(s). The respondents are applicants for SSDI and SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 3,853,928.

Frequency of Response: 1 (Average forms per case 4).

Average Burden Per Response: *13 minutes.

Total Annual Responses: 15,415,712.

Estimated Annual Burden: 835,018 hours.

*** Please Note:** Respondents to the SSA–827 collection complete a total four forms. SSA estimates that it takes a claimant 10 minutes to read both sides and sign the initial SSA–827. However, once a claimant reads the first form, it takes considerably less time to date and sign the subsequent forms because the forms do not have to be read again. SSA estimates the signing and dating of the three additional forms at one minute per form, resulting in three additional minutes. Therefore, the total time it takes to complete all four SSA–827's is 13 minutes.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

Representative Payee Report—20 CFR 404.2035, 404.2065, 416.635, and 416.665—0960–0068. SSA uses forms SSA–623 and SSA–6230 to determine if (1) Payments sent to individual representative payees have been used for SSDI beneficiaries and SSI recipients' current maintenance and personal needs and (2) the representative payee continues to be a capable representative concerned with the individual's welfare. The respondents are individual representative payees for recipients of SSDI benefits and SSI payments.

Type of Request: Revision to an OMB-approved information collection.

Number of Respondents: 5,500,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 1,375,000 hours.

Dated: Janaury 19, 2007.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E7–1089 Filed 1–24–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

BNSF Railway

(Docket Number FRA–2006–26717)

BNSF Railway (BNSF) seeks a waiver of compliance with certain requirements of 49 CFR Part 232—Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment, End-of Train Devices; CFR Part 215—Railroad Freight Car Safety Standards; and CFR Part 231—Railroad Safety Appliance Standards. Specifically, BNSF seeks relief to permit trains received at the U.S./Mexico border in El Paso, Texas, from the Ferrocarril Mexicano Railroad (FXE), to move from the interchange point without performing the regulatory tests and inspections specified in Part 215, Part 231, and 232.205(a)(1) at that location. BNSF proposes moving the trains from the border at Milepost 1155.1 to a main track location at Milepost 1150 where the mechanical inspections and Class I brake test would be performed.

Prior to departing the interchange point, a set and release would be made of brakes on the interchange movement insuring continuous brake pipes to the rear of the train as indicated by air gauge or end-of-train telemetry devices, and moved at a speed not exceeding 20 miles per hour to Milepost 1150 at El Paso, where the train would undergo a Class I mechanical inspection and airbrake test. Any noncompliant cars will be set out.

The petitioner asserts that granting the waiver would facilitate the efficient handling of increased international rail traffic through the El Paso gateway. According to BNSF, rail volume has grown steadily in recent years and it is anticipated to increase even more as the

effects of both the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT) are felt. BNSF says it currently receives 200 to 400 rail cars per day through the El Paso gateway and the capacity of the existing facility in El Paso is inadequate to efficiently handle the current rail volumes. As reasons for the requested relief, BNSF cites poorly laid tracks, short tracks, inadequate crossover capability, and numerous street crossings that cut through the facility. In addition, BNSF states that El Paso is a ''bottleneck'' that causes delays to rail traffic in international commerce on both sides of the border, and that granting the requested waiver will have no effect on railroad safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning this petition should identify the appropriate docket number (FRA–2006–26717) and may be submitted by one of the following methods:

Web site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic site;

Fax: 202–493–2251;

Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001; or

Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communication received within 45 days of the date of this notice will be considered by FRA prior to final action being taken. Comments received after that date will be considered to the extent practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on January 22, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–1127 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–27000]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LEE SEA ANNE I.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–27000 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before February 26, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–27000. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LEE SEA ANNE I is:

Intended Use: ''six passenger sailing charters.''

Geographic Region: New York State Finger Lake—Seneca Lake—scenic, informational cruises.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Dated: January 19, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–1025 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2007–27002]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of

the Coastwise Trade Laws for the vessel MONKEY BUSSINESS.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–27002 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before February 26, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–27002. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MONKEY BUSSINESS is:

Intended Use: ''Sight Seeing, Pleasure Cruises.''

Geographic Region: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Dated: January 19, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–1048 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2007–27005]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *MOONRAKER.*

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–27005 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before February 26, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–27005. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *MOONRAKER* is:

Intended Use: ''Passenger sailing charters.''

Geographic Region: Coastal North Carolina and South Carolina, Virginia, Maryland, Georgia and Florida.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Dated: January 19, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–1024 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–27004]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *SALTY TURTLE.*

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–27004 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before February 26, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–27004. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *SALTY TURTLE* is:

Intended Use: ''Charters carrying 6 or fewer passengers for 1–14 days. Embarking will be in one port and disembarking will be in another mostly along the coastal waters of the US.''

Geographic Region: Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, Rhode Island, New Jersey, New York, Pennsylvania, Connecticut, Massachusetts, New Hampshire, Maine, Ohio, Michigan, Wisconsin, Illinois, Indiana, Kentucky, Missouri, Tennessee, Alabama, Mississippi, Louisiana, Texas, California, Oregon, Washington.

Privacy Act

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Dated: January 19, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–1026 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–27003]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SEA ANGEL.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–27003 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before February 26, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–27003. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEA ANGEL is:

Intended Use: 6-pack sightseeing day trips.

Geographic Region: South Carolina, Georgia and Florida coasts and intracoastal waters.

Privacy Act

Anyone is able to search the electronic form of all comments

received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Dated: January 19, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–1049 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–27001]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TEXAS STAR.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–27001 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before February 26, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–27001. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TEXAS STAR is:

Intended Use: ''Charter (Coastwise trade 20%).''

Geographic Region: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Dated: January 19, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–1023 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–26555]

The New Car Assessment Program; Suggested Approaches for Enhancements

AGENCY: The National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments; Notice of public hearing.

SUMMARY: This notice announces that the National Highway Traffic Safety Administration (NHTSA) is holding a public hearing and is seeking comment on a report titled, ''The New Car Assessment Program Suggested Approaches for Future Program Enhancements.'' The report, published by NHTSA, outlines both near and long-term approaches that the agency is considering to further enhance its New Car Assessment Program (NCAP) crashworthiness and crash avoidance activities to encourage additional safety improvements, and to provide consumers with relevant information that will aid them in their new vehicle purchasing decisions. NHTSA's objective with these approaches is to improve not only overall vehicle safety but the quality of the information that it provides to consumers, especially with the emergence of advanced technologies. This notice requests comments on the possible approaches contained in the report and any additional actions that could be taken to improve motor vehicle safety information for consumers. Additionally, this notice announces the agency's intent to hold a public hearing on its suggested approaches for enhancing the program.

DATES: *Comments:* Comments must be received no later than April 10, 2007.

Public Hearing: The public hearing will be held on March 7, 2007, from 9 a.m. to 4 p.m. at the United States Department of Transportation (Nassif Building), 400 Seventh Street, SW., Washington, DC 20590; room numbers 2230–2232. Those wishing to participate should contact Mr. Anthony Whitson no later than February 21, 2007.

The NHTSA recommends that all visitors arrive at least 45 minutes early in order to facilitate entry into the building. Visitors to the building should enter through the Southwest Lobby to be escorted to the hearing room.

The NHTSA will provide auxiliary aids (sign language interpreter, telecommunications devices for the deaf

(TDDs), readers, taped tests, braille materials, or large print materials, and magnifying devices). Visitors requiring these aids should contact Mrs. Gwen Archer-Pailen at 202–366–1740, by February 21, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Whitson, NVS–111, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Mr. Whitson can be reached by phone at (202) 366–1740, by facsimile at (202) 493–2739, or by e-mail at *anthony.whitson@dot.gov*.

ADDRESSES: *Report:* The report is available on the Internet for viewing on line in PDF format in the Department of Transportation public docket number 26555 at *http://dms.dot.gov*. You may also obtain copies of the reports free of charge by sending a self-addressed mailing label to Mr. Anthony Whitson (NVS–111), The National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Comments: You may submit comments [identified by DOT DMS Docket Number NHTSA–2006–26555] by any of the following methods:

- *Web Site: http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

You may call Docket Management at 202–366–9324 and visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration (NHTSA) established the New Car Assessment Program (NCAP) in 1978 in response to Title II of the Motor Vehicle Information and Cost Savings Act of 1972. The program strives to provide consumers with timely, meaningful, comparative safety information that will assist them in making informed vehicle purchasing decisions. As a result, NHTSA is able to provide an incentive for manufacturers to voluntarily implement vehicle design changes to improve safety performance.

The success of NCAP can be attributed to several activities: (1) The assignment of safety ratings to vehicles based on crashworthiness performance in frontal and side impact crash tests, and crash avoidance performance in rollover resistance testing, (2) the assignment of ease-of-use ratings to child restraints, (3) the inclusion of safety features for vehicle models, and (4) the distribution of safety ratings and safety features to consumers through the Internet and the program's ''Buying a Safer Car Guide'' and ''Buying a Safer Car Guide for Child Passengers.''

However, the continued success of the NCAP requires changes to be made in the program. The NHTSA recognizes that consumer demand has driven more manufacturers to design vehicles and child restraints that achieve the highest NCAP ratings, and consequently most vehicles and child restraints receive the highest ratings. Similarly, with regards to vehicle safety, recent developments in the area of crash avoidance technologies, amendments and proposed amendments to several Federal safety standards, and the need to continue enhancing the presentation of NCAP safety ratings to consumers have prompted the need for a comprehensive review of all NCAP activities so that the program continues to fully achieve its goals.

In analyzing what enhancements to make to NCAP, the agency must first consider the program's guiding principles. The agency believes that for NCAP to remain effective, new approaches should only be considered if there is data that can be used to measure/assess that an approach is likely to provide significant safety benefits. Additional considerations include whether or not the change would:

1. Result in safety benefits that are evident but for which a regulation may not be the best approach;
2. Distinguish meaningful performance differences between vehicles;
3. Spur research and the achievement of safety goals that exceed regulatory requirements; and
4. Stimulate the use and dissemination of information so that it is more widely used.

Below, are summarized approaches from the technical report contained in Docket number 26555. These approaches represent how the agency believes it can continue to enhance its NCAP activities. These approaches take into account all of the aforementioned factors and provide a basis for initiating stakeholder dialogue for enhancing the NCAP.

Approaches To Enhancing Frontal NCAP

Data from the National Automotive Sampling System (NASS) indicates that most injuries in frontal crashes occur in full-frontal and offset-frontal crashes. Additionally, when restricted to full-frontal crashes with adult (16- to 60-year-old) front seat-belted occupants, the maximum number of injuries occurs at changes in velocities from 0 to 25 miles per hour. Within this grouping, the de-habilitating and costly knee/thigh/hip (KTH) and lower leg regions have the highest incidence of the Abbreviated Injury Scale (AIS) 2+ injuries. Neither of these regions is currently rated by NCAP.

In Model Year (MY) 2006, approximately 95 percent of new vehicles achieved a four or five star rating for the driver. A five-star rating in the frontal NCAP test accounts for a combined risk of head and chest injury of 10 percent, and at this risk level current head and chest Injury Assessment Reference Values (IARVs) are not likely to further reduce high-speed or low-speed injury numbers. The statistical data analysis discussed above indicates that future tests should focus on full-frontal crashes, front seat occupants, lower speeds, 16- to 60-year-old adults, and incorporate additional body regions like the hips and legs. Although these body regions are currently measured during testing, they are currently not included in the rating. By including them, there may be opportunity to use the existing test for potential safety improvements.

The report discusses three approaches the agency is considering:

(1) Maintain the current test protocol but add femur readings to the rating to begin addressing KTH injuries.

(2) Determine whether injury measures obtained below the knee are predictive of real world injury. If they are, and the readings from the dummy would result in a meaningful improvement to safety, they could also be added to the rating, and

(3) Evaluate lower speed test(s). The research would determine whether current IARVs need to be adjusted or created, and to assess the ability of a test device and test procedure to accurately measure those injury assessment values.

Approaches To Enhancing Side NCAP

NASS data indicates that the majority of side impact crashes with serious (AIS 3+) injuries involve the primary vehicle being impacted in the side by light trucks or cars and that approximately 82 percent of all serious injuries to occupants result from subject vehicles

being hit by passenger cars or light trucks. The impact conditions for Side NCAP were developed more than 20 years ago. The conditions represent side impacts resulting in serious injuries of occupants being struck by a vehicle with the weight properties of an early 1980's passenger car and the stiffness properties of 1980's era light truck.

The vehicle fleet has changed significantly over the past 20 years and similar to frontal NCAP, 87 percent of MY '06 vehicles receive four or five stars. Consequently, the side NCAP ratings are reaching the point of providing little discrimination between vehicles. Additionally, since the fleet and impact conditions for side impacts have changed over the years, and since side impact head and other side impact occupant protection systems have improved over the years, it is necessary to revisit the design of the test in an effort to continue improving the safety in side impact crashes.

The report discusses two approaches the agency is considering:

(1) Encourage more manufactures to include head protection by including the pole test proposed for Federal Motor Vehicle Safety Standard (FMVSS) No. 214 prior to the final rule being fully phased-in. This test would continue to measure performance while at the same time indicate to consumers the importance of good head protection devices, and

(2) Perform research that focuses on the assessment of the injury mechanisms in a fully equipped side impact air bag fleet. The purpose would be to evaluate how serious injuries occur in the new fleet and develop test procedures to reflect these impact conditions. The outcome of this research could be used to further improve the level of side impact protection through modification to the side NCAP test procedures.

Approaches To Enhancing Rollover NCAP

Although the proportion of crashes that result in rollover is low, these crashes seriously injure and kill about 35,000 vehicle occupants annually. NCAP rollover resistance ratings predict the risk of rollover in the event of a single-vehicle crash. Estimates from the NASS indicate that 88 percent of the single-vehicle rollover crashes occur after the vehicle leaves the roadway and are often referred to as ''tripped rollovers.'' Part of NCAP's rating is based on a geometric measurement called the Static Stability Factor (SSF). The SSF is highly predictive of these ''tripped rollovers.''

The NHTSA estimates that its proposal to require Electronic Stability Control (ESC) on all passenger vehicles by 2012 will result in a significant reduction in run-off-road crashes. Most of the anticipated rollover reduction from ESC is *not* a consequence of ESC increasing rollover resistance. Rather, it is a consequence of ESC preventing a large number of single-vehicle loss-of-control crashes in which the vehicle leaves the roadway, and subsequently, is exposed to soft soil, ditches and other conditions that cause tripped rollovers (which comprise about 95 percent of all rollover crashes). None of the sport utility vehicles (SUVs) with ESC rated by NCAP has tipped up in the dynamic test that assesses the vulnerability of a vehicle to an untripped, on-road rollover. This effect of ESC shows improved rollover resistance scores for SUVs. Finally, ESC could reduce the rollover rate of those run-off-the-road crashes that still occur if it reduces the speed prior to the crash. When enough real world data with ESC vehicles has been accumulated, a need may exist to update the statistical risk model for ESC vehicles used to predict their rollover rates (and compute star ratings).

The report discusses one approach the agency is considering:

(1) Track the rollover rate and the single vehicle crash rate of ESC vehicles to create a new rollover risk model of the rollover rate of ESC vehicles and SSF. When sufficient data is available, it would then be possible to determine whether the current model is accurate for ESC vehicles or whether ESC reduces rollover risk more than currently predicted.

Approaches To Enhancing NCAP Information on Rear Impacts

Currently NHTSA provides no consumer information on rear impacts and although NHTSA has recently upgraded FMVSS No. 202 ''Head Restraints'' to address neck injuries, the real world data indicates that other injuries are occurring in rear impact collisions. Additionally, consumer research has indicated that consumers are concerned about rear impact crashes.

The report discusses two approaches the agency is considering:

(1) Explore providing consumers with basic information concerning rear impact crashes such as safe driving behavior and proper adjustment of head restraints, real world safety data by vehicle classes, and links to the Insurance Institute for Highway Safety (IIHS) rear impact test results.

(2) Longer term, a dynamic test that addresses those injuries not covered by the agency's current standards could be investigated and incorporated into a ratings program.

Approaches To Enhancing NCAP Information on Crash Avoidance Technologies

Various crash avoidance technologies have been developed and are beginning to be offered in the current vehicle fleet. Some of these technologies have shown effectiveness in reducing the number of relevant crashes in NHTSA-sponsored field operational tests. Prevention (in the sense of avoiding the crash) and severity reduction are not currently included in the NCAP safety ratings, and since a vehicle that is less likely to crash is safer for its occupants, NHTSA believes crash avoidance is one area in which NCAP could be used to improve safety by addressing beneficial crash avoidance technologies.

The report discusses three approaches the agency is considering:

(1) The agency could begin promoting three priority crash avoidance safety technologies that have been identified based on technical maturity, fleet availability, and available benefits data. These three technologies are stability control, lane departure avoidance, and rear-end/forward collision avoidance. The agency could highlight to consumers whether or not the vehicles have the technology.

(2) The agency also plans to investigate the feasibility of developing a separate crash avoidance rating that would provide a technology rating. Under this approach, there are two options.

a. One option would be to develop a simple cumulative rating. For example and illustrative purposes only, if there were an A, B, C letter grade rating and a vehicle had only one technology, it would receive a C whereas another vehicle that had all three recommended technologies would receive an A.

b. A second option would be to develop a rating that would take into account the target population and anticipated effectiveness of the technology to decide whether a particular type of technology would be given more importance over another and thus prompt a higher rating. For example, if ESC was considered more effective and more beneficial than lane departure, a vehicle equipped only with ESC could get a B versus a vehicle equipped only with lane departure which would get a C rating.

(3) As the technologies evolve and as the agency develops (through its research) more information related to their safety potential, a safety score (i.e. star rating) on individual technologies could then be developed. These scores would apply to technologies whose safety effectiveness had been sufficiently validated through research, field testing or on-road experience. The agency would need to ensure that it had sufficient data and that there were meaningful distinctions between different types of the same technology. After such an analysis, a set of performance tests could be developed that would be able to distinguish a range of performance.

Approaches To Enhancing the Presentation and Dissemination of NCAP Information

Combined Safety Score

Several NHTSA sponsored research reports and consumer surveys, as well

as a Government Accountability Office and a National Academy of Sciences review of NCAP, have all pointed to the need for an NCAP summary safety rating. Similarly, other consumer information programs around the world such as the IIHS, Japan NCAP, and Euro NCAP have developed summary ratings that combine their respective crashworthiness tests. The agency would focus first on combining the frontal and side crashworthiness ratings using weighting factors compiled from NASS data. This method would combine the frontal ratings for driver and right front passenger seating positions with the side ratings for the front and rear passenger seating positions into one crashworthiness rating and leave NHTSA's current rollover rating separate. The following summary crashworthiness rating concepts are illustrative examples for combining vehicle crash information. Two approaches being considered are presented below.

(1) The overall frontal crash rating would combine the driver and right front passenger into a single star rating by averaging the two seating positions together. The same would be done for the dummies in the side crash to compute the overall side crash rating. To compute the overall crashworthiness rating, the overall frontal and the overall side impact performance would be combined by using weighting factors obtained from the NASS. Each individual total (overall front and overall side) would be weighted by that crash mode's contribution to the total fatalities occurring in the real world.

(2) For each individual crash mode (front and side), this method would normalize each IARV that NHTSA included in the rating by established IARVs for that dummy, body region, and crash mode. Using the NASS data, these normalized values would then be multiplied by the occurrence of that injury in the real world. Body injury regions that are coded by NASS but are not measured by the dummy and or not selected by NHTSA for inclusion in the rating would be equally distributed among the remaining body regions.

Presentation of Safety Information

As consumers' use of the World Wide Web for vehicle safety information has grown, so has the need to consolidate and better present NCAP vehicle safety information to consumers on *www.safercar.gov.*

The report discusses four approaches the agency is considering:

(1) Developing other topical areas under *www.safercar.gov*;

(2) Redesigning the Web site to improve organization;

(3) Improving the search capabilities on the Web site; and

(4) Combining agency recall and ratings database information.

Specific Requests for Written or Public Comments

When commenting on the agency report, we request that consideration also be given to the following questions:

(1) In addition to or rather than the advanced crash avoidance technologies we have identified, are there others with significant safety benefit potential that we should consider? What are they and what studies have been done to estimate the potential safety benefits?

(2) Are there other approaches the agency should consider in selecting and rating advanced technologies? What are the advantages of these alternative approaches?

(3) Identify those cases where you believe a particular approach to enhancing the NCAP and/or NHTSA's planned consumer information activities to address the approach are inappropriate. Discuss the basis for your position. In particular, if you believe a particular approach is inappropriate, discuss what you believe is a more appropriate approach.

(4) Are there other injury criteria, tests, and test devices we should consider? If so, describe how they would improve real world crash safety. Are there reasons why the agency should not pursue the use of injury criteria, tests, and test devices prior to incorporation into a Federal standard?

(5) An overall vehicle safety rating could allow the agency to combine new tests, crash avoidance technologies, items not reflected by the testing protocols into a single metric, and vehicle weight for across class comparisons. However, doing so might mask certain results and also lead to discontinuity in the ratings as technologies are added and removed and or new tests are added. Similarly star ratings from year to year might not be comparable. What are the disadvantages and advantages for combining all crashworthiness and crash avoidance ratings into a single metric? Is discontinuity in ratings important to consumers?

(6) In September 2007, all new vehicles will be required to display the NCAP ratings at the point of sale. It is anticipated that these new safety labels will undoubtedly raise the awareness of NCAP results. In light of this new labeling requirement, are there other activities the agency should be undertaking to raise awareness of NCAP and its safety information?

How can I influence NHTSA's thinking on this subject?

NHTSA welcomes public review of the technical report and invites reviewers to submit written comments so that the agency can consider these in its deliberations on what changes to make to NCAP.

Additionally, NHTSA will hold a public hearing on the report to provide interested parties an opportunity to express their views on the future of NCAP. Through this hearing and from the written comments, the agency will refine its approach to enhancing NCAP. We will consider the information and the views expressed at the public hearing and in the subsequent docket comments in making final decisions to enhance NCAP activities. All interested persons and organizations are invited to attend.

To assist the agency in planning for the hearing, members of the public must request the opportunity to make an oral presentation by contacting Mr. Anthony Whitson at the address or numbers mentioned at the beginning of this document. Those making a presentation will be provided 10 minutes to speak, followed by the opportunity for NHTSA officials to ask questions. Requests for oral presentations and the oral statements themselves should be received no later than February 21, 2007.

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2005–20132) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management, submit them electronically, fax them, or use the Federal eRulemaking Portal. The mailing address is U. S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System Web site at *http://dms.dot.gov* and click on ''Help'' to obtain instructions. The fax number is 1–202–493–2251. To use the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your

comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit them electronically.

Will the agency consider late comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How can I read the comments submitted by other people?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

A. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

B. On that page, click on ''Simple Search.''

C. On the next page (*http://dms.dot.gov/search/searchFormSimple.cfm/)* type in the five-digit Docket number shown at the beginning of this Notice (20132). Click on ''Search.''

D. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Dated: January 18, 2007.

Nicole R. Nason,

Administrator.

[FR Doc. E7–1130 Filed 1–24–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1000X]

Georgia Southwestern Railroad, Inc.—Abandonment Exemption—in Barbour County, AL

On January 5, 2007, Georgia Southwestern Railroad, Inc. (GSWR), filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–05 [1] to abandon a 4.54-mile line of railroad extending from milepost H–334.46, at Eufaula, to milepost H–339.00, near Eufaula, in Barbour County, AL. The line traverses United States Postal Service Zip Code 36027.

The line does not contain federally granted rights-of-way. Any documentation in GSWR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 25, 2007.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,300 filing fee. *See* 49 CFR 1002.2(f)(25).

[1] In addition to an exemption from the prior approval requirements of 49 U.S.C. 10903, GSWR seeks exemption from 49 U.S.C. 10904 (offer of financial assistance procedures) and 49 U.S.C. 10905 (public use conditions). GSWR states that it has agreed to donate the subject line to the City of Eufaula for the purpose of constructing a trail along the corridor and that the City's Federal grant money for the project is about to expire. GSWR's request for exemption from sections 10904 and 10905 will be addressed in the final decision.

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than February 14, 2007. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–1000X, and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Karl Morell, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before February 14, 2007.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 17, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–913 Filed 1–24–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 277X); STB Docket No. AB–997X]

Norfolk Southern Railway Company—Abandonment Exemption—in Madison County, TN and Western Tennessee Railroad—Discontinuance of Service Exemption—in Madison County, TN

Norfolk Southern Railway Company (NSR) and Western Tennessee Railroad (WTNN) (collectively, applicants) have jointly filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for NSR to abandon, and for WTNN to discontinue service and operating rights over a .25-mile line of railroad lying between mileposts (old) C 471.00 and (old) C 471.25 in Jackson, Madison County, TN. The line traverses United States Postal Service Zip Code 38301 and includes the station of Jackson, TN.

NSR and WTNN have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on February 24, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 5, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 14, 2007, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemptions are void *ab initio*.

NSR and WTNN have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 30, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by January 25, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 17, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–937 Filed 1–24–07; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemptions' effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Financial Literacy and Education Commission's Two-Day Summit on Kindergarten Through Postsecondary Financial Education: Correction

AGENCY: Departmental Offices, Treasury.

ACTION: Notice; correction.

SUMMARY: The Department of the Treasury published a document in the **Federal Register** of January 5, 2007, concerning the Financial Literacy and Education Commission's Two-Day Summit on Kindergarten through Postsecondary Financial Education. The document contained an incorrect name for the location of the second day of the event.

FOR FURTHER INFORMATION CONTACT: Luz Figuereo by e-mail at: *FLECstrategy@do.treas.gov* or by telephone at (202) 622–5770 (not a toll free number).

Correction

In the **Federal Register** of January 5, 2007, in FR Doc. E6–22614, on page 625, in the last sentence of the third column, correct ''Department of Education'' to read ''Department of the Treasury''.

Dated: January 18, 2007.

Dan Iannicola, Jr.,

Deputy Assistant Secretary for Financial Education.

[FR Doc. E7–1116 Filed 1–24–07; 8:45 am]

BILLING CODE 4811–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8868

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 8868, Application for Extension of Time To File an Exempt Organization Return.

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 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 R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time To File an Exempt Organization Return.

OMB Number: 1545–1709.

Form Number: 8868.

Abstract: Sections 6081 and 1.6081 of the Internal Revenue Code and regulations permit the Internal Revenue Service to grant a reasonable extension of time to file a return. Form 8868 provides the necessary information for a taxpayer to apply for an extension to file a fiduciary or certain exempt organization return.

Current Actions: There are no changes being made to the form at this time.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 248,932.

Estimated Time Per Respondent: 5 hrs., 47 mins.

Estimated Total Annual Burden Hours: 1,453,638.

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 17, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1029 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–236–81]

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, LR–236–81 (TD 8251), Credit for Increasing Research Activity (§ 1.41–8(d)).

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Credit for Increasing Research Activity.

OMB Number: 1545–0732.

Regulation Project Number: LR–236–81.

Abstract: This regulation provides rules for the credit for increasing research activities. Internal Revenue Code section 41(f) provides that commonly controlled groups of taxpayers shall compute the credit as if they are a single taxpayer. The credit allowed to a member of the group is a portion of the group's credit. Section 1.41–8(d) of the regulation permits a corporation that is a member of more than one group to designate which controlled group they will be aggregated with for the purposes of Code section 41(f).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 250.

Estimated Time per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 63.

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: December 6, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1031 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8806

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 8806, Information Return for Acquisition of Control or Substantial Change in Capital Structure.

DATES: Written comments should be received on or before March 26, 2007, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 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 R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return for Acquisition of Control or Substantial Change in Capital Structure.

OMB Number: 1545–1869.

Form Number: 8806.

Abstract: Form 8806 is used to report information regarding transactions involving acquisition of control or substantial change in capital structure under section 6043.

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 or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 11 hours, 18 minutes.

Estimated Total Annual Burden Hours: 113.

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 17, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1032 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453–PE

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 8453–PE, U.S. Partnership Declaration for an IRS e-file Return.

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 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 R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Partnership Declaration for an IRS e-file Return.

OMB Number: 1545–2034.

Form Number: Form 8453–PE.

Abstract: Form 8453–PE, U.S. Partnership Declaration for an IRS e-file Return, was developed for Modernized e-file for partnerships. Internal Revenue Code sections 6109 and 6103.

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: 500.

Estimated Time Per Respondent: 3 hours 7 minutes.

Estimated Total Annual Burden Hours: 1560.

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 17, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1033 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–19

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 Revenue Procedure 98–19, Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

OMB Number: 1545–1589.

Revenue Procedure Number: Revenue Procedure 98–19.

Abstract: Revenue Procedure 98–19 provides guidance to organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 on certain exceptions from the reporting and notice requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, not-for-profit institutions and farms.

Estimated Number of Organizations: 15,000.

Estimated Average Time Per Organizations: 10 hours.

Estimated Total Annual Recordkeeping Hours: 150,000.

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 16, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1034 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3cPR, W–3PR, and W–3SS

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 Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3cPR, W–3PR, and W–3SS.

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6516, 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 Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: W–2 (Wage and Tax Statement), W–2c (Corrected Wage and Tax Statement). W–2AS (American Samoa Wage and Tax Statement), W–2GU (Guam Wage and Tax Statement), W–

2VI (U.S. Virgin Islands Wage and Tax Statement), W–3 (Transmittal of Wage and Tax Statements), W–3c (Transmittal of Corrected Wage and Tax Statements), W–3PR (Informe de Comprobantes de Retencion), W–3cPR (Transmission de Comprobantes de Retencion Corregidos), and W–3SS (transmittal of Wage and Tax Staements).

OMB Number: 1545–0008.

Form Number: Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3cPR, W–3PR, and W–3SS.

Abstract: Employers report income and withholding information on Form W–2. Forms W–2AS, W–2GU and W–2VI are variations of Form W–2 for use in U.S. possessions. The Form W–3 series is used to transmit W–2 series forms to the Social Security Administration. Forms W–2c, W–3c and W–3cPR are used to correct previously filed Forms W–2, W–3, and W–3PR. Individuals use Form W–2 to prepare their income tax returns.

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: Business or other for-profit organizations and individuals, or households, not-for-profit institutions, farms, and Federal, state local or tribal governments.

Estimated Number of Respondents: 253,007,121.

Estimated Time Per Response: varies.

Estimated Total Annual Burden Hours: 1.

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: December 11, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1036 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8716

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 8716, Election To Have a Tax Year Other Than a Required Tax Year.

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 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 Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Election To Have a Tax Year Other Than a Required Tax Year.

OMB Number: 1545–1036.

Form Number: Form 8716.

Abstract: Form 8716 is filed by partnerships S corporations, S corporations, and personal service corporations under Internal Revenue Code section 444(a) to elect to retain or to adopt a tax year that is not a required tax year. The form provides IRS with information to determine that the section 444(a) election is properly made and identifies the tax year to be retained, changed, or adopted.

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: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 40,000.

Estimated Time Per Respondent: 3 hours, 26 minutes.

Estimated Total Annual Burden Hours: 204,400.

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: December 8, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1037 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–155608–02]

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 final regulation, REG–155608–02, Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts.

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts.

OMB Number: 1545–XXXX.

Regulation Project Number: REG–155608–02.

Abstract: The collection of information in the regulations is in § 1.403(b)–10(b)(2) of the Income Tax Regulations, requiring, in the case of certain exchanges or transfers, that the section 403(b) plan sponsor or administrator enter into an agreement to exchange certain information with vendors of section 403(b) contracts. Such information exchange is necessary to ensure compliance with tax law requirements relating to loans and hardship distributions from section 403(b) plans.

Current Actions: There are no changes being made to this regulation.

Type of Review: New collection.

Affected Public: Individuals or households, state, local or tribal governments, and not-for-profit institutions.

Estimated Number of Respondents: 11,000.

Estimated Time Per Respondent: 4.1 hours.

Estimated Total Annual Burden Hours: 45,000.

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, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1038 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041 and Related Schedules D, J, and K–1

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 1041 and related Schedules D, J, and K–1, U.S. Income Tax Return for Estates and Trusts.

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 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 Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Estates and Trusts (Form 1041), Capital Gains and Losses (Schedule D), Accumulation Distribution for Certain Complex Trusts (Schedule J), and Beneficiary's Share of Income, Deductions, Credits, etc. (Schedule K–1).

OMB Number: 1545–0092.

Form Number: 1041 and related Schedules D, J, and K–1.

Abstract: IRC section 6012 requires that an annual income tax return be filed for estates and trusts. The data is used by the IRS to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax.

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: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 8,744,000.

Estimated Time Per Response: 47 hours, 23 minutes.

Estimated Total Annual Burden Hours: 414,420,365.

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: December 12, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1039 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8038–T

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 8038–T, Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 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 R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

OMB Number: 1545–1219.

Form Number: 8038–T.

Abstract: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. The issuers include state and local governments.

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: State, local or tribal governments.

Estimated Number of Respondents: 2,500.

Estimated Time per Response: 22 hours, 11 minutes.

Estimated Total Annual Burden Hours: 55,475.

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 18, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1040 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–114998–99]

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–114998–99 (TD 8941), Obligations of States and Political Subdivisions (§ 1.142(f)(4)–1).

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Obligations of States and Political Subdivisions.

OMB Number: 1545–1730.

Regulation Project Number: REG–114998–99.

Abstract: Section 421(f)(4) of the Internal Revenue Code of 1986 permits a person engaged in the local furnishing of electric energy or gas that uses facilities financed with exempt facility bonds under section 142(a)(8), and that expands its service area in a manner

inconsistent with the requirements of sections 142(a)(8) and 142(f) to make an election to ensure that those bonds will continue to be treated as tax-exempt bonds. The final regulations (1.142(f)–1) set forth the required time and manner of making this statutory election.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations, and state, local or tribal governments.

Estimated Number of Respondents: 15.

Estimated Time Per Respondent: 1 hour.

Estimate Total Annual Burden Hours: 15.

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: December 6, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1041 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Publication 1075

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 Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies.

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the publication should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Tax Information Security Guidelines for Federal, State, and Local Agencies.

OMB Number: 1545–0962.

Form Number: Publication 1075.

Abstract: Section 6103(p) of the Internal Revenue Code requires the Internal Revenue Service to provide periodic reports to Congress describing safeguard procedures utilized by agencies which receive information from the IRS to protect the confidentially of the information. This Code section also requires that these agencies furnish reports to the IRS describing their safeguards.

Current Actions: There are no changes being made to Publication 1075 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, state, local, or tribal governments.

Estimated Number of Respondents: 5,100.

Estimated Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 204,000.

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 18, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1042 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8316

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 8316, Information Regarding Request for Refund of Social Security Tax Erroneously Withheld on Wages Received by a Nonresident Alien on an F, J, or M Type Visa.

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Information Regarding Request for Refund of Social Security Tax Erroneously Withheld on Wages Received by a Nonresident Alien on an F, J, or M Type Visa.

OMB Number: 1545–1862.

Form Number: 8316.

Abstract: Certain foreign students and other nonresident visitors are exempt from FICA tax for services performed as specified in the Immigration and Naturalization Act. Applicants for refund of this FICA tax withheld by their employer must complete Form 8316 to verify that they are entitled to a refund of the FICA, that the employer has not paid back any part of the tax withheld and that the taxpayer has attempted to secure a refund from his/her employer.

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: Individuals.

Estimated Number of Respondents: 22,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 5,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 18, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1043 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 12815

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 12815, Return Post Card for the Community Based Outlet Participants.

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6516, 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 Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Return Post Card for the Community Based Outlet Participants.

OMB Number: 1545–1703.

Form Number: 12815.

Abstract: This post card is used by the Community Based Outlet Program (CBOP) participants (i.e. grocery stores/pharmacies, copy centers, corporations, credit unions, city/country governments) to order products. The post card will be returned to the Western Area Distribution Center for processing.

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: Business or other for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 834.

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: December 12, 2006.

Glenn Kirkland,

IRS Reports Clearance Office.

[FR Doc. E7–1044 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990 and Schedules A and 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 990, Return of Organization Exempt From Income Tax Under Section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation), Schedule A, Organization Exempt Under Section 501(c)(3) (Except Private Foundation), and Section 501(e), 501(f), 501(k), 501(n), or Section 4947(a)(1) Nonexempt Charitable Trust, and Schedule B, Schedule of Contributors.

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Return of Organization Exempt From Income Tax Under Section 501(c), 527, 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)(Form 990), Organization Exempt Under Section 501(c)(3) (Except Private Foundation), and Section 501(e), 501(f), 501(k), 501(n), or Section 4947(a)(1) Nonexempt Charitable Trust (Schedule A), and Schedule of Contributors (Schedule B).

OMB Number: 1545–0047.

Form Number: 990, and Schedules A and B (Form 990).

Abstract: Form 990 is needed to determine that Code section 501(a) tax-exempt organizations fulfill the operating conditions of their tax exemption. Schedule A (Form 990) is used to elicit special information from section 501(c)(3) organizations. Schedule B is used by tax-exempt organizations to list contributors and allows the IRS to distinguish and make public disclosure of the contributors list within the requirements of Code section 527. IRS uses the information from these forms to determine if the filers are operating within the rules of their exemption.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 434,569.

Estimated Time per Respondent: 217 hrs., 26 min.

Estimated Total Annual Burden Hours: 49,265,718.

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 18, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1045 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tip Determination Agreement (for Use by Employers in the Food and Beverage Industry)

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 the Tip Rate Determination Agreement (for use by employers in the food and beverage industry).

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: For Tip Rate Determination Agreement (for Use by Employers in the Food and Beverage Industry).

OMB Number: 1545–1715.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit rganizations.

Estimated Number of Respondents: 200.

Estimated Average Time Per Respondent: 11 hours.

Estimated Total Annual Burden Hours: 1,737.

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: December 7, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1046 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2001–1

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 Notice 2001–1, Employer-designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer-designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

OMB Number: 1545–1716.

Notice Number: Notice 2001–1.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or recordkeepers: 20.

Estimated Average Time per Respondent/Recordkeeper: 44 hours.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 870 hours.

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 17, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1047 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tip Reporting Alternative Commitment (TRAC) for Use in the Food and Beverage Industry

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 the Tip Reporting Alternative Commitment (TRAC) for Use in the Food and Beverage Industry.

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: For Tip Reporting Alternative Commitment (TRAC) for Use in the Food and Beverage Industry.

OMB Number: 1545–1549.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or Recordkeepers: 41,800.

Estimated Average Time Per Respondent/Recordkeeper: 7 hours, 6 minutes.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 296,916.

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: December 7, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1050 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 21, 2007.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, February 21, 2007 from 2 p.m. Pacific Time to 3:30 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Janice Spinks, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Janice Spinks. Miss Spinks can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: January 17, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–1035 Filed 1–24–07; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 72, No. 16

Thursday, January 25, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9304]

RIN 1545–BF26

Guidance Necessary to Facilitate Business Electronic Filing Under Section 1561

Correction

In rule document 06–9758 beginning on page 76904 in the issue of Friday, December 22, 2006, make the following corrections:

§ 1.342–1 [Corrected]

1. On page 76906, in the third column, in the section heading for § 1.342–1, ''**§ 4.342–1 [Removed]**'' should read ''**§ 1.342–1 [Removed]**''.

§ 1.563–1T [Corrected]

2. On page 76911, in the first column, in § 1.563–1T(a)(5)(ii), in Example 1, in the third line, ''corporations and Y'' should read ''corporations L_1 and Y''.

[FR Doc. C6–9758 Filed 1–24–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9305]

RIN 1545–AW50

Source of Income from Certain Space and Ocean Activities; Source of Communications Income

Correction

In rule document E6–22174 beginning on page 77594 in the issue of Wednesday, December 27, 2006, make the following correction:

§ 1.863–9 [Corrected]

On page 77610, in the third column, in § 1.863–9(j), in Example 11, in the fourth line, ''canconnect'' should read ''can connect''.

[FR Doc. Z6–22174 Filed 1–24–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
January 25, 2007

Part II

Department of Homeland Security

Coast Guard

33 CFR Parts 1, 20 et al. and 46 CFR Parts 1, 4 et al.

Transportation Security Administration

49 CFR Parts 10, 12, and 15

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Final Rule

Consolidation of Merchant Mariner Qualification Credentials; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 101, 103, 104, 105, 106, 125 and 46 CFR Parts 10, 12, 15
Transportation Security Administration
49 CFR Parts 1515, 1540, 1570, 1572
[Docket Nos. TSA–2006–24191; Coast Guard–2006–24196; TSA Amendment Nos. 1515–(New), 1540–8, 1570–2, 1572–7]

RIN 1652–AA41

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: Transportation Security Administration; United States Coast Guard, DHS.

ACTION: Final rule; request for comments.

SUMMARY: The Department of Homeland Security (DHS), through the Transportation Security Administration (TSA) and the United States Coast Guard (Coast Guard), issues this final rule to further secure our Nation's ports and modes of transportation. This rule implements the Maritime Transportation Security Act of 2002 and the Security and Accountability for Every Port Act of 2006. Those statutes establish requirements regarding the promulgation of regulations that require credentialed merchant mariners and workers with unescorted access to secure areas of vessels and facilities to undergo a security threat assessment and receive a biometric credential, known as a Transportation Worker Identification Credential (TWIC). After DHS publishes a notice announcing the compliance date for each Captain of the Port (COTP) zone, persons without TWICs will not be granted unescorted access to secure areas at affected maritime facilities. Those seeking unescorted access to secure areas aboard affected vessels, and all Coast Guard credentialed merchant mariners must possess a TWIC by September 25, 2008. This final rule will enhance the security of ports by requiring such security threat assessments of persons in secure areas and by improving access control measures to prevent those who may pose a security threat from gaining unescorted access to secure areas of ports.

With this final rule, the Coast Guard amends its regulations on vessel and facility security to require the use of the TWIC as an access control measure. The Coast Guard also amends its merchant mariner regulations to incorporate the requirement to obtain a TWIC. This final rule does not include the card reader requirements for owners and operators set forth in the Notice of Proposed Rulemaking (NPRM) issued in this matter on May 22, 2006. Such requirements will be addressed in a future rulemaking. Although the card reader requirements are not being implemented at this time, the Coast Guard will institute periodic unannounced checks to confirm the identity of the holder of the TWIC.

With this final rule, TSA applies its security threat assessment standards that currently apply to commercial drivers authorized to transport hazardous materials in commerce to merchant mariners and workers who require unescorted access to secure areas on vessels and at maritime facilities. This final rule amends TSA regulations in a number of ways. To minimize redundant background checks of workers, TSA amends the threat assessment standards to include a process by which TSA determines if a security threat assessment conducted by another governmental agency or by TSA for another program is comparable to the standards in this rule. TSA amends the qualification standards by changing the list of crimes that disqualify an individual from holding a TWIC or a hazardous materials endorsement.

TSA expands the appeal and waiver provisions to apply to TWIC applicants and air cargo employees who undergo a security threat assessment. These modifications include a process for the review of adverse waiver decisions and certain disqualification cases by an administrative law judge (ALJ). TSA also extends the time period in which applicants may apply for an appeal or waiver.

Finally, this rule establishes the user fee for the TWIC and invites comment on one component of the fee, the card replacement fee.

Under this rule, TSA will begin issuing first generation TWIC cards at initial port deployment locations. These TWIC cards will not initially support contactless biometric operations, but the TWIC cards will be functional with certain existing access control systems in use at ports today.

TSA and the Coast Guard have established a working group, comprised of members of the maritime and technology industries, through the National Maritime Security Advisory Committee (NMSAC), a federal advisory committee to the Coast Guard. This working group, in consultation with the National Institute for Standards and Technology (NIST), is tasked with recommending the contactless biometric software specification for TWIC cards.

TSA will publish a notice detailing the draft contactless biometric software specification for TWIC cards no later than the date by which it publishes the final TWIC fee as required by this Rule. Currently those notices are expected to be published in February 2007. TSA will subsequently publish a final specification for TWIC contactless biometric software functionality and the associated specifications for TWIC card readers. TSA plans also to write electronically the contactless biometric software application to all issued TWIC cards after publication of this specification. After initial field testing, this additional contactless biometric function will be included with all TWIC cards produced after publication of the contactless biometric software specification.

Although this rule goes into effect on March 26, 2007, the requirements to hold a TWIC, and to restrict access to secure areas of a facility or OCS facility, will be effective only after the regulated party is notified by DHS. These notifications will be published in the **Federal Register** and will require compliance on a COTP by COTP basis. Those seeking unescorted access to secure areas aboard affected vessels, and all Coast Guard credentialed merchant mariners must possess a TWIC by September 25, 2008.

DATES: *Effective Date:* This rule is effective March 26, 2007.

Comment Date: Comments with respect to the Card Replacement Fee must be submitted by February 26, 2007.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of dockets TSA–2006–24191 and Coast Guard–2006–24196 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

You may submit comments identified by docket number TSA–2006–24191 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400

Seventh Street SW., Room PL–401, Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: For questions related to TSA's standards: Greg Fisher, Transportation Security Administration, TSA–19, 601 South 12th Street, Arlington, VA 22202–4220, TWIC Program, (571) 227–4545; e-mail: *credentialing@dhs.gov.*

For legal questions: Christine Beyer, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2657; facsimile (571) 227–1380; e-mail *Christine.Beyer@dhs.gov.*

For questions concerning the Coast Guard provisions of the TWIC rule: LCDR Jonathan Maiorine, Commandant (G–PCP–2), United States Coast Guard, 2100 Second Street, SW., Washington, DC 20593; telephone 1–877–687–2243.

For questions concerning viewing or submitting material to the docket: Renee V. Wright, Program Manager, Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (202) 493–0402.

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites comment on one provision of the rule, the Card Replacement Fee, as discussed in section I under Fees and section VI of this preamble. See **ADDRESSES** above for information on where to submit comments. With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. Please explain the reason for any recommended change and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES,** but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and sensitive security information (SSI)[1], TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS's) FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

You may review the comments in the public docket by visiting the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located on the plaza level of the Nassif Building at the Department of Transportation address, previously provided under **ADDRESSES.** Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

Availability of Rulemaking Document

You can get an electronic copy of this document as well as other documents associated with this rulemaking on the Internet by—

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

(2) Accessing the Government Printing Office's web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

Abbreviations and Terms Used in This Document

ALJ—Administrative Law Judge
AMS—Area Maritime Security
ASP—Alternative Security Program
CBP—Bureau of Customs and Border Protection
CDC—Certain Dangerous Cargo
CDL—Commercial drivers license
CDLIS—Commercial drivers license information system
CHRC—Criminal history records check
CJIS—Criminal Justice Information Services Division
COR—Certificate of Registry
COTP—Captain of the Port
DHS—Department of Homeland Security
DOJ—Department of Justice
DOT—Department of Transportation
FBI—Federal Bureau of Investigation
FMCSA—Federal Motor Carrier Safety Administration
FMSC—Federal Maritime Security Coordinator
FSP—Facility Security Plan
HME—Hazardous materials endorsement
HSA—Homeland Security Act
HSPD 12—Homeland Security Presidential Directive 12
MARSEC—Maritime Security
MMD—Merchant Mariner's Document
MSC—Marine Safety Center
MTSA—Maritime Transportation Security Act
NIST—National Institute of Standards and Technology

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclsoure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

NPRM—Notice of Proposed Rulemaking
NVIC—Navigation and Vessel Inspection Circular
OCS—Outer Continental Shelf
REC—Regional Examination Center
SAFETEA–LU—Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users
STCW—International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as amended
TSA—Transportation Security Administration
TPS—Temporary Protected Status
TWIC—Transportation Worker Identification Credential
VSP—Vessel Security Plan

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I. Background

The Department of Homeland Security (DHS), through the United States Coast Guard (Coast Guard) and the Transportation Security Administration (TSA), issues this final rule pursuant to the Maritime Transportation Security Act (MTSA), Pub. L. 107–295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109–347 (October 13, 2006). Section 102 of MTSA (46 U.S.C. 70105) requires DHS to issue regulations to prevent individuals from entering secure areas of vessels or MTSA-regulated port facilities unless such individuals hold transportation security cards issued under section 102 and are authorized to be in the secure areas. An individual who does not hold the required transportation security card, but who is otherwise authorized to be in the secure area in accordance with the facility's security plan, must be accompanied by another individual who holds a transportation security card. MTSA also requires all credentialed merchant mariners to hold these transportation security cards, and requires DHS to establish a waiver and appeals process for persons found to be ineligible for the required transportation security card. The SAFE Port Act contained amendments to the basic MTSA requirements for credentialing (concurrent processing, fees, card readers, program roll out, testing and timelines) as well as added new requirements (disqualifying crimes, new hire provisions and discretion as to who may obtain a TWIC). The substance of the SAFE Port Act is discussed in greater detail later in this document.

On May 22, 2006, TSA and the Coast Guard issued a joint notice of proposed rulemaking (71 FR 29396), setting forth the proposed requirements and processes required under sec. 102 of MTSA (TWIC NPRM) for implementation of the TWIC program in the maritime sector. The NPRM proposed changes to three titles of TSA and Coast Guard regulations (33 CFR, 46 CFR, and 49 CFR). The Department intends for these combined changes to increase port security by requiring all credentialed mariners and all persons who require unescorted access to a regulated facility or vessel to have undergone a security threat assessment by TSA and obtain a TWIC.[2] The proposed security threat assessment included a review of criminal, immigration, and pertinent intelligence records. TSA also proposed a process for individuals denied TWICs to appeal adverse determinations or apply for waivers of the standards.

Prior to the publication of the TWIC NPRM, the Coast Guard published a Notice in the **Federal Register** informing the public that the Commandant of the Coast Guard, pursuant to his authority under 50 U.S.C. 191 and 33 CFR part 125, was exercising his authority to require identification credentials for persons seeking access to waterfront facilities and to port and harbor areas, including vessels and harbor craft in such areas. 71 FR 25066 (April 28, 2006). This action has served as an interim measure to improve security at our nation's ports by verifying maritime workers' identities, validating their background information, and accounting for access for authorized personnel to transportation facilities, vessels and activities. *Id.*

The May 22, 2006 TWIC NPRM provided the draft regulatory text for review and solicited public comments for 45 days. TSA and the Coast Guard also held four public meetings throughout the country to solicit public comments. Those meetings were held on May 31, 2006 in Newark, New Jersey; on June 1, 2006 in Tampa, Florida; on June 6, 2006 in St. Louis, Missouri; and on June 7, 2006 in Long Beach, California. Approximately 1200 people attended these meetings. The public can view transcripts of the four public meetings on the public docket for this rulemaking action at *www.regulations.gov.* DHS also received approximately 1770 written comments on the TWIC NPRM. Those comments also can be accessed through the public docket for this action. TSA and the Coast Guard respond to the comments received in the ''Discussion of Comments'' section, below.

Many commenters requested an extension of the comment period and additional public meetings. As explained more fully in the ''Discussion of Comments'' section below, DHS has decided not to delay implementation of the TWIC program by extending the

[2] Additional information on the statutory and regulatory history of this rule can be found in the NPRM at 71 FR 29396 (May 22, 2006).

comment period or providing additional public meetings because it is imperative to begin implementation of the TWIC requirements, and accompanying security threat assessments, as soon as possible to improve the security of our Nation's vessels and port facilities. TSA and Coast Guard, however, have not promulgated in this final rule the proposed requirements on owners and operators relating to biometric readers. The Department will address those proposed requirements, which generated the majority of the comments received on the NPRM, in a separate rulemaking action. Interested parties will have the opportunity to comment on those provisions during that rulemaking action. Although the card reader requirements are not being implemented under this final rule, Coast Guard personnel will periodically, and without advance notice, use handheld readers to check the biometric information contained in the card to confirm the identity of the holder of the TWIC.

On May 22, 2006, the Coast Guard also published a related proposed rule, ''Consolidation of Merchant Mariner Qualification Credentials,'' at 71 FR 29462 (MMC NPRM), proposing the consolidation of Coast Guard-issued merchant mariner's document (MMD), merchant mariner's license (license), certificate of registry (COR) and International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW) certificate into a single credential called the merchant mariner credential (MMC). The MMC NPRM proposed to streamline the application process, and reduce the administrative burden for the public and the Federal Government. The public meetings held on the TWIC NPRM also included time for the Coast Guard to receive comments on the MMC NPRM. In a separate rulemaking action published elsewhere in this edition of the **Federal Register**, the Coast Guard has provided a Supplemental Notice of Proposed Rulemaking (SNPRM) also entitled ''Consolidation of Merchant Mariner Qualification Credentials.'' The purpose of the SNPRM is to address comments received from the public on the MMC NPRM, revise the proposed rule based on those comments, and provide the public with an additional opportunity to comment on the revised rulemaking. If it becomes final, the MMC rulemaking is not expected to go into effect until the initial TWIC roll out is complete. This time lapse will not cause a detrimental effect on security, as all credentialed mariners will still need to comply with the TWIC requirements and compliance deadlines set forth in this final rule.

II. Final Rule

Under this final rule, DHS, through the Coast Guard and TSA, requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a Transportation Worker Identification Credential (TWIC).

A. Coast Guard Provisions

Owners/operators of MTSA-regulated vessels, facilities, and Outer Continental Shelf (OCS) facilities will need to change their existing access control procedures to ensure that merchant mariners and any other individual seeking unescorted access to a secure area of their vessel or facility has a TWIC.

B. TSA Provisions

Workers must provide biographic and biometric information to apply for a TWIC and pay a fee of $107–$159 to cover all costs associated with the TWIC program. A TWIC applicant must complete a TSA security threat assessment and will be disqualified from obtaining a TWIC if he or she has been convicted or incarcerated for certain crimes within prescribed time periods, lacks legal presence and/or authorization to work in the United States, has a connection to terrorist activity, or has been determined to lack mental capacity.

All applicants have the opportunity to appeal a disqualification, and may apply to TSA for a waiver if disqualified for certain crimes or mental incapacity, or are aliens in Temporary Protected Status (TPS). Applicants who seek a waiver and are denied may seek review by an administrative law judge (ALJ). In addition, applicants who are disqualified under § 1572.107 may seek ALJ review of the disqualification.

A security threat assessment is valid for five years. Therefore, in most cases, a TWIC is valid for five years unless a disqualifying event occurs. If an applicant obtains a TWIC based on a comparable threat assessment under § 1572.5(e), the TWIC will expire five years from the date on the credential associated with the comparable threat assessment. To renew a TWIC, the renewal applicant must provide new biographic and biometric information, complete a new threat assessment, and pay the fee to renew the credential.

C. Changes From NPRM

Each of the changes made from the NPRM to the final rule is summarized in Table 1 and discussed in detail following the table.

TABLE 1.—SUMMARY OF SIGNIFICANT CHANGES BETWEEN MAY 22, 2006 NPRM AND THIS FINAL RULE

Topic	NPRM	Final rule
Access control	Visual identity badge and reader (with biometric verification and validity check at facility/vessel based on MARSEC level).	Visual identity badge; Coast Guard will conduct periodic checks of biometric and validity (second rule for reader requirements).
Escorted access	Definition only	Definition modified to clarify that in restricted areas (33 CFR 101.105), ''escort'' means a side-by-side escort; outside restricted areas, ''escort'' may consist of monitoring.
New hires	Not granted unescorted access to secure areas until successful completion of security threat assessment and card issuance.	Permitted to have limited access for 30 consecutive days if accompanied by TWIC-holder and additional requirements are met.
Passenger access area	Defined only for certain vessels (passenger, ferries, cruise ships).	Passenger access area remains and employee access area for certain vessels added (employee access areas do not apply to cruise ships).
TWIC Addendum and recordkeeping requirements.	Included	Excluded.
Secure area	Definition only	Clarified definition's meaning in preamble, and revised part 105 to allow part 105 facilities to submit FSP amendment to change access control area.

TABLE 1.—SUMMARY OF SIGNIFICANT CHANGES BETWEEN MAY 22, 2006 NPRM AND THIS FINAL RULE—Continued

Topic	NPRM	Final rule
Lost/Stolen/Damaged cards	Access procedures defined in TWIC Addendum.	Specific requirements included in regulation.
AMS Committee members	Need TWIC	Need name-based check or a TWIC.
Vessels in foreign waters	No special provisions	Changed secure area definition to state that at certain specified times, U.S. vessels may not have any secure areas.
Emergency responders	Not specifically addressed	Not required to obtain a TWIC for emergency response.
Voluntary compliance	Offered	Not offered.
Compliance dates	12–18 months after final rule	Phased for facilities by each COTP zone. All mariners and vessels 20 months after the publication date of this final rule.
Disqualifying crimes	Same as those used for HME	Amended; new list will apply for both TWIC and HME.
Administrative law judge (ALJ) review.	Not included	May be used for waiver denials and disqualifications under § 1572.107.
Immigration standards	Limited ability for non-U.S. citizens to obtain TWICs.	Expanded to cover foreign maritime students, and certain professionals and specialists on restricted visas; permitting aliens in TPS to apply for a waiver.
Mental incapacity	Could only be waived by showing court order or letter from institution.	Waiver broadened to allow for ''case-by-case'' determinations.
Fee	$95–$149; card replacement fee $36.	$107–$159; card replacement fee $36, but requesting comment on increasing this fee to $60.

1. Changes From Coast Guard's Proposed Rule

Coast Guard is changing several sections of the proposed rule as a result of comments received and additional analysis. These changes include: (1) Changing the access control procedures to be used with TWICs by removing the reader requirements; (2) revising and clarifying the definition of the term ''escorting;'' (3) adding provisions allowing for access for individuals who are new hires and who have applied for, but not yet received, a TWIC; (4) adding a provision to allow for limited, continued unescorted access for those individuals who report their TWIC as lost, damaged, or stolen; (5) adding a provision to create ''employee access areas'' aboard passenger vessels and ferries; (6) removing the proposed requirement to submit a TWIC Addendum and keep additional records regarding who has been granted access privileges; (7) adding a provision to allow certain facilities to designate smaller portions of their property as their secure area via an amendment to their facility security plan; (8) removing the proposed requirement for all AMS Committee members to hold a TWIC; (9) changing the definition of secure area to state that, at certain times, U.S. vessels may not have any secure areas; (10) adding a provision to allow emergency responders to have unescorted access without a TWIC during emergency situations; (11) removing the provision allowing for voluntary compliance for those vessels and facilities not otherwise required to implement the TWIC requirements; and (12) revising the compliance dates for owners/operators of vessels and facilities.

(a). Reader Requirements

After reviewing the comments (which are summarized below), we determined that implementing the reader requirements as envisioned in the NPRM would not be prudent at this time. As such, we have removed the reader requirements from the final rule, and will be issuing a subsequent NPRM to address these requirements. That NPRM will address many of the comments and concerns regarding technology that were raised in the below-summarized comments. We will, however, continue to require the use of the TWIC. As stated in the NPRM, there are considerable security benefits to be gained from a TWIC, even in the absence of reader usage. The TWIC provides greater reliability than existing visual identity badge systems because it presents a uniform appearance with embedded features on the face of the credential that make it difficult to forge or alter. When presented with a TWIC, security personnel familiar with its security features are immediately able to notice any absence or destruction of these features, making it less likely that an individual will be able to gain unescorted access to secure areas using a forged or altered TWIC. Additionally, the Coast Guard will conduct unannounced checks of the cards while visiting facilities and vessels. The Coast Guard will use handheld readers to check the biometrics on the card against the person presenting the card. These unannounced checks are an important component of the security efforts at the ports.

(b). ''Escorting''/''Unescorted Access''

We have amended the definition of escorted access to clarify our intent. Namely, that the distinction between escort and unescorted access are to serve as performance standards, rather than strict definitions. We expect that, when in an area defined as a restricted area in a vessel or facility security plan, escorting will mean a live, physical side-by-side escort. Whether it must be a one-to-one escort, or whether there can be one escort for multiple persons, will depend on the specifics of each vessel and/or facility. We will provide additional guidance on what these specifics might be in a Navigation and Vessel Inspection Circular (NVIC). Outside of restricted areas, however, side-by-side escorting is not required, so long as the method of surveillance or monitoring is sufficient to allow for a quick response should an individual ''under escort'' be found in an area where he or she has not been authorized to go or is engaging in activities other than those for which escorted access was granted. Again, we will provide additional guidance with more specifics in a NVIC.

(c). New Hires

We have added a new section within parts 104, 105, and 106 to provide owners/operators with the ability to put new hires to work once new hires have applied for their TWIC and an initial name-based check is completed. In order to ensure adequate security for the vessel and facility during this period, these provisions allow new hires to have access to secure areas for up to 30 consecutive days, so long as they pass a TSA name based check and are

accompanied by another employee with a TWIC. If TSA does not act upon a TWIC application within 30 days, the Coast Guard may further extend access to secure areas for another 30 days. Additional guidance on the manner in which new hires may be accompanied will be issued by the Coast Guard. The guidance will be in the form of a NVIC that considers vessel or facility size, crew or staff size, vessel or facility configuration, the number of TWIC holders, and other appropriate factors, or by making a determination on a case-by-case basis. For example, in some instances, where the operating environment of the vessel is such that there is a small crew, and there is a 24-hour live watchstand while underway, we expect to view the new hires as accompanied when the vessel owner/operator ensures that the security measures for monitoring and access control included within their Coast Guard-approved security plans are implemented. As the operating environment increases or becomes more complex, such as might be the case when Certain Dangerous Cargoes (CDCs) are present, we expect to require additional security measures to ensure that the new hires are, in fact, accompanied by an individual with a TWIC. Similar guidance will also be in place for larger vessels, as well as for facilities and OCS facilities. The NVIC will be released in the near future.

In order to take advantage of this new hire provision, the following procedures must be followed:

(1) The new hire will need to have applied for a TWIC in accordance with 49 CFR part 1572 by completing the full enrollment process and paying the user fee. He or she cannot be engaged in a waiver or appeal process. The owner or operator must have the new hire sign a statement affirming this.

(2) The owner or operator or the security officer must enter the following information on the new hire into the Coast Guard's Homeport Web site (*http://homeport.uscg.mil*):

(i) Full legal name, including middle name if one exists;

(ii) Date of birth;

(iii) Social security number (optional);

(iv) Employer name and 24 hour contact information; and

(v) Date of TWIC enrollment;

(3) The new hire must present an identification credential that meets the requirements of § 101.515 of this subchapter; and

(4) There must be no other circumstances that would cause reasonable suspicion regarding the new hire's ability to obtain a TWIC, and the owner or operator or Facility Security Officer (FSO) must not have been informed by the cognizant COTP that the individual poses a security threat.

This provision only applies to direct hires of the owner/operator; it cannot be used to allow temporary unescorted access to contractors, vendors, longshoremen, truck drivers (unless they are direct employees of the owner/operator), or any other visitor. This provision does not apply if the new hire is a Company, Vessel, or Facility Security Officer, or is otherwise tasked with security duties as a primary assignment.

In order for the Coast Guard and TSA to verify that a new hire who is awaiting TWIC issuance passes an initial security review, this provision includes a requirement for the owner, operator, Vessel Security Officer (VSO) or FSO to enter new hire identifying information into the Coast Guard's Homeport web page. The Homeport web page is a secure location capable of communicating sensitive security information such as Vessel Security Plans (VSP) and Facility Security Plans (FSP) between industry and the Coast Guard. The Homeport web page address is *http://homeport.uscg.mil.* Homeport will then interface with the TSA system, and if a match to an enrollment record can be made, the TSA system will pass back to Homeport the result of the initial name-based check. If the result is that the new hire has been cleared, the owner/operator/security officer can put the new hire to work under the provisions of this section and any guidance provided by the Coast Guard in a forthcoming NVIC.

TSA will begin the security threat assessment process as soon as the enrollment record is complete. Generally, TSA can complete an initial security review within 48–72 hours based on all of the information provided during enrollment. Thus, in some cases (where the new hire information is entered into Homeport three or more days following enrollment), the owner/operator/security officer will not have to wait long before finding out if an individual has cleared the initial name check. We expect that Homeport will be able to notify owners/operators/security officers, via e-mail, when it has received an update on any of the new hires entered by that owner/operator/security officer, which will alleviate any need for them to continuously check in with Homeport.

The new hire must have applied for a TWIC in accordance with 49 CFR part 1572 by completing the full enrollment process and paying the user fee. The owner/operator must have the new hire sign a statement affirming the enrollment, payment, and that the new hire is not involved in an appeal or waiver application. The owner/operator must retain this statement until the new hire receives a TWIC. The statement must be produced if the Coast Guard requests it during an inspection or investigation. The new hire must also present to the owner or operator a form of identification that meets the standard set in 33 CFR 101.515.

It is also important to note here that a new hire may be initially cleared to work in the secure area under the provisions of this section, but be disqualified from receiving a TWIC when the full threat assessment is complete. The results of the criminal history records check (CHRC) generally will not be fully adjudicated within three days, and if the adjudication reveals a disqualifying criminal history, the new hire will not be cleared to receive a TWIC.

The owner/operator of regulated vessels or facilities is required to accompany new hires in secure areas, which includes monitoring new hires while they are in restricted areas of the vessel or facility. Monitoring has the same meaning here as found in §§ 104.285, 105.275, and 106.275 of 33 CFR chapter I, subchapter H.

We are also requiring owners/operators of regulated vessels and facilities to determine that their new hires need access to secure areas immediately in order to prevent adverse impact to the operation of the vessel or facility. Owners and operators must identify that a hardship exists to their operations if their new hires are not allowed access. This adverse impact is not the impact of simply providing escorts for new hires, but must be adverse impacts to the business itself from not being able to employ new hires immediately in secure areas without escort.

Owners and operators of regulated vessels and facilities must be assured that there are no other circumstances that would cause reasonable suspicion regarding the new hire's ability to obtain a TWIC. This information can come through the normal hiring process, reference checks, or interviews. Also, if the Coast Guard, through its Captain of the Port (COTP), has informed the owner/operator that the new hire poses a security threat, the new hire may not have unescorted access to secure areas of the vessel or facility. Only individuals who pass a threat assessment and are issued a TWIC may have unescorted access to secure areas of the vessel or facility.

(d). Access for Individuals With Lost/Stolen TWICs

Under the NPRM, we proposed requiring owners/operators to include alternative security procedures in the TWIC Addenda. These alternative procedures were to be used in various situations, such as when individuals needed unescorted access to secure areas but had lost their TWIC, had it stolen, or simply forgotten it that day. As discussed below, we removed the TWIC Addendum requirement from the final rule, but we wanted to include a provision to allow TWIC holders to continue, for a short period, to have unescorted access to secure areas after reporting their TWICs as lost, damaged, or stolen. As a result, this final rule includes specific procedures for owners/operators to use in the case of lost, damaged, or stolen TWICs. This procedure includes having the individual report his/her card as lost, damaged, or stolen to the TWIC Call Center and checking another form of identification that meets 33 CFR 101.515, provided there are no other suspicious circumstances that would cause an owner/operator to question the veracity of the individual. In order to prevent this procedure from becoming a significant loophole in the TWIC regulation, we require that the individual be known to have had a valid TWIC and to have previously been granted unescorted access, and have limited the use of the procedure to seven (7) consecutive calendar days. This should provide enough time for the replacement card to be produced and shipped to the nearest enrollment enter, and for the individual to travel to that center to pick up the replacement card.

(e). ''Employee Access Areas''

We intended for the term ''passenger access area'' to capture those employees whose jobs are necessary solely for the entertainment of the passengers of the vessel, such as musicians, wait staff, or casino employees on a passenger vessel. Upon reviewing comments, however, we realized that there are a variety of employees who may need to enter non-passenger spaces, such as the galley, who would be included under TWIC's applicability merely because of their need to enter these areas. As such, we are adding a definition for ''employee access areas,'' for use only by passenger vessels and ferries. An employee access area is a defined space within the access control area of a ferry or passenger vessel that is open to employees but not passengers. It is not a secure area and does not require a TWIC for unescorted access. It may not include any areas defined as restricted areas in the vessel security plan (VSP). Note, however, that any employee that needs to have unescorted access to areas of the vessel outside of the passenger or employee access areas will need to obtain a TWIC.

(f) TWIC Addendum and Recordkeeping Requirements

We removed the TWIC Addendum requirement from the final rule when we determined that the reader requirements would be delayed until a subsequent rulemaking. The purpose of the TWIC Addendum was to allow the owner/operator to explain how the readers would be incorporated into their overall access control structure, within the standards provided in the NPRM. With the removal of the reader requirements from this final rule, we feel it is appropriate to also remove the TWIC Addendum requirement. Additionally, because we envision the TWIC Addendum to be a part of the subsequent rulemaking on reader requirements, we felt it would be overly burdensome to also require a TWIC Addendum at this point in time.

The recordkeeping requirements related to TWIC implementation have also been removed from the final rule. We had proposed the requirements because we believed they could be satisfied by using the TWIC readers, which were also proposed. Due to our decision to remove the reader requirements from this final rule, it makes sense to also remove the recordkeeping requirements that were intrinsically tied to those readers.

(g). Secure Area

We did not intend for the terms ''secure area'' and ''restricted area'' to be read as meaning the same thing. Restricted areas are defined already in the MTSA regulations as ''the infrastructure or locations identified in an area, vessel, or facility security assessment or by the operator that require limited access and a higher degree of security protection.'' (33 CFR 101.105) Additionally, those regulations spell out certain areas within vessels and facilities that must be included as restricted areas (*see* 33 CFR 104.270, 105.260, and 106.265). This final rule defines ''secure area'' as meaning the area over which an owner/operator has implemented security measures for access control. In other words, the secure area would be anything inside the outer-most access control point of a facility, and it would encompass the entirety of a vessel or OCS facility.

We adopted this definition after much consideration, including consideration of making only restricted areas secure areas. We ultimately abandoned this option, however, when we realized that equating the restricted area to the secure area would have required that the readers and biometric verification be used at the entry points of each restricted area. Because some facilities and vessels have multiple restricted areas that are not always contiguous, this would have likely meant that many owners/operators would have needed more than one reader, increasing their compliance costs. Additionally, the process of repeated biometric identification could have interfered with the operations of facilities and vessels. Finally, we determined that there are areas within some facilities that are not required to be restricted areas that should be deemed secure areas, such as truck staging areas, empty container storage areas, and roads leading between the facility gates and the pier. Allowing persons who have not been through the security threat assessment or are not escorted to have access to these areas could provide them with the opportunity to access the non-restricted areas of the facility to perpetrate a transportation security incident (TSI). Pushing the secure area out beyond the restricted area makes the event of an intentional TSI less likely. As a result, we decided to define the secure area as the ''access control area,'' thus limiting the number of readers required, as well as the number of times biometric verification would need to take place, and providing for the necessary level of security outside of restricted areas. We note, however, that facility owners/operators have the discretion to designate their entire facility as a restricted area. In this situation, the restricted area and secure area would be one and the same.

We recognize that many facilities may have areas within their access control area that are not related to maritime transportation, such as areas devoted to manufacturing or refining operations, and were only included within the FSP because the owner/operator did not want to have to install additional access control measures to separate the non-maritime transportation related portions of their facility from the maritime transportation related portions. Given the new obligations of this TWIC final rule, however, these owners/operators may wish to revisit this decision. As such, we are giving facility owners/operators the option of amending their FSP to redefine their secure area, to include only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation

security incident. These amendments must be submitted to the cognizant COTP by July 25, 2007.

We realize that there may be some owners and operators of vessels that would like the same option. However, vessels present a unique security threat over facilities in that they may not only be targets in and of themselves, but may also be used as a weapon. Due to this fact, we will continue to define the entire vessel as a ''secure area,'' making exception only for those special passenger and employee access areas which are discussed above. Vessel owners/operators need not submit an amendment to the VSP in order to implement these special areas, however they may do so, following the procedures described in part 104.

(h). U.S. Vessels in Foreign Waters

Due in part to the unique operating requirements imposed on U.S. Offshore Supply Vessels (OSVs) and Mobile Offshore Drilling Units (MODUs) when operating in support of OCS facilities in foreign waters, we determined that we must change some language from the proposed rule. As such, we are adding a provision to the definition of secure area in § 101.105 that states that U.S. vessels operating under the waiver provision in 46 U.S.C. 8103(b)(3)(A) or (B) have no secure areas. These waiver provisions allow U.S. vessels to employ foreigners as crew in certain circumstances. The effect of this change is to exempt these vessels from the TWIC requirement while they are operating under the referenced waivers. As soon as the vessel ceases operating under these waiver provisions, it will be deemed to have secure areas as otherwise defined, and TWIC provisions will apply.

(i). Area Maritime Security (AMS) Committee Members

The NPRM proposed requiring all members of AMS Committees to have a TWIC. We recognize that large numbers of the members will either (1) already have a TWIC, due to their role within the security organization of a facility, or (2) already have undergone some type of comparable background screening due to their position as a Federal, State, or local law enforcement official. After further consideration, we believe that anyone not falling into one of these categories could be discouraged from volunteering to sit on an AMS Committee, due to the cost of obtaining a TWIC. This could have a detrimental effect on the AMS Committee, as there may be individuals who are experts in security who would be (and in some cases already are) valuable parts of AMS Committees, who would opt out of sitting on the Committee rather than assume the cost of obtaining a TWIC. Therefore, we have changed the final rule to allow AMSC members to serve on the AMSC after the completion of a name-based terrorist check from TSA. If an AMSC member requires unescorted access to secure areas of vessels or facilities they will be required to obtain a TWIC. If, however, they do not require unescorted access, but do need access to SSI, they must first pass a TSA name based check at no cost to the AMSC member. The Federal Maritime Security Coordinator for the member's particular AMSC (*i.e.* COTPs) will forward the names of these individuals to TSA or Coast Guard Headquarters for clearance prior to sharing SSI with these members.

(j). Emergency Responders

We added a provision within 33 CFR 101.514 to allow State and local emergency responders to gain access to secure areas without a TWIC during an emergency situation. Not all emergency responders will fall into the category of State or local officials. We feel it is imperative that these individuals be allowed unescorted access to secure areas in an emergency situation. Emergency responders who are not State or local officials are encouraged to apply for a TWIC. Under the existing access control requirements of 33 CFR 105.255, the owner or operator has documented procedures for checking credentials prior to allowing access and will maintain responsibility for all those granted access to a vessel or facility, even in an emergency situation.

(k). Voluntary Compliance

The provisions that would have allowed vessel and facility owners/operators to implement voluntary TWIC programs have been removed. These provisions have been eliminated due to the fact that neither TSA nor the Coast Guard can, at this time, envision being in a position to approve voluntary compliance before the full TWIC program, (*i.e.*, reader requirements) is in place. We will keep it in mind, however, as we develop our NPRM to repropose reader requirements.

(l). Compliance Dates

We have also revised the compliance dates slightly. Vessels will now have 20 months from the publication date of this final rule to implement the new TWIC access control provisions. Facilities will still have their compliance date tied to the completion of initial enrollment in the COTP zone where the facility is located. This date will vary, and will be announced for each COTP zone at least 90 days in advance by a Notice published in the **Federal Register**. The latest date by which facilities can expect to be required to comply will be September 25, 2008. Additionally, mariners will not need to hold a TWIC until September 25, 2008. Mariners may rely upon their Coast Guard-issued credential and a photo ID to gain unescorted access to secure areas to any facility that has a compliance date earlier than September 25, 2008.

2. Changes From TSA's Proposed Rule

TSA is changing several sections of the proposed rule as a result of comments received, new legislation, and additional analysis. The changes include: (1) Establishing procedures for review of waiver denials by an ALJ; (2) applying the hazmat and TWIC appeal procedures to air cargo personnel; (3) amending the list of disqualifying criminal offenses; (4) expanding the group of aliens who meet the immigration standards; (5) amending the waiver standards for applicants disqualified due to mental incapacity; (6) amending the fees for TWIC; (7) revising the standard for drivers licensed in Mexico and Canada who transport hazardous materials into and within the United States; and (8) modifying the prohibitions on fraudulent use or manufacture of TWIC or access control procedures.

(a). Review by Administrative Law Judge

We noted in the NPRM that if legislation was enacted after publication of the final rule to require review by an Administrative Law Judge of the denial of waiver requests by TSA, we would include such a statutory mandate in the final rule. *See* 71 FR at 29421. The Coast Guard and Maritime Transportation Act of 2006, Pub. L. 109–241, was enacted on July 11, 2006. Section 309 of this Act requires the Secretary of Homeland Security to establish an ALJ review process for individuals denied a waiver by TSA. Accordingly, we are including the ALJ review procedures in new § 1515.11.

The ALJ review process set forth under § 1515.11 does not alter the substantive criteria under which TSA will grant or deny a waiver. Therefore, this provision constitutes a rule of agency procedure and may be implemented without prior notice and comment under the Administrative Procedure Act, 5 U.S.C. 553(b)(A). *See Hurson Assoc. Inc.,* v. *Glickman,* 229 F.3d 277 (D.C. Cir. 2000) (rule eliminating face-to-face process in agency review of requests for approval

was procedural and not subject to notice-and-comment rulemaking).

The new legislation requires ALJ review to be available for denials of waivers. Under the rules waivers are not available for determinations under § 1572.107 that an applicant poses a security threat, which usually is based on an intelligence-related check involving classified information. However, we have considered that there appears to be an intent that we provide for an ALJ review of such determinations, considering, for example, that the statute provides for ALJ review of classified information, which rarely is relevant to waivers under the current rules. We have also considered that the decision to determine whether an applicant poses a threat under § 1572.107 is largely a subjective judgment based on many facts and circumstances. The same is true for the decision to grant or deny a waiver of the standards in §§ 1572.103 (criminal offenses), aliens who are in TPS under 1572.105, or 1572.109 (mental capacity). Accordingly, we are providing for ALJ review of both a determination that the applicant does not meet the standards in § 1572.107, and a denial of a waiver of certain standards in §§ 1572.103, 1572.105, and 1572.109.

An applicant who has received an Initial Determination of Threat Assessment based on § 1572.107 may first appeal that determination using the procedures in new § 1515.9. If after that appeal TSA continues its determination that the applicant is not qualified, the applicant may seek ALJ review under § 1515.11.

On the other hand, the determination that an applicant does or does not have a disqualifying criminal offense listed in § 1572.103, immigration status in § 1572.105, or mental capacity described in § 1572.109, largely involves an analysis of the legal events that have occurred. Such analyses depend mainly on review of legal documents. We have retained in § 1515.5 the paper hearing process for the appeal of an Initial Determination that an applicant is not qualified under those sections. At the end of that appeal, if TSA issues a Final Determination that the applicant is not qualified under one of those sections, the applicant may seek review in the Court of Appeals. At any time, however, the applicant may seek a waiver of certain standards in those sections on the basis that, notwithstanding a lack of qualification, the applicant asserts that he or she does not pose a security threat and thus seeks to waive the subject standards. The applicant initiates the request for a waiver using the procedures in § 1515.7. If a waiver is not granted, the applicant may seek review by an ALJ under § 1515.11.

For consistency, we are providing the same review processes for hazardous materials endorsement (HME) applicants that we are providing for TWIC applicants.

Paragraph 1515.11(a) of this new section specifies that the new process applies to applicants who are seeking review of an initial decision by TSA denying a request for a waiver under § 1515.7 or who are seeking review of a Final Determination of Threat Assessment issued under § 1515.9.

Section 1515.11(b) allows the applicant 30 calendar days from the date of service of the determination to request a review. The review will be conducted by an ALJ who possesses the appropriate security clearances to review classified information. The rule sets forth the information that the applicant must submit. This section clarifies that the ALJ may only consider evidence that was presented to TSA at the time of application in the request for a waiver or the appeal. If the applicant has new evidence or information to support a request for waiver, the applicant must file a new request for a waiver under § 1515.7 or a new appeal under § 1515.9 and the pending request for review will be dismissed. Section 1515.11 provides detailed requirements for the conduct of the review, such as requests for extension of time and duties of the ALJ.

In accordance with the Coast Guard and Maritime Transportation Act, this section provides for ALJ review of classified information on an *ex parte*, in camera basis and consideration of such information in rendering a decision if the information appears to be material and relevant.

Paragraph 1515.11(f) provides that within 30 calendar days after the conclusion of the hearing, the ALJ will issue an unclassified decision to the parties. The ALJ may issue a classified decision to TSA. The ALJ may decide that the decision was supported by substantial evidence on the record or that the decision was not supported by substantial evidence on the record. If neither party requests a review of the ALJ's decision, TSA will issue a final order either granting or denying the waiver or the appeal.

Paragraph 1515.11(g) describes the process by which a party may petition for review of the ALJ's decision to the TSA Final Decision Maker. The TSA Final Decision Maker will issue a written decision within 30 calendar days after receipt of the petition or receipt of the other party's response. The TSA Final Decision Maker may issue an unclassified opinion to the parties and a classified opinion to TSA. The decision of the TSA Final Decision Maker is a final agency order.

Paragraph 1515.11(h) states that an applicant may seek judicial review of a final order of the TSA Final Decision Maker in accordance with 49 U.S.C. 46110, which provides for review in the United States Court of Appeals. Under sec. 46110 a party has 60 days after the date of service of the final order to petition for review.

(b). Appeal Procedures for Air Cargo Personnel

In the final rule we are adding the appeal procedures that currently apply to air cargo workers codified at 49 CFR parts 1540 to 1515. In the NPRM TSA stated that it may use the procedures in part 1515 for other security threat assessments, such as for air cargo personnel. *See* 71 FR at 29418. At that time the air cargo proposed rule had been published but was not yet final, and it proposed to use appeal procedures that were essentially the same as for HME applicants. The air cargo rule has now been made final. *See* 71 FR 30478 (May 26, 2006). Because part 1515 was not yet final in the air cargo rule, we placed the appeal procedures for the air cargo security threat assessment into part 1540 subpart C, along with other procedures that apply to air cargo threat assessments. In a further effort to harmonize security threat assessments, we are now moving the appeal procedures for air cargo personnel to part 1515. For consistency with the TWIC and HME processes we are providing for review by an ALJ as described above.

We are also revising part 1540 subpart C to harmonize more with part 1572. Thus, we are replacing ''individual'' with ''applicant'' to refer to the person who is applying for a security threat assessment. We are also revising § 1540.205 to read essentially the same as § 1572.21 for TWIC, because it serves the same function. Note that while the procedures for TWIC refer to CHRCs and other checks, the procedures for air cargo personnel refer only to intelligence-related checks, because they are not subject to the other checks conducted on TWIC applicants.

(c). Disqualifying Criminal Offenses.

In this final rule, the list of criminal acts that disqualify an applicant from holding an HME under 49 CFR 1572.103 now applies to TWIC applicants. We believe equal treatment for transportation workers is appropriate and consistent with the pertinent

statutory requirements. The standards for the HME rule were mandated by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act) Pub. L. 107–56, 115 Stat.272 (October 25, 2001). It provides that TSA conduct a security threat assessment on applicants to determine if they pose a ''security risk.'' The USA Patriot Act was enacted shortly after and in response to the terrorist attacks on the United States on September 11. As a result, we interpreted the language ''security risk'' to mean a risk of terrorism or terrorist activity. Nothing in the statute or the legislative history of the USA Patriot Act contradicts this reading of the language. MTSA, enacted a year later, requires a security threat assessment to determine whether an applicant poses a ''terrorism security threat.'' We believe the security threat assessment required under MTSA is the same threat assessment required under the USA Patriot Act, even though the actual language differs slightly.

In addition, TSA is making administrative and substantive changes to this section. In the NPRM, TSA indicated that it was considering changing the list of disqualifying crimes and asked for comment on the list. TSA received significant comments from Congress and others suggesting that the list of disqualifying crimes is overly broad, and that some crimes had more of a nexus to terrorism than others. 152 Cong. Rec. 2120 (2006). *See also* Comments of House Committee on Homeland Security on TSA and Coast Guard's Rule to Implement TWIC, July 6, 2006. TSA has evaluated the list of disqualifying crimes and decided to fine tune the list to better reflect crimes that are more likely to result in a terrorism security risk or a transportation security incident, and thus should disqualify an applicant from receiving a TWIC.

TSA is making a substantive change to this section concerning the crimes of treason, sedition, espionage, and terrorism listed in § 1572.103(a), which are permanently disqualifying. Applicants convicted of these crimes are not eligible for a waiver. As we proposed to do in the NPRM, TSA is adding conspiracy to commit these crimes to the list of crimes that are not subject to a waiver request. TSA has determined that a conviction of conspiracy to commit espionage, treason, sedition, or terrorism is indicative of a serious, ongoing, unacceptable risk to security and should not be waived under any circumstances.

TSA is changing the language in (a)(4) from ''a crime listed in 18 U.S.C. Chapter 113B—Terrorism'' to ''a federal crime of terrorism as defined in 18 U.S.C. 2332b(g)'' or conspiracy to commit such crime, or comparable State law. Section 2332b(g) is a definitional list that is broader and more explicit than the crimes punished directly in Chapter 113B. We are making this change to more accurately capture all pertinent terrorism-related crimes. Although we intended to be as inclusive as possible with the previous language, experts at the Department of Justice advise that the new language more accurately captures the relevant criminal acts. TSA is adding felony bomb threat in paragraph (a)(9) as a permanent disqualifier including maliciously conveying false information concerning the deliverance, placement, or detonation of an explosive or other lethal device against a state or government facility, public transportation system or an infrastructure facility. TSA is including this crime because it is, in essence, a threat to commit an act of terrorism. We note that we have disqualified an applicant with such crime under the authority of current paragraph (b)(6) dishonesty, misrepresentation, or fraud. To be clear that this crime is a permanent disqualifier, we are adding it as an independent offense in § 1572.103(a)(9). This offense includes making any threat, or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility.

Paragraph 1572.103(a)(9) is based in part on conduct prohibited by several federal crimes. The first is 18 U.S.C. 844(e), which is found in chapter 40 (Explosive Materials) of the federal criminal code. Section 844(e) criminalizes the use of the mail, telephone, or other instrument of interstate or foreign commerce to willfully make any threat or maliciously convey false information knowing the same to be false, concerning an attempt to kill, injure, or intimidate any individual or unlawfully damage or destroy any building, vehicle, or other real or personal property by means of an explosive. This crime is already disqualifying under paragraph (a)(7). For inclusion in the list of disqualifying crimes, TSA modified this description to broaden it beyond a threat made through an instrument of interstate or foreign commerce. This change provides a disqualification for purely intrastate conduct that results in a felony conviction under State law. TSA also modified the wording found in section 844(e) to include threats of use of lethal weapons in addition to fire and explosives, such as biological, chemical, or radiological weapons. Threats to use these weapons are prohibited by other sections of the federal criminal code. *See, e.g.*, 18 U.S.C 175 (Biological weapons); 18 U.S.C. 229 (Chemical Weapons); and 18 U.S.C. 2332h.

TSA has revised the language of paragraph (b) to clarify that the crimes listed are disqualifying if either of the following are true: (1) The applicant's date of conviction is within seven years of the date of application; or (2) the applicant was incarcerated for that crime and was released from incarceration within five years of the date of application.

TSA is adding the offense of fraudulent entry into seaport secure areas to the list of interim disqualifiers. This is a new provision in 18 U.S.C. 1036 that we believe is particularly relevant to this rulemaking and any TWIC applicant.

TSA is also clarifying in paragraph (b)(2)(iii) that money laundering is an interim disqualifier because it is encompassed under the crimes of dishonesty and fraud and can be a means of funding terrorism. It is known that criminals obtain money from the illegal sale of drugs, firearms and other contraband, launder the money to hide its origin and then funnel this money to terrorist groups. The money laundering disqualifier is limited to convictions where the laundering was for proceeds of other disqualifying criminal activities such as drugs or weapon sales.

TSA is also clarifying that welfare fraud and passing bad checks will not be considered crimes of dishonesty, fraud, or misrepresentation for purposes of paragraph (b)(2)(iii). In some states, conviction for passing a bad check of $100 is a felony and so would be disqualifying for an HME or TWIC applicant. Similarly, a conviction for welfare fraud can be a felony under state law, depending on the circumstances of the case. TSA believes that these crimes generally do not have a nexus to terrorism and therefore should not be disqualifying under MTSA.

TSA is moving the definitions of ''explosive,'' ''firearm,'' and ''transportation security incident'' from § 1572.3 to § 1572.103, where the terms are used. This should help to eliminate uncertainty about the crimes that are disqualifying. In addition, TSA is adopting clarifying language concerning the kind of activity that constitutes a ''transportation security incident.'' As required in § 7105 of SAFETEA–LU,

codified at 47 U.S.C. 5103a(g)(3), the definition now makes clear that nonviolent labor-management activity is not considered a disqualifying offense.

The list of disqualifying crimes in § 1572.103 applies equally to TWIC and HME applicants, thus the amendments apply to both.

(d). Immigration standards

The NPRM was drafted to permit non-resident aliens in the U.S. with unrestricted authorization to work here to apply for and obtain a TWIC. As a result of comments and the relatively common employment of foreign specialists in certain maritime job categories who do not have ''unrestricted'' work authorization, we are expanding the group of aliens who can apply to include certain restricted work authorization categories.

For purposes of this discussion, it is helpful to explain that there are two categories of U.S. visas: immigrant and nonimmigrant. As provided in the immigration laws, an immigrant is a foreign national who has been approved for lawful permanent residence in the United States. Immigrants enjoy unrestricted eligibility for employment authorization. Nonimmigrants, on the other hand, are foreign nationals who have permanent residence outside the United States and who are admitted to the United States on a temporary basis. Thus, immigrant visas are issued to qualified persons who intend to live permanently in the United States. Nonimmigrant visas are issued to qualified persons with permanent residence outside the United States, but who are authorized to be in the United States on a temporary basis, usually for tourism, business, study, or short-or long-term work. Certain categories of lawful nonimmigrant visas or status allow for restricted employment authorization during the validity period of the visa or status.

TSA has carefully reconsidered the immigration standards we proposed in the NPRM in light of the comments we received relating to immigration status and our own ongoing analysis. As a result, we are amending the immigration standards for TWIC and HME applicants. The critical issues we examined and on which we rely to determine whether an alien should be permitted to apply for a TWIC or HME are: (1) The statutory language regarding immigration status; (2) the degree to which TSA can complete a thorough threat assessment both initially and perpetually on the applicant; (3) the duration of the applicant's legal status as of the date he or she enrolls and the degree to which we can control possession of a TWIC once legal status ends; (4) the restrictions, if any, that apply to the applicant's immigration status; (5) particular maritime professions that commenters stated often involve aliens; and (6) the checks done by the U.S. Department of State (State Department) or other federal agency relevant to granting alien status.

With respect to non-U.S. citizens, MTSA provides that an individual may not be denied a TWIC unless he or she may be denied admission to or removed from the United States under the Immigration and Nationality Act (8 U.S.C. 1101, *et seq.*), or ''otherwise poses a terrorism security risk to the United States[3].'' 46 U.S.C. 70105(c). Under this final rule, all applicants for TWICs must be lawfully present in the country. Each of the permissible classes listed in § 1572.105 has, as a basis, lawful presence in the United States. Additionally, if the duration of an applicant's legal status as of the date of enrollment does not meet or exceed the period of validity of the credential, five years, we have concerns about permitting the applicant to receive a TWIC[4]. Given the statutory language—that we may deny a TWIC to an applicant who ''*may be* denied admission to the United States or *removed from* the United States under the Immigration and Nationality Act''—we believe it is not advisable and may be inconsistent with MTSA to issue a five-year credential to an individual whose known lawful status as of the date of enrollment is a much shorter time period. The statutory language reflects the evolving nature of immigration status and we believe it is a significant distinction that warrants particular treatment.

Changes to alien status occur frequently and are difficult to track accurately in real time and perpetually, both of which are necessary to ensure that a TWIC holder remains in legal status. Where we can achieve a level of certainty that the applicant will not possess a TWIC longer than his or her lawful presence and commenters have indicated there is a need for certain short-term aliens to hold a TWIC, we will consider issuing them a credential.

Many aliens in lawful nonimmigrant status are not eligible to work in the United States or their employment authorization is restricted in some way, usually to the particular sponsoring employer or entity. With the exception of students in valid M–1 nonimmigrant status who are enrolled in the U.S. Merchant Marine Academy or a comparable State school and must complete vocational training, we do not believe it would be consistent with MTSA to permit lawful nonimmigrants that are ineligible to work or conduct business in the United States to apply for a TWIC. Also, if the employment restriction placed on the nonimmigrant generally prevents the individual from working in a maritime facility or vessel, we do not believe a TWIC should be granted. The final rule now lists the nonimmigrant classifications with restricted employment authorization that have a nexus to the maritime industry. Aliens in these nonimmigrant categories with restricted employment authorization may apply for a TWIC notwithstanding the fact that their immigration status may expire in less than five years, because we are requiring additional measures to ensure that the TWIC expires after the employment that requires unescorted access to secure areas ends.

The final rule now requires employers of TWIC holders who are lawful nonimmigrants with restricted authorization to work to retrieve the applicant's TWIC when the job for which the nonimmigrant status was granted is complete. The employer in this situation should be well aware that the employment status has ended because the visa was issued to facilitate a specific job or employment with the employer. However, if an employer terminates the employment relationship with the alien working on a restricted visa, or that alien quits working for the employer, the employer is required to notify TSA within 5 days and provide the TWIC to TSA if possible. Additionally, all applicants must return their TWIC to TSA when they are no longer qualified for it, and a visa applicant's TWIC expires when either the employment ends or the visa expires. These requirements should minimize the likelihood that an alien will continue to possess a TWIC and have unescorted access to secure areas

[3] The governing statute for immigration standards for an HME (49 U.S.C. 5103a) requires TSA to ''review relevant databases to determine the status of an alien under U.S. immigration law,'' which provides TSA more discretion to determine whether an alien in a particular immigration class should hold an HME. In order to maintain consistent standards among transportation workers where possible, the immigration standards we are establishing in this final rule for TWIC applicants will also apply to HME applicants. However, as a threshold matter, HME applicants must first meet the standards to hold a commercial driver's license promulgated by the U.S. Department of Transportation, which may include immigration status.

[4] The TSA system is not currently programmed to issue credentials with varying expiration dates; all TWICs will expire five years from the date on which they were issued. We plan to explore modifying aspects of the TSA system as the program matures.

of the maritime industry after his or her legal status to do so expires.

The requirement to return a TWIC to TSA when the pertinent employment ends does not apply to employers of lawful nonimmigrants with unrestricted authorization to work or employers of unrestricted lawful nonimmigrants. Under the immigration laws, the status assigned to an alien carries with it the determination that the individual may work in the United States with or without restriction. Where the alien status includes employer sponsorship as a condition of legal presence, we believe it is appropriate to require the employer to return the credential to TSA once that relationship ends. However, in the cases of alien status that do not carry employment restrictions, we do not believe it is advisable at this time to require any employer action. The lawful nonimmigrant who is not under employment restriction may cease working for an employer and maintain legal status. Retrieving the TWIC at this point would not be appropriate. If the applicant loses lawful status, under the rule, he or she must report any disqualifying offense to TSA and surrender the TWIC. In addition, the enrollment record for each applicant contains contact information for employers, and if TSA determines that an applicant has lost legal status, we would generally have the information necessary to contact the employer and the TWIC holder.

To satisfy the second prong of MTSA's immigration status requirement, that a TWIC holder does not pose a terrorism security threat to the United States, TSA considers a variety of factors. TSA must be able to conduct a comprehensive threat assessment of the applicant. As in all of TSA's security threat assessment programs, we will conduct a comprehensive threat assessment of each applicant upon enrollment, and then will vet the applicants perpetually using appropriate databases throughout the five-year term of the TWIC. We consider the initial and perpetual vetting to be equally important in maintaining a high level of confidence in the TWIC population. To the extent that a full threat assessment cannot be completed on an applicant initially or perpetually, TSA has concerns about granting that applicant unescorted access to secure areas of maritime facilities and vessels.

Many immigration statuses change over time, and TSA generally is not in a position to perpetually vet the immigration status of an applicant. We are reluctant to provide a five-year TWIC under these circumstances unless we achieve some level of control over the actual credential through the applicant's employer to minimize the likelihood that an alien who has lost lawful status keeps the credential.

A significant component of a comprehensive security threat assessment is a fingerprint-based criminal history records check for arrests, indictments, wants, warrants, and serious felony convictions. If we are unable to complete such a check because we cannot access the criminal records of the country in which an applicant has lived for many years, we have concerns that we cannot make an accurate assessment of the individual. Many U.S. workers commented on this fact, in some cases asserting that U.S. citizens are held to a higher standard than workers born abroad because of the inability to do a complete criminal records check on foreign-born applicants. We do not believe that this situation alone constitutes justification to deny non-citizens a TWIC, particularly since U.S. citizens may be born abroad, or spend substantial time abroad. However, it does give rise to a legitimate security concern. Consequently, we must make every effort to minimize the likelihood that someone with malicious intent can enter the United States legally or illegally, hide significant prior criminal or terrorist activity, and obtain unescorted access to secure areas of the maritime industry.

To reduce the likelihood that TWICs will be issued to someone with malicious intent, we are changing the immigration standards in a variety of ways to reduce those eligible for TWICs to only those individuals on whom the Department of State and/or DHS can perform an adequate security review. First, we are not permitting certain aliens in lawful nonimmigrant status with unrestricted employment authorization to apply for a TWIC. We are not permitting aliens in valid S–5 or S–6 lawful nonimmigrant status with unrestricted authorization to work in the United States to apply for a TWIC. Individuals who are in S–5 and S–6 lawful nonimmigrant status are informants providing information relating to criminal or terrorist organizations. Typically, individuals who are able to provide this kind of information to law enforcement personnel in the United States have been engaged in criminal or terrorist activity themselves. For this reason, we believe they pose a security risk and should not be granted a TWIC. Additionally, this status is granted to no more than 250 individuals per year, and so the likelihood that preventing these individuals from applying for a TWIC would adversely impact a significant number of applicants or the maritime industry is virtually nonexistent. Finally, the S–5 and S–6 status requires frequent contact with U.S. law enforcement personnel for approximately three years, after which time the applicant may be recommended for lawful permanent resident status. After these individuals satisfy the conditions of their status and become lawful permanent residents, the risk they initially present would effectively be mitigated and they would be permitted to apply for a TWIC.

We do not believe it is advisable to permit lawful nonimmigrants in K–1 or K–2 status to apply for a TWIC. These individuals include the fiancés and minor children of fiancés of U.S. citizens. Their lawful status expires in just four months. We believe these individuals can be escorted under the final rule until they obtain permanent or other lawful status.

Aside from holders of the S–5 and S–6 and K–1 and K–2 statuses all lawful nonimmigrants with unrestricted authorization to work in the United States may apply for a TWIC.

Second, we are revising the rule to treat U.S. nationals, that is, principally American Samoans, as we treat U.S. citizens.[5] We accomplished this change by adding a definition to the rule for ''National of the United States,'' which means a citizen of the United States or an individual who owes permanent allegiance to the United States. This change is consistent with longstanding principles of immigration law and we believe would not introduce a security threat. Similarly, the final rule permits citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau who have been admitted as nonimmigrants under the Compacts of Free Association between the United States and those countries to apply for a TWIC. The United States has entered into treaties with these countries that afford their citizens preferred treatment. For instance, citizens of these countries may reside indefinitely and work in the United States without restriction. Therefore, we believe it is appropriate to permit these individuals to apply for a TWIC.

Third, in response to many comments about the use of foreign professionals in the maritime industry for specialty work, we are permitting certain lawful

[5] Note that Swains Island has been incorporated into American Samoa and thus does not need a separate reference. (48 USC 1662) In addition, this includes nationals of the Commonwealth of the Northern Mariana Islands.

nonimmigrants with restricted authorization to work in the United States to apply for a TWIC. There is a longstanding practice of employing non-U.S. citizens to complete specialized maritime tasks, such as maintaining vessel engines and motors. In addition, many international maritime companies transfer staff from abroad into the United States for short or long-term periods, and many of these individuals must work at maritime facilities or on vessels. Denying this segment of the industry the opportunity to apply for a TWIC could adversely impact maritime operations and economic vitality. However, to mitigate our concerns about the inability to complete a thorough initial and perpetual threat assessment on individuals who have not lived in the United States for any significant period of time and who are authorized to remain in the United States for less than five years, we are adding requirements for employers and affected workers to return the TWIC to TSA when the job is completed or the worker otherwise ceases employment with the company.

We received a comment concerning aliens who are religious personnel in valid R–1 lawful nonimmigrant status with restricted employment authorization. The commenter noted that vessel crew members may request spiritual guidance or religious services when their vessel docks at a port in the United States, and religious workers in valid R–1 status should be permitted to apply for a TWIC to board the vessel. Seafarer Welfare Advocates are eligible for TWICs as long as they meet the TWIC rulemaking eligibility requirements; however, there are no exemptions for aliens holding R–1 visas. We believe that individuals with R–1 visas can be escorted because any individual providing religious services to crew members on a vessel would be on board the vessel for relatively short periods of time and would most likely be in the company of TWIC holders during that time. While we do not believe that these individuals need to hold a TWIC to carry out their religious or spiritual functions, they may apply and will be issued TWICs if they meet the eligibility requirements.

Fourth, we are permitting students of the United States Maritime Academy and comparable State maritime colleges in valid M–1 lawful nonimmigrant status to apply for a TWIC. These individuals clearly have a need for unescorted access to maritime facilities and vessels as they complete their vocational training in the United States.

Fifth, we are adding individuals who are in TPS to the group of applicants who may apply for a waiver. Temporary Protected Status is a temporary immigration status granted to eligible nationals of designated countries. The Secretary may designate a country for TPS when it is determined that (1) there is an ongoing armed conflict in the state and, due to that conflict, return of nationals to that state would pose a serious threat to their personal safety; (2) the state has suffered an environmental disaster resulting in a substantial, temporary disruption of living conditions, the state is temporarily unable to handle adequately the return of its nationals, and the state has requested TPS designation; or (3) there exist other extraordinary and temporary conditions in the state that prevent nationals from returning in safety.

TPS beneficiaries are not required to leave the United States and may obtain work authorization for the initial TPS period and for any extensions of the designation. TPS does not automatically lead to permanent resident status. A TPS designation may be effective for a minimum of 6 months and a maximum of 18 months. Before the end of the TPS designation period, the conditions that gave rise to the TPS designation are reviewed. Unless a determination is made that those conditions are no longer met, the TPS designation will be extended for 6, 12, or 18 months. If the conditions that led to the TPS designation are no longer met, the TPS designation is terminated. Designations, extensions, terminations and other documents regarding TPS are published in the **Federal Register**. Currently, nationals of Somalia, Sudan, Burundi, Honduras, Nicaragua, and El Salvador have TPS status in the United States.

In many cases, TPS status for a particular country will remain in place for several years. Thus, nationals of these countries may be in the United States for a decade or more and establish a record that TSA can effectively review for a security threat assessment. Based on this and the unrestricted work authorization, we have determined that under certain circumstances, TPS recipients should be permitted to hold a TWIC. Our ability to complete a thorough threat assessment and the record that is disclosed during the threat assessment will be critical factors in determining if a waiver should be granted to a TPS recipient. In addition, letters of reference from employers, teachers, and religious or spiritual personnel are also important to reach a determination on a waiver. Part 1515 lists the information TSA reviews in making waiver determinations, which now also apply to TPS recipients.

Finally, on October 17, 2006 Congress passed the John Warner National Defense Authorization Act for Fiscal Year 2007 (P.L. 109–364). In that Act, Congress amended 46 U.S.C. 8103 to permit an alien allowed to be employed in the U.S. under the Immigration and Nationality Act who meets additional requirements for service as a steward aboard large passenger vessels to obtain an MMD. Since all MMD holders must obtain a TWIC, we have extended this statutory requirement to TWIC as well. Individuals who would satisfy the statutory requirements would most likely, if not always, possess a C–1/D Crewman Visa. The C–1/D visa has been added to the list of acceptable restricted nonimmigrant visas.

Table 2 indicates the types of visas that a lawful nonimmigrant with a restricted visa must hold in order to demonstrate eligibility to apply for a TWIC.

TABLE 2.—TYPES OF VISAS THAT A NONIMMIGRANT WITH A RESTRICTED VISA MUST HOLD

Visa	Nonimmigrant classifications	Description/information
C–1/D	Combined Transit and Crewman Visa. 8 CFR 214.2(c)(D)	For alien crewmen serving in good faith in a capacity required for normal operation and service on board a vessel who intends to land temporarily and solely in pursuit of his calling as a vessel crewman.
E–1	Treaty Trader (see 8 CFR 214.2(e)(1)).	For nationals of a country with which the United States maintains a treaty of commerce and navigation who is coming to the United States to carry on substantial trade, including trade in services or technology, principally between the United States and the treaty country, or to develop and direct the operations of an enterprise in which the national has invested. The employee must intend to depart the United States upon the expiration or termination of E–1 status.

TABLE 2.—TYPES OF VISAS THAT A NONIMMIGRANT WITH A RESTRICTED VISA MUST HOLD—Continued

Visa	Nonimmigrant classifications	Description/information
E–2	Treaty Investor (see 8 CFR 214.2(e)(2)).	An alien employee of a treaty investor, if otherwise admissible, may be classified as E–2 if the employee is in or is coming to the United States to engage in duties of an executive or supervisory character, or, if employed in a lesser capacity, the employee has special qualifications that make the alien's services essential to the efficient operation of the enterprise. The employee must have the same nationality as the principal alien employer. In addition, the employee must intend to depart the United States upon the expiration or termination of E–2 status.
E–3	Australian in Specialty Occupation.	The E–3 is a new visa category only for Australians coming to the U.S. to work temporarily in a specialty occupation.
H–1B	Specialty Occupations (see 8 CFR 214.2(h)(4)).	Persons who will perform services in a specialty occupation which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or its equivalent (in the specialty) as a minimum requirement for entry into the occupation in the US.
H–1B1	Free Trade Agreement (FTA) Professional Visa (H–1B1).	Foreign nationals of countries which have Free Trade Agreements with the United States and are engaged in a specialty occupation are eligible for the H–1B1 FTA Professional Visa [Free Trade Agreement (FTA) Professional Visa]. A U.S. employer must furnish a job letter specifying the details of the temporary position (including job responsibilities, salary and benefits, duration, description of the employing company, qualifications of the applicant) and confirming the employment offer.
L–1	Executive, managerial	An alien who within the preceding three years has been employed abroad for one continuous year by a qualifying organization may be admitted temporarily to the United States to be employed by a parent, branch, affiliate, or subsidiary of that employer in a managerial or executive capacity, or in a position requiring specialized knowledge.
O–1	Extraordinary Ability or Achievement.	An alien who has extraordinary ability in the sciences, arts, education, or athletics, which has been demonstrated by sustained national or international achievement.
TN	North American Free Trade Agreement (NAFTA) visas for Canadians and Mexicans.	The nonimmigrant NAFTA Professional (TN) visa allows citizens of Canada and Mexico, as NAFTA professionals, to work in the United States.
M–1	Vocational student	This visa category is for a fixed time needed to complete the course of study and training. For purposes of the final rule, only students who are attending the U.S. Merchant Marine Academy or comparable State maritime school and hold this visa are permitted to apply for a TWIC.

We are making an additional change to the application information required of TWIC applicants who are not U.S. nationals. In 49 CFR 1572.17, we are requiring all aliens to bring to enrollment the documents that verify the immigration status they are in as of the date of enrollment. We will examine the documents to ensure that the applicant is eligible to apply for a TWIC under the immigration standards and then scan the documents into the TSA system so that they become part of the enrollment record.

In addition, we are requiring drivers with commercial licenses from Canada to provide a Canadian passport at enrollment, if they do not hold a Free and Secure Trade (FAST) card [6]. We know that Canadian TWIC applicants who hold a FAST card have completed a thorough background check by the Canadian government. However, Canadian provinces do not always require Canadian citizenship or in some cases, lawful presence, when issuing a drivers license. Therefore, we do not believe it is advisable to issue a TWIC based solely on a Canadian driver's license. We are not requiring this of Mexican-licensed drivers who apply for a TWIC because they must obtain border crossing documents to enter the United States, which are issued after the Mexican government has completed a review of the individual and determined they are Mexican citizens or are lawfully present in Mexico.

[6] The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol (CBP) and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

(e). Mental Incapacity

TSA is changing the waiver process to permit applicants who in the past have been involuntarily committed to a mental health facility or declared mentally incapable of handling their affairs to apply for a waiver without always having to provide documentation showing that the disqualifying condition is no longer present, as we have previously. For example, there may be cases in which an individual has an addiction to drugs or alcohol and is involuntarily committed to a mental health facility to complete rehabilitation. If the individual wishes to apply for a waiver, documents showing that applicant completed rehabilitation successfully would be critical to TSA's determination on the waiver request. The individual may no longer use illegal drugs or drink alcohol, but technically they may still have an addiction. Therefore, we believe TSA should decide these waiver requests on a case-by-case basis. The documentation submitted to TSA in support of the waiver request will be very important in making the waiver determination. Applicants and/or their representatives should carefully consider and include all available information TSA can use to determine if the applicant poses a security threat.

(f). Fees

Section 520 of the 2004 DHS Appropriations Act, Pub. L. 108–90, requires TSA to collect reasonable fees for providing credentialing and background investigations in the field of transportation. Fees may be collected to pay for the costs of: (1) Conducting or obtaining a CHRC; (2) reviewing available law enforcement databases, commercial databases, and records of other governmental and international agencies; (3) reviewing and adjudicating requests for waivers and appeals of TSA decisions; and (4) other costs related to

performing the security threat assessment or the background records check, or providing the credential. Section 520 requires that any fee collected must be available only to pay for the costs incurred in providing services in connection with performing the security threat assessment, or the background records check, or providing the credential. The funds generated by the fee do not have a limited period of time in which they must be used. They can be used until they are fully spent. TSA has also established the fees in this final rule pursuant to the requirements of the General User Fee Statute (31 U.S.C. 9701), which requires fees to be fair and based on: (1) Costs to the government; (2) the value of the service or thing to the recipient; (3) public policy or interest served; and (4) other relevant facts.

In this final rule, TSA uses slightly different terminology to describe the three types of fees and their segments than was used in the NPRM. The Standard TWIC Fee is the fee that an applicant would pay to obtain or renew a TWIC. The Standard TWIC Fee contains the following segments:

- Enrollment Segment (referred to as the ''Information Collection/Credential Issuance Fee'' in the NPRM),
- Full Card Production/Security Threat Assessment (STA) Segment (referred to as the ''Threat Assessment/Credential Production Fee'' in the NPRM), and
- FBI Segment (referred to as the ''FBI Fee'' in the NPRM).

The Reduced TWIC Fee is the fee an applicant would pay to obtain a TWIC when the applicant has undergone a comparable threat assessment in connection with an HME, a FAST card, or other threat assessment, as provided in § 1572.5(e), or holds an MMD or License as provided in § 1572.19(b). The Reduced TWIC fee is made up of the following segments:

- Enrollment Segment, and
- Reduced Card Production/STA Segment (referred to as the ''reduced fee for the Security Threat Assessment/Credential Production Fee'' in the NPRM).

The Card Replacement Fee is the fee that an applicant would pay to replace a credential that has been lost, stolen, or damaged and is made up of the Card Replacement Segment.

In the TWIC NPRM, TSA proposed to set the Standard TWIC Fee at $129–149, including the Enrollment Segment of $45–65, the Full Card Production/Security Threat Assessment (STA) Segment of $62, and the FBI Segment of $22. TSA proposed that the Reduced TWIC Fee be set at $95–115, including the Enrollment Segment of $45–65 and the Reduced Card Production/STA Segment of $50.[7] TSA proposed that the Card Replacement Fee, composed of the Card Replacement Segment, be set at $36. *See* 71 FR at 29405, 29428–29431.

In this final rule, TSA establishes the Standard TWIC Fee at $139–159, including the Enrollment Segment of $45–65, the Full Card Production/STA Segment of $72, and the FBI Segment of $22.[8] The total Reduced TWIC Fee is set at $107–127, including the Enrollment Segment of $45–53 and the Reduced Card Production/STA Segment of $62.

In this final rule, TSA establishes the Replacement Card Fee of $36, as was in the NPRM. TSA's analysis shows that this fee is costed out at $60, but is not including that amount in the final rule due to the large difference in amount from the NPRM. TSA proposes in this final rule to change the Replacement Card Fee to $60 based on the reevaluation of costs elements discussed below, and requests comments only on this fee. *See* Request for Comments in Section VI.

Table 3 compares the NPRM per person fee and segments amounts to the final rule per person fee and segments amounts:

TABLE 3.—TWIC PER PERSON FEE SEGMENTS—NPRM VS. FINAL RULE

	NPRM	Final rule	$ Increase	% Increase
Standard TWIC Fee				
Enrollment Segment	$45–$65	$45–$65		
Full Card Production/STA Segment (for Individuals requiring a full STA)	62	72	$10	
FBI Segment:	22	22		
Total	129–149	139–159	10	7.86–6.7
Reduced TWIC Fee				
Enrollment Segment	45–65	45–65		
Reduced Card Production/STA Segment (for Individuals not requiring a full STA):	50	62	12	
Total	95–115	107–127	12	12.6–10.4
Card Replacement Fee				
Card Replacement Segment	36	60[9]	24	66.7

No applicant will be required to pay a fee until after TSA publishes this notice in the **Federal Register**.

Cost Components

The NPRM identified the cost components from which the proposed fees were calculated. These are the same components that were used to calculate the final fees. However, the fees themselves have changed for the reasons described in this section. Since publication of the NPRM, the TWIC program has reevaluated the cost estimates that drive the TWIC fees. Table 4 lists the cost components of the TWIC Program as estimated for the NPRM and compares them to the costs estimated for the final rule. These cost components are used to derive the TWIC fees that must be collected to fully recover program costs.

[7] While the proposed rule text at § 1572.503(2) indicated that the Reduced TWIC Fee included both the Enrollment Segment and the Reduced Card Production/STA Segment, it erroneously listed the fee at $50. The total for this fee was correctly stated in the preamble as $95. See 98 FR at 29045.

[8] If the FBI changes its fee in the future, TSA will collect the amended fee.

[9] While this rule sets a Card Replacement Fee of $36, TSA is proposing that the Card Replacement Fee be increased to $60 and is seeking comment only on the Card Replacement Fee. See Request for Comments Section VI.

TABLE 4.—5-YEAR TOTAL TWIC COST COMPONENTS—NPRM VS. FINAL RULE

Cost components	NPRM	Final rule	Percent change	Standard TWIC fee	Reduced TWIC fee	Card replacement fee
Enrollment/Issuance	$65,212,285	$65,980,199	1	X	X	X[10]
Threat Assessments[11]	42,463,118	32,120,927	−24	X	X[12]	.....
IDMS	18,783,000	44,190,882	135	X	X	X
Card Production	20,427,000	28,346,657	39	X	X	X
Program Support	22,641,000	18,810,786	−17	X	X	X
Total	169,526,403	189,449,451	12			

As shown by Table 4, some of the cost components decreased from the NPRM costs estimates, while some increased. The Enrollment/Issuance cost component increased by approximately 1 percent due to further analysis that indicated a need to account for the contractor fee associated with replacing a lost, stolen, or damaged card. This contractor fee is estimated at $5. This card re-issuance cost within the Card Replacement Fee was not included as part of the NPRM estimate.

The Threat Assessments cost component decreased overall by approximately 24 percent. While the costs associated with adjudication by ALJs have been added, cost reductions for perpetual vetting and threat assessment gateway account for the overall reduction.

The IDMS cost component increased based on a re-evaluation of the overall IDMS costs. The program office identified: (1) The need to increase the hardware and software required to obtain a Security Certification & Accreditation, and to support the full volume of TWIC applicants; (2) system changes required to address security vulnerabilities; and (3) increases in contractor support necessary for systems operations and maintenance. The total increase is estimated at $19 per credential produced.

The Card Production cost increased by approximately 39 percent based on two factors. First, in order to produce cards more rapidly during the initial enrollment, additional shifts were required at the card production facility. This decision was made in order to address comments to the NPRM that cards needed to be produced as quickly as possible. Second, TSA and Coast Guard received comments to the NPRM on the need to support contactless biometric authentication based on the harsh conditions of the maritime environment and operational efficiencies. In order to address these comments TSA and the Coast Guard have established a NMSAC working group to recommend a contactless TWIC technology specification. Second, we have added a fee to cover future technology-related product improvements to the TWIC system and credential. Technology improvements occur rapidly and in order to take advantage of the efficiency these improvements provide, we must plan for that cost. Building in the cost of technology and system improvements is a common practice for programs that rely so heavily on software and hardware to collect and transmit large amounts of information.

The Program Support cost decreased by approximately 17 percent because the program office reevaluated and decreased program staffing levels required to support the maritime population after the initial maritime enrollment period. Additionally, Program Support costs related to interagency communication requirements also decreased. These cost reductions resulted in approximately a $2 per card decrease.

The discussion below describes the cost components associated with each type of fee, Standard, Reduced and Card Replacement. Although the overall program costs increased by approximately 12 percent, the three types of TWIC fees did not increase by 12 percent as each fee is composed of different cost components.

The per person cost segments for the Standard TWIC Fee are derived from all five of the cost components in the Total TWIC Cost Components table above—Enrollment/Issuance, Threat Assessments,[13] IDMS, Card Production, and Program Support. Note that the IDMS, Card Production, Program Support cost components makeup the Card Production/STA and FBI segments of the Standard and Reduced TWIC Fees. The net increase in the total for the Standard TWIC Fee is based primarily on the increase of the IDMS and Card Production cost components, as described above in the analysis of the TWIC cost components.

The per person cost segments for the Reduced TWIC Fee are also derived from five of the cost components in the Total TWIC Cost Components Table 4—Enrollment/Issuance, Threat Assessments,[14] IDMS, Card Production, and Program Support. The net increase in the Reduced TWIC Fee is based on the reevaluation of the cost components, as described in the analysis of the TWIC cost components above. It should be noted that the reduced fee does not include the entire Threat Assessments cost component. Because the Reduced TWIC Fee does not include this entire cost component, this fee does not entirely benefit from the reduction in the Threat Assessments cost component, and therefore, increased at a greater percentage than the Standard TWIC Fee.

The per person cost for the Card Replacement Fee is derived from four of the cost components in the Total TWIC Cost Components Table 4—Enrollment/Issuance,[15] IDMS, Card Production, and Program Support. The net increase in the Card Replacement Fee of $24 is based on the reevaluation of the cost components, as described in the analysis of TWIC cost components

[10] While the majority of the Enrollment/Issuance requirements have already been satisfied by the applicant through initial enrollment, there are still some enrollment/issuance functions associated with these card replacements, such as overhead. Therefore, these applicants will not be burdened with the normal enrollment/issuance cost component.

[11] The Threat Assessments, IDMS, Card Production and Program Support Components makeup the Card Production/STA and the FBI Segments.

[12] While the majority of the Threat Assessment requirements have already been satisfied by the applicant through participation in a previous security fee, there are still some threat assessment functions associated with these applicants, such as CSOC activities. Therefore, these applicants will pay the Reduced Card Productions/STA Segment.

[13] The Threat Assessment cost component includes the FBI Segment of the Standard TWIC Fee.

[14] As stated in footnote 11, although the majority of the Threat Assessment requirements have already been satisfied by the applicant through participation in a previous security fee, there are still some threat assessement functions associated with these applicants.

[15] As stated in footnote 10, although the majority of the Enrollment/Issuance requirements have alread been satisfied by the applicant through initial enrollment, there are still some enrollment/issuance functions associated with these card replacements, such as overhead.

above. It should be noted that this fee does not include the entire Enrollment/Issuance cost component or any of the Threat Assessments cost component. Because this fee does not include the Threat Assessments cost component, this fee does not benefit from the reduction in the Threat Assessments cost component. Thus, the Card Replacement Fee has increased at a greater percentage than the Standard and Reduced TWIC Fees. Because this fee is substantially higher than that in the NPRM, TSA is establishing $36 as the fee in this rule but is proposing to increase the fee to $60 and is providing the public an opportunity to submit additional comments on the card replacement fee. *See* Request for Comments in Section VI.

An Additional Notice on Fees

As Table 3 indicates, the Enrollment Segment is a range of $45–$65 for both the NPRM and the final rule. TSA is unable to finalize the fee because we do not yet have a final contract with an enrollment provider. When a final contract is executed, TSA will publish a Notice in the **Federal Register** that will specify the amount for that segment and all of the fees. Therefore, the rule text does not contain TSA's exact fee numbers, but it does include the FBI fee. No applicant will be required to pay a fee until after TSA publishes this notice in the **Federal Register**.

(g). Drivers Licensed in Mexico and Canada Transporting Hazardous Materials

In accordance with sec. 7105 of SAFETEA–LU, commercial motor vehicle drivers licensed in Canada or Mexico may not transport hazardous materials into or within the United States unless they undergo a background check that is similar to that undergone by U.S.-licensed drivers.[16] TSA has determined that a card issued by the Bureau of Customs and Border Protection (CBP) under the FAST program provides a similar background check. *See* 71 FR 44874 (August 7, 2006). The security threat assessment that is required under this final rule for issuance of a TWIC is the same background check currently required for U.S.-licensed drivers with HMEs. Therefore, we are amending 49 CFR 1572.201 to allow possession of a TWIC card by a driver licensed in Mexico or Canada to satisfy the SAFETEA–LU requirement. Thus, drivers licensed in Canada or Mexico may obtain either a FAST card or a TWIC to meet the requirement that they have a background check that is similar to that of a U.S. hazmat driver.

In this final rule, for administrative purposes, we are reprinting the entire part 1572. We are making only a couple of changes to § 1572.203, however. We are changing its title to more clearly reflect its scope, to ''Transportation of explosives from Canada to the United States via railroad carrier.'' In § 1572.203(b) we are changing the definition of ''Customs Service'' to ''Customs and Border Protection (CBP)'' to reflect the reorganization of the U.S. Customs Service under the Homeland Security Act of 2002.

(h). Compliance and Enforcement Matters

We are adding a new section. (49 CFR 1570.7) to make it clear that it is a violation of this rule, and other applicable federal laws, to circumvent or tamper with the access control procedures. This section also clarifies that it is a violation for any person to use or attempt to use a credential that was issued to, or a security threat assessment conducted for, another person. In addition, no person may make, cause to be made, use, or cause to use, a false or fraudulently-created TWIC or security threat assessment issued or conducted under this subchapter. Finally, it is a violation of this rule, and other applicable federal laws, for any person to cause or attempt to cause another person to violate these procedures. Violations of any provision of this rule may be subject to such civil, criminal or administrative actions as are authorized under federal law.

Note that the acts identified in § 1570.7 may also be violations of Federal criminal law, such as 18 U.S.C. 701 (Official badges, identification cards, other insignia), 18 U.S.C. 1001 (Statements or entries generally), 18 U.S.C. 1028 (Fraud and related activity in connection with identification documents and information), 18 U.S.C. 1029 (Fraud and related activity in connection with access devices). In appropriate cases, TSA will refer to the Department of Justice (DOJ) matters for criminal investigation and, if appropriate, criminal prosecution.

Section 1570.9 is being added to make clear that a person must allow his or her TWIC to be inspected upon request of an appropriate official. For clarification purposes, Coast Guard has provided a similar requirement in 33 CFR 101.515(d) adopting the same language as § 1570.9.

As discussed in section C.4. of this preamble, § 1570.11, Compliance, inspection, and enforcement, was proposed in the NPRM as § 1572.41.

D. Anticipated Future Notices and Rulemaking

1. Notices

We will publish several notices in the **Federal Register** to facilitate implementation of the TWIC program. Specifically, a notice will be published:

(a) establishing the fees for the TWIC, as stated above in C.2(f);

(b) for each COTP zone, prior to beginning the enrollment period; and

(c) for each COTP zone, 90-days prior to requiring compliance with these regulations.

2. Rulemaking

In the future we will issue another NPRM to propose card reader requirements for MTSA-regulated vessels and facilities. It will be issued with a comment period that is long enough for all interested persons to reasonably be able to provide comment, and it will announce public meetings in a variety of places. We cannot, at this time, make any definitive statement on where those places will be, but we will consider the locations suggested by commenters and inform the public of upcoming meeting information in advance in the **Federal Register**.

E. Summary of TWIC Process Under the Final Rule

The TWIC program was developed to improve identity management and credentialing shortcomings that exist in segments of the transportation industry. TSA evaluated a variety of technologies, used field testing, and to the extent possible, incorporated the basic tenets of Homeland Security Presidential Directive 12 (HSPD–12)[17] to arrive at the credential and enrollment process implemented in this program. The standards for the program are to ensure that the credentialing processes: (1) Are administered by accredited providers; (2) are based on sound criteria for verifying an individual's identity; (3) include a credential that is resistant to fraud, tampering, counterfeiting and terrorist exploitation; and (4) ensure that the credential can be quickly and electronically authenticated.

The purpose of the TWIC program is to ensure that only authorized personnel who have successfully completed a security threat assessment have unescorted access to secure areas of maritime facilities and vessels. The credential will include a reference biometric that securely links the credential holder to the issued

[16] 49 U.S.C. 5103a(h).

[17] HSPD–12 requires Federal agencies and their contractors to adopt an identity management and credentialing system that uses biometrics.

credential. At any time, TWIC holders may be asked to confirm that they are the rightful owner of the credential by matching their biometric to the one stored on the credential. An individual's credential is revoked by TSA if disqualifying information is discovered or the credential is lost, damaged or stolen. When a credential is revoked, TSA lists it on the list of revoked cards, or 'hotlist' by the unique serial number assigned to the credential. Therefore, a revoked credential that is compared against the hotlist will be flagged and access would not be granted.

TSA has designed the TWIC process to maintain strict privacy controls so that a holder's biographic and biometric information cannot be compromised. The TWIC process implemented in this rule is described below from the perspective of an applicant.

1. Pre-Enrollment and Enrollment

TWIC enrollment will be conducted by TSA or TSA's agent operating under TSA's direction. These personnel are known as Trusted Agents. All Trusted Agents must successfully complete a TSA security threat assessment and receive extensive training before they are authorized to access documents, systems, or secure areas.

DHS will publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate. Once DHS has published that notice, facility and vessel owners/operators (owners/operators) must notify workers of their responsibility to enroll into the TWIC program during the enrollment period. Regarding the compliance date for facilities, DHS will also publish this information in the **Federal Register** for each COTP zone at least 90-days in advance. Owners and operators are required to inform their employees of this date as well. (The implementation plan for enrollment is discussed in greater detail below.) TSA and the Coast Guard will work with owners/operators to ensure that they can provide applicants sufficient time to enroll, complete the security threat assessment and any necessary appeal or waiver process, and obtain the credential before the applicant is required to present the credential for access to a facility or vessel. As TWIC is implemented, owners/operators must give individuals at least 60 days notice to begin the enrollment process. Generally, TSA completes a threat assessment in approximately 10 days when there is no indication that the applicant may not meet the TWIC enrollment criteria. If criminal activity or other potentially disqualifying information is revealed, however, TSA cannot guarantee that such information will be favorably resolved and a threat assessment completed in less than 30 days.

Applicants are encouraged to ''pre-enroll'' online to reduce the time needed to complete the entire enrollment process at an enrollment center. The convenience of pre-enrollment is a significant benefit for applicants and reduces strain on the enrollment centers. The pre-enrollment process allows applicants to provide much of the biographic information required for enrollment and to select an enrollment center where they wish to complete enrollment. While pre-enrolling, applicants may schedule an appointment to complete enrollment at an enrollment center, although appointments are not required at enrollment centers. For pre-enrollment, applicants may use a personal computer with access to the internet or they may use TWIC kiosks. The TWIC kiosks will be set up by the TSA agent when enrollment begins at locations convenient to the affected population, including enrollment centers, and are similar to an ATM machine.

The Web address for pre-enrollment and all additional information relating to the TWIC program is *www.tsa.gov/twic.* The TWIC Web site also will list the documents the applicant must bring to the enrollment center to verify identity so that all applicants can be properly prepared. Mariners who must prove U.S. citizenship or immigration status to obtain an MMD, license, COR, STCW endorsement or MMC must provide the documents required by the Coast Guard at 46 CFR chapter I, subchapter B at the time of enrollment.[18] TSA will scan these documents into the enrollment record, which will be forwarded to the Coast Guard. In addition, applicants who are not U.S. citizens or nationals must bring their immigration documents, including visas and naturalization paperwork, to enrollment so that the documents which prove legal presence in the United States can be scanned into the enrollment record.

[18] In order to allow the Coast Guard to remove the requirement that all mariners apply for their credentials in person at a Regional Examination Center (REC), it is necessary for TSA to document proof of citizenship, as the citizenship requirements for certain Coast Guard-issued mariner credentials are stricter than the overall TWIC citizenship requirements. For more information on mariner credentials and the Coast Guard's plan to remove the physical appearance at an REC requirement, *see* the Coast Guard SNPRM titled ''Consolidation of Merchant Mariner Qualification Credentials'' published elsewhere in today's **Federal Register**.

At the enrollment center, applicants who pre-enroll must provide documents to verify their identity, confirm that the information provided during pre-enrollment is correct, submit biometrics identifiers, and sign the enrollment documents. At the enrollment center, all applicants will receive a privacy notice and consent form, by which they agree to provide personal information for the security threat assessment and credential. (For applicants who pre-enroll, the privacy notice is provided with the application on-line, but the applicant must acknowledge receipt of the notice in writing at the enrollment center.) If an applicant fails to sign the consent form or does not have the required documents to authenticate identity, enrollment will not proceed.

All information collected at the enrollment center or during the pre-enrollment process, including the signed privacy consent form and identity documents, is scanned into the TSA system for storage. All information is encrypted or stored using methods that protect the information from unauthorized retrieval or use. If an enrollment center temporarily loses its internet connection, the enrollment data is encrypted and stored on the enrollment workstation, but only until an internet connection is restored.

Applicants will provide fingerprints from each hand and sit for a digital photograph. We will collect a print from all 10 fingers unless the applicant has lost or seriously injured his or her fingers. TSA will provide alternative procedures for enrollment centers to use if an applicant cannot provide any fingerprints. The fingerprints and photograph will be electronically captured at the enrollment center and made part of the applicant's TWIC enrollment record. The fingerprint images collected from each applicant will be submitted to the FBI for the CHRC.

The TWIC fee, which covers the cost of enrollment, threat assessment, and credential production and delivery, will be collected from the applicant at the enrollment center. Payment can be made by cashier's check, money order, or credit card. The TWIC enrollment fee is non-refundable, even if the threat assessment results in denying a TWIC to the applicant.

The entire enrollment record (including all fingerprints collected) will be transmitted to the TSA system, encrypted, and segmented to prevent unauthorized use. The TSA system acknowledges receipt of the enrollment record, at which time all enrollment data is automatically deleted from the enrollment workstation. At this point,

enrollment data is stored only in the TSA system, and is stored there as encrypted data. The TSA system contains many feedback mechanisms to validate the transmission and receipt of data at key points in the process. The status of each transmission is recorded within the system.

As discussed in the TWIC NPRM (71 FR 29402), during TSA's Prototype testing phase of the program, the average time needed for an applicant who pre-enrolled to complete enrollment was 10 minutes, 21 seconds. TSA expects that it will take approximately fifteen minutes to complete enrollment of applicants who do not pre-enroll.

TSA and Coast Guard plan to use a phased enrollment approach based on risk assessment and cost/benefit analysis to implement the program nationwide. Locations that are considered critical and provide the greatest number of individual applicants will be among the earliest enrollment sites. As stated above, TSA will publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate. In addition, DHS will publish a notice in the **Federal Register** indicating the compliance date for each COTP zone. This notice will be published at least 90 days prior to the compliance date. There are approximately 130 locations where TSA plans to enroll applicants. TSA and Coast Guard will work closely with the maritime industry to ensure that owners/operators and workers are given as much notice as possible of the commencement of enrollment at their location. (See the discussion of § 1572.19 below for additional information on the timing of enrollment.) TSA will use a combination of fixed and mobile enrollment stations to make the enrollment process as efficient as possible for applicants and owners/operators.

2. Adjudication of Security Threat Assessment

Following enrollment, the TSA system sends pertinent parts of the record to various sources so that appropriate terrorist threat, criminal history, and immigration checks can be performed. When the checks are completed, TSA makes a determination whether to issue a TWIC to the applicant and notifies the applicant of that decision. If the applicant is deemed to be qualified, the TSA system notifies the credential production portion of the system to create a credential. TSA sends the applicant a Determination of No Security Threat via U.S. mail, and the TSA system notifies the applicant when the credential is ready to be retrieved from the enrollment center. Notifications from the TSA system that a credential is ready for pick-up will be through e-mail or voice mail, depending on the preference the applicant expresses on the application.

If TSA determines that the applicant is not qualified, TSA sends an Initial Determination of Threat Assessment to the applicant via U.S. mail, with information concerning the nature of the disqualification, and how the applicant may appeal the determination or apply for a waiver of the standards. If the applicant proceeds with an appeal or application for waiver that is successful, TSA will notify the applicant accordingly and the credential production process begins. (The appeal and waiver processes are discussed in greater detail below in the discussion of 49 CFR part 1515.)

3. Credential Production and Delivery

If the applicant is deemed by TSA to be qualified to receive a TWIC, the TSA system generates an order to produce a credential. The TWIC is produced at a government credential production facility. The face of the TWIC credential contains the applicant's photograph, name, TWIC expiration date, and a unique credential number. In addition, the credential will store a reference biometric, a personal identification number (PIN) selected by the applicant, a digital facial image, an expiration date, and a Federal Agency Smart Credential number. The PIN can subsequently be used as an additional security factor in authenticating identity and authorizing use of the credential; or it can be used as the primary verification tool if the biometric is inoperative for some reason.

4. Receiving the Credential

The TSA system will notify the applicant when the credential is ready, and what if any additional steps the applicant must take to receive the credential. Once the enrollment and issuance process is completed, the credential is activated and is ready to be presented at a facility or vessel for use as an access control tool. The TWIC security threat assessment and credential are valid for five years, unless information is discovered that causes TSA to revoke the credential.

5. Lost, Damaged, or Stolen TWICs

Replacement TWICs are available if a credential is lost, stolen, or damaged. As soon as a TWIC holder becomes aware that his credential is missing or damaged, he must report this fact by calling the TWIC Call Center which will be open 24 hours per day, 7 days a week. TSA will post the Call Center number on the TWIC web site as soon as it is available, and it will be posted at all enrollment centers and kiosks. The Center follows a standard process to revoke the credential, and order printing and transmission of a replacement. TSA adds the lost, damaged or stolen credential to the 'hotlist,' which includes the Smart Card number of all credentials that TSA has revoked. Applicants must pay a fee of $36[19] to cover the cost of invalidating the previous credential, production of a replacement credential, shipping, and other appropriate program costs. The reissued TWIC will have the same expiration date as the lost/damaged/stolen TWIC.

6. Renewal

TWICs issued under this rule remain valid for a period of five years, unless renewed before the five-year term ends. Upon renewal, an applicant receives a new credential and the old credential is invalidated in the TSA System. TSA does not plan to notify TWIC holders when their credential is about to expire because the expiration date will be displayed on the face of the credential. To renew a TWIC, the holder must appear at any enrollment center, at least 30 days before expiration, to initiate the renewal process. This will provide sufficient time for TSA to conduct the security threat assessment and the Coast Guard to complete any review necessary to renew any required mariner documents. During renewal, applicants must provide the same biographic and biometric information and identity verification documents required in the initial enrollment and pay the associated fees. Note that the TWIC web site will maintain a list of documents that may be used to verify identity, which may change over time. A new credential is issued upon renewal using the same issuance process as used in the initial TWIC issuance and the expired credential will be invalidated. The newly issued credential will have an expiration date five years from the date of issuance of the new credential. Although renewal only occurs every five years, TSA conducts recurring checks on individuals throughout the five year period, so that newly-discovered information informs the access rights of individuals.

[19] We request comments on changes to the card replacement fee in Section VI below.

7. Call Center

Toll-free TWIC Call Center (Help Desk) support will provide around-the-clock service for transportation workers, facility operators, and others who require assistance. Assistance includes help for pre-enrollment; enrollment; and lost, stolen, or damaged card reporting and replacement. Help will also be available for scheduling enrollment appointments, locating the closest enrollment facility to an applicant, guiding applicants through the Web-based pre-enrollment process, and for checking on the status of a TWIC application.

F. SAFE Port Act of 2006

On October 13, 2006, the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Pub. L. 109–347) was enacted. The portions of the Act which relate to the TWIC program are discussed below.

Section 104(a) of the SAFE Port Act contains a number of amendments to the basic requirement in MTSA for credentialing codified in 46 U.S.C. 70105. New sec. 70105(g) mandates concurrent processing by TSA and the Coast Guard of an individual's application for an MMD [20] and a TWIC. This final rule is in compliance with this requirement. TSA will share with the Coast Guard the individual's CHRC, fingerprints, photograph and proofs of citizenship and identity, which will allow the Coast Guard to begin evaluating whether the individual is qualified to obtain an MMD while TSA completes its security threat assessment. TSA will also share the results of their security threat assessment with the Coast Guard to ensure that MMDs are only issued to individuals who pass the security threat assessment and are issued a TWIC. Thus, such applicants will only submit one set of fingerprints and other information relating to citizenship, alien status, and criminal history, which will be used by both TSA and the Coast Guard.

New sec. 70105(h) requires that applicants who have passed a security threat assessment for an HME or MMD pay only for the costs associated with the issuance, production, and management of the TWIC and are not charged for the cost of another threat assessment. This final rule is in compliance with this requirement in that TSA will not charge those who already hold an HME or MMD for an additional threat assessment under TWIC. Rather, TSA will charge a reduced fee.

New sec. 70105(i) provides requirements for implementing TWIC across the nation by prioritizing the ports based on risk, and requires that the TWIC program is to be implemented according to the following schedule: (1) top ten priority ports by July 1, 2007; (2) the next forty priority ports by January 1, 2008; and (3) all other ports by January 1, 2009. Under new sec. 70105(j) each application for a TWIC made by someone holding an MMD as of the date of enactment of this bill must be processed by January 1, 2009. We are now planning how to meet these requirements and will establish the implementation schedule accordingly.

New sec. 70105(k) requires DHS to conduct a pilot program on card readers as set out in that section. DHS is currently analyzing how best to meet these requirements, and will begin the pilot program as soon as practicable.

Under new sec. 70105(m) DHS may not require card readers to be placed aboard a ship unless the crew's number is in excess of the number determined to require a reader or if the Secretary determines that the vessel is at risk of a severe transportation security incident. When DHS drafts the rule that will require use of card readers by vessel owners and operators, it will do so in compliance with this requirement.

SAFE Port Act sec. 104(b) has additional amendments to MTSA. It revises 46 U.S.C. 70105(b) by adding a paragraph making clear the Secretary has the discretion to add to the list of those individuals who otherwise may be required to obtain a TWIC. The Secretary may apply TWIC requirements to individuals including those ''not otherwise covered by this subsection''. TSA has exercised this discretion by allowing Canadian and Mexican commercial drivers who transport hazardous materials to obtain TWICs, which will allow them to transport hazardous materials in the United States. Further, SAFE Port Act sec. 104(b) clarifies in sec. 70105(c) that DHS must establish a waiver and appeal process for applicants denied a TWIC under sec. 70105(c)(1)(A) or (B) (criminal history) or (D) (otherwise poses a security threat). TSA's new process in 49 CFR part 1515 complies with this requirement.

Under SAFE Port Act sec. 104(c), the deadline for final TWIC regulations remains January 1, 2007. Further, the regulation must include a provision for an interim check against terrorist watchlist databases so as to enable new workers to start working immediately. This final rule is in compliance with this requirement. As explained in detail elsewhere in this preamble, owners or operators wishing to put their newly hired direct employees to work immediately, prior to issuance of the new hire's TWIC, may do so provided that the new hire is successfully checked against various terrorist databases. The procedure for running the new hire's information through these checks can be found in 33 CFR 104.267, 105.257, and 106.262.

SAFE Port Act sec. 106 states that applicants convicted of treason, espionage, sedition, and crimes listed in chapter 113B of title 18, U.S.C., or comparable State laws must be disqualified from holding a TWIC. The list of disqualifying crimes in 49 CFR 1572.103 complies with this requirement by including these crimes as disqualifying.

III. Discussion of Comments

TSA and the Coast Guard received approximately 1770 comments on the TWIC NPRM during the 45-day comment period. In addition, an estimated 1200 people attended the four public meetings that were held between May 31 and June 7, 2006. Copies of the written comments received, as well as transcripts of the public meetings, are available to the public on *www.regulations.gov* at the public docket for this rulemaking action.

Numerous commenters supported the concept and purpose of the TWIC program as a method of protecting national maritime security. Some expressed their support unequivocally. One commenter requested that its port be selected for the first phase of the enrollment and implementation process. Several commenters who generally agreed with the idea of the TWIC, also criticized certain details of the proposal, expressed qualifications of various kinds, or said the proposal needed to be more efficient, workable, and fair. Some terminal operators and marine engineers who supported TWIC said that although it would achieve greater maritime security, they were concerned about its burden on industry or noted that security needed to be balanced against fairness for maritime workers. One commenter who generally supported the implementation of TWIC was concerned about the impact of the proposed rules on the efficiency of port facility operations, and suggested a more phased and flexible approach. Another commenter asked for more of a risk-management approach with a performance-based set of guidelines and a reevaluated technology. An

[20] Although the SAFE Port Act only created this requirement for MMDs, TSA and the Coast Guard have also applied concurrent processing, a longer time period to apply for an initial TWIC, and reduced fees to licenses, CORs, STCW endorsements, and the MMC.

association of maritime operators supported security and background checks and digital fingerprint and photographs, but was concerned about the short timeline for implementation, the absence of facilities to provide the necessary services, and the social and economic burden imposed on individuals. Another commenter who supported TWIC thought that the requirements for who must possess a TWIC was over inclusive and that waivers or exemption processes should be added to lower the overall number of people who would require a TWIC. A commenter noted that although employers were responsible for notifying employees of the TWIC requirement, employer sponsorship of the TWIC program was not desirable.

In contrast, many commenters expressed strong general opposition to TWIC without providing explicit reasons. Some said it was unnecessary and unjustified, and would not improve maritime security. Some argued that the rule would be harmful. These commenters cited concerns that TWIC was not the most effective and economic approach, it would adversely affect staffing of vessels and port facilities, and it would cause economic hardship on the industry and individuals. Commenters also stated that TWIC was inappropriate for the inland marine industry, it would harm stevedore/terminal operators, and it was an unnecessary cost and duplication of effort where seaport access credentials are currently in use. One commenter stated that although the current system of licensing and documenting maritime personnel is failing or broken, the addition of TWIC will only add additional delays and burden. One commenter argued that the largest threat existed from foreign vessels, and they should not be excluded. Another commenter found the rule ''large-port-centric'' and disapproved of this ''one-size-fits-all'' approach.

TSA's and Coast Guard's responses to the comments are discussed below.

A. Requests for Extension of Comment Period and Additional Public Meetings

We received numerous requests to extend the comment period past the 45 days provided in the NPRM. We also received a significant number of comments requesting that we hold additional public meetings. These requests included a large number of supporting reasons.

Several commenters said that TSA and the Coast Guard had not done enough to obtain information about the concerns of affected maritime workers and industries before going forward with the TWIC rule, and the rule schedule should be extended to allow time for the collection of more information, with public meetings in more sections of the country, such as the Gulf Coast and Great Lakes ports. One commenter said the rule was skewed toward the issues involving large ports. A U.S. Senator argued that more information should have been collected on the impact of the rule on both the inland barge industry and the for-hire passenger excursion boat industry, and an association argued that there was little appreciation of the operational realities of the tugboat, towboat, and barge industry. Another commenter saw little reference to the domestic passenger fleet. Commenters listed the following organizations that they thought should have been consulted: the Passenger Vessel Association, American Waterways Operators Association, the Towing Safety Advisory Committee, the Merchant Personnel Advisory Committee, American Petroleum Institute (API), Offshore Mariner Safety Association (OMSA), and other maritime organizations.

We have carefully considered the comments submitted and nonetheless determined that it is not advisable to extend the comment period, nor did we hold additional public meetings. We considered delaying implementation of this entire project but determined that the security risk associated with such a delay is not acceptable. While the ''name checks'' being completed by TSA under the Notice published by the Coast Guard on April 28, 2006 (71 FR 25066) do provide some security to the ports, we need the added layer of security that issuing TWICs provides. First, the current name check regime established through the Coast Guard Notice checks names against the terrorist watch lists and immigration databases. With TWIC, we will also check an individual's criminal history and conduct an enhanced immigration check. Second, the interim vetting regime only applies to permanent employees and long-term contractors of facilities and longshoremen, whereas the TWIC program provides the benefit of performing checks on all individuals with unescorted access to both facilities and vessels. Finally, the TWIC program will provide the owners/operators with the piece that the interim vetting regime is missing—namely, a universal credential to verify whether an individual requesting access to a vessel or facility has been screened and determined not to be a security threat. With the Coast Guard spot checks, we can also verify, on a random basis, the validity of the TWICs being used to gain entry to vessels and facilities.

As we began reviewing the comments we received at the public meetings and on the docket, we realized that there were some portions of the NPRM that were not ready to be implemented. Most important among these pieces were the card reader and biometric verification requirements. As a result, we have removed those requirements from the final rule. What remains is the requirement to apply for and hold a TWIC, the threat assessment standards to be used when processing TWIC applications, and the reduced access control requirements, where the TWIC is used as a visual identity badge at MTSA-regulated vessels and facilities. The Coast Guard intends to integrate the TWIC requirements into its already existing facility and vessel annual MTSA compliance exams, as well as through unannounced security spot checks to confirm the identity of the TWIC holder using hand-held card readers.

We will initiate a new rulemaking action after pilot testing TWIC readers in the maritime environment. Through that rulemaking action we will propose, seek comment on, and finalize the requirements for card readers. We will also hold public meetings during that rulemaking action, and will consider holding these meetings in any location suggested by commenters. Thus, while we determined that it was not in the public interest to delay implementation of the TWIC program to allow for an extended comment period or additional public meetings, we will be providing an additional opportunity for public participation before owners/operators of vessels and facilities will have to implement the card reader requirements.

B. Coast Guard Provisions

1. Definitions

(a) Requests To Add Additional Definitions

One commenter felt that using the word ''ensure'' in the regulations establishes an unreasonable standard of care that would require facilities to guarantee safety, and expose facilities to strict liability in the case of a terrorist incident. The commenter recommended that the final rule amend all uses of the word ''ensure'' in 33 CFR, chapter I, subchapter H.

We disagree. The word ensure, as used in current regulations as well as the TWIC NPRM, was used throughout subchapter H purposely, to designate where the ultimate responsibility for

various security functions would be found for enforcement purposes. We did not propose changing it in the TWIC NPRM and we have not changed it in the final rule.

One commenter recommended that the final rule better define the term ''Federal Official'' in 33 CFR 101.514, so that active duty and reserve military personnel, all Federal Civil Service employees, and people who hold Department of Defense (DOD) Common Access Card (CAC) cards are not required to obtain or possess a TWIC. We disagree with the suggested change, as the term Federal official is clear enough on its face, meaning individuals who are working for the Federal government. Section 101.514 allows these individuals to gain unescorted access to a vessel or facility using their agency-issued, HSPD–12 compliant identification card. Until an HSPD–12 card is available, these officials may use their agency's official credential—when representing that agency on offical duty—if that is the DOD CAC card, then the CAC card may be used.

One commenter noted that a definition for the term ''official'' is not provided in the proposed rule, and recommended that Federal, State, and local ''officials'' not requiring a TWIC for unescorted access should be limited to law enforcement, fire, rescue, and government employees that have been subjected to a background screening equivalent to the one conducted for issuance of a TWIC. We believe that the term ''official'' is clear enough in context, and as such we have not added a definition as suggested by the commenter. We recognize, however, that emergency responders may not fit into the ''officials'' category, and so we have added a new paragraph to § 101.514 to cover emergency responders during emergency situations.

One commenter recommended that the rule be amended to exclude persons working on vessels whose sole purpose is entertainment, such as musicians on passenger vessels. If this exclusion was not made, the commenter recommended that where a vessel engaged solely in entertainment has been inadvertently grouped with vessels of other classes, that the designation of various spaces aboard the vessels, and within those vessels' facilities, be more clearly defined in the final rule, including: (1) For passenger vessels, exclude the employees, whose workstation is limited to areas accessible by passengers, based on the fact that they are occupying the same areas as the passengers who are not subject to the requirement; and (2) apply the TWIC ruling only to the crew areas or persons with access to crew areas. This would allow operators to maintain the security of control stations, equipment rooms and voids, without disruption of access to other employee only areas of the vessel or a facility, which do not need to be restricted areas.

We agree with this comment. As discussed above in the section discussing changes to the Coast Guard provisions, we are adding a definition for ''employee access areas,'' for use only by passenger vessels and ferries. An employee access area is a defined space within the access control area of a ferry or passenger vessel that is open to employees but not passengers. It is not a secure area and does not require a TWIC for unescorted access. It may not include any areas defined as restricted areas in the VSP. Note, however, that any employee that needs to have unescorted access to areas of the vessel outside of the passenger or employee access areas will need to obtain a TWIC.

(b). TWIC

Two commenters recommended that all references to a ''valid TWIC'' be changed to ''TWIC'' since the definition of TWIC requires that it be valid and non-revoked. We agree and have made the suggested changes within 33 CFR parts 101 through 106. We have left the language in 46 CFR parts 10, 12, and 15, however, because in those places, the term TWIC is not tied to the definition in § 101.105.

(c). Public Access Area/Passenger Access Area

One commenter recommended that the definition of ''public access area'' for cargo vessels be the same as that for passenger vessels to allow similar flexibility. Alternatively, the commenter provided a separate definition of ''public access area'' that allows facilities to designate any area as such, provided the area is specified in the FSP.

One association noted that vessels other than ''passenger vessels'' are permitted to carry passengers, industrial personnel, or persons in addition to the crew. The association recommended that the final rule provide flexibility similar to passenger vessels for other types of vessels by providing the following definition of public access areas in 33 CFR part 101: ''Public access areas means those defined spaces within a vessel, facility or OCS facility that do not require a TWIC for unescorted access. Any vessel, facility or OCS facility may designate areas as public access areas provided they are specified in the security plan.''

They further recommended that facilities owners and operators be provided flexibility similar to that of passengers in designating public access areas, and recommended that the following definition be added to part 105:

''§ 105.xxx Public access area.

(a) Any facility may designate areas within the facility as public access areas. Any such areas must be specified in the FSP.

(b) Public access areas are those defined spaces within a facility that do not require escorted access for persons not in possession of a TWIC.''

They also recommended that OCS facilities owners and operators be provided flexibility similar to that of passenger vessels in designating public access areas, and recommended that the following definition be added to part 106:

''§ 106.xxx Public access area.

(a) Any OCS facility may designate areas within the facility as public access areas. Any such areas must be specified in the FSP.

(b) Public access areas are those defined spaces within an OCS facility that do not require escorted access for persons not in possession of a TWIC.''

We disagree with these comments. The concept of a ''passenger access area'' has been included in the final rule to cover passenger vessels, ferries, and cruise ships, *i.e.*, those vessels that routinely, as part of their normal operating procedures, carry passengers. While we recognize that some cargo vessels may also, at times, carry passengers, we do not feel it is appropriate to expand this provision to other categories of vessels at this time. We feel that appropriate flexibility is given in the interpretation of ''escort'' to address these situations, while maintaining security. Additionally, facilities are already able to designate certain portions of their facility as ''public access areas,'' therefore we do not feel it necessary to expand the ''passenger access area'' concept to facilities at this time.

Several commenters recommended that the definition of ''passenger access areas'' be clarified in the final rule to state that no person, including employees, workers, and vendors, would need a TWIC to have unescorted access to a passenger access area on a vessel.

We have not amended the language as suggested, but agree with the commenters' concept. The proposed, and now final, definition of ''passenger access area'' states that these areas are not part of the secure area of the vessel. Thus, anyone requiring unescorted access to the passenger access area ONLY does not need to have a TWIC,

as he or she does not need unescorted access to a secure area. This covers passengers, employees, other workers, and vendors.

(d). Monitoring

One commenter felt that the definition of ''monitoring'' as used in current regulations and the TWIC NPRM, was ambiguous, confusing, and should be deleted. We disagree. The NPRM did not propose to change the definition of monitoring, and as such we are not making any changes in the final rule. For an explanation of what was meant by that term, *see* the final rule titled ''Implementation of National Maritime Security Initiatives,'' issued on October 22, 2003 (68 FR 60448).

(e). Breach of Security

One trade association recommended that the definition for ''breach of security'' as used in current regulations and the TWIC NPRM be clarified to allow certain individuals without a TWIC in secure areas, such as escorted persons and foreign seafarers conducting authorized ship's business. The commenter also recommended that the guidance in parts 104 through 106 be amended to clarify this.

Neither the NPRM nor the final rule amend the definition for ''breach of security.'' As stated in the NPRM, ''[c]ircumstances that trigger the reporting requirement[s] in § 101.305 are highly fact-specific and difficult to define comprehensively.'' (71 FR 29417). Generally speaking, finding properly escorted persons within a secure area would not, in and of itself, constitute a breach of security. One situation that would, with certainty, however, is finding someone unescorted within a secure area without a TWIC. This would constitute a breach of security. We will be issuing new guidance for parts 104 through 106, in the form of a NVIC, and will be sure to include provisions on what could constitute breaches of security or suspicious activity in the context of TWIC.

(f). Escorted/Unescorted Access

Several comments requested clarification and additional guidance on the definition of ''escorting.'' Several commenters requested additional clarification about the level of surveillance for personnel without a TWIC, and supported the use of surveillance and monitoring technology instead of physical escorting, or the use of one escort to monitor multiple individuals. The commenters said that constant, one-on-one supervision would be unduly burdensome.

Commenters also stated that the escorting and recordkeeping requirement would be too burdensome in terms of manpower, cost, and recordkeeping. Many of these commenters interpreted the definition to require the physical presence of one escort for each individual without a TWIC at all times while in a restricted area. Some of these commenters provided examples of situations where the requirement would be too burdensome. One port authority stated that it typically has over 100 temporary workers on site that would require escorts. Another commenter was concerned that the rule may prevent shore leave for European Union workers not holding a TWIC, particularly where an escort was unavailable or the regulations were interpreted inconsistently at different ports. One trade association felt that the requirement for escorting would be too burdensome for facilities without the manpower to escort individuals without TWIC, particularly in emergency situations when the workforce has been displaced. One commenter felt that the escort provisions should be unnecessary for foreign maritime facilities complying with the International Ship and Port Facilities Security Code (ISPS Code).

Several commenters were concerned about the need to escort repairmen, maintenance crews, truck drivers, delivery men, crews doing dockside checks of their vessel, musicians, caterers, and other workers, and the need for escorting during weekends and non-business hours when escorts might not be available. One commenter stated that it would have to provide escorts for technical representatives of foreign equipment manufacturers to work on its foreign-built (but U.S.-flagged) vessels. The company also said the rule would be ''problematic'' because it would require a constant escort for foreign owners of U.S.-flagged vessels who visit the vessels. They also stated the rule might disadvantage U.S. ship management companies that operate U.S.-flagged vessels for foreign owners.

As noted above in the section discussing changes to the Coast Guard provisions, we have amended the definition of escorted access to clarify that when in an area defined as a restricted area in a vessel or facility security plan, escorting will mean a live, side-by-side escort. Whether it must be a one-to-one escort, or whether there can be one escort for multiple persons, will depend on the specifics of each vessel and/or facility. We will provide additional guidance on what these specifics might be in a NVIC. Outside of restricted areas, however, such physical escorting is not required, so long as the method of surveillance or monitoring is sufficient to allow for a quick response should an individual ''under escort'' be found in an area where he or she has not been authorized to go or is engaging in activities other than those for which escorted access was granted. Again, we will provide additional guidance with more specifics in a NVIC.

Additionally, as discussed above, the reporting and recordkeeping requirements proposed in the NPRM have been removed from this final rule. We will take the comments on these requirements into consideration when we begin a new rulemaking on reader requirements.

One commenter felt that the definitions of ''escorting'' and ''unescorted access'' are in conflict, and recommended that the definition of ''unescorted access'' be broadened to include either an escort or monitoring sufficient to identify whether the escorted individual is engaged in activities other than those for which escorted access was granted.

One commenter felt that the definition of escorting was in conflict with the requirement in § 105.290(d) to provide additional security to monitor holding, waiting, or embarkation areas, because passengers that do not hold TWICs may be in those areas. The commenter expressed concern that this conflict could result in inconsistent requirements, with some government officials requiring each passenger to be accompanied one-on-one by security personnel.

''Escorting'' means ''ensuring that the escorted individual is continuously accompanied while within a secure area in a manner sufficient to identify whether the escorted individual is engaged in activities other than those for which escorted access was granted.'' As stated above, we did not intend for the term escorting to always mean a one-to-one side-by-side escort, and we have added to the definition to clarify that outside of restricted areas, monitoring will meet the definition of escorting. We believe that the requirements in § 105.290(d) are sufficient to meet the definition of ''escorting'' when passengers are in holding, waiting, or embarkation areas so long as the monitoring provisions of the facility's approved security plan are in place.

One commenter recommended that the definition be clarified to state that the escort must hold a TWIC. This would prevent two individuals without TWICs from escorting each other.

We have included the requirement that all escorts be TWIC-holders in the actual access control provisions of parts

104, 105, and 106. We have added language to the definition to specifically state that individuals without TWICs may not enter restricted areas without being escorted by an individual who holds a TWIC, with certain exceptions for new hires.

One port authority recommended that the escorts be limited to a subset of TWIC holders, as is done in the aviation sector, and that a limit on the number of individuals a single person can escort be established. We have no limits on who can serve as an escort, other than the requirement that all escorts hold a TWIC. Owners/operators are free to establish more stringent requirements for their escorts if they so desire. As stated above, we will be issuing a NVIC that will provide more detail on how many individuals each escort can accompany at one time.

One commenter requested clarification on who was qualified to be an escort and was concerned that they would need to use an outside security service to serve as escorts. It is not our intention to require outside security services in order for an owner/operator to be able to provide escorts. We will provide more guidance on what is expected of escorts in our NVIC, but generally we expect that any escort be able to respond quickly should any of the individuals that he or she is escorting enter (or attempt to enter) an area they are not authorized to be in or engage in activities other than those for which escorted access was granted.

One commenter felt that the definitions of ''escorting'' and ''unescorted access'' are in conflict, and recommended that the definition of ''Unescorted Access'' be broadened to include either an escort or monitoring sufficient to identify whether the escorted individual is engaged in activities other than those for which escorted access was granted.

The definition of ''unescorted access'' in the final rule provides flexibility, allowing owners/operators to designate which individuals need unescorted access, which need to be escorted, and which need to be banned from all access based on their individual circumstances. The Federal government will take appropriate action against known or suspected terrorists or illegal aliens, preventing them from gaining even escorted access to secure areas. However those persons who represent ''security threats'' due to past criminal activity may not constitute a risk when escorted.

As we noted above, we did not intend for the term escorting to always mean a one-to-one side-by-side escort. In fact, outside of restricted areas, such side-by-side escorting is not necessary, so long as the method of surveillance or monitoring is sufficient to allow for a quick response should an individual ''under escort'' be found in an area where he or she has not been authorized to go. As stated above, we will provide additional guidance with more specifics in a NVIC.

(g). Recurring Unescorted Access

Many commenters supported the provision allowing the holder of a TWIC who regularly enters and departs a secure area on a vessel on a continual basis to do so without verifying the TWIC for each such event. The commenters felt that screening employees that access secure areas frequently would be burdensome. One commenter stated that this provision is needed by operations with few employees. Some of these commenters supported expanding this provision to include facilities. One commenter recommended that facilities allow recurring unescorted access without TWIC verification, when the validity of an individual's TWIC has been confirmed within the prior thirty days during Maritime Security (MARSEC) Level 1, but that at MARSEC Level 2 TWIC verification be conducted each time the individual accesses the area.

One commenter recommended the definition be revised to ''* * * authorization to enter a vessel or facility on a continual basis after an initial personal identity and credential verification, as outlined in the vessel or facility security plan.'' The commenter stated that this modification will provide significant relief for facilities during MARSEC Level 1.

We reviewed these comments and recognize that recurring unescorted access might be a valuable and sensible tool for both vessels and facilities. However, because the requirements for readers and owner/operator TWIC verification have been removed from the access control provisions of this final rule, the term is no longer used within the access control provisions of subchapter H. Despite this fact, we have retained the definition, and expect that it will be used in a future rulemaking to impose reader requirements. Any NPRM on that issue will include consideration of expanding the concept to any vessel or facility with a small enough contingent of regular employees that allowing such access would not present a significant security risk.

(h). Secure Area

There were numerous comments on the proposed definition of secure area. One commenter requested clarification on where card readers need to be located for secured and restricted areas. When the NPRM on reader requirements is published, we will include clarification on this subject, where appropriate.

Many commenters felt that the use of the terms ''secure area'' and ''restricted area'' was confusing, and that additional clarification or changes to the definitions or use of these terms be made. Several commenters believed that these terms meant the same thing, and recommended using either ''secure area'' or ''restricted area'', but not both. Several commenters felt that ''secure area'' should not be defined as ''restricted area'' at low consequence facilities. One commenter recommended that any facility be given the flexibility to designate its existing restricted areas as its secure areas in its TWIC Addendum. The commenter recommended that specific provisions in the proposed regulations that could be interpreted as preventing this, such as the requirement that ''appropriate personnel know who is on the facility at all times'' (33 CFR 105.200(b)(18)) and the record keeping requirements (33 CFR 105.225(b)(9)) should be revised to make it clear that they only apply within the secure areas designated in the TWIC Addendum. One commenter recommended that only the term ''secure area'' be used, while other commenters recommended that only the term ''restricted area'' should be used. Many commenters recommended that the definition of ''secure area'' should be aligned with, or made the same as, the existing definition of ''restricted area'' used in existing security plans. The commenters felt that this would be more consistent with existing regulations and security plans and would allow flexibility without reducing security. These commenters argued that having different definitions would result in unnecessarily increasing access restrictions in areas that are restricted to employees only but are not essential for security, such as galleys and storage areas. Some commenters recommended that the final rule include a definition of ''employee only area'' or ''owner-controlled area'' for such areas, and that TWIC not be required for them.

Two commenters recommended that the term ''secure area'' be defined more narrowly than ''restricted area.'' One of these commenters was concerned that defining the terms ''secure area'' and ''restricted area'' to be the same would be costly for facilities and vessels that have designated in their security plan their entire facilities and vessels as a ''restricted area.''

Several commenters recommended that if ''secure area'' and ''restricted area'' are defined as coextensive, facilities should have flexibility in determining which ''secure areas'' require TWIC. Another commenter recommended that if ''secure area'' and ''restricted area'' be defined as coextensive, the agency create a definition for ''security sensitive areas'' requiring TWIC that would be a subset of ''secure areas.'' Multiple commenters requested that if these terms do have different meanings, the final rule should explain the difference, and identify the difference in access restrictions required for them.

One commenter was concerned that the Coast Guard would not accept the ''restricted areas'' established in existing security plans as ''secure areas.'' This commenter felt that vessels and facilities should have the flexibility to define existing areas designated as ''restricted areas'' as ''secure areas'' to avoid expending resources on areas that are not important to security.

Multiple commenters were concerned that the definitions of ''secure area'' or ''restricted area'' would result in inconsistent application by regulators at different facilities. One commenter was concerned that their entire facility has been determined to be a secure area, and thus all of their employees would require a TWIC. Some commenters recommended that small facilities be allowed to define areas as being ''secure areas'' only when a vessel is present.

Several commenters were concerned that the definition of ''secure area'' was too broad, and would require TWIC for any area with any access restriction, such as a fence. Commenters were concerned that this would result in their entire vessel or facility being designated as a ''secure area.'' Many of these commenters felt that they could not meet such a requirement, or that such a requirement would be unnecessary for security. One commenter expressed concern that this might result in numerous Transportation Security Incidents.

One commenter recommended that the first sentence of the proposed rule be rewritten to read, ''Secure area means the area on board a vessel or at a facility or outer continental shelf facility which the owner/operator has designated as requiring a transportation worker identification credential (TWIC) for a person obtaining unescorted access, as defined by a Coast Guard approved security plan.''

Multiple commenters recommended that the final rule clarify that facility owners and operators have broad flexibility in designating ''secure areas,'' and that the Coast Guard readily approve such designations. These commenters felt that this was necessary to minimize the costs and disruptions from the rule.

One commenter recommended that the proposed rule be amended to include a process for limiting the portions of sites to be covered by the rule based on security vulnerability criteria, which would certainly include barge unloading facilities and possibly other areas designated as ''restricted'' in the site's FSP developed under MTSA.

As noted above in the discussion of changes to the Coast Guard provision of this rule, we did not intend for the terms ''secure area'' and ''restricted area'' to be read as meaning the same thing.

As also noted above, we recognize that many facilities may have areas within their access control area that are not related to maritime transportation, such as areas devoted to manufacturing or refining operations. The individuals working in these non-maritime transportation areas may rarely, if ever, have a need to access the maritime transportation portions of the facility. As such, we are giving facility owners or operators the option of amending their FSP to redefine their secure area to include only those portions of their facility that are directly related to maritime transportation or are at risk of being involved in a transportation security incident. Redefining the secure area does not necessarily reduce the original facility footprint covered by the FSP where security measures are already in place. That can only be achieved by a reevaluation of the facility as a whole. Instead, the amendment will only effect where TWIC program requirements will be implemented. Additionally, any secure areas must have an access control perimeter which ensures only authorized individuals with valid TWICs have unescorted access. These amendments must be submitted to the cognizant COTP by July 25, 2007.

One commenter expressed a desire for Coast Guard to support allowing a facility owner/operator to modify their FSPs by maintaining a significant level of security for the entire facility, while enhancing security for narrower area of the site. This commenter proposed the following language for the final rule preamble: ''Facility owner/operators are encouraged to review, and revise as necessary, their Facility Security Plans to apply TWIC requirements to those portions of the site that (i) trigger MTSA regulation, (ii) can be reasonably separated through access controls from other parts of the facility; and (iii) require a higher degree of security protection. Coast Guard will review and approve these changes to the FSP so long as the facility demonstrates that (i) it can maintain existing security at the balance of the facility, and (ii) restricted access controls (including TWIC access controls) have been provided for the area that will have heightened security.''

We agree with the substance of this comment. While the exact recommended verbiage has not been incorporated into the final rule, we believe the intent and proposed flexibility has. Facility owners and operators will continue to be responsible for drafting and submitting their unique security plans for Coast Guard approval. As noted above, greater flexibility has been afforded to facility plan submitters, allowing them to redefine their secure area to include only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation security incident.

We realize that there may be some owners and operators of vessels that would like the same option. However, vessels present a unique security threat over facilities in that they may not only be targets in and of themselves, but may also be used as a weapon. Due to this fact, we will continue to define the entire vessel as a ''secure area,'' making exception only for those special passenger and employee access areas which are discussed below. Vessel owners/operators need not submit an amendment to the VSP in order to implement these special areas, however they may do so, following the procedures described in part 104.

Commenters also requested clarification on whether the term ''secure area'' is intended to include passenger access areas as defined under 33 CFR 105.106. These commenters recommended that the passenger access areas not be defined as ''secure areas.''

''Passenger access areas'' are, by their definition, not secure areas. They will, however, exist solely within the secure area of the vessels on which they are implemented. As such, they will operate as ''pockets'' within the secure area.

One commenter stated that small passenger vessels and facilities where they moor would be at a small risk of a terrorist attack. The commenter recommended that the final rule state that such vessels and facilities do not have any ''secure areas.''

We do not agree with this comment. During the MTSA rulemaking process, the Coast Guard evaluated all vessels and facilities to determine which of those are at a high enough risk of a

Transportation Security Incident (TSI) to warrant imposing the security plan requirement. Small passenger vessels and the facilities that they use were determined to pose a high enough risk to warrant imposition of the security plan requirement. We do not believe that circumstances have changed to warrant a change to those requirements. We have, however, provided some relief to small passenger vessels in this rulemaking by allowing them to carve out passenger and employee access areas (explained elsewhere in this final rule), which will help minimize the ''secure area'' on board.

One commenter was concerned that since secure areas are defined in the owner or operator's threat assessment (which is approved by the Coast Guard, but is not publicly available), a business operating at the port, vessel, or facility for the first time would not know what areas are designated as ''secure'' and whether they need a maritime TWIC.

The threat assessment approved by the Coast Guard addressed restricted areas, not secure areas. We have defined secure areas as the access control areas of vessels and facilities, which should provide enough guidance to new businesses, as the area over which a vessel or facility exerts access control should be readily visible to anyone approaching that vessel or facility for access.

One commenter also requested clarification on whether ''secure areas'' corresponds to existing security classification existing under the ISPS Code.

The comment is unclear. The ISPS Code uses the term restricted area, and as discussed above, we do not intend for the secure area to mean the same thing as restricted area. In that regard, this final rule does not correspond with the ISPS Code. However, we note that the definition we have provided will not interfere with a vessel or facility meeting the requirements of the ISPS Code.

One commenter noted that safety issues surrounding needed access to ''secure areas'' in an emergency are not addressed. Another commenter stated that access to secure areas cannot be restricted in an emergency. We recognize this issue and have added a paragraph to § 101.514 that clarifies emergency personnel need not have TWICs to obtain unescorted access to secure areas during emergencies.

Two commenters recommended that the term ''secure area'' be revised to read ''Secure area is used as defined in 33 CFR 101.''

We disagree. The definitions found in 33 CFR part 101 apply to all of subchapter H, therefore it is not necessary to constantly refer back to part 101 when, in parts 103 through 106, we use a term defined in part 101.

2. General Comments on Applicability

Many commenters had questions and/or concerns for TSA and Coast Guard related to the applicability of the proposed rule. One asked what the TWIC requirements would be for a CDC facility that is in a separate location on port property, since it is not a secure maritime facility and thus does not fall under the security regulations of 33 CFR part 105.

Another commenter posed several questions for TSA and Coast Guard: Will the unlicensed crew members on small passenger vessels certificated for less than 150 passengers under ''Subchapter K'' need to hold a TWIC? Will unlicensed crew members on passenger vessels carrying more than 12 passengers, including at least one passenger-for-hire, on an international voyage, which can include large charter yachts of up to 500 Gross Register Tonnage (GRT), be required to carry a TWIC? Will deckhands on barges subject to ''Subchapters D or O'' be required to obtain a TWIC? Will deckhands on towing vessels greater than 26 feet in length be required to obtain a TWIC?

One commenter noted that every terminal under MTSA is unique, which is why they are required to have FSPs and suggested that 33 CFR part 105 be used as a baseline and to allow terminals to write their specific plans to ensure security and ease of commerce thus allowing the terminal operators to determine if individuals without the TWIC may have unescorted access to the terminal. One commenter shared their experience implementing legislation similar to the TWIC via Florida Statute 311.12. The commenter suggested adding a grandfather component to the proposed rule to allow current personnel working in the maritime industry certain considerations. The commenter went on to note that if they had not implemented a grandfather component to Florida Statute 311.12, the smooth operation of commerce would have come to a halt.

Many commenters, including individuals, marine services companies, barge lines, cruise lines, towing companies, and marine maintenance companies, argued that they already had adequate security plans, restrictions, testing procedures, personnel procedures, and other safeguards in place, some of which were approved by the Coast Guard. One local government commenter said that TSA should exempt any facility from the TWIC requirements that had a FSP already in place. Another commenter noted that in the absence of security incidents at any scrap yards relating to maritime transportation and small port facilities that receive bulk aggregate materials, the FSP should be sufficient for addressing risks at such facilities.

MTSA was clear and unambiguous, leaving little if any room for agency interpretation. Essentially, all individuals must hold a TWIC in order to be eligible for unescorted access to secure areas of MTSA regulated facilities or vessels. In addition, the statute was very clear that all credentialed Merchant Mariners will be issued a biometric identification card, which will be the TWIC. Where needed and allowable under the statute, certain arrangements or exemptions were proposed and modified as the result of the public comments to identify special cases where individuals without a TWIC or who are unable to obtain a TWIC can continue to work aboard MTSA regulated facilities or vessels, subject to additional security provisions.

As a result of the public comments and concern regarding the potential negative impact on industry resulting from the requirements to implement a TWIC system, greater flexibility has been afforded to facility owners/operators by allowing them the option, in revised § 105.115, to redefine their ''secure area'' as only that portion of their access control area that is directly related to maritime transportation. Other definitions, such as ''passenger access area'' and ''employee access area,'' will also provide greater flexibility in assisting regulated entities with enhancing security while meeting the new regulations. Additionally, provisions have been included, as discussed more specifically below, to allow limited access to new hires under specific conditions, and to persons who have reported their TWIC as lost, damaged or stolen and are awaiting replacement cards.

One commenter recommended utility fuel-handling facilities be the only facilities subject to the TWIC program. The commenter also recommended that the TWIC be required for such facilities only when the facility is being used for off-loading.

As stated earlier, the MTSA of 2002 clearly and unambiguously ruled out blanket waivers for specific industry segments or specific job descriptions. With very limited exceptions, all individuals must hold a TWIC in order to be eligible for unescorted access to secure areas of MTSA regulated facilities or vessels.

(a). Applicability—Requests for Exemptions

Numerous commenters requested exemptions from the TWIC requirements for the following industries, vessels, and facilities:

- U.S.-flagged passenger vessels;
- U.S.-flagged mobile offshore drilling units (MODUs) and offshore supply vessels (OSVs) operating outside the geographic boundaries of U.S. jurisdiction, employing non-citizen workers;
- Other U.S. flagged vessels employing non-citizen crewmembers under the provisions of 46 U.S.C. 8103(b)(3) or (e);
- Inland tugboat, towboat, and barge industry;
- Small and/or isolated low consequence ports, facilities, or vessels;
- Facilities with security requirements that are equivalent or more stringent than the TWIC (*e.g.*, shipyards that currently meet existing DOD credentialing and security plan requirements);
- Facilities and vessels participating in aggregate stockpile and loadout activities;
- Tall ships operating under the U.S. flag and educational sailing programs for school children;
- Bunkering and gas support facilities; and
- U.S. vessels undergoing repairs at a foreign port or facility.

The commenters presented various arguments to support their requests for exemption. Some commenters noted that exemption criteria should be added to the proposed rule indicating that vessels and facilities that were deemed low risk during a risk assessment should not fall under the TWIC requirement, because TWIC places an unwarranted burden on these vessels and facilities with little added security benefit. For example, one commenter requested that oil and gas support facilities and bunkering facilities be exempted from the TWIC requirements. Another commenter asked for an exemption since their activities and their location are low risk, predominately carrying bulk and break bulk products within the Great Lakes.

Similarly, other commenters argued that small vessels (*e.g.*, inland towing vessels, small passenger vessels) or small ports should be exempt from the TWIC requirements because the workers know each other and unknown visitors are infrequent. These commenters argued that the intent of the TWIC system, to identify those people who pose a threat, would not be served by installing card readers on small vessels or in small ports. They stated that identifying someone who does not belong is not difficult on these small vessels and in these small ports, and can be accomplished visually. They claimed that the proposed rule would only add cost to these industries with little to no benefit to maritime security. For example, many commenters noted that the crews on inland towing vessels are predominantly U.S. nationals who already comply with the security regulations in 33 CFR parts 104 and 105, so requiring TWICs for this industry would be costly and would result in few improvements in maritime security. In addition, several commenters from the small passenger vessel industry requested that subchapter K and T vessels operating in restricted waters and routes be exempt from the proposed rule.

More specifically, some commenters noted that vessels under a specific tonnage should be exempt from the TWIC requirements. One commenter asked that vessels of less than 500 regulatory tons GRT and 6,000 International Tonnage Convention (ITC) tons be exempt from the requirements. Another commenter asked that vessels less than 100 gross tons with undocumented workers be exempt from the proposed rule.

Many commenters argued that U.S.-flagged MODUs and offshore supply vessels (OSVs) operating outside the geographic boundaries of U.S. jurisdiction, employing non-citizen workers should not be required to obtain a TWIC. One commenter argued that in some countries the law requires these vessels operating on the continental shelf to hire local crewmembers, so requiring escorts for all of these crewmembers would place a large burden on these vessels and cause them to be unable to work overseas. In addition, the commenters argued that there is little threat posed by these vessels that are located thousands of miles from the U.S. coast. More than one commenter stated that the ISPS Code and its implementing regulations in SOLAS recognize the need for MODUs and OSVs to employ non-U.S. citizens in their crew and apply shelf-State standards instead of flag-state standards. The TWIC program should recognize the need for these vessels to employ non-U.S. citizens as well.

One commenter stated that it is their understanding that foreign-flagged MODUs (OCS facilities) that are on location on the OCS would be excluded from the requirements, since foreign vessels with valid ISPS Code certificates are in compliance with 33 CFR part 104 (except 104.240, 104.255, 104.292, and 104.295) and all foreign vessels are exempt from TWIC requirements under 33 CFR 104.105(d). The commenter asked for confirmation that this understanding of the proposed rule is correct. In addition, they requested confirmation that a MODU that is not regulated under part 104, and therefore not required to implement TWIC provisions, but is working next to or over an OCS facility that is regulated by part 106, and therefore is required to implement TWIC provisions, would be exempt from the TWIC requirements.

In addition to requests for exemptions for industries, vessels, and facilities, many commenters requested exemptions for the following types of workers:

- Employees who work at small ports, facilities, or vessels;
- Merchant seamen who are U.S. citizens and hold current U.S. Coast Guard licenses, Merchant Mariner Documents (MMD), certificates of registry, and STCW documents;
- Employees on vessels under 100 gross tons;
- Contract security guards who have already undergone a DOJ background investigation;
- Crewmembers, service technicians, or repair persons performing vessel maintenance and repairs;
- Hotel staff and passenger vessel staff;
- Seasonal or short term workers which access needs of less than 90 days;
- Cadets from U.S. maritime academies;
- Emergency response personnel;
- 15.702(b) crew and other authorized foreign nationals boarding U.S. vessels overseas;
- Employees who must continuously enter and exit secure areas (*e.g.*, baggage handlers at a cruise ship terminal);
- Port chaplains or other religious personnel;
- Workers who are not involved in the transportation industry; and
- Vessel agents.

The reasons presented by the commenters for granting the workers' an exemption were varied. Some commenters argued that passenger vessel staff who work within the same areas as the passengers who are not subject to the requirement should not be required to obtain a TWIC.

Commenters argued that crewmembers, service technicians, or repair persons performing vessel maintenance and repairs should not be required to obtain a TWIC because they do not present a security risk and additionally because there are not enough vessel and facility staff to escort these workers.

One commenter asked that the proposed provision exempting foreign vessels be expanded to also exempt ''foreign nationals employed on U.S. vessels under the provisions of 46 CFR 15.720(b) or who are authorized visitors aboard a U.S.-flagged vessel operating from or in foreign ports.''

Many commenters requested exemptions for emergency response personnel and law enforcement officers.

More generally, commenters suggested that workers should be exempt from the TWIC requirements until they go to work for a company that needs to conduct business in a secure area. In addition, commenters requested that workers without access to restricted areas of vessels or terminals not be required to obtain a TWIC.

MTSA was clear and unambiguous and ruled out blanket waivers for the requested industry segments or specific job descriptions. Essentially, all individuals must hold a TWIC in order to be eligible for unescorted access to secure areas of MTSA-regulated facilities or vessels. Where needed and allowed by statute, certain arrangements or exemptions were proposed and modified as the result of the public comments to identify special cases where individuals without a TWIC or who are unable to obtain a TWIC can continue to work aboard MTSA-regulated facilities or vessels subject to additional security provisions.

These special cases include the foreign vessel exemption, a new provision within the definition of secure area stating that in certain circumstances, U.S. vessels operating in foreign waters do not have secure areas, the passenger and employee access areas, and the provision allowing part 105 facilities to amend their security plans to limit their secure area to only those portions of their facility that are related to maritime transportation.

When issuing the regulations found in 33 CFR chapter I, subchapter H (known as the Coast Guard MTSA regulations), which establish who must submit a security plan, the Coast Guard utilized a risk based approach to identify and separate those particular facilities and vessels which pose a higher risk from those which pose a lower risk. While we agree with the argument that one MTSA-regulated facility or vessel can pose a lower risk than another MTSA regulated facility or vessel, the fact remains that all have already been determined to present a high enough risk of a TSI to warrant their inclusion in the MTSA regulations. The statute requires all MTSA regulated vessels and facilities to comply with the access control requirements by requiring TWICs for unescorted access to secure areas.

As a result of numerous comments and concerns regarding reader usage and installation aboard facilities and vessels in addition to emerging technology, this final rule addresses use of the TWIC as a visual identity badge and does not require use of readers. We will consider those comments requesting that the risk among all MTSA regulated vessels and facilities be reevaluated when we propose reader standards in a subsequent rulemaking.

Understanding the unique situations where successful commerce and support of the maritime industry is dependent upon legal employment or boarding of foreign mariners or crew while operating outside of U.S. waters, we determined that we must change some language from the proposed rule. As such, we are adding a provision to the definition of secure area in § 101.105 that states that U.S. vessels operating under the waiver provisions found in 46 U.S.C. 8103 (b)(3)(A) or (B) have no secure areas. These waiver provisions allow U.S. vessels to employ foreigners as crew in certain circumstances. As soon as the vessel ceases operating under these waiver provisions, it will be deemed to have secure areas as otherwise defined, and TWIC provisions will apply.

Additionally, facility owners/operators can affect the population of those who will need to obtain a TWIC by taking advantage of the option given to them in revised § 105.115 and redefining their ''secure area'' as only that portion of their access control area that is directly related to maritime transportation. The Coast Guard must approve such modifications.

(b). Applicability—Foreign Vessels

One commenter supported the proposed exemption for foreign flag vessels calling on U.S. ports. The commenter stated that this would include not requiring a valid TWIC to access vessel-designated restricted areas and the need for TWIC readers aboard foreign flag vessels. However, many commenters disagreed with this provision for various reasons. Some commenters stated that there is a need for application of international standards to all ships, U.S. and foreign, to maintain a level playing field and prevent economic discrimination against U.S. ships. For example, one commenter stated that security within the Gulf of Mexico will not be ensured until the foreign vessels that routinely operate in support of the offshore oil and gas industry, and call on Gulf ports such as Fourchon, Galveston, Mobile, etc., are held to and comply with equivalent standards.

Another commenter urged that an accurate cost-benefit analysis must factor in the cost of vessel operating companies that are forced out of business because they cannot compete with foreign competitors in the Gulf of Mexico who have been exempted from these requirements.

Other commenters argued that the proposed regulations overlook the area of greatest interest to national security, namely the traffic of foreign vessels and foreign seafarers at U.S. ports and maritime facilities, while imposing additional regulation on American mariners who already undergo thorough vetting, and U.S. vessels that already operate under a vessel security plan compliant with the MTSA. One commenter claimed that a security threat posed by individuals on a foreign-flagged vessel moored at a U.S. port is no less of a security threat than persons aboard a U.S. vessel, and objected that TSA has decided to forgo security requirements for foreign-flagged vessels. One commenter expressed that DHS has not conducted any analysis as to whether foreign mariners who do not participate in SOLAS or ISPS pose homeland security threats. One commenter stated that the Coast Guard has not fully considered the impact of its requirement to grant access to foreign nationals who have not been vetted by TSA.

One comment stated that because foreign mariners are not required to hold a TWIC under the proposed rule, if the entire terminal is classified as a ''secure area,'' crewmen that have docked at berth and have been cleared by CBP must be escorted every time they leave the ''restricted area'' of the pier. The commenter notes that if they are already in the restricted area they do not have to be escorted, but if they enter that part of the secure area that is not restricted, they must have an escort. The commenter asked that, since CBP has already made a determination whether these mariners pose a risk to our country, why then does a low consequence terminal have to make sure they are escorted if they pose no risk?

One comment said the proposed rule does not clearly indicate whether a foreign vessel must obtain, deploy, and operate TWIC readers at its access points on the vessel. However, the commenter said that the proposed rule appears to exempt foreign vessels from using TWIC readers.

Foreign vessels carrying valid ISPS Certificates do not fall within the TWIC applicability of the MTSA, as they are not carrying security plans approved by

the Secretary under 33 U.S.C. 70103. MTSA requires compliance with TWIC requirements for vessels or facilities whose plans include an area designated as a secure area by the Secretary for purposes of a security plan approved under sec. 70103. The vast majority of foreign vessels do not submit their plans to the Secretary, and therefore are not ''secure areas'' even when the foreign vessel is docked at a U.S. port. However, when docked at a U.S. port, individuals on the foreign vessels are subject to the facility's security plan—including TWIC and escorted access requirements—if they wish to leave the foreign vessel.

We do not agree that sec. 102 of the MTSA applies to foreign seafarers arriving on foreign vessels. The TWIC process cannot practically or meaningfully be applied to foreign mariners, who would not likely have the means to get to enrollment centers or to return to claim and activate their credentials, nor would any be able to present the appropriate identity documents, or meet the requirement for lawful presence. Requiring foreign seafarers to present a TWIC would mean that before being allowed off of a foreign vessel, each foreign seafarer would need to come to the United States to enroll in the TWIC program, and then again to pick up their TWIC. It is also not clear that such a provision would provide any security benefit, as the criminal background checks that are done as part of the TWIC security threat assessment would have very little meaning, since it is unlikely that a foreign seafarer will have a criminal record in the United States, and the additional background checks are done during the visa application and CBP screening processes (see below). Finally, placing such requirements on foreign seafarers would certainly affect the treatment U.S. mariners receive in other countries.

We also disagree that the TWIC subjects U.S. maritime workers and mariners to stricter processes than foreign seafarers. Currently, foreign seafarers arriving on foreign vessels are required to have a U.S. visa, issued by the Department of State subsequent to at least one face-to-face interview and a vetting process that is similar to TWIC vetting. Upon arrival in the U.S., foreign mariners are not allowed to leave the vessel until and unless they are allowed entry after inspection by a CBP Officer. Those seafarers that arrive without a visa or a CBP issued waiver are restricted to the vessel. Seafarers that are allowed to leave the vessel are subject to the security provisions of the facilities where their vessel is moored, including the conditions by which they are allowed to traverse the facility, and will be required to have escorted access through secure areas of the facility.

One commenter urged that a further provision be added at new § 104.105(e) to read as follows: ''(e) Foreign nationals employed on U.S. vessels in accordance with the provisions of 46 CFR 15.720 or who are authorized visitors aboard U.S. flag vessels operating from or in foreign ports are not subject to the TWIC requirements found in this part.''

As noted above, we are adding a provision to the definition of secure area in § 101.105 that states that U.S. vessels operating under the waiver provisions found in 46 U.S.C. 8103 (b)(3)(A) or (B) have no secure areas. These waiver provisions allow U.S. vessels to employ foreigners as crew in certain circumstances. The effect of this change is to exempt these vessels from the TWIC requirement while they are operating under the referenced waivers. As soon as the vessel ceases operating under these waiver provisions, it will be deemed to have secure areas as otherwise defined, and TWIC provisions will apply.

Many commenters stated that not requiring foreign vessels and foreign crews to obtain a TWIC would be detrimental to U.S. maritime security. One commenter noted that this policy would put U.S. offshore oil and gas supplies at risk. One commenter pointed out that currently a large portion of the ships transporting oil and hazardous materials are foreign vessels with foreign crews.

Another commenter noted that 95 percent of the vessels sailing from international waters into U.S. ports are crewed by foreign mariners, so although vetting these foreign mariners would be very difficult it is necessary to enhance U.S. port security. The commenter pointed out that U.S. mariners are already subject to background checks during the licensing procedure, so including U.S. mariners, while exempting foreign mariners from the TWIC program will not enhance U.S. port security.

Numerous commenters expressed concern about uncredentialed foreign mariners. One argued that if licensed and documented American mariners must hold a TWIC, foreign workers on American flag vessels should also be required to hold proper security credentials. Many commenters argued the necessity of covering foreign nationals working as drivers in domestic facilities such as ports and foreign crewmen on foreign vessels, such as Liquified Natural Gas (LNG) tankers. Comments came from a wide variety of maritime and trucking industry associations, and individuals.

Some commenters also stated that ensuring the security of freight moving in from foreign ports was a more important issue than TWIC.

One commenter noted that under the proposed rule many commercial fishing vessels will not be required to obtain a TWIC. The commenter argued that the TWIC program should include all commercial vessels, since commercial fishing vessels could easily be used as a terrorist target.

We do not agree with these comments. As discussed above, the vast majority of foreign vessels are not required to have a security plan under MTSA and thus do not constitute secure areas for purpose of the TWIC program. In regard to the security concerns cited by the commenters, however, individuals from foreign vessels who wish to leave the vessel while docked at a U.S. port are required to be escorted through secure areas on MTSA-regulated facilities. Further, each and every foreign mariner wishing to step off of a vessel onto U.S. soil must be issued a visa from the Department of State, and be admitted by CBP into the United States.

In addition, the Federal government has a variety of programs in place to identify potential security risks from foreign vessels and crew members entering U.S. ports. For example, the Coast Guard's Notice of Arrival requirements (33 CFR part 160, subpart C), U.S. Coast Guard Port State Control Examinations, vessel escorts, and crew list, cargo and last port of call screening, foreign port inspections and similar programs have been in place for several years to reduce the risk posed by certain foreign-flagged vessels transiting or calling U.S. ports.

Additionally, under CBP's Advance Passenger Information System (APIS) (19 CFR 4.7), vessels (both foreign and U.S.-flagged), must provide manifest information on all passengers and crew no later than 24 hours and up to 96 hours prior to the vessel's entry at a U.S. port. The data that must be provided by the vessel to CBP includes: the country that issued the passport or alien registration number; the passenger's or crew member's full name, date of birth, passport or alien registration number, country of residence, visa number, originating foreign port and final port of destination. *Id.* The manifest information is compared against terrorist watchlist information by CBP.

Commercial fishing vessels are not subject to 33 CFR subchapter H and therefore are not included in the congressional mandate for TWIC. As noted in the interim final rule published on July 1, 2003, titled ''Implementation

of National Maritime Security Initiatives,'' commercial fishing vessels were determined to be at a low risk of a TSI during the initial risk assessment and therefore were not included in the applicability for 33 CFR subchapter H (*see* 68 FR 39246–7).

One commenter stated that there are many reasons for foreign seafarers to be allowed to traverse the facility (*i.e.*, reading draft marks, completing a Declaration of Security (DoS), required training, making phone calls, medical and humanitarian needs). The commenter argued that to only mention crew changes and shore leave does not advise facility operators and Federal officials that there are other legitimate reasons for seafarers to be granted access to portions of a facility.

We agree that there are legitimate reasons for foreign seafarers to require limited access to facilities. Recognizing, in particular, that seafarers, whether foreign or U.S., will require access to facility areas to conduct vessel operations, such as reading drafts, adjusting mooring lines, securing shore ties, completing a declaration of security (DoS), and loading stores, we have included a provision to allow mariners limited access immediately adjacent to their vessels to conduct these operations. Limiting the access in this manner takes operational realities into account without adversely impacting security. Also recognizing this need applies to U.S. vessels not covered by 33 CFR part 104 when moored at a part 105-regulated facility, this provision is also granted to U.S. mariners on vessels not covered by part 104 who would not otherwise be required to possess a TWIC.

(c). Applicability—Mariners

One commenter requested clarification about whether every uncredentialed mariner (*e.g.*, crewmember) requiring unescorted access to secure areas of vessels and facilities will require a TWIC. Many crewmembers who have unescorted access to secure areas of vessels and facilities are not required to have credentials (*e.g.*, up to 17,000 crewmembers on inland and river towing vessels up to 1,600 GRT; crewmembers on small passenger vessels up to 100 GRT; and offshore towing vessels up to 100 GRT), noted one commenter. Therefore, the commenter argued that the proposed rule needs to make it clear that every uncredentialed mariner requiring unescorted access to secure areas of the vessels (especially small passenger vessels, offshore supply vessels or facilities) will need a TWIC.

Under this rule, every mariner, whether holding a credential from the Coast Guard or not, who requires unescorted access to a secure area of a MTSA-regulated vessel or facility will need to have a TWIC.

Another commenter, an owner of vessels and facilities, noted that they currently are not required to have VSPs or FSPs, however, the proposed rule indicates that their licensed employees will now need to obtain a TWIC. The commenter stated that making a licensed employee obtain a TWIC when the workplace is non-secure does not make sense. In addition, the commenter noted that only requiring licensed crewmembers to obtain a TWIC, but exempting unlicensed crewmembers, does not make sense. One commenter suggested that this could become very burdensome for the vessels and facilities, since individuals may choose not to obtain a TWIC and thus will have to be escorted while in secure areas. The commenter recommended that TSA and Coast Guard make the TWIC mandatory.

Many individual commenters and commenters from mariners' associations argued that domestic merchant seamen are already required to obtain documentation, and that an additional burden should not be placed on them. Several said that domestic professional mariners should be considered partners in security, because they have a vested interest in a secure workplace. Commenters stressed that the rule should recognize the difference between ''bluewater'' international operations and ''brownwater'' domestic operations on inland waterways, because the latter do not pose the same threat to national security. Several commenters also argued that the economic effect of the proposed rule would be to place domestic maritime workers, such as those in the offshore oil and gas industry, at a disadvantage vis-à-vis foreign competitors.

The final rule applies to all licensed mariners, regardless of where they work, and workers needing unescorted access to secure areas of vessels, facilities, and OCS facilities currently regulated by parts 104, 105, and 106. Licensed mariners, regardless of their employer or working location, must obtain TWICs due to sec. 102 of MTSA (46 U.S.C. 70105(b)(2)(B)), which states that the TWIC requirement applies to ''an individual issued a license, certificate of registry, or merchant mariners document under part E of subtitle II of this title.'' Additionally, the statute requires that any individual requiring unescorted access to secure areas of a vessel or facility regulated by 33 CFR part 104, 105, or 106 obtain a TWIC, regardless of whether they are licensed or unlicensed. (*See* 46 U.S.C. 70105(b)(2)(A)). We disagree with the commenters who felt that the TWIC requirement was ''not mandatory.'' Mariners will not be able to renew their credentials without a TWIC, and vessel and facility owners/operators have an enforceable responsibility to ensure that only persons holding TWICs be granted unescorted access to secure areas. If an individual shows up for work without a TWIC, and his or her employment would call for unescorted access within a secure area, it is the duty of the owner/operator to either turn that individual away or provide an escort, but there is nothing stating that the owner/operator must allow the individual access of any kind. We have provided for limited exceptions to this, to cover newly-hired individuals who have applied for their TWIC but have not yet received it, and to cover those individuals who have reported their card as lost, damaged, or stolen. These provisions can be found in the access control sections of parts 104, 105, and 106.

(d). TWIC Eligibility—Foreign Workers

Many commenters argued that foreign workers who have already obtained work visas and have been cleared by CBP should be allowed to obtain a TWIC, even though they are not resident aliens. For example, some commenters pointed out that trained foreign experts with work visas are often used on U.S.-flagged industrial vessels to assist with specialized work. The commenters argued that requiring an escort for these workers who have already been cleared by the CBP and obtained the appropriate work visas, would be burdensome and unnecessary. These commenters pointed out that just as the NPRM states that Mexican and Canadian truckers need to have access to facilities, offshore vessels need to allow specialized foreign workers on their vessels. Other commenters stated that the proposed rule is more stringent than what is required by law.

Several commenters noted that as a multinational corporation they have foreign employees and foreign business partners at their U.S. facilities, so if these employees and business partners cannot obtain a TWIC it will create a large burden for their corporations. The multinational corporations will face a burden not only from having to provide escorts for their foreign employees and foreign business partners, but also from lost business due to foreign business partners choosing not to work with U.S. multinational corporations due to the extra hassles.

We recognize that this population of workers is essential to the maritime transportation industry and that there would be significant impacts to facilities if they were not able to obtain unescorted access to carry out their work. As a result, we have amended the final rule to allow additional foreigners, holding certain work visas, to apply for a TWIC. These provisions are discussed in more detail in the TSA section below.

We do not believe, however, that TWICs should be issued to anyone who has been granted a work visa and cleared by CBP. While foreign workers—either immigrant or nonimmigrant—may be subject to certain screening to obtain a visa or to enter the country. However, these individuals do not undergo the comprehensive security threat assessment necessary to allow a person unescorted access to a secure facility.

(e). Applicability—Area Maritime Security (AMS) Committee Members

The NPRM proposed requiring that all AMS Committee members obtain a TWIC. Several commenters stated that they agreed with this provision of the proposed rule. For example, one commenter noted that if the rule is not applied equally to all parties it will have little value. Other commenters stated that they did not agree with this provision and felt that AMS Committee members should not have to obtain a TWIC. Some of these commenters argued that the TWIC is not a tool to clear individuals for access to SSI[21], but is a tool to assist facility and vessel owners in implementing access control. The commenters argued that since some of the AMS Committee members do not need access to secure maritime areas and all of the AMS Committee members have already undergone the screening for access to SSI, the AMS Committee members should not have to obtain a TWIC. In addition, commenters noted that requiring the AMS Committee members to obtain a TWIC would increase the costs associated with membership and thus discourage membership.

After reviewing these comments, we have decided to refine the TWIC requirement in regard to AMS Committee members, as explained above in the discussion of changes to the Coast Guard provisions of the final rule. The final rule allows individuals to serve on an AMS Committee after the completion of a name-based terrorist check from TSA. FMSCs (*i.e.* COTPs) will forward the names of these individuals to TSA or Coast Guard Headquarters for clearance prior to sharing SSI with these members.

(f). Applicability—Owners/Operators

The proposed rule requested comment on whether owners/operators of vessels, facilities, and OCS facilities should be required to obtain a TWIC, based on their access to SSI. Some commenters argued that requiring those who have already been screened for their access to SSI to obtain a TWIC based solely on their access to SSI would be an unnecessary waste of money and resources. These commenters noted that not all SSI is sensitive enough to require the kind of background check that will be a part of TWIC. A few commenters noted that the owner/operator should determine who in their corporation needs to obtain a TWIC and who needs access to SSI. One commenter noted that this question pertains to 49 CFR part 1520, which was not defined as being within the scope of this rulemaking, although it defines SSI and provides standards for access to and control of SSI. Therefore, although 46 U.S.C. 70105(b)(2)(E) permits the Secretary to determine that individuals with access to SSI must have a TWIC, this issue should be the subject of a separate rulemaking addressing the provisions of 49 CFR part 1520. One commenter argued that owners and operators should be subject to the TWIC requirements, since they have access to SSI. Another commenter argued that owners and operators should be required to obtain a TWIC. They argued that owners' and operators' open access to secure areas and SSI by virtue of their position, warrants their need for the TWIC. This commenter went on to argue that not requiring owners and operators to obtain the TWIC would amount to rank discrimination. They sited the Dubai Ports World controversy as further evidence of the need for owners/operators to obtain a TWIC.

The final rule does not include a requirement that all owners/operators obtain a TWIC. We reviewed all of the comments received and agree with the idea that an owner/operator, due to access to SSI access and ability to control the company, should probably go through a background check. However, our difficulty comes in determining who exactly the owner/operator to be checked is. For small or closely-held companies, this is an easy answer, and we expect that in the majority of these cases, the owner/operator will get a TWIC due to his/her need to have unescorted access to the vessel or facility. However, larger, multi-national, publicly traded companies pose a much bigger problem. It would be impractical for TSA to run background checks and issue TWICs to anyone holding stock in a company that may own a facility or vessel regulated under MTSA. Additionally, these companies may be structured in such a manner that a bank or several large holding companies are actually the owners, but they have little to no input on the day to day operations at the facility or vessel. We reiterate, however, that any individual, including owners and operators, who wishes to have unescorted access to secure areas must have a TWIC.

As such, we have not included the TWIC requirement for owners/operators in this rule. We will, however, continue to examine the issue, and may propose adding this requirement in the future.

(g). Applicability—Federal/State/Local Officials

The proposed rule states that Federal officials are not required to obtain a TWIC, but must have an HSPD–12 compliant identification. Several commenters agreed with this provision because to obtain the HSPD–12 compliant identification cards, the applicant is subject to the same or more rigorous level of threat assessment that will be required for the TWIC (*e.g.*, background investigations, fingerprints). Other commenters noted technological issues that will need to be resolved if Federal officials are allowed to use HSPD–12 compliant credentials in place of the TWIC. Several commenters emphasized that it is necessary for the TWIC equipment to be able to read the HSPD–12 compliant credentials or validate the cards' continued validity. Another commenter requested that § 101.514(b) be clarified, so it is clear that Federal officials are still subject to the facility's access control requirements and presenting their credentials does not grant them unescorted access to the facility. In addition, several commenters noted that the proposed rule must include a requirement that Federal officials obtain an HSPD–12 compliant ID on the same schedule as the merchant mariners will be required to obtain TWICs and MMCs.

The final rule will require Federal, State and local officials, in the course of their official duties, to present their current agency credentials for visual inspection to gain unescorted access to secure areas. We recognize the

[21] ''SSI'' is unclassified information that is subject to disclosure limitations under statute and TSA regulations. *See* 49 U.S.C. 114(s); 49 CFR part 1520. Under 49 U.S.C. 114(s), the Assistant Secretary of TSA may designate categories of information as SSI if release of the information would be detrimental to the security of transportation. SSI may only be disclosed to persons with a need to know, such as those required to carry out regulatory security duties.

technological difficulties presently facing the evolution of the biometric readers. However, in the future, we anticipate a separate rulemaking to require an HSPD–12 compliant credential to be read by a biometric reader for gaining unescorted access. We must stress that Federal, State and local officials will only use their authority to gain unescorted access in the course of their official duties. Such officials must abide by a facility's or vessel's access control requirements unless extenuating circumstances require otherwise.

Under the proposed rule, compliance would be voluntary for State and local officials because the majority of these individuals undergo a security threat assessment prior to beginning their job. However, several commenters argued that this could be detrimental to maritime security and is problematic for several reasons. First, not all State and local officials undergo a security threat assessment. Second, it would be hard for crew members to determine if the State or local official's credential meets TWIC standards. Third, under this provision State and local officials would not be subject to the background check every five years like other holders of the TWIC. Another commenter noted that there have been instances in the past where local and State agencies have conducted their background checks independently of their employee application process. In addition, another commenter noted that the threat of terrorists posing as armed local or State enforcement officers is great, so there needs to be a more thorough evaluation of these individuals' identity then just showing their ID. Several commenters noted that those with the main responsibility for port security (*e.g.*, port authority police who fall under the State and local system) should be required to get a TWIC, rather than make it optional. One commenter specified that all armed law enforcement officials should be required to obtain a TWIC.

One commenter noted that under § 101.514(c) State and local law enforcement officials would not have to possess a TWIC to gain unescorted access to secure areas. At the same time, § 105.210 would require facility personnel responsible for security duties to maintain a valid TWIC. The commenter said that some ports have a police force comprised of certified police officers who are required to obtain the exact training as State and local law enforcement personnel. The commenter recommended that either § 101.514(c) or § 105.210 be rewritten to recognize these port police and remove the requirement for them to obtain a TWIC.

Federal agencies are already required to implement HSPD–12, therefore there is no need for either the Coast Guard or TSA to do more than require that those credentials be used. We believe State and local agencies may issue similar cards as the Federal government completes implementing HSPD–12. Therefore, we are not requiring State and local officials to obtain TWICs at this time. We may revisit this decision in the future. While all State and local officials may not be required to undergo a security threat assessment comparable to the TWIC, they will continue to utilize their existing authority to board regulated vessels and enter regulated facilities as needed for official business and should continue to be afforded access in accordance with existing approved security plans. However, we encourage local and State officials to obtain TWICs to facilitate access to facilities and vessels when such access is a regular part of their duties.

Regarding the status of ''port police'' who receive the same training and certification as local or State law enforcement officers being exempt from the requirement to obtain a TWIC, we disagree with the commenter. These individuals can be exempt only if they are actual State or local officials due to their employment status and statutory law enforcement authority.

Other commenters requested clarification of the applicability of the requirements of this final rule to emergency first responders other than law enforcement, such as firefighters and emergency paramedics. We recognize that emergency responders are an important part of any port. We have extended the option to obtain a TWIC to them, but the final rule has also been changed to state that emergency responders will not be required to show a TWIC to gain unescorted access to secure areas during emergency situations, such as natural disasters or transportation security incidents. We do recommend that they obtain a TWIC if they require unescorted access during non-emergency situations.

(h). Applicability—Voluntary compliance

Two commenters wanted § 101.514(d) clarified regarding voluntary implementation of a TWIC program. They stated that the definition of a TWIC program is confusing, and asked ''[c]an a voluntary TWIC program be used for badging purposes only, but the vessel or facility owner must still obtain approval of a security plan in order to use the card?'' One commenter wants the agencies to explain the opt-in reference from the NPRM, asking why anyone would opt-in when it carries a mandatory follow-up.

One commenter wants the Coast Guard to insert language into the rule regarding voluntary application of the security plan as opposed to voluntary application of the TWIC program.

As noted above in the discussion to changes to the Coast Guard provisions, this final rule no longer contains provisions allowing for voluntary TWIC programs, therefore it is not necessary to respond to these comments at this time. These provisions have been eliminated due to the fact that neither TSA nor the Coast Guard can, at this time, envision being in a position to approve voluntary compliance before the full TWIC program (*i.e.*, reader requirements) is in place. We will keep it in mind, however, as we develop our NPRM to re-propose reader requirements.

3. Coast Guard Roles

Several commenters expressed concern that the challenge to operators who service multiple ports increases as each COTP is given broad authority to establish and enforce different standards.

We agree that consistency among different COTP zones is important and that different COTP interpretations of a final rule, such as TWIC, can create a challenge especially for those operators who service multiple ports. We also agree that some degree of discretion and flexibility is critical to the successful implementation and enforcement of all Coast Guard regulations throughout a COTP Area of Responsibility. To enhance nationwide consistency of the TWIC regulations, the Coast Guard will continue to create and distribute robust field guidance for use by all COTPs. In most cases, Coast Guard field guidance is available to the public and industry for their own use in preparing for inspections and examinations. Should an operator feel that different interpretations of a particular regulation by two or more COTP are negatively impacting their operation, they are welcomed and encouraged to contact the appropriate Coast Guard District Commander for resolution.

A commenter asked who would enforce the escort requirement and the other TWIC requirements. The Coast Guard will continue to be the primary enforcement authority for all MTSA regulations.

One commenter expressed concern that the Coast Guard has been unable to ascertain and report on the number and types of valid merchant mariner licenses or merchant mariner documents in existence at any time, and that this suggests a limitation in its ability to call

on merchant mariners in response to a national emergency. This comment is addressing the Coast Guard Merchant Mariner Credential (MMC) rulemaking, and so we have not addressed it there.

One commenter requested that the Coast Guard articulate its intentions with regard to production of an identification document complying with the International Labour Organization (ILO) standards for U.S. seafarers.

As the United States is not signatory to the International Labour Organization Seafarers' Identity Document Convention (Revised), 2003 (ILO–185), no plans have been made at this time to produce an identification document complying with that particular standard.

Several commenters suggested that the background checks for TWIC be combined with those required for MMC. Two commenters suggested that TSA perform the security threat assessments for Merchant Mariner Documents (MMDs) as well as TWICs and that the Coast Guard use the results of such assessments in its processing of MMD applications. Others suggested that the consolidated review process should be carried out by Coast Guard.

At this time, the option of having TSA or Coast Guard conduct all the required background checks for individuals who require both the MMCs and the TWIC is not feasible. TSA has established a system and process for ensuring individuals applying for the TWIC undergo a consistent security threat assessment and the Coast Guard already has the authority and process in place for conducting the required safety and suitability checks for mariners prior to issuance of credentials. To create a unique system of background checks for approximately one fifth of the expected initial TWIC population would create the need for additional infrastructure within one agency and raise costs for the government and the entire TWIC population. In addition, the Coast Guard has more expertise and authority over the merchant marine than TSA and is in a much better position to determine whether an applicant is safe and suitable to serve in the merchant marine at the rate or rating sought. At this time, the most efficient and cost effective method available for issuing TWICs to credentialed mariners is to have TSA conduct the security threat assessment and issue the identity document (TWIC) while the Coast Guard continues to issue the mariner's qualification document (MMD/License/MMC).

In addition, requiring only one criminal record review for both security and safety-related crimes by one agency would negatively impact mariner flexibility. If only one background check were to occur, mariners would be required to apply for their MMC only at the time they applied for their TWIC. As currently proposed, the MMC and TWIC expiration dates need not align. This allows an individual who works at a port to decide later that he or she wants to become a merchant mariner. In addition, for those mariners who already hold a MMD, License or Certificate of Registry (COR), they need not renew their credential upon the initial issuance of their TWIC, because the effective period of their current credential is not affected by this proposed regulation. If we were to require only one background check by TSA for all mariners, the mariner credential would have to come into line with the expiration date of the TWIC. Requiring mariners who already hold credentials to renew so that their credential's expiration date matches their TWIC expiration date is currently impossible from a legal standpoint due to the statutory requirement that Licenses and MMDs must have a 5 year validity period under 46 U.S.C. 7106 and 46 U.S.C. 7302. Such a requirement would inherently shorten that 5 year duration. Finally, requiring only one security/safety/suitability criminal record review by TSA at the time of application would affect individuals who would like to seek raises in grade or new endorsements on their MMC during the 5 year validity period.

One commenter expressed concern about unanticipated impediments to international transportation resulting from TWIC, particularly regarding rail transportation. This commenter urged Coast Guard and TSA to be prepared to respond quickly to interpret the new regulations and address other unanticipated issues.

We agree that both TSA and Coast Guard should be prepared to make modifications to the TWIC program if needed; any amendments will follow existing requirements for changes to published regulations.

One commenter expressed a desire for standardization of the application process for TWIC or MMD across all regions of the country.

We agree that a standard application process for TWIC and MMD (to be replaced by the MMC) is desirable and a reasonable goal. It is our expectation that all forms, instructions and data collection and processing procedures will be standardized, but not combined, for the TWIC and MMC. As stated earlier, some degree of flexibility will be necessary for local TSA and Coast Guard authorities to best serve the local operators and customers. For example, TWIC enrollment center locations, hours and days of operation are planned to incorporate local industry input.

4. Owner/Operator Requirements

The proposed rule would have required owners/operators of vessels, facilities, and OCS facilities to ensure that security systems and equipment were installed and maintained, including at least one TWIC reader that would meet the standard incorporated by TSA in 49 CFR 1572.23. The proposed rule would have also required that owners and operators ensure that computer and access control systems and hardware are secure.

Several commenters argued that MTSA only mandates TWICs themselves and does not require TWIC readers and their associated equipment. Other commenters were confused as to whether the proposed rule would allow one TWIC reader for an entire vessel and facility or would require a TWIC reader at all access points to secure areas.

Many commenters said that the requirement to place at least one TWIC reader on every vessel would be costly and would not improve security, particularly on small vessels such as towboats. Some commenters argued that their vessel crews are small and that the presence of any unauthorized individuals would be readily apparent. Several of these commenters requested that the final rule waive the requirement for TWIC readers for passenger vessels.

One commenter stated that TWIC readers should not be required in a ship's interior unless required by the vessel's security plan, because existing vessel security plans already adequately address such security concerns. The commenter argued that the locations of TWIC readers should be dictated by the risk assessment performed for the vessel's security plan.

One commenter requested that the final rule allow one TWIC reader for a facility and the vessels that operate from that facility, as long as the facility's security plan incorporates the vessel operations or the facility and vessels have separate approved security plans. Another commenter said that the use of card readers should be optional for facilities and vessels until experience is gained and best practices are developed within the industry.

One commenter requested that the final rule require that facility operators ensure that all readers deployed are fully functional and operational to ensure that all gates are accessible for truck drivers and other affected personnel to use.

Because the use of readers is not required by this final rule, concerns

related to the value or drawbacks related to requiring readers have been deferred. A more complete discussion of why recordkeeping requirements are no longer included may be found below in the section discussing recordkeeping requirements.

One commenter said that § 105.200(b)(8) requirements for adequate coordination of security issues between the facility and vessels that call on it are problematic for both passenger facilities and vessels. The commenter asked that the subparagraph be modified to reference only those that access secure or restricted areas, not the entire facility.

The referenced paragraph, while redesignated, was unmodified by the NPRM or this final rule and, therefore, no changes to the provision were considered.

One commenter said that the proposed rule does not adequately address a facility's responsibility to log seafarers off the ship and onto the facility for routine ship operations. The association asserted that the ship and its crew, by virtue of its clearance by Federal officials to enter port and begin cargo or passenger operations, should be considered a part of the facility and logging off the ship should not be necessary for either normal ship operations or access for shore leave.

Because the recordkeeping requirements have been removed from this rule, there are no specific TWIC logging off requirements. Removal of the TWIC recordkeeping requirements is discussed below.

One commenter stated that the rule must clarify that the owner/operator cannot be held responsible for events rendering employees ineligible for a TWIC of which the owner/operator has no direct knowledge.

Section 105.200(b)(14) establishes a responsibility on the part of the owner/operator to inform TSA of any information that he/she becomes aware of in the normal course of its operations or simply by chance. Whether the information is known ''directly'' or ''indirectly,'' the intent is to ensure that facts, which would affect an individual's eligibility to possess a TWIC, are made available to TSA. The section does not impose a responsibility for an owner/operator to actively seek information on employees or other workers; merely to provide it to TSA should the owner/operator become aware of such information.

One commenter asserted that there is no discussion in the NPRM regarding how owners/operators should deal with a failure in the TWIC system other than to state that they must incorporate backup processes into their plans. The commenter said that TSA and Coast Guard should provide some recommended alternatives. Another commenter expressed an interest in having consistency in the backup processes used by ports and urged TSA and Coast Guard to be more prescriptive on this matter.

One commenter noted the NPRM stated that if the TWIC reader breaks, security personnel should know how to compare the picture on the TWIC with the person's face or have someone vouch for that individual. The commenter then asked if matching a person's face to his or her picture is an acceptable approach to screening, why that method of screening is not an acceptable alternative to the readers more generally. Two commenters said that they supported the inclusion of language that allows operators to include protocols for responding to TWIC holders who cannot electronically verify a match between themselves and the information stored in the cards.

Because the reader requirement has been removed from this final rule, we believe that further discussion of what would constitute acceptable alternate security procedures should the TWIC system fail would be better addressed during a subsequent rulemaking that implements a reader requirement.

5. Requirements for Security Officers and Personnel

One commenter said that he would not have the time to attend any required training to become familiar with the TWIC program.

It is the responsibility of each individual to ensure that he or she receives all the training necessary to successfully perform his or her assigned duties. However, we will work closely with industry and other appropriate stakeholders to ensure that the knowledge requirements can be satisfied by all affected personnel.

One commenter stated that changes to §§ 105.205, 105.210, and 105.215 seem unnecessary because the proposed rule requires possession of a TWIC for unescorted access to a secure area.

We disagree; the provisions provide clarity and avoid any question as to the responsibility of Company Security Officers (CSOs) and other security personnel to have and maintain a valid TWIC.

One commenter asked whether the citizenship of a CSO would affect his or her ability to receive a TWIC. The commenter also asked whether the CSO and other security personnel of a foreign-flagged vessel would need to obtain a TWIC.

Foreign-flagged vessels, including cruise ships, and their crews are exempt from the TWIC provisions, as set forth in 33 CFR part 104. If the CSO is not a U.S. national or legally authorized to work in the United States, he/she may be eligible for a TWIC depending on whether he/she has applied for and received certain types of U.S. visas. We have expanded the eligibility for persons working under valid work visas to open TWIC eligibility to as many of these individuals as possible.

One commenter said that the proposed rule should be amended to provide the CSO with the authority to implement acceptable alternative screening measures for unescorted access to a vessel when the use of TWICs is impractical, unreasonable, and vessel security is not compromised. In particular, the commenter requested that the CSO be empowered with the discretionary authority to modify or exempt TWIC-controlled unescorted access and use the currently accepted procedure of a positive photo-identification along with verification from the worker's company.

Alternative Security Programs (ASPs), proposed and implemented pursuant to the existing regulations, will be available to owners/operators. The ASP must be approved pursuant to 33 CFR 101.120. We do not agree, however, with the proposal to allow CSOs the authority to accept alternative measures to TWIC without first obtaining approval for such an alternative from the Coast Guard. Provisions for seeking waivers or equivalents remain unchanged, and are listed in §§ 104.130 and 104.135, respectively.

One commenter noted that page 29403 of the NPRM refers to the ''access control administrator of the vessel or facility.'' The commenter said that it already has a CSO, FSOs, and VSOs. It asked whether the NPRM would require companies to create a new position or assign a new set of duties to a company employee.

The term ''access control administrator'' was not intended to, nor does it, create a new position. It was used to describe a position that may or may not already exist at a vessel or facility. Additional duties to CSO, FSO and VSO are expressly set out in the Rule, and are not intended to overburden any of those positions.

One commenter asked how much knowledge of and training on the relevant aspects of the TWIC Program VSOs and other personnel of foreign-flagged vessels would be required to have.

Foreign-flagged vessels and their crews are exempt from the TWIC

provisions, as set forth in 33 CFR part 104. VSOs on U.S.-flagged vessels will need to know of those aspects of the vessel's TWIC Program that are relevant to his/her job. For example, if the VSO will be responsible for visually inspecting TWICs, he/she must be familiar with the security features of the TWIC, the alternative procedures to be followed when an individual tries to enter after reporting a TWIC as lost, damaged, or stolen, the procedures to be followed when a fraudulent (altered) TWIC is discovered, and the procedures to be followed when an individual without a TWIC tries to enter a secure area without escort.

One commenter noted that the NPRM proposed requiring that all individuals with security duties and those who may be examining TWICs at access control points have some familiarity with the security features of the TWIC. The company said that TSA or Coast Guard should provide an online course about the security features of the TWIC that can be completed prior to going to the enrollment center, at a kiosk, or at the enrollment center. Successful completion of that course would be required prior to the TWIC application being accepted. Another commenter suggested that the Federal government should provide more extensive outreach and direction to operators and Security Officers prior to finalizing the rule. The purpose of the outreach would be to receive input and to more fully discuss expectations of those who will be given new responsibilities by the rule.

We agree that further guidance on how to fulfill the training requirements contained in this final rule is necessary. The use of online courses may be implemented at a future date. In the interim, further guidance will be forthcoming through publication of an NVIC.

One commenter suggested that the CSO be provided with the option of activating TWICs on behalf of the enrollment centers. We are not considering this option currently, because it may introduce privacy and security issues with the security goals of the TWIC program. However, as the program develops, we will continue to consider ways to allow for greater flexibility in all levels of the program whenever appropriate.

6. Recordkeeping/Tracking Persons on Vessels/Security Incident Procedures

Sections 104.235, 105.225, and 106.230 of the NPRM proposed requiring Security Officers to maintain records for two years of all individuals who are granted access to the secure areas of a vessel, facility, or OCS facility. Numerous commenters, including the SBA Office of Advocacy stated that, in general, the requirement is overly burdensome and would have no resulting security benefit. Several commenters requested a clear understanding of what this information will be used for and justification for the creation and maintenance of each of these records. A few commenters stated that this requirement is overly burdensome on cruise operators because of the volume of people coming and going. One commenter said that this requirement is especially burdensome on operators of small passenger vessels like water taxis but did not state why. Some commenters specifically asked that the requirement be deleted from the rule. Many commenters stated that two years is too long to maintain such records. In contrast, one commenter supported the two-year timeframe.

Many commenters noted that businesses that maintain security videotapes typically keep them for only a brief period. These commenters said that if no security incident has occurred relating to a particular entry to a secure area, there is no need to keep a record of the person involved. Should the Federal government need to ''track'' the presence of employees on vessels, it can obtain and rely on payroll records and other employee files typically kept in the course of business rather than imposing a mammoth new recordkeeping requirement?

Two commenters said that the recordkeeping requirement would further delay the processing of individuals in and out of port facilities, which would affect the flow of freight through the facilities. Five commenters said that the need to keep and access records would greatly increase operating costs.

One association noted that the requirement would force facilities and vessels to install both an entrance and an exit system and said that there have been technological problems with exit systems. It said that exit system technology should be tested before a requirement to use them is promulgated.

Two commenters said it is not clear by whom and where the access records would need to be kept for two years. One commenter suggested that the recordkeeping requirement would make more sense if it applied only to individuals picking up hazardous materials from their facility. A few commenters suggested that the rule be amended to allow video recording to meet the recordkeeping requirement. Additional commenters wanted crewmembers to be exempted from these general provisions to save on paperwork, suggesting instead that crewmembers be logged into the system upon entry to the vessel and logged off upon final exit from the vessel without registering every entry and exit in-between.

Two commenters wanted vendor/contractor personnel to be entered into the database upon initial boarding and then entered again after his final departure. The commenters also stated that there is no need to record every trip made to and from delivery vehicles or shoreside offices/workshops.

Several commenters complained about the lack of personnel to maintain these records. They asserted that facilities will be required to manually enter information on visitors who are exempt from the TWIC requirement. Some commenters felt this was not practical. Two commenters wanted provisions added to the regulation to allow modified procedures for large work gangs, such as longshore gangs vetted by the port, to board the vessel to work cargo without each individual longshoreman being screened by the vessel prior to and at the conclusion of the workday.

Commenters balked at the amount of records that will need to be kept. Two commenters suggested that, to alleviate burden, the records should be automated through the TWIC system, which could keep track of all persons granted access to secure areas. This could be done through an additional access card. One commenter complained that the cost of readers is an unnecessary expense and does not need to be incurred for one-vessel or two-vessel operations, but that without the reader, the paperwork requirements become even more daunting. One commenter wanted the rule to specify exactly what information should be maintained and suggested: Name, ID number, and home address.

As noted above in the discussion of changes to the Coast Guard provisions, the recordkeeping requirements related to TWIC implementation have been removed from the final rule. We had proposed the requirements because we believed they could be satisfied by using the TWIC readers, which were also proposed. Due to our decision to remove the reader requirements from this final rule, it makes sense to also remove the recordkeeping requirements that were intrinsically tied to those readers. We will keep these comments in mind as we consider whether to re-propose new recordkeeping requirements.

Several commenters wrote in opposition to the requirement that vessel or facility owners ensure that

appropriate personnel know who is on the facility at all times.

One commenter said that the requirement would place a tremendous strain on many ports and would provide little value if individuals are properly screened during the entry process. According to the commenter, even if card readers are installed at each entry and exit point and all TWIC holders were to utilize them, provisions would still have to be made to capture data from visitors, vessel crew members, and passengers in freight trucks. The commenter noted that current Coast Guard regulations require ports to grant access to crew members of vessels, including foreign nationals. Because foreign nationals would not be eligible to obtain a TWIC, the port authority said it would have to hire additional security guards to escort crew members while they transit port property. The commenter added that the NPRM had not explained or justified the benefits of knowing precisely who is on a vessel or at a facility at all times or in requiring individuals to use a TWIC to exit.

Another commenter said the requirement would require readers at both entrance and exit gates and argued that exit control is costly and provides little additional protection. The commenter added that other industries have reported technological problems with exit systems. It noted that exit control is not required in the ''higher risk'' aviation sector.

One commenter said that it is not critically important to national security that facilities know exactly who is on a facility at any given time. It is only important to know that everyone on the facility has been cleared to enter. Another commenter said that this requirement would require every facility to construct a security building at every entrance and deploy security guards around the clock. The commenter said that the resulting compliance costs would be prohibitively expensive but would not improve the security of ports because facility operators are already guarding areas determined to be at risk.

Some commenters opposed the application of this requirement to passenger vessels. Two commenters said that because large cruise ships have hundreds of properly authorized visitors onboard at any given time, it would be unreasonable to require a single crew member to know who is onboard. They suggested that the ship's visitor and crew logs be utilized for this purpose because all cruise ships record the arrival and departure of each person while in port. A third commenter noted that passenger vessels can carry thousands of passengers and requested that this requirement be drafted or explained in a way that could ''reasonably'' be applied to passenger vessel operations.

Another commenter recommended that owners or operators be required to know the whereabouts of contractors and visitors, but not facility employees. The commenter stated that it would be extraordinarily difficult to know who is present at a large facility with thousands of employees, because many people ''badge in,'' but not out. The commenter said that the requirement as proposed could require new equipment at multiple access points with little enhancement of security.

Because the use of readers is not required by this final rule, these record keeping requirements and the requirement to know who is on a vessel or facility at all times have also been removed. Comments and concerns on these issues, however, will be considered in any subsequent rule which imposes a reader requirement.

One commenter requested that § 104.290(a)(1) and 105.280(f) be modified to conform to § 104.235 and 105.225, respectively, by requiring the availability of a list of persons who have been allowed access to secure areas, not to the entire vessel or facility.

Because the proposed record keeping requirements have also been removed, we have also removed the requirement that these records be made available after a security incident. Comments and concerns on these issues, however, will be considered in any subsequent rule which imposes a reader requirement.

7. Reader Requirements/Biometric Verification/TWIC Validation Procedures

We received a substantial number of comments on technology issues, almost all of which expressed concern about the feasibility and appropriateness of the proposed TWIC system. Commenters noted that the prototype did not test many parts of the proposed system including the readers and communications with a central database. Some questioned whether the central database is available. They questioned whether the systems will be compatible with existing systems; if they are not the cost of replacement will be high. Commenters stated that TSA must test the proposed system before requiring its use and ensure that it will work in the marine environment and that backup systems will function as well. They stated that if comprehensive testing is not done the result could be higher costs throughout the entire supply chain. In terms of interconnectivity, they stated that the system has to be shown capable of processing 700,000 TWICs instantaneously. Commenters also noted that the system does not appear to have been tested with passenger vessels.

Many commenters stated that cards that had to be inserted into a reader would not work in the marine environment. These commenters stated that TSA had failed to demonstrate the contact readers would work reliably in the marine environment and had not accounted for the cost of frequent maintenance and replacement or the costs imposed by failures that delayed workers and cargo. One commenter noted that when it tested readers outdoors the device did not last five days. Many commenters recommended a contactless reader system as an alternative. They noted that this type of card was used in prototype. Commenters suggested that readers and cards should have mean time between failure of 10,000 hours and at least 6 months between maintenance.

Commenters stated that they needed to know what types of readers would be required before they could be reasonably asked to comment on the rule.

Many commenters questioned whether cost-effective fingerprint readers would work in the marine environment. They noted that the readers require clean screens and clean hands; the latter may be difficult in the marine and port environment. One commenter stated that one member using a biometric reader had a 300 percent annual repair rate, which meant that multiple backup systems will be needed.

Commenters stated that failure rates of 10 percent would have a serious effect on the ability to move cargo into and out of ports. One commenter noted that a failure rate of 10 percent would mean that 3,500 individuals a day would be delayed at LA/Long Beach. If 10 percent of trucks were delayed, the delay would ripple through the entire line of trucks waiting and through the supply chain. They recommended that an error rate must be less than one percent before the system is adopted. Commenters who had implemented biometric readers indicated that they had failed to perform satisfactorily.

After reviewing these comments, we have determined that implementing reader requirements as envisioned in the NPRM would not be prudent at this time. As such, we have removed the reader requirements from the final rule, and will be issuing a subsequent NPRM to address these requirements, instead requiring that the TWIC be used as a visual identity badge at MTSA-regulated

vessels and facilities. That NPRM will address many of the comments and concerns regarding technology that were raised in the above-summarized comments.

Many commenters opposed the requirement to install a TWIC reader on each vessel. One reason for this opposition was that crews on some vessels are small and very familiar with one another, making it difficult for an unauthorized individual to go unrecognized. Other commenters cited the high cost of installing readers on each vessel. Some commenters said that the readers would be difficult to mount on small vessels or would break down in the marine environment. Commenters also said that there is no legislative mandate to require TWIC readers on vessels. Some commenters suggested that the TWICs of vessel crew members could be scanned at the entry point to a facility prior to boarding a vessel.

One commenter said that alternative methods should be allowed for using the TWIC to vet personnel for access on board vessels without the use of readers. One alternative suggested by the company would be to allow all personnel to check in at a central location such as a company office, have their biometrics confirmed, and then be transported to the vessel via trusted agent. At the same time as personnel are being transported, a confirmed list of vetted personnel could be electronically transmitted to the vessel for confirmation purposes. Another commenter opposed a requirement for a TWIC reader on vessels carrying fewer than 150 passengers. A third commenter said that requiring all terminals, regardless of size and technological expertise, to have electronic readers and supporting IT systems in place and operating properly might further compromise efficient terminal throughput. If the readers and related IT systems don't function properly, they will exacerbate congestion and delays. The commenter said it is therefore essential that all technical and process-related issues are thoroughly ironed out before rules are finalized and the program is implemented.

As stated above, the reader requirements have been removed from this rule; therefore, it is not necessary to respond to these comments at this time. Concerns that remain relevant will be considered during the subsequent rulemaking.

One company said that each TWIC would include data on an individual's employer, which would mean getting a new TWIC after every job change. Because of the high turnover rate of vessel personnel, the number of invalid TWICs would grow quickly.

Workers' eligibility to maintain a TWIC is not tied to his or her employer, and employer information is not included on the TWIC itself. Therefore, when a worker changes employment, TSA need not be notified, and neither the TWIC itself nor the individual's eligibility to hold and maintain a TWIC will be affected.

Some commenters pointed out the possibility that truck back-ups could occur or be made worse in the likely event that a truck driver arrives at a reader and finds that he or she does not have their TWIC or their TWIC is inoperable due to being damaged or some breakdown of the system. Another commenter expressed a similar concern about operational delays that could result from lost or damaged cards or system malfunctions during the typical rush of longshoremen arriving for work at or near the same time.

The removal of the reader requirements from this final rule should eliminate the concerns expressed above. Additionally, we have added specific provisions to accommodate persons who have reported their TWICs as lost, damaged, or stolen, to provide continued access for a limited time, until they are able to pick up their replacement TWIC.

Several commenters said that the requirement to check TWICs against an updated list from TSA would be overly burdensome, especially if the list of invalid TWICs becomes large. One company preferred that TSA establish a toll-free number and a website for checking the validity of a TWIC instead of requiring company to maintain a potentially large database. Another commenter said that TSA and Coast Guard should reduce the frequency of TWIC verification at MARSEC Levels 1 and 2. Alternatively, the commenter suggested that a company could maintain possession of a person's TWIC and verify them as frequently as necessary.

One commenter said that TSA and Coast Guard should be responsible to develop a system with which owners/operators can contact TSA to verify the validity of TWICs. The association said that one possible solution is to establish a web portal where facility operators, through a password protected system, are able to match a name and picture with the TWIC ID number.

Many commenters said that most vessels do not have Internet access and therefore would have trouble regularly updating their list of valid TWICs by downloading data from TSA. One commenter said it would theoretically be possible to employ an agent at each port of call to physically deliver downloads to a vessel, but this would significantly increase the cost of the program. Another commenter noted that not all marine employers have computers, so there must be a way (*e.g.*, telephone-based system) for those without computers to check the validity of a TWIC.

One commenter noted that there are a number of areas on western rivers that are wireless dead zones. The company also noted that few existing vessels have satellite Internet connection capability and any such expectation should be included in the economic analysis. The commenter also added that if TSA and Coast Guard expect vessels to use landline connectivity, the cost to stop a vessel periodically (weekly or daily) to download the latest information to vessel card readers would be significant and should be included in the economic analysis.

Two commenters questioned whether satellite communications would remain available for civilian use at elevated security levels. One commenter said that at MARSEC 3, the Federal government takes control over communications satellites, thus making it impossible to download any data from TSA via satellite.

Several commenters said the proposed frequency for updating the TSA information used for TWIC screening is excessive. Several suggested alternative update frequencies for each MARSEC Level. Two commenters said the proposed update frequencies should be the same as for validation of HMEs (annually). A company involved in responses to marine spills said that the requirement to update its list of valid TWICs would be cumbersome and an extra burden during responses.

One commenter suggested that information about individuals who are determined to be a security risk should be communicated to the local Coast Guard for immediate dissemination to FSOs. The company argued that it would be ''ridiculous'' to require a time-sensitive industry to employ computers to search through millions of names in a national database to identify a name not on the list. The company said that national security would be better served by providing the much shorter list of ''non-authorized'' persons. One commenter requested that the rule clarify that a private regional entity under contract to a terminal operator would be allowed to maintain the database of valid TWICs for the operator.

Although a reader is not strictly necessary for checking the validity of a TWIC, in most cases, we believe that requiring facilities to manually check the validity of TWICs without including reader requirements is impracticable. Therefore, because the reader requirement has been removed from this rulemaking; the requirement that the credential's validity be checked against the TSA list of revoked credentials also has been removed. The Coast Guard, when conducting spot checks, will verify a TWIC's validity while confirming the identity of the TWIC holder. We will continue to consider ways to provide flexibility to owners/operators in satisfying this requirement in subsequent rulemakings.

One company asserted that TSA and Coast Guard had not provided any information to the regulated community regarding the size or format of the data files likely to be associated with the list of invalid TWICs. Without this information, the company said it could not provide detailed comments regarding the cost or difficulty in providing this information to its vessels or whether it is even possible with the systems currently in place.

We agree that this type of information is necessary for industry to effectively implement these requirements, and will keep this comment in mind as we draft our NPRM re-proposing reader and TWIC validation requirements.

One commenter said that U.S. vessels face connectivity issues when transiting foreign ports and would therefore not be able to comply with the proposed requirement.

We will keep this comment in mind as we draft our NPRM re-proposing reader and TWIC validation requirements.

Another commenter suggested that facial recognition should be allowed at MARSEC Level 1 instead of biometric verification. Another commenter asked what facilities would be required to do if there are delays in updating its database. The commenter said that this is a critical point, because many other high-priority actions would be taking place at MARSEC Levels 2 and 3.

These requirements have been removed from this rule and therefore, concerns related to the use of the credential at different MARSEC levels will be revisited in a subsequent rulemaking.

A commenter said that rather than placing the burden on employers to repeatedly check the validity of each worker's TWIC, the vessel or facility operator should have the option of registering its employees and others who access its vessels or facilities using a TWIC with the Coast Guard. The Coast Guard would be responsible for notifying the operator if a TWIC it has registered has been invalidated.

As set forth in the NPRM, owner/operators could register its employee and others who access its vessel or facility using a TWIC with TSA, and TSA would notify the owner/operator if a TWIC is subsequently invalidated. TSA describes the process as ''privilege granting.'' This process will still be available, even though we are not requiring owners/operators to routinely validate TWICs in this final rule.

One commenter questioned whether the Federal government would be able to update the list of invalid TWICs on a daily basis at elevated MARSEC Levels. Another commenter conjectured that if there is a terrorist incident that leads to elevated security measures, Internet and other communications systems would likely be taxed to the point of failure. This would make frequent updates of the TWIC database difficult if not impossible.

While it is impossible to predict with certainty how essential infrastructure will be impacted by a terrorist incident, we believe that the layered security approach imposed by the MTSA provides the best approach to ensuring the greatest protection to our maritime facilities. However, because the reader requirement has been removed from this rulemaking, so has the requirement that owners and operators check the credential's validity against the TSA hotlist. We will keep these comments in mind as we draft our NPRM re-proposing reader and TWIC validation requirements.

Several commenters said that the required scrutiny of TWICs should not change with the MARSEC Level. Commenters said that the card is designed to be secure and linked to the cardholder by biometric verification, so the security benefits of additional scrutiny would not be worth the effort. One association opposed the requirement that vessels download daily updates on the status of TWICs at MARSEC Levels 2 and 3. The association said that the proposed rule's discussion of MARSEC Levels was not based on reasonable risk analysis. One commenter said that the requirement for use of a PIN and daily check of TWICs at MARSEC Levels 2 and 3 would provide only a marginal increase in security that is not worth the time, effort, and potential problems these measures would create. Another commenter opposed the proposed requirement that all TWIC-enabled gates be manned at MARSEC Level 2, saying it would divert security resources when they are most needed. One commenter said there is no history of legislative intent during the development of MTSA for a requirement that industry download latest TSA information during increased MARSEC Levels.

These requirements have been removed from the final rule and therefore, we defer any response to these comments. We will keep these comments in mind as we draft our NPRM re-proposing reader and TWIC validation requirements.

One commenter maintained that weekly/daily verification for maritime workers was unjustified based on the fact that hazardous materials truck drivers, who pose a greater security threat (due to operation by a single individual and close proximity to population centers and potential terrorist targets), are checked annually.

We believe that this commenter misunderstood what the NPRM meant by the weekly/daily verification, but note that the final rule does not include this verification procedure, and therefore we need not respond to it further at this time.

Some commenters stated that their facilities are not transportation facilities, and as such the cards will be used only to clear employees into the facility. They stated that their existing systems are sufficient and that shifting to the proposed TWIC would double the time required to process each employee, which could cause operational delays during shift changes. The TWIC system should be designed to be easily integrated into legacy systems or TSA should allow facilities to use their existing systems after an employee obtains a TWIC.

The NPRM was drafted to allow owners/operators to continue to use their existing access control systems so long as they were able to integrate the TWIC into those systems. The elimination of the reader, biometric validation, and card verification pieces from this final rule does not change this. In order to integrate the two systems, owners/operators will need to ensure that their own access control systems are updated to show whether the employee has a TWIC even when he/she presents only the facility-specific badge. In other words, an individual must still have a TWIC before he/she can be granted unescorted access to a secure area, even if the badge being used to gain entry on a day-to-day basis is not the TWIC.

The Navy stated that Department of Defense Common Access Cards (DOD CACs) should fulfill the TWIC requirements. As long as the DOD CAC is the official credential for the Navy, it

will meet the identification requirement in § 101.514(b) when required for official duties authorized by the Navy. If it is replaced with another credential in order to gain compliance with HSPD–12, however, that new credential will need to be used by Naval personnel seeking to gain unescorted access to a MTSA-regulated vessel or facility.

8. Access Control Issues

(a). New Hires/Persons Needing Access Before TWIC Is Granted

Many commenters remarked that seasonal workers are employed for 90 days or less, and those commenters believed that the rule would severely impede seasonal hiring if the workers had to wait 60 days for a TWIC. Some commenters pointed out that seasonal businesses often must find new or replacement staff quickly. An association noted that seasonal workers are generally students, who may not know where they are going to work 60 days before classes end. Another association described how a business might not have enough TWIC holders at the beginning of the season to escort the rest of the workforce.

We believe that the inclusion of the ''employee access area,'' discussed above, should operate to exclude the vast majority of seasonal employees from even needing a TWIC.

Some commenters mentioned similar problems with short-term workers and casual labor hired with little advance notice, and those commenters described instances where workers are needed immediately. For example, in some businesses, deckhands come and go at a greater frequency than 30 days. One commenter remarked that it is not uncommon for a new hire to get onboard only to find out that they are not suited for work on vessels, leaving them scrambling to fill a position when a crewmember leaves. A State port authority noted that in addition to new hires, other individuals might need occasional unescorted access without having to wait for a TWIC card.

Several commenters objected to the fact that new hires would not be able to work until they obtained a TWIC card. Many other commenters agreed that the requirement would hurt the ability of companies to hire new workers and mentioned the high turnover rate in the industry, especially among entry-level positions. As one commenter described the situation, ''When a worker needs a job, he or she needs a job now, not 30–60 days from now. If we cannot readily put people to work, there are any number of non-maritime employers who will be happy to hire them and put them to work immediately.'' Commenters added that vessels and facilities would have to add security personnel to escort new hires and that TSA should develop some mechanism, such as temporary access, to address the period before the new hires or existing employees receive their TWIC cards.

One commenter had a suggestion for temporary access for visitors requiring unescorted movement for special cargo deliveries from a transportation mode not usually found in the maritime sector (*e.g.*, oversized loads of equipment being shipped outside of the United States). A temporary TWIC should be established which can be granted by the facility after verifying two forms of identification and a check of databases. Various private companies already offer this service and DOD uses it for contractors and vendors to enter U.S. Army facilities.

Many commenters encouraged TSA and Coast Guard approval of a probationary period during which a new hire could begin work or training while the TWIC application is pending. Such a period could begin after the vessel, facility, or port has conducted its own background checks. Other commenters also favored a simplified or expedited background check (similar to those for firearms purchases) and interim, site-specific authorization for access. Some commenters specifically mentioned a temporary credential, similar to a temporary security clearance, or a pass authorized by the vessel or FSO. One commenter generally favored a shorter duration card.

A few commenters had suggestions about a different security system for short-term workers. One of them emphasized that casual laborers in the maritime industry may work for only one day, but casual laborers often outnumber permanent employees, so the requirement for escorts is impractical. One commenter added that the process required by the regulations must be flexible enough to allow small operators to respond to time sensitive demands for service, and cost-effective enough to allow these same small entities to continue to remain in business. Another commenter wanted to continue with its current photo ID system. A third commenter favored having annual renewal of the TWIC.

After reviewing these comments, we recognized the need to provide owners/operators with the ability to put new hires to work immediately if an urgent staffing requirement exists, once new hires have applied for their TWIC. We have included, above, a detailed discussion of the new provisions that have been added to this final rule to allow new hires to have access to secure areas for up to 30 consecutive days, provided the security threat assessment process has begun, the new employee passes an initial TSA security review, and the individual remains accompanied while in the secure area. In addition, if TSA does not act upon a TWIC application within 30 days, the cognizant Coast Guard COTP may further extend a new hire's access to secure areas for another 30 days. Additional guidance on this provision will be forthcoming in a NVIC.

(b). Persons With Lost/Stolen/Damaged TWICs

Several commenters expressed concern that key personnel will lose their TWIC and not be able to enter a marine terminal or a vessel until they receive a new one. Several questioned TSA's estimation that replacement cards could be printed and shipped within 24 hours. One noted anecdotal evidence from participants in the Delaware River pilot that nearly two weeks elapsed before a replacement card was ready for activation. Another noted that the 24-hour estimation provided in the NPRM did not account for shipping time or the time required for an applicant to get to a TWIC enrollment center and that 3–4 days may be required for the entire replacement process. Many commenters indicated that it was important to ensure that individuals continue to access appropriate facilities while they await replacement cards or when they simply forget to bring their TWIC with them to work. Failing such access, operators will face burdensome work interruptions and employees might seek a different job or request unemployment compensation.

Commenters offered several suggestions regarding measures to mitigate delays that could result from lost, malfunctioning, or forgotten TWICs: (1) Temporary cards issued while an applicant awaits a replacement card; (2) some type of receipt indicating that the replacement card had been ordered; (3) providing a mechanism for a vessel/facility operator to capture the biometric from the card or from the TSA database for storage in the local database and validate an individual's identity by matching his fingerprint with the biometric stored in the local database in the event the individual leaves his card home on a given day; or (4) alternative identification verification provisions (*e.g.*, visual identification, confirmation call to vendor's employer) included in vessel security plans for situations where mariners and shoreside personnel seeking unescorted access to the vessel have lost or forgotten their TWIC.

As noted above in the discussion to the changes to the Coast Guard provisions of this rule, we have added specific procedures for owners/operators to use to allow individuals to continue to gain unescorted access to secure areas for seven (7) consecutive days in the case of lost, damaged, or stolen TWICs. This procedure should alleviate the concerns over work slow downs or stoppages that were expressed by the commenters above.

One commenter noted a related issue that mariners whose TWIC is lost, stolen, or inoperable may have to be replaced on very short notice and that finding replacement workers could result in operational delays and other problems.

It is likely that the provisions added into the final rule, to allow for individuals with lost, damaged, or stolen TWICs to continue to work for up to seven (7) days, will alleviate this problem.

(c). Use of PIN

Several commenters objected to the requirement for TWICs to have an accompanying PIN number. Many of these commenters said the other security protections in the card would obviate the need for a PIN. In general, comments on this issue reflected two different interpretations of the proposed rule's requirement regarding PIN numbers. Some commenters assumed that the PINs would only be required at elevated security levels, while others assumed that TWIC holders would have to enter the PIN each time to unlock the biometric features of the card. One commenter opined on the treatment of PIN numbers in the FIPS–201–1 standard. According to the commenter, FIPS–201–1 states that the PIN must be validated before the two fingerprints stored on the card can be accessible. In addition, section 6.2.3 of FIPS–201–1 outlines the authentication steps, which indicate PIN validation occurs before biometric reading/validation. If this is correct, then the PIN will always be used since the NPRM proposes biometric validation when entering the secure area of a vessel or facility. Another commenter echoed these comments on the FIPS–201–1 standard and added that the requirement for use of a PIN regardless of threat level is inconsistent with ''the MTSA philosophy.''

Several commenters opposed the use of a PIN only at MARSEC Level 3. They said that because Level 3 occurs so infrequently, TWIC holders would probably forget their PINs. One commenter requested the use of facial comparison instead of a PIN for an alternative means of identification. This commenter said that use of a PIN would compromise the security of the credential. Two commenters said that if PINs are required, there must be a way to check or reset a forgotten PIN within a very short period of time. Other commenters said that the use of a PIN would lead to long delays in access to port facilities and could disrupt the flow of commerce. Two of these commenters requested that the access system not lock out an individual after several unsuccessful attempts to enter his or her PIN, citing the potential resulting disruptions to the flow of commerce. One commenter said that a PIN entry pad will require additional maintenance (due to exposure to the elements) or additional infrastructure to make it immune to the elements (*i.e.*, enclosed boxes, protective barriers to prevent vehicles from contacting the box, etc.).

Because the reader requirement has been removed from this rule, the PIN requirement will not be an issue for routine access controls. We note, however, that the Coast Guard will be conducting spot checks for TWICs, using hand-held readers, and that if an individual is stopped during one of these spot checks, he or she will need to know the PIN in order to unlock the biometric stored on the card and allow for biometric verification. We are sensitive to those commenters who noted that, without daily use of the PIN, individuals will be likely to forget, however, as noted by some of the commenters above, having a card that is compliant with the current technology standard and provides the appropriate level of security and privacy requires the use of a PIN.

(d). Requirement That All Non-TWIC Holders Be Escorted

One commenter expressed concern about the impact of the escort requirement on visitors who do business at ports. The commenter noted that many port facilities may have normal deliveries (*e.g.*, mail, overnight delivery services) or businessmen and women visiting the port, and that ports should be given flexibility on how to handle these visitors. The organization suggested reviewing how the State of Florida handles visitors if it decides not to grant additional flexibility to facilities in the final rule, and said that the final rule should consider different escort requirements at different MARSEC levels.

Another commenter said that the escort provisions would be especially troublesome for small ports because of their limited security personnel. A third commenter expressed concern about the resources that would be required to escort ''one-time-only'' drivers. A fourth commenter recommended that the type of escorting or monitoring required at Certain Dangerous Cargo (CDC) Facilities be based on a vulnerability assessment instead of dictated by standard, noting that additional information on risk could be incorporated from the Maritime Security Risk Assessment Model (MSRAM) or other assessment tools.

As explained elsewhere in this final rule, the term ''escorting'' has been broadly defined to allow flexibility to owner/operators, based on their individual operations, in satisfying the requirement. Further guidance as to how individual owner/operators can satisfy this requirement will be provided in a NVIC. We expect guidance will describe that when in an area defined as a restricted area in a vessel or facility security plan, escorting will mean a live, side-by-side escort. However, outside of restricted areas, such side-by-side escorting is not necessary, so long as the method of surveillance or monitoring is sufficient to allow for a quick response should an individual ''under escort'' be found in an area where he or she has not been authorized to go or is engaging in activities other than those for which escorted access was granted.

Two commenters noted that many technicians who work on shipboard equipment are not U.S. citizens. They typically work in areas of the ship that would not be considered public access areas and often work at night or when the regular crew is off-duty. The commenters maintained that vessel crews do not have the extra personnel to escort these technicians. One of these commenters requested that the final rule contain a provision for a foreign citizen to have access to vessels if they are approved by the ship's Master or Chief Engineer and recognized as a trusted worker.

We acknowledge that technicians who are non-U.S. citizens or immigrants are an integral part of the maritime industry. Lawful nonimmigrants with unrestricted authorization to work in the United States may apply for a TWIC. In addition, we are amending the immigration standards to permit foreign nationals who are students of a State Maritime Academy or the U.S. Merchant Marine Academy to apply for a TWIC. Also, we are permitting certain aliens in the United States on a restricted work visa to apply for a TWIC. Applicants sponsored by a U.S. company authorized to work on a temporary basis in the United States under an H visa, individuals employed in the United

States on an intra-company transfer under an L visa, NAFTA professionals in the United States under a TN visa, nationals of a country that maintains a treaty of commerce and navigation with the United States and is engaging in substantial trade under an E–1 visa, is in or is coming to the United States to engage in duties of an executive or supervisory character under an E–2 visa, applicants with extraordinary skill in science, business, or art entering the country on an O visa, and Australians in a specialty occupation under an E–3 visa are now authorized to apply for a TWIC. The companies that hire these individuals are required to notify TSA when the workers are no longer employed at their U.S. operations, recover the TWIC, and return it to TSA. In addition, the rule requires the workers to surrender the TWIC to the employer when leaving that place of employment in the United States. We are requiring the surrender and retrieval of the TWIC to prevent instances in which a worker would hold a 5 year TWIC, but be authorized to work in the United States for a much shorter period of time.

One commenter said that the escort requirement, when combined with other requirements in the proposed rule, could have the side effect of completely dismantling what remains of the U.S. Merchant Marine. The commenter said that companies will only flag their ships in the United States as long as there is an economic incentive for them to do so. The commenter maintained that the cost of providing TWIC-carrying escorts for all foreign citizens, purchasing the necessary equipment, and paying for more training could motivate companies to flag their ships under another country's flag.

We share concerns about unintentional negative impacts TWIC implementation could have on the maritime industry. Where the governing statutory provisions provide the Department with discretion, we continue to weigh the security benefits of implementing TWIC against the burden it imposes upon industry. We believe that the provisions set forth in this final rule reflect a reasonable implementation that will not overly burden industry and we will continue to evaluate the impact on industry as we proceed with future rulemakings.

One commenter expressed concern about how maritime ministry activities would be affected by the implementation of the rule.

The Coast Guard supports the activities of those organizations providing services to seafarers of all nationalities. Chaplains and other humanitarian workers are encouraged to obtain TWICs and to work with owner/operators in preserving continued unescorted access to vessels and seafarers.

(e). Vessel-Specific Issues

Coast Guard proposed adding § 104.106 to provide for passenger access areas on board passenger vessels, ferries, and cruise ships, which would allow vessel owners/operators to carve out areas within the secure areas aboard their vessels where passengers are free to move about unescorted. Many commenters supported this provision and stated that these concepts are absolutely essential to a workable rule. The commenters argued that without this provision, the passenger vessel industry, which depends on attracting the public as customers, would not be able to function. Several of the same commenters stated that the clarification that a vessel employee whose duties require unescorted access to a passenger access area, but not to secure areas of the vessel, would not need a TWIC needs to be explicitly stated in the language of the final rule.

Some commenters wanted clarification of the different types of areas on a vessel. One commenter was unable to determine whether all areas not designated passenger access areas are to be considered ''secure areas.'' The commenter noted that, using the definition of passenger access area as found in proposed § 104.106, a passenger area would not necessarily be within the access control area or ''secure area'' of a vessel or facility, which seems to be a contradiction as it is written in the proposed rule.

As defined in § 104.106, passenger access areas are located within the access control areas of the vessel (and are thus within the ''secure area''), but by definition they are not part of the secure area. They can be thought of as pockets within the secure area—all areas around the passenger access areas are secure and require TWICs for unescorted access, but the passenger access area does not. As such, any employees whose duties keep them entirely within the passenger access area do not need a TWIC, the same way that passengers would not.

Some commenters also noted that certain vessel spaces are absolutely essential to security (*i.e.*, the bridge and the engine room), adding that the current MTSA regulations use a definition of ''restricted area'' that implies that only certain portions of a vessel will be so designated.

We agree that only certain portions of the vessel need be designated as restricted areas. As noted above in the discussion of the definition for secure area, we considered requiring TWICs only in these areas, but determined that doing so might actually be more harmful to owners/operators. The NPRM included reader requirements, including the use of the TWIC and readers for biometric verification. Using the restricted area as the secure area would have required that these readers and the verification be used at the entry points of each restricted area. This would have likely meant that many vessel owners/operators would have needed more than one reader, increasing their compliance costs. Additionally, the process of biometric identification could have interfered with the operation of the vessel. As a result, we decided to define the secure area as the access control area, thus limiting the number of readers required, as well as the number of times biometric verification would need to take place.

This final rule does not include the reader and biometric verification requirements, but we do expect to issue a second rulemaking in the future that will re-propose these requirements (although they may have some differences from what was included in the NPRM of May 22, 2006). Because we expect to require readers and biometric verification in the future, we do not think it is a good idea to confuse the maritime industry by adopting a definition of secure area in this final rule that would not be workable when reader requirements go into effect. As such, we did not revise the definition of secure area to coincide with the restricted areas.

One commenter requested clarification that for foreign-flagged cruise ships, the Flag State-approved and ISPS Code compliant Ship Security Plan (SSP) is where passenger access issues would be discussed. The commenter wanted confirmation that no additional plan, such as the TWIC Addendum described in proposed § 104.115, or revision to existing plans is necessary for foreign flag cruise ships under either of these regulations.

For reasons discussed above, § 104.105 exempts all foreign-flagged vessels, including foreign cruise vessels, from TWIC requirements.

Another commenter noted that the creation of § 101.514 does not address the existence of a ''passenger access area'' as an exception, and the language of § 104.100 needs to be referenced here with other exceptions to having a TWIC. Therefore, the commenter suggested that a new subparagraph should be added to read: ''No passenger, employee, or other individual needs to possess a TWIC to

obtain unescorted access to a passenger access area as defined in § 101.106 or a public access area as defined in § 105.106.''

We do not agree with the suggested change. Because the definition of passenger access area clearly states that these areas are not secure areas, it is clear that TWIC requirements do not apply within the passenger access area.

One commenter stated that contractor personnel working for oil and gas operators on vessels would be required to carry a TWIC or be escorted on the vessel. The commenter concluded that, with up to 36 oil field workers on a vessel, this would put a strain on the crew to escort the individuals without a TWIC.

This is technically correct, however we hope that the clarification of what was meant by ''escorting'' will alleviate these concerns and any additional strain on vessel crews. In our clarification, we expect that when in an area defined as a restricted area in a vessel security plan, escorting will mean a live, side-by-side escort. However, outside of restricted areas, such side-by-side escorting is not necessary, so long as the method of surveillance or monitoring is sufficient to allow for a quick response should an individual ''under escort'' be found in an area where he or she has not been authorized to go or is engaging in activities other than those for which escorted access was granted.

One commenter noted that the proposed rule does not address how to handle access control and identification on vessels under repair in shipyards or in drydock. The commenter suggested that the rules should specifically address this issue and state that the owner of a vessel that is withdrawn from navigation, whether permanently or temporarily, is not required to implement or maintain access control and identification requirements while the vessel is not in navigation.

The MTSA regulations already state that vessels that are laid up or out of service are not subject to part 104. This applies to vessels no longer anticipating MTSA operations. For vessels that are undergoing repairs of a temporary nature, they must be in compliance with their approved VSP including access control measures. However, the approved VSP may contain security measures for intermittent operations, such as drydocking and shipyard repair work. These intermittent security measures may include relaxing access control measures during repair periods, but will include specific measures to reestablish access control and monitoring of the vessel and conducting a sweep of the entire vessel to ensure no unauthorized objects have been left aboard.

Referring to proposed § 104.265(c)(4), one commenter stated that this requirement implies that a MODU vessel with several restricted (secured) areas, would be required to have a card reader at the entrance to each of these areas. The commenter argued that the vessel should only be required to have a card reader at the point(s) of embarkation to the vessel. Additionally, the commenter stated that the vessel would incur undue burden to ensure that a person trained in the TWIC to be assigned/posted at the entrance to each secure area and verify the TWIC for these people.

This comment displays a confusion regarding the meaning of secure area. It is not to be read as meaning the same as restricted area, but rather to coincide with the access control area of the vessel or facility. In the case of a MODU, this would be the entirety of the vessel. Additionally, the MTSA regulations allow for the checking of identification at the point of embarkation to the MODU, and the TWIC provisions do not change this.

One commenter supported proposed § 104.265(c)(8), which permits coordination, where practicable, with identification and TWIC systems in place at facilities used by vessels. The commenter recommended further broadening these provisions to clarify that when a vessel is berthed at a facility which is required under part 105 of these regulations to have a TWIC system in place, the vessel may suspend its TWIC operations while berthed at that facility. The commenter argued that there is simply no need to require duplicate TWIC validation especially when considering that facilities and vessels already have other non-TWIC security and access procedures in place.

We do not agree with this comment; the vessel owner/operator must maintain the ultimate responsibility for the security of his or her vessel. Amending the regulations as the commenter suggests would shift that ultimate responsibility to the facility owner/operator without requiring a contractual relationship with the vessel, which is inappropriate.

(f). Facility-Specific Issues

A law firm representing six companies suggested the following technical change to § 105.255(a)(4): ''change the word ''Prevent'' to ''Deter'' to be consistent with the rest of the maritime security regulations.''

We disagree with this recommendation. Owners/operators must ensure the implementation of security measures to prevent an unescorted individual from entering an area of the facility that is designated a secure area unless the individual holds a duly issued TWIC and is authorized to be in the area.

The same law firm requested a clarification of § 105.255(d), asking ''what is the meaning of the phrase 'complies and is coordinated with TWIC provisions.'''

This provision allows the facility owner or operator to use a separate identification system, but it must be in addition to the TWIC. Requiring coordination means that the separate ID system cannot be used if it would allow someone without a TWIC to get unescorted access to secure areas.

We received one comment on the requirement proposed in § 105.255(c) (3) for facility operators to ensure that the facility operator's TWIC program ''uses disciplinary measures to prevent fraud and abuse.'' The commenter stated that this would not be the correct assignment of responsibility, because the relevant evidence is only in the possession of government. The commenter also stated that the TWIC is a federally-issued credential obtained by an individual without the involvement of a facility operator or employer. If a TWIC is fraudulently obtained and used or abused in some manner, that would be a serious matter to be addressed by Federal law enforcement and not a subject for employer-imposed discipline. The commenter contended that the employer would not have the necessary evidence to impose discipline under the regulations.

The existing regulations already required owners and operators to have disciplinary systems in place to enhance the legitimacy of their identification system, whether it was a facility issued badge or a State-issued identification credential. There is a difference as to what the disciplinary system would be in each case, but we do not think it is inappropriate to place this responsibility on the owner/operator. For example, the facility owner or operator could fire and possibly take legal action against someone for tampering with the company's badging system, but if they found someone presenting a suspected fake ID, an appropriate disciplinary measure could be to deny access, and could even go as high as firing the individual. Similar disciplinary measures can be put in place in regards to TWIC.

One commenter noted that § 105.255(f)(4) implies that vessel crew and others seeking access to a vessel via a facility, who do not have a TWIC, fall under the definition of ''any person''

when visiting a facility. The current version of this section, § 105.255 (e)(3), reads ''vessel passengers and crew,'' while the above-proposed wording eliminates the word ''crew'' from the section.

The phrase ''vessel personnel and crew'' was removed and replaced with ''any person'' to clarify that the world of persons without a TWIC who might need access through a facility to a vessel is bigger than just vessel personnel and crew. If, however, the vessel personnel and crew do have a TWIC, they would no longer fall into this category of ''any persons,'' but rather into the separate category of persons with TWICs.

Some commenters argued that the proposed regulations are unclear about whether the currently accepted forms of seafarer identification are considered ''government identification.'' One commenter noted that the Coast Guard's section-by-section analysis to § 105.255 reads that persons presenting for entry who do not hold a TWIC would still be required to show an acceptable form of identification, as set forth in §§ 101.515 and 104.265(e)(3). Current Coast Guard guidance states that passports, seaman's books, STCW endorsements, and driver's licenses are acceptable forms of identification that a foreign mariner could use to access a facility. The commenters proposed that the Coast Guard either add the existing approved documents contained in current Coast Guard guidance to the list of acceptable items in proposed § 105.255(f)(4), or clarify in the comments to the final rule that existing approved documents are still acceptable as ''government identification'' so long as they comply with proposed § 101.515. The commenters also suggest the Coast Guard add ''crew'' or ''crew of a foreign vessel'' into the list of non-TWIC holding personnel referenced in proposed § 105.255(f)(4).

The list of documents found in § 105.255(f)(4) are intended to be used to verify an individual's reason for accessing a facility. The inspection of these documents should be read in conjunction with the general requirement to check an individual's identification by examining an ID meeting the requirements set out in § 101.515. We have not amended either §§ 105.255 or 101.515 to specify that the items listed in the Policy Advisory are adequate, but we have no intention, at this time, of changing that guidance.

One commenter also recommended the revision of 33 CFR 105.255(b)(1) to read ''Each location allowing means of access to designated secure areas on the facility must be addressed.'' The commenter stated that as currently worded, this subparagraph contradicts 33 CFR 101.105, 33 CFR 105.225(b)(9) and 33 CFR 105.255(a)(4), subparagraph (c)(1), and could be misinterpreted as requiring that a facility's access control program cover a much more extensive area than is the intent of the proposed regulations.

This final rule will no longer be adding language to this paragraph, therefore the suggested change is no longer necessary.

One commenter noted that at small ports, it is the terminal operator's responsibility to ensure compliance with the security plan and that many small ports face a tremendous difficulty in doing the ''people'' side of security. Another commenter stated that port facilities should be given more flexibility regarding escorting of visitors.

We appreciate the concerns raised by the commenters, and have provided clarification elsewhere in this final rule as to what is meant by ''escorting,'' which we hope will alleviate these concerns.

One commenter raised the question of whether family members traveling with truck drivers in the summer would be required to have an escort in secure areas of marine facilities. They pointed out that many truck drivers travel with family members in the summer months.

In accordance with the access control provisions of both the NPRM and the final rule, owners and operators of facilities are required to check identification of all persons prior to granting access and to require a TWIC prior to granting unescorted access to secure areas. In the case of family members traveling with authorized personnel who require unescorted access to secure areas of a facility and also hold a TWIC, it remains the responsibility of the owner or operator to continue to either allow the authorized personnel to serve as the escort for their family member, or to follow the same procedure used for any other visitor that does not hold a TWIC.

Some comments proposed that current security programs or credentialing programs should be evaluated as an alternative to the proposed rule.

The MTSA regulations in 33 CFR parts 101, 104, 105 and 106 provide for acceptance of ASPs, waivers, or equivalents. These provisions still apply, even with the addition of the TWIC requirements. Note, however, that they would only apply to the facility owner/operator's access control responsibilities; they would not alleviate an individual's burden to apply for and obtain a TWIC if they require unescorted access to a secure area.

One commenter said that a universal identification credential such as TWIC, should allow mariners unescorted access to the terminal when there is a valid need for such access, *i.e.*, to reach the job site aboard a ship berthed within the port facility. Indeed, the mandatory provisions of the ISPS Code (ISPS Code—Part A Requirement 16 Port Facility Security Plan) require such facilitation of access by mariners. The commenter stated that owner/operators, in complying with the proposed rule and with approved security plans, should be sufficiently reassured (for liability purposes) to allow unescorted access to the TWIC holders with a legitimate need for admittance, and that the proposed rule should make clear that owners/operators of secure areas who follow their approved security plan and who adhere to the TWIC access control procedures will not be deemed liable for some type of breach unforeseeable within the federal port security regulations.

We agree that possession of a TWIC should serve as evidence that a mariner does not pose a security risk to a facility owner, and that facility owners should be able to rely upon this fact in allowing mariners unescorted access through their facilities in order to facilitate crew changes, take shore leave, or complete a variety of other duties that may require the mariner to step off of the vessel onto the facility. Issues of liability are beyond the scope of this rule.

A commenter expressed concern about how it would implement the proposed rule at its fenced port facilities, where access control is handled by security officers who check the identification of everyone who drives in. The commenter said it did not seem practical to have employees use a card reader just to drive in past the security officers. The company also said that the restricted areas of its facilities are not enclosed spaces that can be locked off, so card readers would not work to control access to them.

While card readers are not required by this rule, owner/operators remain responsible for controlling access to restricted areas in accordance with existing regulations. Additionally, it is noted that the definition of secure area is not the same as restricted area, as explained elsewhere in this final rule. This final rule imposes a responsibility on owner/operators to ensure that only TWIC holders are allowed unescorted access to secure areas. While satisfying the escorting requirement for individuals without a TWIC may be accomplished by other means than

requiring a side-by-side escort in some secure areas, this final rule requires that owner/operators ensure that access to restricted areas by individuals without a TWIC is only allowed while in the presence of at least one TWIC holder.

One commenter said that it is necessary that the rule put the eventual TWIC holding population on notice that they will require a specific, discrete authorization or a ''business purpose'' when seeking access. The company requested that the final rule restore language that is currently in 33 CFR 105.255(e)(3). That language clearly requires that the reason for access be checked as a routine part of access control. The company said that this requirement is an important and essential layer of access security and affirms the requirement in 33 CFR 105.255(a)(4). The company added that this requirement has been muddled and diminished as the requirement for asserting business purpose when seeking access found at 33 CFR 105.255(f)(4) now only applies to persons not holding a TWIC and seeking entry.

Section 105.255(a)(4) clearly establishes the requirement that individuals may only be allowed unescorted access if they: (1) Have a valid TWIC and (2) are authorized to be in the area pursuant to the facility security plan.

(g). Outer Continental Shelf (OCS) Facility-Specific Issues

Some commenters referenced proposed § 101.514, the general requirement that ''all persons requiring unescorted access to secure areas of vessels, facilities and OCS facilities, regulated by parts 104, 105 or 106 of this subchapter must possess a TWIC. . . .'' One commenter stated that this requirement should either be removed from this section and placed individually in parts 104, 105 and 106, or a specific and limited exemption provided for certain vessels regulated under part 104. One commenter said strict adherence to the TWIC requirements is not feasible for off-shore foreign vessels routinely operating on the U.S. OCS. One commenter said § 101.514 is a particularly onerous requirement for newly hired personnel to work on a U.S. flagged mobile offshore drilling units (MODUs) and do not possess a TWIC. Another commenter stated that these limited exemptions should include U.S. flag MODUs and offshore supply vessels (OSVs) because the vessel manning statutes specifically recognize the necessity of permitting these vessels which are operating outside the geographic boundaries of U.S. jurisdiction to employ non-U.S. citizens and immigrants in their crews. The commenter noted that MODUs in particular are often required to employ indigenous labor as a condition of operations on the continental shelf of another nation, and it is difficult to envision a scenario under which these non-citizens could present a security threat to the United States. Similarly, the commenter notes that the manning statutes recognize that non-citizens should be permitted to fill the vacancies created when a vessel sailing foreign is deprived of members of its required complement. The commenter concluded that it is simply unreasonable to expect that an escort with a TWIC can be provided for either a watchstanding member of the crew of an OSV for the duration of a voyage, or to an industrial worker on a MODU for the duration of a foreign drilling contract.

One commenter stated that strict adherence to the TWIC requirements of this part is simply not feasible for vessels routinely operating outside the United States. The commenter argued that application of the requirements, as proposed, would render it impossible to operate a U.S. flag MODU or OSV in foreign waters, would make it impossible to affect repairs in a foreign shipyard, and would negate specific provision of the manning statutes that permit the employment of non-citizens in specific circumstances. Therefore the commenter recommended that the proposed § 104.105(d) be revised to read as follows:

(d) the TWIC requirements, including those related to unescorted access, found in this chapter do not apply to:

(1) foreign vessels;

(2) U.S. vessels employing non-citizen crewmembers under the provisions of 46 U.S.C. 8103(b)(3) or (e), with respect to those crewmembers;

(3) U.S. MODUs, offshore supply vessels or other vessels engaged in support of exploration, exploitation, or production of offshore mineral energy resources operating beyond the water above the Outer Continental Shelf (as that term is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 (a)).

As noted above in the discussion of the changes to the Coast Guard provisions of this rule, we are adding a provision to the definition of secure area in § 101.105 that states that U.S. vessels operating under the waiver provision in 46 U.S.C. 8103 (b)(3)(A) or (B) have no secure areas.

We are sympathetic to the concerns of OSV owner/operators, whose vessels are required to comply with part 104 but are transporting crew members to MODUs that are not subject to part 106, and therefore will not have TWICs. We believe that the clarification of the term ''escorting'' should provide some relief to these owner/operators.

One commenter noted that the proposed rule states that foreign vessels entering U.S. ports that carry a valid ISPS Code certificate are deemed to be in compliance with part 104, except §§ 104.240, 104.255, 104.292, and 104.295. And, under § 104.105(d), the proposed rule exempts all foreign vessels from the TWIC requirements. Several commenters requested confirmation that the combination of the exemption of foreign vessels from the TWIC requirement and the existing acceptance of ISPS certification for foreign vessels excludes an OCS facility which is a foreign-flag MODU ''on location'' from the TWIC requirements. The commenters also requested confirmation that there would be no TWIC requirements for a non-covered MODU working next to or over a covered OCS facility. Another commenter, seeking clarification of the proposed rule, asked: If you have a voluntary compliance for a MODU and it obtains a flag-issued International Ship and Port Facilities Security Code certificate, is that sufficient for exemption from TWIC requirements?

A foreign-flag MODU ''on location'' in U.S. waters and holding valid ISPS certification would be exempted from the TWIC requirements of parts 104 and 106.

One commenter believed the escort rules were unreasonable for the oil and gas industry and anticipated that these rules would lead to company and service personnel needing to obtain a TWIC.

The clarification to the escort provisions, provided elsewhere in this final rule, should alleviate the concerns of this commenter by limiting the need for live accompaniment to those instances where the company/service personnel are in restricted areas. At all other times, monitoring would be acceptable.

(h). Other Issues

Many commenters said that the rule should give owners/operators of vessels and facilities the ability to use the TWIC as a ''visual identity badge.'' Some commenters specifically advocated visual checks of TWICs at MARSEC Level 1. Another said that TWICs could be used as a visual identity badge in the early stages of implementing the rule and could be used with readers after more experience is gained with the reader technology. One association

asked that passenger vessels and facilities be allowed to employ TWICs as visual identity badges and not be required to install readers.

Several commenters found fault with the statement in the NPRM that ''allowing owners/operators to rely solely on the visual identity badge system is unreasonable in light of the additional cost of the credential, and the available security enhancements that the increased cost represents.'' These commenters did not think the requirement to use TWICS with biometric readers should be justified by the cost of the TWICs themselves. One commenter noted that TSA officials have endorsed the use of a visual identity badge system for airport employees and said that if such a system if sufficient for the aviation sector, it should also be used in the maritime sector. A shipbuilding and ship repair company argued that a visual identity badge system is needed to prevent delays as hundreds of employees arrive for work.

As already noted, this final does not address reader requirements. However, owners and operators may choose to use the TWIC with an existing physical access control system. The hotlist will be available to owners and operators who could use the magnetic strip or the cardholder unique identifier (CHUID) embedded in the credential to tie it into a legacy system that checks those entering against the hotlist. Although this option is available for owners and operators, the use of reader technology is not required at this time. We will revisit concerns related to other uses of the TWIC in the subsequent rulemaking.

Commenters found access control regulations for train workers within the current TWIC proposal unclear. One commenter recommended that rail facilities be allowed to check workers before boarding a port-facility bound train; another was unsure if train operators would require a TWIC and how other rail worker access control issues should be handled by the industry. Similarly, another commenter noted that train crews pose a unique problem because they enter maritime facilities on trains proceeding down the track. Trains do not typically stop at the property line of maritime facilities, and there is no guard house at which the train crews can scan their credentials. The commenter recommended that railroads be permitted to check crews before they get on the train.

Rail workers will require TWICs if their job requires them to have unescorted access to secure areas of maritime facilities. How and when those TWICs are checked is a process for the train operator to work out with the facility owner/operator, in accordance with the latter's FSP, but the baseline requirement is that unescorted access not be granted to secure areas without a TWIC.

Commenters complained that the proposed rule reflects a ''one size fits all'' approach and did not take into account the different levels of risk and vulnerability across the maritime industry. Several commenters said that the proposed rule should be reviewed to assure that is both risk-based and incorporates performance-based standards as much as possible. One commenter noted that most programs implemented under MTSA have thus far relied upon risk-based standards, but that the proposed TWIC rule is based on a ''one size fits all'' formula that applies the same security rules and the same costs to all operators. The association said that the broad application of this approach could prove to be an undue hardship for smaller and less threatened terminals and facilities that do not have access to the same resources as larger facilities. The commenter suggested that TSA and Coast Guard consider whether a risk assessment could be incorporated into the TWIC program, where practical, to minimize any disadvantage or undue adverse impact on smaller marine facilities.

Some commenters noted that the ''Low Consequence Facility'' designation allows the COTP some flexibility in determining how to logically secure the port without burdening industry with unnecessary requirements that produce no viable improvement in terrorism-related security. The commenters asked TSA and Coast Guard to incorporate the ''low consequence facility'' designation into the regulations.

Another commenter similarly requested alternative facility-specific identification systems for ''low-risk operations.'' Another commenter said that a risk/vulnerability assessment would result in more vessels and facilities being exempted from the TWIC requirement. As an example, he suggested that the cut-off for vessels would be between 500 and 5,000 gross tons. Two commenters said that they did not consider the proposed rule to be tailored to specific and realistic security threats facing the inland marine transportation industry. Another commenter said that requiring card readers for low-risk business operations would be unreasonable and unproductive. The company also said that tow operations would be susceptible to armed takeover attempts even with a TWIC requirement in place, so the rule would not provide any security benefits to these operations.

The MTSA regulations are inherently risk-based, as only those facilities and vessels determined to be at risk of a TSI were included in the applicability of subchapter H. The TWIC regulations intended to provide flexibility to owner/operators through the submission and approval process of their individual TWIC Addenda and security plans. Because many of the ''one size fits all'' requirements have been removed from the final rule, we defer a more specific response until our subsequent rulemaking on reader requirements. We will keep these comments in mind as we draft our NPRM re-proposing reader and TWIC validation requirements.

Many commenters said that the proposed rule would cause unreasonable delays for people attempting to enter facilities. Commenters often said that the resulting delays would disrupt or slow the flow of freight through U.S. ports. One commenter referred specifically to employees who move in and out of facilities several times a day. They expressed concern about these employees having to do a biometric verification each time they re-enter the facility. Several commenters said that the delays caused by the proposed rule would result in increased air pollution, because trucks would idle longer while waiting to enter port facilities.

Commenters said that the proposed rule would drive up the cost of goods that are shipped through ports, which would drive business away. One commenter stated that the proposed rule would pose a potentially significant barrier to international trade. Another remarked on the importance of the Port Authority of New York-New Jersey to the regional economy and the need to minimize disruptions to its operations. A commenter predicted that the rule's impacts on port operations would have secondary effects on industries that rely on imports. One commenter said that the cost of complying with the proposed rule would increase the cost of U.S. exports, reducing the competitiveness of American companies in the global marketplace. Another commenter said that the cost of complying with the proposed rule would hurt the competitiveness of U.S.-flagged ships.

The Department understands that this rulemaking imposes costs on businesses. The Department believes that those costs are a product of statutory mandates and the Nation's security needs. We refer readers to the accompanying Final Assessment for further details on our assessments of the costs and benefits of this rule. This

should assuage concerns arising from the use of the TWIC as set forth in the NPRM. We will revisit concerns related to other uses of the TWIC in a subsequent rulemaking.

One commenter requested that the final rule specify that no port facility or vessel may require the visitor or worker to give up possession of their TWIC as a basis for entry. Any handling of the card by anyone other than the cardholder should be limited strictly to the immediate task of processing the card in a reader, and the card must be promptly returned to the holder unless it has expired or been flagged for revocation.

We agree with this comment as it relates to the final rule issued today. We are aware of several facilities that use their own badging system, and as part of that system they require visitors to leave a form of personal identification with a security officer before they are able to receive a facility specific badge. These systems have largely been approved by the Coast Guard. However, we do not think it is appropriate for these visitors to be required to leave their TWIC behind if they have another form of identification they can leave (*e.g.*, drivers license) after the TWIC has been visually inspected.

One commenter said that the original intended purpose of the TWIC was to facilitate access to secure vessels and facilities for those with the right to obtain such access. The commenter said that the original intent did not include denying access to those without a TWIC.

We partially agree. While facilitating access was one intended result, it also had the purpose of increasing security at our nation's ports by identifying those individuals who would receive unescorted access to secure areas. While the regulations do not prevent an owner/operator from granting access to individuals without a TWIC, they are now required to ensure that an individual without a TWIC is either escorted or is not allowed to enter secure areas.

Some commenters said that the rule was written for ''blue water'' ports and oceangoing vessels but would not work well for the off-shore energy sector or the inland towing industry. Other commenters said that the proposed rules appear to have been developed with little appreciation for the operational realities of the American tugboat, towboat and barge industry.

Many of the concerns expressed regarding the TWIC implementation as proposed by the NPRM should be assuaged by deferring TWIC reader requirements to a subsequent rulemaking. We believe that if further flexibility is required in implementation by a particular industry or operation, the waiver and ASP provisions that currently exist in the regulations can provide it.

One commenter recommended that the rule allow facilities to store biometric information from the TWIC in a facility database with the individual's permission. This option, exercised at the discretion of the facility, would allow the facility operator to validate an individual's identity by matching the fingerprint with the biometric information stored in the facility database in the event the individual leaves his or her card at home on a given day. Local controls could be written in the FSP, and approved by the Coast Guard, to prevent abuse of this option.

One commenter wants DHS to grandfather facilities that have installed new access control systems within the last three years so they will recover their costs in implementing them.

Many expressed concerns that the TWIC would displace sophisticated access control systems already in place at regulated facilities. Many suggested that facilities that had invested significant amounts of capital into access control systems be allowed to continue using those systems in conjunction with TWIC. Others suggested that facilities be allowed to use alternate systems in place of TWIC.

TWIC technology can be adapted to existing access control systems, and it was not our intent to force owner/operators with sophisticated systems to abandon those systems to accommodate TWIC. We believe that TWIC enhancements can be fully integrated to most existing physical access control systems, and hope that the language of the final rule clarifies that owner/operators need not replace existing systems so long as TWIC capabilities are appropriately incorporated into the facilities' existing system. A NVIC providing further guidance on applying the access control requirements in this final rule is forthcoming.

9. TWIC Addendum

One commenter said that the time allowed for completion of a TWIC Addendum should be at least one year. The company based this request on the complexity of the proposed program, especially for shipyards that must coordinate TWIC requirements with screening programs required by other federal agencies. Another commenter requested that companies be allowed to submit amendments to their VSPs that incorporate their TWIC provisions rather than a separate addendum. The company said this would mean less work for some companies and for the Marine Safety Center (MSC) that must do the reviews and approvals. Another commenter asked whether the TWIC Addendum would be considered SSI and whether a vessel operator could show the Addendum to people when they come on board the vessel.

One commenter recommended that the Coast Guard be required to notify an entity submitting a TWIC Addendum once the Coast Guard makes a determination of completeness. The commenter said that a confirmation letter from the Coast Guard that a complete submission has been received and is undergoing review would prevent potential delays to vessels that have not yet received an approval letter from the Coast Guard. This commenter also recommended that entities submitting a TWIC Addendum should include a contact point and method by which the Coast Guard could easily accomplish this requirement (*e.g.*, e-mail, fax, or hard copy via surface mail).

One commenter requested that the TWIC Addendum be reviewed by the Coast Guard itself and not by outside consultants.

One commenter said that the requirement that the TWIC Addendum be kept ''on site'' or onboard the vessel should be revised. Specifically, the commenter said that the rule should require the TWIC Addendum to be maintained at the same location as the VSP or ASP. The commenter noted that under one approved ASP, the ASP must be maintained by the Company Security Officer at a secure location, but need not be carried on board the towing vessel. The commenter requested that the same approach be followed with the TWIC Addendum.

One commenter posed several questions regarding how this requirement would apply to OCS facilities (§ 106.115). The company asked if the requirement would apply to a foreign-flag MODU ''on location'' if the vessel has an approved ship security plan (SSP) as required under the ISPS Code. The company also asked how the requirement would apply to a non-self-propelled foreign flag MODU ''on location'' working next to or over an OCS facility that is required to comply with TWIC requirements.

Several commenters stated that Coast Guard should provide clarification on why companies and vessels need to integrate the TWIC Addendum into the ship's security plan. They said that if set up properly, the TWIC Addendum could be a stand-alone document as easy reference for persons with security

duties that are authorized to view this information.

One commenter notes that, as proposed, §§ 105.500 to 105.510 would allow an owner/operator to resubmit an entire security plan with a list of sections amended as the TWIC Addendum, but once approved, it would carry the same expiration date as it had prior to the amendment. He recommended that if the revised plan were submitted to the COPT with a revised facility security assessment, that a new time line should start and the plan should be approved for five years from the date of approval.

One commenter recommended that the TWIC Addendum requirements (33 CFR 105.120, 33 CFR 105.200 and 33 CFR 105.500–510) should be revised to explicitly require facilities to designate the secure area within which access control is required. The commenter stated that once the Coast Guard has approved the TWIC Addendum, the facility would be protected from inspectors voicing their personal opinion that the secure area does not comply with their interpretation of the definition.

We removed the TWIC Addendum requirement from the final rule when we determined that the reader requirements would be delayed until a subsequent rulemaking. The purpose of the TWIC Addendum was to allow the owner/operator to explain how the readers would be incorporated into their overall access control structure, within the standards provided in the NPRM. With the removal of the reader requirements from this final rule, we feel it is appropriate to also remove the TWIC Addendum requirement. In order to ensure that security is not compromised, we have added to the access control provisions in each part (33 CFR parts 104, 105, and 106) to provide specific security measures (as opposed to performance standards) to be implemented by owners/operators in the area of access control. Additionally, because we envision the TWIC Addendum to be a part of the subsequent rulemaking on reader requirements, we felt it would be overly burdensome to also require a TWIC Addendum at this point in time.

As the TWIC Addendum requirement is no longer included in this final rule, we will address these concerns in a subsequent rulemaking.

One commenter said that Coast Guard-approved VSPs should dictate security provisions once an individual is onboard the vessel and that the proposed rule should not establish duplicative security requirements. The commenter said that the VSPs limit access to vessels generally and in particular prohibit access of unauthorized individuals to restricted areas of vessels. The commenter went on to state that TWICs should be used only as a basic identification device and proposed 49 CFR 1572.23 and 33 CFR 104.265 should be amended so that mariners are only subject to the existing VSPs when onboard a vessel.

We disagree that the TWIC establishes duplicative security requirements. The TWIC will enhance existing security requirements by improving the ability of owner/operators to prevent access by unauthorized individuals to restricted areas of the vessel and the vessel in general. Therefore, we decline to adopt the recommendation.

One commenter encouraged the Coast Guard to provide for some flexibility in the drafting of security plans to accommodate port workers who frequently move between secure and non-secure areas during the course of a single operation. The association said that continuous application of the limitation to gain re-entry access would be impractical and could potentially drive up costs unnecessarily. As an example, the association said that they need the ability to service cruise ship vessels without access procedures that require multiple interfacing with biometric readers.

We believe that the use of the TWIC as a visual identity badge, as required in this final rule, will alleviate some of the burden noted in this comment.

One commenter opined on the application of the TWIC requirements to shipyards involved in building and repairing U.S. military and Coast Guard vessels. The commenter stated that these shipyards must already comply with DOD security requirements, and claimed that the security afforded by the MTSA regulations is less comprehensive than the security provided by DOD security measures. The commenter said that complying with both sets of security requirements would be costly and could potentially reduce security by causing confusion and increasing administrative burdens. The commenter noted that the increased costs and administrative delays would be borne ultimately by the U.S. Navy and Coast Guard, and for these reasons requested that the shipyards be exempted from complying with the TWIC rule.

We disagree with this comment as it pertains to ''all shipyards.'' If a shipyard falls within the applicability of the MTSA regulations and is required to submit a FSP under 46 U.S.C. 70105, then any individual requiring unescorted access to a secure area is required to have a TWIC. We note here that shipyards are specifically exempt from 33 CFR part 105 applicability (*see* 33 CFR 105.110(c)), and would only come under the facility security regulations if the shipyard is subject to a separate applicability requirement, such as being regulated under 33 CFR part 154, requirements for facilities transferring oil or hazardous material in bulk.

Both the NPRM and the final rule provide for a means through which security threat assessments done by other governmental agencies may be deemed comparable. If there are background checks in place under the DOD programs, and if those background checks include security threat assessments that are deemed comparable to the one done by TSA, then individuals may receive their TWIC at a reduced cost, but they will still need to apply at a TSA TWIC enrollment center.

Commenters stated that the rule assumes that people with TWICs will be facility employees, but that many are not (particularly truckers).

We disagree with these comments. As we stated in the NPRM, the TWIC requirements applies U.S.-credentialed mariners and to anyone seeking unescorted access to secure areas within MTSA-regulated vessels or facilities. It is not limited to facility employees, nor did we assume it would be.

One commenter noted that FSPs differ based on the threat assessment conducted for each facility. He said that the NPRM might encourage a misunderstanding among the public that every facility is ''doing business'' strictly according to the Code of Federal Regulations (CFR). He said, ''It is very difficult sometime for people to understand that [a facility security plan] may not specifically reflect what the CFR says.''

We do not agree with this comment. If a facility is operating under its approved FSP, then it is in compliance with the regulations. The MTSA regulations are performance standards, and as such there are a variety of ways in which a facility might meet the standards contained therein. Unless a facility has been granted a waiver from portions of the regulations, we fail to see how a FSP would not reflect what is stated in the CFR.

10. Compliance Dates

The NPRM proposed requiring owners/operators to develop and submit TWIC Addendums within six months of publication of the final rule. One commenter pointed out that the Coast Guard allows itself five years to fulfill

its responsibilities, but owners/operators only get 6 months. One commenter wanted the text regarding TWIC Addendum submission to be revised to read ''six months after such date that the Secretary deems the program has been fully implemented within the maritime work force ashore.'' One commenter wanted six months to be extended to at least one year or one year from the time the Coast Guard approves the TWIC Addendum. This would allow time for adjusting capital budgets and integrating the TWIC readers/system with existing access control systems. One commenter wanted to know what happens with regards to this timeframe if TWIC readers are not available when the implementation period begins or are not readily able to be integrated into existing systems.

These sections of the NPRM also would have required vessel, facility, and OCS facility owners/operators be operating according to their approved TWIC Addendum between 12 and 18 months after publication of the final rule, depending on whether enrollment has been completed in the port in which the vessel is operating. One commenter expressed concern that the 750,000 cards needed for initial enrollment cannot be produced within 18 months. Eight commenters believed the timeline is totally unrealistic. One commenter recommended that the ''effective dates'' section be reserved until it is demonstrated that the documents can be issued and equipment is both available and functional, and stated that a subsequent notice could be published in the **Federal Register** establishing effective dates of the access control and credentialing provisions when they are ready. Five commenters requested the deadline be extended. Three commenters wanted to extend the deadline specifically to afford time to budget for TWIC compliance (which typically requires a three-year lead time) and/or request/receive Federal grant funding.

The TWIC Addendum requirements have been removed from this final rule, and as such it is not necessary to respond to them at this time. We will keep them in mind as we draft our NPRM on reader requirements. As noted above, we have also revised the compliance dates slightly. Vessels will now have 20 months from the publication date of this final rule to implement the new TWIC access control provisions. Facilities will still have their compliance date tied to the completion of initial enrollment in the COTP zone where the facility is located. This date will vary, and will be announced for each COTP zone at least 90 days in advance by a Notice published in the **Federal Register**. The latest date by which facilities can expect to be required to comply will be September 25, 2008. Additionally, mariners will not need to hold a TWIC until September 25, 2008. They may rely upon their Coast Guard-issued credential and a photo ID to gain unescorted access to secure areas to any facility that has a compliance date earlier than September 25, 2008.

One commenter stated that the final rule should clearly state the dates for compliance, and found § 104.115(d)(2) to be confusing as written. Two commenters argue that the TWIC enrollment process will never be ''complete'' since employers will always be submitting new applicants for enrollment, and asked who determines that enrollment is complete.

We are sensitive to these comments, however until the contract for the entity that will be operating enrollment centers is complete, we will not know exactly what date will apply to each COTP zone. We will communicate more specific dates as they become available, but can state that we expect that initial enrollment (*i.e.,* the enrollment rollout) will be complete nationally within 18 months of the first TWIC enrollment.

One commenter believed that the schedule for the applicant to provide information is confusing. The implementation schedule in § 1572.19 appears to contradict the schedule in § 104.115.

In order to reduce or eliminate any confusion, we point out that § 1572.19 applies to the individual TWIC holder and § 104.115 applies to vessel owners and operators of regulated vessels.

One commenter said the rule needs to clarify and focus on the Access Control System pilot timeline. Operational tests in selected pilot ports and terminals should be concluded and the TSA data interfaces checked and proven before the Access Control System is designed and the TWIC Addendum created. It is not clear if the timeframes apply to just the TWIC rollout or to both the TWIC and the Access Control System. Three commenters felt that the timeframe could potentially cause significant additional costs to the industry (i.e., obtaining equipment and systems, hiring personnel to run the programs, etc.). Two commenters said the deadline for compliance listed in 49 CFR 1572.19 is unreasonable. It should be extended to a minimum of 18 months from the implementation of the final rule. Six commenters expressed the need for proper field testing of the biometric readers prior to usage. Two commenters were concerned about the logistics of processing applications and issuing TWIC cards to hundreds of thousands of workers. One commenter believed TWIC is being implemented due to political issues and pressures. One commenter thought the timeline should be changed to start compliance after the technology for the cards and the readers has been proven to work instead of the date the final rule is published. Three commenters stated the rule needs clarification between page 29407, where it discusses a phased enrollment process, and page 24909, where it lists timeframes for plans and compliance. They stated that the timeframes do not allow for a phased process. All commenters recommend adopting the phased process, and one added it should be based on risk and employee access to critical infrastructure.

One commenter wanted compliance dates to begin after the Coast Guard has approved the revised plans. Another asked the Coast Guard to review their implementation timeline and ensure that industry has adequate time to successfully implement all of the requirements.

With the removal of many of the more technologically complex portions of the NPRM from this final rule, we have attempted to clarify compliance deadlines for this final rule within the regulation text. The initial enrollment period will be a phased enrollment period, which we estimate will take 18 months to complete. Owners/operators of vessels will be required to comply with the TWIC provisions of this final rule on September 25, 2008. This means that by this date, vessel owners/operators will need to begin visually inspecting TWICs before they grant individuals unescorted access to secure areas. However, many workers on vessels will be required to use a TWIC to access facilities en route to their vessel. Additionally, enrollment center scheduling has been set up to address initial enrollments of merchant mariner and non-merchant mariner workers concurrently at each port. Mariners may apply at any TWIC enrollment center, at any time during the enrollment period. Although mariners are not required to have a TWIC until the end of the enrollment period, they are encouraged to apply early. Vessel owners/operators will be better served ensuring their crews are enrolled during initial enrollment periods because they may need to access many different facilities throughout the country, and facility owner/operators must be in compliance with the access control provisions as the initial roll out enrollment in their COTP zone is completed. As noted above,

these exact dates will be announced in **Federal Register** Notices.

Two commenters requested implementation of TWIC cards be delayed for vessel personnel until the Coast Guard has redesigned its MMC to incorporate TWIC security features or at least 18 months after TWIC reader systems are ready.

With the removal of the TWIC reader requirements from this final rule, this comment is no longer relevant. However, we note that the compliance date of this final rule, for vessel owners/operators, has been changed. Vessel owners/operators need not begin checking for TWICs until 20 months after the publication date of the final rule. Workers on vessels will still be subject to the security procedures at 105 and 106 facilities. Additionally, enrollment center scheduling has been set-up to address initial enrollments concurrently with MMD and non-MMD workers at each port. Vessel personnel will be better served enrolling during initial enrollment periods at each port.

11. General Compliance Issues

One commenter wanted to know how the Coast Guard is going to ensure compliance with the TWIC program. Another cited a need for a means to verify the status of a TWIC in the field and suggested that at a minimum a call center phone number and electronic means are needed. They also suggested an investigation into the costs and benefits of equipping law enforcement personnel with the means to validate driver fingerprints against a TWIC.

At least until we are able to finalize a second rulemaking to impose reader requirements on the maritime community (as appropriate), the cards will be used for access control as visual identity badges instead of being required to be read by an owner or operator's reader at access control points. Additionally, the Coast Guard will be confirming the identity of TWIC holders using hand-held readers, uploaded with the most recent hotlist, during its already existing annual facility and vessel MTSA compliance exams, unannounced facility and vessel spot checks, and for cause as needed. Finally, although the installation of readers is not currently required, the hotlist will be made available to vessel and facility owners and operators should they voluntarily decide to use the credentials within their existing physical access control systems. As an example, an owner or operator could write to the magnetic strip on the card or read the CHUID stored on the chip embedded in the card to tie it into a legacy system that checks the TWIC against the hotlist.

Another commenter wanted to know what protection there is if the facility that you are going to does not comply with the TWIC program.

If the facility does not comply because the MTSA regulations do not apply to it, there is no issue. If however, a MTSA-regulated facility does not visually inspect TWICs as required by this final rule, they are subject to the civil penalty provisions found in 33 CFR 101.415. Anyone who knows of such non-compliance should make a report to the National Response Center (NRC), using the contact information found in 33 CFR 101.305, as such non-compliance is a breach of security.

Two commenters are concerned that TSA and the Coast Guard want to publish a final rule before the end of the year and will not adequately address the numerous uncertainties and questions on this proposed rule that were raised by the commenters.

We disagree with this comment. We have considered each and every comment submitted to the docket during the 45-day comment period, as well as all of the comments received at the four public meetings that were held in late May and early June. We have made several changes to the proposed rule as a result of the issues and concerns raised, the biggest being the delay of the card reader and associated requirements. Additionally, in this ''Discussion of comments and changes,'' we have responded to all of the comments we received.

Four commenters requested that the agencies issue a TWIC NVIC to assure consistent interpretation and application of the program. They also advised that TSA should develop simplified integration plans to assist companies with the implementation.

One commenter suggested that TSA and Coast Guard offer ''best practices'' for industry to use. As an example, the company cited the need for suggestions on handling contractor personnel during major construction projects and plant turnarounds.

We agree that a NVIC will be necessary to assist customers with compliance as well as assure consistency nation-wide; this will be forthcoming to help interpret the provisions of this rule. We are also issuing robust field guidance to all of our COTPs, to ensure uniform application of the requirements.

One commenter expressed concern that union involvement may slow the enrollment process. The commenter wanted to make sure that labor agreements and arrangements are addressed in TWIC.

We do not feel that this final rule is the place to address labor concerns between facilities and unions.

12. Additional Requirements—Cruise Ships

Section 104.295(a)(1) proposed higher burdens on U.S. cruise ships, such as requiring that an individual's identity be checked against their TWIC at each entry to the vessel, and that the validity of the TWIC be verified with TSA at a higher rate than for other vessels. Commenters said that these additional requirements are cost-prohibitive and unfair to owners and operators of U.S.-flagged cruise ships and should be applicable to foreign cruise ships. One commenter opposed this provision, stating that this requirement is excessive, burdensome and does not respond to a demonstrated risk, and under lower MARSEC level requirements, it is not necessary to verify the identity of someone who is a known employee.

While the reader requirements have been removed from this final rule, we do not agree with the comments. Cruise ships do carry a higher risk than other passenger vessels, as the higher number of passengers on-board creates a more attractive target to terrorists. Additionally, the higher number of employees, including licensed crew, entertainers, wait staff, and other unlicensed crew, make it less likely that all employees will be ''known'' to the security personnel checking credentials. However, we will keep these comments in mind as we draft the NPRM to re-propose reader requirements.

Other commenters stated that most procedures for access can be covered under a vessel's security plan. One commenter said the crew was at the heart of the security plan and will ensure vessel security. One commenter suggested that instead of requiring card readers at every vessel entry point, employees should scan their cards at the facility entry point prior to boarding their assigned vessel. Another commenter stated that the proposed rule should be edited to allow for spot-checking of passengers and employee-displayed badges as mandated by a Coast Guard approved VSP at MARSEC Level 1, as current security plan specify.

These comments are no longer applicable, as the final rule does not include the requirements for readers and biometric verification. We will keep them in mind as we draft the NPRM to re-propose reader requirements.

Under proposed § 104.295(a)(2), at MARSEC Level 2, the owner or operator

of a U.S.-flagged cruise ship must ensure that each crewmember or employee seeking to board the vessel is required to enter his or her correct PIN prior to being allowed to board. Several commenters opposed this proposed provision. Another commenter stated that an effective and reliable biometric check is sufficient to verify identity at all MARSEC levels and did not agree that the additional measures of using PIN numbers is necessary. The commenter also noted that most individuals will not remember their PIN number, thus causing unforeseen problems and necessary back-up measures.

Many of these comments are no longer applicable, as the final rule does not include the requirements for readers and biometric verification. We will keep them in mind as we draft the NPRM to re-propose reader requirements.

The comment on the PIN number, however, is still relevant. The cards that will be issued initially and used as a visual identity badge will hold the biometric template on a dual interface chip. The Coast Guard intends to integrate the TWIC requirements into its existing facility and vessel annual MTSA compliance exams, as well as through unannounced security spot checks using hand-held readers. We will monitor issues with PINs during the Coast Guard checks, and if problems are identified, we will address them in the NPRM re-proposing the access control and reader requirements.

13. Additional Requirements—Cruise Ship Terminals

Proposed § 105.290 identified which activities must be done within the facility's secure area, to clarify the identifications to be checked before granting individuals entry to the facility, and to clarify that passengers must be escorted within secure and restricted areas of the facility. One commenter stated that this would require changes difficult to incorporate using an addendum and would require the full FSP to be rewritten. Also, the commenter noted that it is unclear in the proposed rule if ''passenger access areas'' are considered ''secure areas,'' since they would be inside the terminals access control area. The commenter recommended that the regulations be written to allow unescorted passenger access once passengers have passed through the passenger screening locations. One port authority recommended that cruise ship terminal operators be allowed to establish passenger access areas within the terminal, similar to cruise ships. The port authority recommended that this be a defined space within the access control area of the terminal that is open to passengers but does not require a TWIC for unescorted access.

Passenger access areas are not an option for facilities, therefore many of these comments are not applicable. The escorting requirements (as clarified elsewhere in this final rule) for those areas open to passengers within cruise ship facilities should be identical to what these facility owners/operators are already doing under the existing requirements found in §§ 105.275 and 105.290.

Another commenter argued that the regulations should allow cruise ship terminal operators to establish ''passenger access areas'' within the terminal, which would be a defined space within the access control area of the terminal that is open to passengers but does not require a TWIC for unescorted access.

We disagree with this comment. The passenger access area was designed for use by vessels only. Cruise ship terminals should be able to use the security measures implemented to meet the requirements in § 105.290 to meet the definition of ''escorting,'' therefore, we do not think it is necessary to extend the concept of passenger access areas to cruise ship terminals.

14. Additional Requirements—Certain Dangerous Cargo (CDC) Facilities

Section 105.295 proposed making a change to clarify that persons not holding TWICs must be escorted within CDC facilities. All of the commenters on this section stated that this change will be very burdensome for CDC facilities. Several commenters said that any additional necessary measures can be dealt with through the existing regulatory regime. One commenter said any changes should be made on the basis of a vulnerability assessment. Some commenters argued that each FSO should decide whether more stringent TWIC program requirements should be implemented. Another commenter said that any additional security measures should be left to the discretion of the owner, subject to oversight by the Coast Guard through the security plan review and approval process.

We disagree with these comments. Leaving the TWIC requirements in the hands of individual owners/operators, without first providing standards, would create serious security flaws in the TWIC system. However, we are sympathetic to the concerns raised over escorting. As explained elsewhere in this final rule, we did not intend to require a side-by-side escort at all times in all places. So long as the places to be accessed are not parts of any restricted area, the provisions used by the facility to satisfy their monitoring requirements will likely suffice to meet our escorting performance standard.

One commenter stated that since the HME credentialing requirements are equal to TWIC, and HME holders are allowed to transport CDCs, a TWIC holder would not pose a greater security risk than an HME holder. Therefore, the commenter argued that no additional restrictions need to be placed on CDC facilities regarding unescorted access by TWIC holders. The commenter also asked: ''In the case that a CDC facility is a separate location on port real estate (*e.g.*, truck yard close to marine terminals), and it does not fall under the security regulations of Part 105 because it is not a secure maritime facility, what will be the TWIC verification requirements at that CDC facility, if any?''

We agree; under the final rule, all HME holders will be required to obtain a TWIC if they need unescorted access to a MTSA regulated facility. Thus, since all HME holders on a CDC facility would also likely be TWIC holders, they would necessarily be treated the same as other TWIC holders. In answer to the commenter's question, TWIC requirements only apply to facilities regulated under 33 CFR part 105. Thus, if a facility is not regulated by part 105, either because it is not a maritime transportation facility or any other reason, then the TWIC provisions would not apply.

15. Additional Requirements—Barge Fleeting Facilities

Under proposed § 105.296, owners/operators of barge fleeting facilities would take responsibility for ensuring that anyone seeking unescorted access to barges within the fleeting facility hold a TWIC. All of the commenters stated that the additional regulations for conducting access control checks are not practical for this industry. Most of the commenters claimed that these requirements are unnecessary for small facilities and crews, such as those at barge fleeting facilities. One commenter requested that owners/operators of barge fleeting facilities take responsibility for ensuring that anyone seeking access has a TWIC. One commenter requested that the proposed rule accommodate facilities that have plans that allow for use of the card readers at the facility and not on every one of the vessels. One commenter said that the change in the rulemaking to require a TWIC for anybody to access a fleeted barge will effectively raise the competitive pricing for certain services, including

carpenters, electricians, contracted painters, fencing companies, etc.

Because this final rule does not include reader requirements, we will not, at this time, be responding to the comments that addressed reader usage and/or requirements. We will, however, keep them in mind for our future rulemaking to implement reader requirements.

This final rule does still require that barge fleeting facilities ''control access to the barges once tied to the fleeting area by implementing TWIC as described in § 105.255 of this part.'' Section 105.255 requires that TWIC be used a visual identity badge. We do not believe that this should impose an impracticable burden on the fleeting facilities, as they were already required to check identification of persons under the pre-existing MTSA regulations.

16. Miscellaneous

(a). Compliance of TWIC With International Labour Organization (ILO) 185

Five commenters request that TWIC also comply with ILO 185. Two of these also want TWIC to be accepted as an international seafarer identification document. Three of them remarked that the TWIC must be compatible with the ILO 185 in order for the document to be accepted in foreign ports of call. One commenter encouraged the Coast Guard and Transport Canada to enter into a bi-national agreement or MOU to recognize each nation's secured credentials for their respective seafarers (the TWIC for U.S. seafarers and the proposed Seafarer's Identity Document (SID) for Canadian seafarers). The commenter stated that mutual recognition of these documents as equivalent would streamline vessel and marine facility access control procedures and promote easier access to shore leave for seafarers as per the ISPS Code.

As the United States is not signatory to the ILO Seafarers' Identity Document Convention (Revised), 2003 (ILO–185), no plans have been made at this time to recognize the SID as a TWIC equivalent or produce an identification document complying with that particular standard.

(b). Notification of Employer Upon Employee Disqualification

Section 1572.9 (e) states that the applicant must certify the following statement in writing: ''I acknowledge that if the Transportation Security Administration determines that I pose a security threat, my employer, as listed on this application, may be notified.'' TSA specifically invited comments on this specific requirement. One commenter points out the contradictory requirements between § 1572.9 (e) and the preamble text. The preamble implies that TSA will notify the employer only of the employee's disqualification without releasing the reason for that disqualification. The commenter suggests that TSA include this wording in § 1572.9 (e) in order to protect the privacy of the employee. Another commenter wrote in to support the implementation of this provision.

Consistent with the requirements of the statute, TSA has no intention of providing information to an employer as to why an applicant is disqualified. However, if TSA has reliable information concerning an imminent threat posed by an applicant and providing limited threat information to an employer, facility or vessel operator, or COTP would minimize the risk to the facility, vessel, port, or individuals, TSA would provide such information. We have amended paragraph (e) to clarify this.

(c). Requirement of 46 U.S.C. 70105(b)(2)(D)

One commenter wants to know whether the provisions in 46 U.S.C. 70105(b)(2)(D) were inadvertently left out of the proposed rule or whether they are no longer necessary.

At this time, the Coast Guard has implemented the requirements in 46 U.S.C. 70105(b)(2)(C) and (D) as follows. In this rulemaking, the requirement for all Coast Guard credentialed merchant mariners to hold a TWIC includes all vessel pilots holding a Coast Guard-issued license. We have not extended this requirement to address the issue of non-Federal pilots (those few pilots holding only state commissions or credentials, who do not also hold a federally-issued merchant mariner credential). Also in this rulemaking, we included a requirement that all individuals seeking unescorted access to secure areas of 33 CFR subchapter H regulated vessels must have a TWIC. This population includes all individuals working aboard Subchapter H regulated towing vessels that push, pull or haul alongside tank vessels. We have not, however, extended this requirement to address the issue of all individuals working aboard non-Subchapter H regulated towing vessels that push, pull or haul alongside tank vessels (towing vessels less than or equal to eight meters in registered length and some larger towing vessels that meet the exemptions listed in 33 CFR 104.105). The requirements of 46 U.S.C. 70105(b)(2)(C) and (D) will be further addressed in a future notice and comment rulemaking.

(d). Location of the Current 46 CFR 10.113 in the Proposed Rule

One commenter is confused over where the current 46 CFR 10.113 will be published in the new regulation.

Section 10.113 is part of the TWIC regulation, and will publish at that cite. It did not exist prior to this final rule, and is a new addition to part 10 along with a similar addition to part 12 at § 12.02–11. When the Coast Guard's ''Consolidation of Merchant Mariner Qualification Credentials'' rulemaking is finalized, it will be removed due to redundancy.

(e). Lack of Contingency Plan in Case of Disasters

One commenter demanded that there be a contingency plan created for those times when a natural disaster or emergency arise. When this happens, there may be a need to hire new maritime workers in a very short period of time to avoid disruption to the shipping industry and what it provides to the community.

We appreciate the concern shown by the commenter, but are not prepared, at this time, to write such provisions into the regulation. We do note, however, that 33 subchapter H includes procedures for obtaining approval for both waivers and equivalent security measures (*see* §§ 101.130, 104.130, 105.130, 106.125). In the absence of any specific contingency plan provisions, we believe that the waiver and equivalent provisions may be used to hire new personnel and allow them to work in a short time span. Additionally, Coast Guard is able to respond quickly in these situations and suspend any provisions that might disrupt the shipping industry in the wake of a natural disaster.

(f). Duplication of Applications and Background Checks for Merchant Mariners

One commenter supports the MTSA and the need for transportation workers to have an identification credential. This commenter also said these requirements should not be applied to American merchant mariners because of the extensive application process that merchant mariners currently undergo to obtain a MMD. American merchant mariners should be exempt from obtaining a TWIC if they possess a valid MMD and, in the future, a valid MMC. The MMD or MMC should serve as a federal identification credential.

We sympathize with the commenter, however 46 U.S.C 70105(b)(2)(B) clearly requires that U.S. mariners issued an MMD (as well as any other Coast Guard-

issued credential) obtain a TWIC. We recognized the duplication of effort that this might impose upon mariners, and as a result the Coast Guard has proposed consolidating its various credentials, and is working with TSA to ensure that as much information as possible will be shared between the two agencies, allowing mariners to apply for all of their required credentials after one visit to a TWIC enrollment center. Additionally, the Coast Guard will not be duplicating the security threat assessment; rather we will accept the TWIC as proof that the individual has been vetted for identification and security purposes. The Coast Guard inquiry will be limited to determining questions of safety and suitability. For more information on this effort, please see the Coast Guard's SNPRM entitled ''Consolidation of Merchant Mariner Qualification Credentials'' published elsewhere in today's **Federal Register**.

(g). Comments on Merchant Mariners

One commenter stated the large uncredentialed portion of the workforce (*e.g.*, towing vessels) needs to be identified and stabilized with immediate, adequate, and recorded safety and vocational training.

We agree with the concept that all mariners, both credentialed and non-credentialed, benefit from safety and vocational training. Although this comment is outside the scope of the TWIC regulations, which focus on identification and security, we note that existing regulations found in Title 46 of the CFR are in place to address these important issues.

One commenter expressed the view that Congress should reorganize the government to remove the superintendence of the U.S. Merchant Marine from the Coast Guard and return it to the U.S. Department of Transportation as a new agency.

Congressional reorganization of the U.S. Government is outside the scope of this regulation.

Another commenter would like to know why the TWIC card cannot be ''smart'' enough to be used as the qualification and identification credential.

We sympathize with this comment, and examined the possibility of combining the qualifications onto the TWIC. Unfortunately, it is not feasible at this time to have all of the qualifications listed on the face of the TWIC. STCW requires foreign port state control officers to be able to read a mariner's qualification credentials, and not all countries have the ability to read smart cards. It is impractical, and for some may be impossible, to print all of the information that will appear on an MMC on the face of the TWIC. We will, however, continue to explore options to allow for further consolidation between the two programs.

(h). Union Involvement

One commenter supported the program but urged that the rights of workers be preserved. The commenter was concerned that the program would restrict the civil rights of an employee to engage in collective and union activities and stated that wording should be incorporated into the rule to afford these liberties to all workers.

Nothing in either the NPRM or this final rule should be construed as having an effect on an employee's rights to collectively form or join a union. It is unnecessary to add anything to the regulation stating this explicitly.

(i). Written Request of Releasable Material Upon Initial Determination of Disqualification

The NPRM states that if an applicant wishes to receive copies of the releasable material upon which the Initial Determination was based, he must serve TSA with a written request within 60 days after the date of service of the Initial Determination. One commenter wanted TSA to automatically provide this information to the employee at the time of the determination for several reasons: (1) Employees may be denied employment during this process and writing a request and processing that request will delay possible employment; (2) requiring employees to request this information unduly burdens them (paperwork burden issue); (3) many employees will not have legal counsel and may not realize that they must make a special request for the information; and (4) by law, all appellants would be entitled to review the releasable material, and furthermore, this information is directly relevant to their appeal.

TSA provides applicants who receive an Initial Determination of Threat Assessment with the reason they do not meet the security threat assessment standards in the initial determination itself. The package that is mailed to the applicant includes the reason for the initial determination and information on how the applicant can appeal the determination. Therefore, in most cases the applicant will not need to request additional releasable information from TSA. TSA has prepared the information explaining the appeal and waiver process with applicants who are not represented by counsel in mind. The documents clearly and simply state the steps an applicant must take if an appeal or waiver is warranted.

(j). Interpretation of TWIC Requirements

One commenter urged interpretations to be centralized at Coast Guard Headquarters and disseminated to Coast Guard field offices. The commenter argued that COTPs should not be able to make individual interpretations and determinations of the rules, and added that this problem arose during MTSA implementation and led to inconsistent and inaccurate interpretations.

As stated elsewhere in this final rule, the Coast Guard intends to implement a robust guidance document to its field offices, in order to avoid inconsistent application of the regulatory requirements.

(k). Reporting of Incidents That May Result in a Transportation Security Incident

33 CFR 101.305(a) states that activities that may result in a transportation security incident are required to be reported by the owner/operator to the National Response Center (NRC). One commenter wanted this language to be amended to require reports to NRC for incidents that may ''reasonably'' be expected to result in a TSI. The commenter wants some clarification here to alleviate unnecessary and nonproductive reporting requirements.

We disagree with the suggested amendment. The NPRM did not include a proposed revision to § 101.305(a), and no change has been included in the final rule. Experience over the past three years indicates that the language of this section is not leading to any ''unnecessary and nonproductive'' reports to the NRC.

(l). Suggested Corrections To 33 CFR 101.515

One commenter requested three corrections/clarifications to § 101.515. First, to conform the personal identification requirements in § 101.515(a) with those in § 125.09, as set forth in the Coast Guard Notice, ''Maritime Identification Credentials'' that was published on April 28, 2006 (71 FR 25066), to be consistent as to what identification is required to access a part 105 facility. Second, in § 101.515(b), the reference to § (b)(4) should be to (a)(4). Third, clarify in § 101.515(c) that the facility has the right to escort law enforcement personnel for safety reasons and that such access does not imply unescorted access.

We have looked at the three suggestions, but have determined that

none of them are appropriate for action at this time. The second suggestion is not necessary, as the correct cross-reference is already listed. The first suggestion is not appropriate as the referenced Notice was intended as an interim security measure until TWIC could be implemented. We expect that, with implementation of this final rule, the Coast Guard will be able to announce that it will no longer be enforcing the provisions of 33 CFR part 125, as described in the referenced Notice. Finally, the third suggestion is not appropriate, as there may be times when requiring an escort would delay law enforcement officials, which is explicitly not allowed in § 101.515.

(m). Accredited Providers

One commenter wants DHS to explain the qualifying process a contractor must pass in order to be accredited. Since this was not in the NPRM, the commenter would like the opportunity to comment on this information once it is published.

The enrollment provider must adhere to all applicable laws, such as the Privacy Act of 1974 (5 U.S.C. 552a) and the Federal Information Security Management Act (44 U.S.C. 3541 et seq., Title III of the E-Government Act of 2002, Pub. L. 107–347) to protect the personal information that is collected and stored in the TSA System. In addition, all TWIC contractor employees who will have access to DHS sensitive information must have favorably adjudicated background investigations commensurate with the sensitivity level of the position held. The contractor must also maintain an IT Security Program where DHS data is stored or processed on contractor-owned information systems.

(n). Preamble Items Not Inserted Into the Rule

Three commenters complained that there were many requirements/issues mentioned in the preamble that were not incorporated in the rule. However, no specific examples were given. In light of this fact, we are unable to respond to this comment.

(o). Additional Uses of the TWIC

Two commenters would like to know if the TWIC card can be used for other commercial purposes not related to security. Specifically, one commenter would like to know if the TWIC card could be used as a payroll spreadsheet.

TWIC is designed to be used a tool for securing access control; however it is possible that it might be used for other purposes as well. The rule does not prevent alternate uses of the credential, as long as they do not interfere with the applications and information related to the standards in this rule.

(p). Accepted Cargo in Light of TWIC

One commenter assessed their business practices as a result of the implementation of TWIC and decided they would no longer move CDCs. They also said they would be forced to abandon their VSPs. The commenter is worried that other companies may do the same and not move these types of commodities. This would greatly hinder our economy and is not the intended effect of TWIC.

TSA and the Coast Guard have removed the card reader requirements from this final rule to reduce the potential burden on small businesses until such time as we can review additional technology and complete additional evaluation of the costs and benefits of reader requirements. Further details of the economic impacts of this final rule, including the costs imposed and the benefits gained, are identified in the accompanying Final Assessment.

(q). Interim Rules vs. Final Rules

One commenter wants the Coast Guard to address whether or not this rule will be published as a final rule as it incorporates, modifies, or updates regulations from the past that have never been published as a final rule.

This comment relates to interim final rules that the Coast Guard previously issued affecting STCW, licensing, and MMD regulations. The TWIC and MMC projects are not intended to serve as the final rules for those projects. At the completion of both TWIC and MMC, the Coast Guard intends to publish additional final rules addressing the comments received on the aforementioned interim rules, and make any necessary changes.

(r). NVIC

One commenter extended an offer to work with the Coast Guard in the development of an NVIC.

We appreciate the offer. We anticipate issuing a NVIC very soon. We also anticipate contacting many of our industry partners and engaging in as much industry consultation as possible prior to issuing a second NPRM proposing reader requirements.

C. TSA Provisions

1. Technology Concerns

TSA received a substantial number of comments on technology issues, almost all of which expressed concern about the feasibility and appropriateness of the proposal for reading the TWIC cards and verifying information. Commenters asserted that the TSA Prototype did not test many parts of the proposed system, including the readers and communications with a central database. Some raised questions about a central database. They questioned whether the systems will be compatible with existing systems and stated that if not, the costs of replacement will be high. Commenters stated that TSA must test the proposed system before requiring its use to ensure that it will work in the marine environment and that backup systems will function as well. They assert that TSA does not appear to have addressed issues related to system failures and power outages. In terms of interconnectivity, they stated that the system has to be shown capable of processing 700,000 TWIC instantaneously. Commenters also noted that the system does not appear to have been tested with passenger vessels.

As stated in the previous discussion on Coast Guard's provisions, the final rule will not require the owner/operator implementation of access control infrastructure, including readers. A notice of proposed rulemaking will follow this final rule that will address the use of access control readers for the TWIC program. Also, we must note that the TWIC program will not require continual interface with a 'central database' as implied in the comments.

The implementation of the TWIC program is different from Prototype in that TSA will not be involved with the port facility infrastructures and other ''systems'' referenced in these comments. Prototype created a testing environment for the credential that included Physical Access Control System (PACS) readers. The testing environment for Prototype included various environments and transportation modes, including marine locations.

Commenters also questioned TSA's assumption that the cards have a 5-year life cycle; the South Carolina State Port Authority said its experience indicated that cards do not last more than a year, which if true, would increase costs.

TSA believes the 5-year longevity of the TWIC is reasonable. There is very little data to permit a comparison of the credential referenced by the South Carolina State Port Authority to the durability of the TWIC. TSA will monitor card failures as the program is implemented and make changes to the credentialing system as needed.

Many commenters questioned the appropriateness of the FIPS 201–1 standard referenced in the NPRM and contact technology. They noted that it was developed for granting access to federal facilities and computer systems, not for granting access to ports and

marine facilities. They stated that it is slower, prone to errors, less reliable, and more susceptible to sabotage than contactless readers and cards. They noted that it has not been implemented at federal facilities yet. One commenter noted that smart cards can be copied.

DHS agrees that there are a number of challenges including biometric authentication, privacy controls, and security features. Therefore, we have established the NMSAC working group to recommend a contactless biometric specification for the TWIC program. In addition, when developing the card reader requirements, we will consider all of these concerns and implement a system that effectively serves a commercial environment.

A number of commenters noted that communications between vessels and a central database were uncertain and that some vessels do not have computers. They also noted that for some port facilities, locating the reader to handle arriving vessels can be problematic. Vessel operators stated that it is not feasible to install readers on many vessels.

Neither the NPRM nor this final rule discusses communications with a ''central database.'' The final rule does not require owner/operator implementation of access control infrastructure, including readers. A subsequent notice of proposed rulemaking will follow that will address the use of access control readers for the TWIC program.

Commenters questioned whether the reader technology required is ''intrinsically safe,'' as is required for facilities handling some hazmat.

All of the reader requirements have been removed from this final rule, therefore we do not need to address this comment at this time. We will, however, keep it in mind for our subsequent rulemaking on reader requirements, and the Coast Guard and TSA will work to ensure that new equipment will satisfy the applicable safety requirements. Furthermore, there should be no material impact on logistics or productivity based on the change from the NPRM. Vessels, facilities, and OCS facilities subject to this final rule already check individuals' identification credentials. This rule, therefore, should not introduce new requirements that would impact logistics or productivity.

2. Enrollment Issues

(a). Documents To Verify Identity

Commenters have asked what information an applicant must provide in order to verify identity when applying for a TWIC. Some commenters recommended that TSA adopt the documents listed as acceptable for identification purposes on U.S. Citizenship and Immigration Services (USCIS) Form I–9 ''Employment Eligibility Verification'' as acceptable documents to verify identity for TWIC purposes. Other commenters asserted that the documents listed on the current Form I–9 are subject to fraud.

TSA notes that the Form I–9 and its associated requirements are to verify that an individual is authorized under applicable immigration laws to work in the United States. The types of documents acceptable for a person to demonstrate his or her authorization to work may not in all instances be acceptable for TSA to verify identity for purposes of granting a credential that will allow the person access to a secure facility. If TSA believes that there is a significant risk that a type of document offered to verify a person's identity may be susceptible to fraud, we will not include that type of document in our list of identity verification documents for TWIC. As discussed above, the list of documents for identity verification for TWIC will be posted on the TWIC Web site and will initially include the documents accepted by TSA for persons applying for HMEs. DHS and other agencies within the federal government, however, continue to review identity documents to ascertain that those which are most susceptible to forgery, fraud, or duplication are not used, among other things, to obtain government security credentials. TSA may change the list of acceptable documents in the future consistent with that review.

In addition, the REAL ID Act of 2005, Pub. L. 109–13, 119 Stat. 312 (May 11, 2005), requires implementation of minimum document requirements and issuance standards for State-issued driver's licenses intended for use for official federal purposes. The REAL ID Act requires that, effective May 11, 2008, a State that participates in REAL ID will adopt certain minimum standards to: (1) Authenticate documents produced by applicants to prove identity and lawful status in the U.S., (2) ensure the integrity of the information that appears on driver's licenses and identification cards, and (3) prevent tampering, counterfeiting or duplication of such cards for a fraudulent purpose. Under the REAL ID Act, DHS is authorized to promulgate regulations to determine whether States driver's license standards are in compliance with the REAL ID Act.

The standards for documents accepted for identity verification for TWIC purposes would necessarily be affected by any regulations issued to implement the REAL ID requirements and will likely result in a change in the accepted document list for TWIC once the REAL ID regulations are implemented.

For all mariners, the enrollment section now provides that merchant mariners must bring the documents that the Coast Guard requires in 46 CFR chapter I, subchapter B to verify citizenship and alien status. The proof of citizenship requirements are currently contained in 46 CFR 10.201 for licenses and CORs, and 12.02.13 for MMDs. The Coast Guard has proposed changing these citizenship requirements as discussed in the MMC SNPRM published elsewhere in today's **Federal Register**. We are requiring that mariners bring these documents to the TWIC enrollment center because they must be scanned into the enrollment record so that the Coast Guard has them available to review when reviewing the merchant mariner's record to renew or obtain an MMC.

(b). Where Enrollment Should Begin

A few commenters opposed implementation at the largest ports until the TWIC program has been tested in other areas first, to minimize adverse impacts on the national economy.

To mitigate security threats at the ports, TSA and the Coast Guard have developed a phased deployment for the TWIC program over an 18-month period. The deployment of TWIC enrollment centers will start with a small number of ports, and ports will be added over time across the TWIC population centers. The scheduling of the deployment by TSA and the Coast Guard is based on the Coast Guard's list of ports, ranked by size and criticality. The deployment schedule will be closely coordinated with the COTP in the various regions.

(c). Other Timing Issues

Some commenters thought that the schedule for implementing the program within 18 months is unrealistic. Others urged TSA to extend the implementation period to allow testing of biometric readers or to allow the Coast Guard to redesign its MMC to incorporate TWIC security features.

We believe the 18-month timetable for conducting the initial enrollment is realistic. If unforeseen events delay completion of the initial enrollment, we will adjust the schedule accordingly and notify all affected workers and owners/operators.

One commenter believed that the 5-year TWIC renewals should be staggered. Another commenter suggested that the TWIC should be

considered good, even if expired, based on receipt by TSA of a valid application or renewal. Others supported the 180-day window for renewals for mariners, but asked whether the same window would apply to non-mariners employed on covered vessels. The phased deployment of enrollment centers will result in staggered TWIC enrollment. The deployment approach will spread out the enrollment population to different geographic locations as the deployment progresses across the maritime sector. All affected workers should plan for renewals based on their respective schedules and locations. The NPRM specifically mentioned a 6-month period for mariners because they must complete the check for the mariner's license, which is time-consuming, following the threat assessment for TWIC.

Some officials from the State of Florida suggested that the Florida identification cards currently in use could be replaced with the TWICs as the Florida cards expire. State-issued identification cards will not be considered comparable to or interchangeable with TWIC, and therefore, the commenter's suggestion cannot be accepted.

Others asked how the scheduling system would interact with ports and port enrollment personnel, and urged TSA to give consideration to current workers to minimize disruption to commerce.

TSA and the Coast Guard will work closely with the COTPs and industry to ensure that all affected employers and workers know when enrollment will begin at the nearest location. Much of the enrollment information for TWIC, including some scheduling items, will be available on-line. We will publish Notices in the **Federal Register** as the enrollment schedule unfolds, so that all affected workers, including individuals who do not work regularly on a vessel or maritime facility, can determine when he or she should enroll and where to complete enrollment. All applicants are encouraged to pre-enroll on-line and schedule an appointment at the enrollment center to complete enrollment. In addition, owners/operators must give 60 days notice to employees to provide employees with adequate notice to schedule TWIC enrollment during the initial enrollment roll out.

(d). Additional Enrollment Centers

Many commenters believed there should be more enrollment centers at convenient locations to minimize travel and missed work. Some commenters were concerned that the number of centers in highly industrialized areas would not be adequate, and some named specific locations, such as Oakland, California and Paducah, Kentucky that need centers. Others thought there was a need for centers at ports in Alaska, such as Juneau; at out-of-the-way places such as Kodiak and Dutch Harbor, Alaska and the U.S. Territory of Guam; and at locations outside the United States for mariners on job assignments overseas. A commenter asked about renewals for individuals who are residing overseas and do not have ready access to an enrollment center.

We agree and, where applicable, we may use mobile enrollment centers for the phased enrollment approach. Based on commenters' input, Juneau and Guam have been added as ports that will be covered. The Port of Oakland is on the list. The area of Paducah is a 3–5 hour drive from centers located in St. Louis, Chattanooga, Nashville, Louisville and Memphis. These areas, as well as others mentioned in Alaska, will be reviewed during the implementation. The number and location of enrollment centers will balance the need for convenience with the cost of additional enrollment centers to avoid increasing the financial burden on applicants.

A few commenters noted that centers should be readily accessible to trucks and that centers should be kept open around-the-clock if that is where workers would go to reset their PIN. One commenter recommended that the procedures for changing a PIN be clarified. Several commenters suggested making use of existing facilities, such as offices of CBP, motor vehicle offices, law enforcement offices, post offices, Coast Guard RECs, sector command centers, and enrollment centers used for the Florida identification card. Commenters also encouraged the use of mobile centers that could visit ports and major facilities and could return more than once so that applicants could use the mobile center again.

We agree and, as stated above, will use mobile enrollment centers where appropriate for the phased-in enrollment approach. TSA also agrees that alternate hours of operation at enrollment centers will reduce the burden placed on TWIC users. Enrollment center hours of operation will balance the need for convenience with the cost of additional personnel for extended enrollment center hours, to avoid increasing the amount of the fee for the applicants. The contractor selected for enrollment may use existing facilities as it deems appropriate.

(e). Picking Up Credentials at an Alternate Center

Several commenters supported the idea of allowing applicants to pick up their credential at an alternate location. Some noted that mariners aboard a vessel may not be able to return readily to the same enrollment center.

TSA appreciates the commenter's suggestion, but under the current implementation plan, the system cannot be altered to accommodate retrieving credentials from an alternate location. TSA is working to include this kind of option in the future. For now, aside from the software design issue, TSA believes that without further analysis or testing, this process may unreasonably complicate the accountability and shipment of the cards from the production facility. If an applicant cannot retrieve the credential shortly after being notified that it is ready, the enrollment center will hold the card until the applicant returns to pick up the credential.

(f). Other Ways To Ease the Process

A few commenters believed that facilities and employers should be allowed to capture all applicant information, including the biometrics, and activate the credentials. Some suggested that the CSO could activate TWICs on behalf of the enrollment centers. One commenter suggested using a passport, which includes a specific check for identity by the issuing office, in place of the TWIC. Two commenters asked how enrollment will be accomplished for mariners abroad and whether U.S. consulates could play a role.

Based on industry comments received during Prototype, we do not require individual companies to act as sponsors and assist in the enrollment process. In addition, given the economies of scale, the cost of enrollment is lower by using one contractor. It is also important to maintain consistency in procedures across the country and ensure that only Trusted Agents who are adequately trained conduct enrollment and card activation.

We do not agree that a passport is a good alternative to TWIC. TWIC is a biometric credential with multiple security, identification, and authentication features; a passport does not contain many of these features, such as a biometric, which are required by MTSA.

The Coast Guard and TSA are examining methods to ensure that mariners stationed overseas will have adequate opportunities to enroll for TWIC. This process may involve

sending TWIC enrollment personnel overseas for a short time.

(g). Other Enrollment Center Issues

Commenters raised a number of miscellaneous suggestions and questions regarding enrollment. Commenters asked how TSA would address post-enrollment maintenance of the enrollment centers.

After the initial 18-month deployment of enrollment centers, TSA will determine the needs for post-enrollment maintenance of enrollment centers based on population, turnover, and other factors related to enrollment.

Commenters suggested that the criminal history portion of the threat assessment should be conducted in the applicant's State of residence because criminal codes vary from State to State.

TSA will leverage existing tools and personnel to conduct security threat assessments. All of the CHRCs will go through the FBI's Criminal Justice Information Service (CJIS), which is the national repository for criminal records. It is true that criminal codes may vary from State to State, but the adjudication staff and attorneys with criminal law expertise who support the adjudication process are experienced in examining State conviction records to determine if a disqualifying offense in § 1572.103 of the rule has occurred.

Commenters asked if there would be accommodations for individuals who cannot produce 10 fingerprints due to injury. For purposes of the CHRC, TSA will consult with the FBI and utilize the procedure it has in place for individuals who cannot produce 10 fingerprints.

Commenters asked if making an appointment for completing enrollment provides a defined time slot for service.

As planned, the appointment process will allow the applicants to schedule a time for enrollment in 15- to 30-minute increments at a specific enrollment center. The center will also accommodate walk-in enrollees, but will provide preference to those with appointments.

Commenters asked what method of payment would be acceptable for the TWIC fee. TSA will accept payment by credit card, cashier's check, or money order.

Commenters asked if enrollment centers will be located at ports, and if port personnel will be used to enroll applicants. Also, commenters asked if the enrollment staff will be trained.

TWIC enrollment centers will be staffed by TSA contractor personnel—Trusted Agents, not port personnel. All Trusted Agents will undergo a TSA security threat assessment and complete specialized training before conducting enrollment. TSA and the Coast Guard are currently considering that the enrollment centers will be within a five-mile radius of the center of the port population, where possible.

(h). Use of E-Mail for Notifications and Correspondence

A commenter asked if e-mail could be used in place of paper notifications and correspondence, and supported it as a means for cost savings. A commenter suggested allowing at least one alternate method for transmitting notifications and correspondence to applicants.

TWIC enrollees will be notified via e-mail or voice mail that their card is ready. TWIC applicants are asked to express a preference for one of these methods, and should select the one they are most likely to receive when sent. However, the notifications that TSA must provide following completion of the security threat assessment must be through the U.S. mail at this time. The infrastructure TSA currently uses for HME applicants involves the electronic production of letters that have been created to fit all potential threat assessment outcomes and transmission by U.S. mail. For the TWIC initial enrollment and the HME process, TSA cannot change this existing system, but will expand the system to accommodate e-mail notifications in the future.

(i). Lost, Damaged, or Stolen TWICs

Several commenters made reference to the need to report a lost or stolen TWIC immediately.

We agree with this comment. Lost, damaged, or stolen TWICs must be reported to TSA in accordance with § 1572.19(f). They should be reported to the TWIC Call Center, which will have a readily available number, as soon as the card is determined to be missing or damaged. After the applicant submits payment for the replacement TWIC card, the TWIC system will then automatically send a signal to the card production facility to trigger production of a replacement TWIC. TSA will add the lost/damaged/stolen credential to the list of revoked cards for which access to secure areas cannot be granted, to guard against the credential being used by someone other than the rightful holder. Additionally, reporting the card is a necessary step if the individual continues to require unescorted access.

One commenter stated that if an employee can demonstrate proof that the TWIC was stolen, the fee for a replacement TWIC should be waived.

We do not agree with the comment. It would be very difficult to establish with certainty that a TWIC was stolen before a replacement card is ordered, and developing standards for determining this to apply consistently at all enrollment centers would be equally difficult. In addition, for security reasons applicants must handle their credentials carefully so that they do not fall into the hands of others.

Several commenters expressed concern about the burden of requiring an applicant to appear at an enrollment center to report a lost or stolen card (as required in the Prototype). According to these commenters, the inconvenience of traveling to an enrollment center is exacerbated for mariners serving on vessels engaged in international voyages or on domestic voyages where the lack of proximity to an enrollment center would make it very difficult to mandate a personal appearance in a timely manner, especially considering the 24 by 7 watch schedules on commercial vessels. Several commenters requested that individuals be able to order a replacement TWIC via the Internet and then validate his or her biometrics and activate their TWIC during a single trip to an enrollment center.

We agree with these comments, and applicants should report lost, damaged or stolen credentials through the TWIC Call Center. TWIC holders will have to visit an enrollment center once to pick up and activate their replacement TWIC.

(j). Employer Responsibility To Notify Employees

A commenter remarked that such a requirement should not be for individual notice, but should be fulfilled by a posting. The commenter expressed concern that if an individual is not notified and subsequently is determined to pose a threat of terrorism or engaged in terrorist activity, the owner/operator might be liable for any damages that result.

We recognize that an owner/operator may have a variety of means at his or her disposal to communicate with employees. The requirement does not specify that the notice be given to each employee individually, but whatever mean is chosen (and there may be more than one) it should be aimed at reaching as many employees as possible.

One commenter requested confirmation that TSA had stored the fingerprints and biographical information of HME driver-applicants.

TSA stores the fingerprints and biographic information of HME applicants who are licensed in States that use TSA's agent to conduct enrollment.

3. Appeal and Waiver Issues

(a). Independent Review by Neutral Party

Several commenters urged TSA to modify the appeal and waiver processes to include an independent review by a neutral party, such as an ALJ. TSA issues an Initial Determination of Threat Assessment if the results of the threat assessment reveal a disqualifying standard. In the proposed rule, TSA stated that if legislation were enacted after publication of the proposed rule that requires TSA to adopt a program in which ALJs may be used to review cases in which TSA has denied a waiver request, TSA would amend the final rule to address such statutory mandates. 71 FR at 29421. On July 11, 2006, the Coast Guard and Maritime Transportation Act of 2006 was signed into law. H.R. 889, sec. 309, amending 46 U.S.C. 70105(c). The Act mandates the creation of a review process before an ALJ for individuals denied a waiver under the TWIC program. As a result, we have added procedures for the review by an ALJ for requests for waivers that are denied by TSA. These procedures are discussed in detail above in ''TSA Changes to the Proposed Rule.''

(b). Deadlines for Appeal and Waiver Processing

Several commenters argued that it would be difficult for individuals who travel for extended periods of time to comply with the 60-day deadline for appealing an adverse determination or requesting a waiver. Some of these commenters also noted that TSA's definition of ''date of service'' provides for constructive notice but does not ensure actual notice.

While the proposed rule allowed applicants to apply for an extension of the deadline, the request for extension had to be in writing and received by TSA within a reasonable time before the due date to be extended. TSA understands that if individuals have difficulty complying with the 60-day deadline for appealing an adverse decision or requesting a waiver, individuals may have equal difficulty requesting an extension within the timeframe allowed. For these reasons, TSA is amending its appeal and waiver procedures to allow requests for an extension even after the deadline for response has passed. Individuals will now be allowed to request an extension of the deadline after the deadline has passed by filing a motion describing the reasons why they were unable to comply with the timeline. We believe this amendment makes the appeal and waiver processes more reasonable for the group of workers affected.

(c). Facility Owner's Role in TWIC Appeal Process

One commenter said that the adjudication process for information developed during the security threat assessment is flawed and undermines the facility owner's responsibility because it does not involve the owner/operator of a facility. The commenter said that a facility owner might have information that could allow the appeal to be decided quickly. The commenter said that the proposed appeal process conflicts with the facility owner's ultimate responsibility for the security of his facilities and that it could create significant liability issues for facility owners. The commenter stated that the ultimate responsibility for determining an individual's eligibility for unescorted access to critical facilities must remain with the owner of that facility.

We disagree. The statutory language of 46 U.S.C. 70105 specifically prohibits sharing of information with an applicant's employer: ''Information obtained by the Attorney General or the Secretary under [sec. 105 of the MTSA] may not be made available to the public, including the individual's employer.'' It further provides that ''An individual's employer may only be informed of whether or not the individual has been issued the card under [sec. 70105 of the MTSA].'' An applicant may offer any information during an appeal or waiver process that he or she feels is relevant to the appeal or waiver process, including information from the employer on his or her behalf that the applicant feels will assist the adjudicators in making a decision.

The TWIC process does not create a liability issue for facility or vessel owner/operators. The ultimate responsibility for decisions as to who should be allowed entry, and under what conditions, remains with the owner/operator, so long as only TWIC holders are given unescorted access to secure areas. The TWIC system enhances his or her ability to make that decision by providing a highly reliable source of information regarding the known risks presented by an individual requiring access. The owner/operator can therefore make informed, confident choices in deciding whether or not to grant access and under what conditions. Furthermore, since the owner/operator is removed from the adjudication process, he or she is further protected from increased liability, since all challenges to the adjudication process will necessarily be directed at the federal government, not the owner/operator.

4. TSA Inspection

In proposed § 1572.41, TSA proposed to require owners/operators to permit TSA personnel to enter the secure areas of maritime facilities to evaluate, inspect, and test for compliance with the standards in part 1572. Many commenters recommended that the Coast Guard serve as the primary inspection authority. Several commenters expressed uncertainty regarding whether or the degree to which TSA's envisioned responsibility for auditing TWIC readers implies a role for TSA in compliance checking. Some commenters suggested that the Coast Guard be responsible for all vessel and facility inspections, particularly those that entail boarding vessels. One commenter recommended an MOA between the Coast Guard and TSA and one suggested that TSA access TWIC readers under the Coast Guard oversight. Another commenter recommended that TSA delete 49 CFR 1572.41, not implement a TSA inspection program, and revise 33 CFR 101.400 and 33 CFR 101.410 to add TWIC compliance to existing Coast Guard vessel and facility security inspection programs.

In accordance with our statutes, TSA and the Coast Guard have joint responsibility for development and oversight of the TWIC program. In addition, both agencies have statutory authority to inspect for compliance with their regulations and to conduct security assessments. The intent of adding specific language to the regulation regarding TSA's inspection authority is not to add additional burdens to the maritime industry but to clarify the existing authority and inform the public of their statutory obligations. To address the concerns expressed by the maritime industry and promote consistency, Coast Guard and TSA field guidance will be developed and include the need for coordination of TSA inspections or tests with the local Coast Guard COTP or his/her representative.

The inspection rule language has been moved to 49 CFR 1570.11, where it fits organizationally among the other general requirements. This section is similar to those in other modes of transportation and is necessary for TSA to exercise its oversight and enforcement responsibilities over trusted agents, the enrollment process, and the performance of the credential in a variety of circumstances.

5. Security Threat Assessment

(a). Comparability of Other Background Checks

We received many comments on proposed § 1572.5(d), in which TSA described a process to determine if security threat assessments or background checks completed by other governmental agencies can be deemed comparable to TSA's threat assessment for TWIC and HME, to minimize redundant assessments. Generally, commenters supported the concept of recognizing the background checks of other government agencies as comparable. Many argued that maritime workers may have a government ''Secret'' or ''Top Secret'' clearance and should not be required to undergo a TWIC threat assessment. Commenters from marine services companies, shipping and cruise lines, towing companies, and maritime organizations stated that background checks performed by employers should alleviate, in whole or part, security concerns and make TWIC unnecessary. Some said that company ID badge programs adequately address the security issues. Some commenters said the name checks currently being conducted on port workers created adequate safeguards. Two commenters said that they should have an opportunity to demonstrate to TSA that their credential program qualified as an alternate to TWIC and could be designated as ''TWIC equivalent.'' One commenter noted that TWIC would need to cover persons who are not normal seaport employees, such as Federal postal service employees. One commenter pointed out that background checks for unescorted access to the Secure Identification Display Areas of an airport are equivalent to or more stringent than the background checks under the proposed rule. One commenter noted that certain utility workers are already subject to more stringent security measures such as Nuclear Regulatory Commission requirements. One commenter requested that the final rule recognize the equivalency of the DOD National Industrial Security Program (DOD NIST) and the U.S. Office of Personnel Management's Trustworthy Determination review and clearance programs. Several commenters supported the fact that the proposed rules will accept a background check done for a hazardous materials endorsement or under CBP's FAST program.

TSA is pleased that this section is generally favored by the industry and we are not making any changes to the language proposed in the NPRM. TSA looks forward to working with other governmental agencies, many of which were cited in the comments, to issue comparability determinations where appropriate and eliminate duplicative checks. When a comparability decision is made, TSA will announce the decision through a Notice in the **Federal Register**. Fees will be reduced in the same manner described in this rulemaking for holders of HMEs.

We do not believe it would be advisable to offer comparability determinations to private companies for the checks they perform on the workforce. A check conducted by a private employer would not include the in-depth review of information related to terrorist activity and organizations to which TSA has access. These checks are critical to making the security determination that MTSA requires.

(b). Adjudication Time

The proposed rule preamble states that facility and vessel owners/operators must notify workers of their responsibility to enroll and that generally, owners/operators should give individuals 60-days notice to begin the process. Many commenters objected to this timeframe, referring to it as a ''60-day waiting period.'' One commenter urged TSA to dedicate additional resources to ensure the system has the capacity to handle the processing load. Other commenters believed that completing the threat assessment in less than 30 days is optimistic.

Many commenters urged that the time needed to complete an applicant's adjudication should be shortened. Several pointed out that during TWIC Prototype testing, the goal was 96 hours from enrollment to receipt of the card, and commenters favored this time period. A few commenters asked why the period could not be shortened to 24 or 48 hours, and others suggested 5 days, which is the standard in Florida. Some asked why we could not adopt the check completed for purchasing a firearm. A commenter noted that the in legislative history of MTSA, members of Congress expected that DHS would be able to issue a TWIC within 72 hours of receipt of an application. Others, including local port authorities and associations, did not give a specific timeframe but thought the processing time could and should be reduced. One commenter asked TSA to provide expedited or prioritized application service for merchant mariners who are often absent for many months at a time. One commenter recommended that TSA should consider issuing a temporary credential for those individuals who are attempting to rectify a problem that surfaced in the adjudication process, which might stem from a case of mistaken identity or inaccurate court records.

First, it is important to state that the TWIC program does not have a mandatory ''waiting period.'' Rather, TSA must adjudicate the security threat assessment of each applicant following enrollment and each case necessarily entails processing time. During the initial enrollment roll out, owners/operators must give ample notice to workers so that the threat assessment can be completed before the workers are required to present a TWIC to gain access to secure areas. As a general rule, security threat assessments and issuance of a TWIC should take no longer than 30 days. In fact, in our experience completing the threat assessments for hazmat drivers, threat assessments are typically completed in less than 10 days and we will strive to keep the threat assessment time period to 10 days for most applicants. However, processing time increases for an applicant with a criminal history or other disqualifying information, and is further lengthened if the applicant initiates an appeal or waiver.

Criminal records are not standard and are often incomplete or out-of-date. When a rap sheet is revealed following submission of an applicant's fingerprints, an adjudicator must review it carefully and often must make additional inquiries in other public court data sources or telephonically to determine if a disqualifying offense has occurred, and if it occurred within the prescribed time period. In addition, often the adjudicator must contact another agency that may be engaged in an investigation of the applicant, to determine the nature of the investigation, if it involves security-related issues, and whether going forward with an Initial Determination of Threat Assessment would inappropriately signal to the applicant that an investigation is ongoing. This process can be very lengthy, and one over which TSA generally has no control.

The time period needed to complete security threat assessments during the TWIC prototype is not a good model from which to make comparisons. TSA was not able to complete a CHRC during Prototype, because there was not a regulation in place requiring a fingerprint-based check. Therefore, the time needed to complete the threat assessment was much shorter than is typical. However, the Prototype provided data on enrollment and card production processing times. We will

process applications as they are received. After applications are received and sent for security threat assessment, individual processing times will vary based on the complexity of the adjudication.

The check done when an individual wishes to purchase a firearm differs from this check in many respects. The firearms check was created before the terrorist attack on September 11, and has a different purpose. The government reviews different records for that check, which do not require fingerprints to search. No credential is issued and no biometric is used to verify identity, so the system needed to support the program is less complex. The volume of applicants is lower than in TSA's security threat assessment programs and there is a different funding mechanism for the firearms search.

In response to the many comments on adjudication time, TSA is amending the information required or requested for enrollment to help expedite the adjudication process. Most of the new information is voluntary; however, providing it should help TSA complete adjudications more quickly. All of the amendments apply to HME and TWIC applicants. First, applicants who are U.S. citizens born abroad may provide their passport number and Department of State Consular Report of Birth Abroad. These documents expedite the adjudication process for applicants who are U.S. citizens born abroad. In addition, applicants who have previously completed a TSA threat assessment should provide the date of completion and the program for which it was completed. Also, applicants are asked to provide information if they hold a Federal security clearance, and include the date the clearance was granted and the agency for which the clearance was performed.

We considered issuing a temporary credential to individuals while their threat assessment is underway, but determined it would create more problems than it would solve. First, the fee to each applicant would increase dramatically. Second, an entirely new software system would have to be developed to implement a temporary credential. For a simple system, the temporary card would probably not contain a biometric or photograph, and so the opportunities for misuse would be great.

The Coast Guard has had experience with issuing temporary credentials. In the late 1970s, the Coast Guard issued temporary MMDs, in the form of a letter, to allow an applicant to sail for six months during which time the applicant could decide if he or she wanted to remain a seafarer. No commitment of employment was required. This soon became an administrative burden with the applicant obtaining a temporary MMD, sailing for awhile, and then finding better employment ashore. In addition, the Coast Guard had many records of issuance with no closure because the applicant never returned to apply for a final MMD.

A general review of background checks and security threat assessments across government and in the private sector will show that the TSA processing time for a TWIC or HME is far below the average time to complete an assessment. Many threat assessments take six months or longer. In any event, as described above in the discussion of the Coast Guard's provisions, we have included a provision in the final rule to provide relief to the owner/operator who absolutely must provide a new direct hire with access to secure areas before the individual's TWIC has been issued.

(c). Disqualifying Criminal Offenses

We received a variety of comments concerning disqualifying criminal offenses. We changed this section in response to comments, and the changes are discussed in detail above in the ''TSA Changes from the Proposed Rule.'' We received some very specific comments that we will address here.

Several commenters including port authorities recommended that cargo theft be added to the list of disqualifying crimes. Depending on the circumstances of the conviction, TSA believes that, in most cases, cargo theft will be covered by § 1572.103(b)(2)(iii) dishonesty, misrepresentation, or fraud.

Some commenters suggested that improper transportation of hazardous materials could encompass neglecting to placard a vehicle or to replace a placard that fell off. Also, commenters are concerned that a transportation security incident could include an environmental spill caused by negligence. TSA does not agree. Improper transportation of a hazardous material under 49 U.S.C. 5124 requires that the violation be knowingly, willfully, or recklessly committed. To be disqualified under the rule, the applicant must have received a felony conviction for improper transportation of hazardous materials or a transportation security incident. A felony conviction for these crimes reflects evidence of serious criminal culpability for conduct directly related to proper transportation procedures and port security. Both of these offenses are waiver eligible, and TSA may evaluate the applicant's conduct, intent, and other circumstances of the conviction as part of the waiver process.

Other commenters suggested that ''improper transportation of a hazardous material'' and ''unlawful possession of an explosive or explosive device'' should not permanently disqualify someone from obtaining a TWIC. TSA disagrees. These offenses have always been permanent disqualifiers. Because of the dangerous nature of explosives, a felony offense involving hazardous or explosive materials is highly relevant to a person's qualifications to transport hazardous material or to have unescorted access to secure areas. As TSA stated in the NPRM, after reviewing all of the individual circumstances, TSA has granted waivers for prior nonviolent felony convictions for illegal possession of an explosive.

Commenters noted that States define crimes differently and that these inconsistent standards may lead to unequal standards for denying individuals employment. Where necessary, TSA evaluates an applicant's State conviction by comparison to the State crime to the elements of the applicable federal crime. TSA may review the individual circumstances of a conviction, including the elements of the crime as defined by a particular State, if the crime is identified as one for which the applicant may be eligible for a waiver and the applicant seeks a waiver from disqualification.

TSA also received several comments suggesting that the language was unclear explaining how prior convictions and incarceration count to disqualify an applicant. TSA has revised the language to clarify that the crimes listed are disqualifying if either of the following is true: (1) The applicant's date of conviction is within seven years of the date of application; or (2) the applicant was incarcerated for that crime and was released from incarceration within five years of the date of application.

Requests for ''grandfathering,'' that is, waiving all or certain disqualifying crimes for individuals who have been working on a MTSA-regulated facility or vessel prior to the implementation date for TWIC, were carefully considered and evaluated at length during the public comment period and drafting of the final rule. We have decided not to include a grandfathering provision in order to ensure that all individuals who are issued a TWIC have successfully completed a published and consistent threat assessment process. Part of the purpose in implementing TWIC is finding out who is in our ports; we do not think it is appropriate to allow unescorted access to an individual who may pose a terrorism risk merely

because he or she has worked in the maritime environment for a period of time without incident. Doing so presents an unacceptable security risk. However, in order to address the industry comments and concerns over losing a significant population of the work force due to an inability to apply for and receive a TWIC due to the disqualifying crimes requirement, the list has been modified, and the waiver appeal process has been enhanced to include independent third party evaluation.

Several commenters opposed § 1572.107 which grants TSA the ability to disqualify individuals for crimes that are not included on its list, as this would be too subjective or applied inconsistently. Others commented that § 1572.107(b) violates due process as it allows TSA to disqualify an individual merely ''suspected'' of posing a security threat.

TSA believes that this is a necessary provision, as it is impossible to list every crime that may be indicative of a threat to security. Further, § 1572.107 is not often used to disqualify persons for criminal convictions, and part 1515 requires a different level of review than a determination based on the list of disqualifying crimes.

Paragraph 1572.103(d) describes how an arrest with no indication of a conviction, plea, sentence or other information indicative of a final disposition must be handled. TSA is changing the time allowed for an applicant to provide correct records from 30 days to 60 days. The individual must provide TSA, within 60 days after the date TSA notifies the individual, with written proof that the arrest did not result in a conviction of a disqualifying criminal offense. If TSA does not receive such proof within 60 days, TSA will notify the applicant that the he or she is disqualified from holding an HME or a TWIC.

One commenter stated that preventing individuals who are wanted or under indictment for listed felonies from obtaining a TWIC is inappropriate since only those that have been ''convicted'' can be denied a security card.

An individual under want or warrant is a fugitive from justice and therefore is not a suitable candidate for a TWIC. In addition, the return of an indictment for a disqualifying crime reflects a preliminary finding that there is, at a minimum, reasonable cause to believe that the individual committed the disqualifying crime. Therefore, TSA has determined that persons who are the subject of a pending indictment for one of the crimes on the list should be disqualified from obtaining TWICs. If the indictment is subsequently dismissed or, after trial, results in a finding of not guilty, the applicant is no longer disqualified and may reapply for a TWIC.

A commenter asked TSA to reconsider the practice of considering a guilty plea a conviction for purposes of this section. TSA applies federal law to determine whether the disposition of a criminal case constitutes a ''conviction.'' In *Dickerson* v. *New Banner Institute, Inc.,* 460 U.S. 103 (1983), the United States Supreme Court held that the defendant had been convicted for the purpose of a federal gun control statute even though under state law, the defendant's sentence had been deferred. The fact that the defendant pled guilty to the state offense was sufficient to constitute a conviction for the purposes of federal law. This case supports a broad interpretation of the term ''convicted,'' for purpose of this final rule.

(d). Waivers

It is important to highlight here that applicants who are disqualified due to a criminal conviction should make every effort to apply for a waiver, assuming the crime is waiver-eligible. TSA has developed the waiver program to ensure that individuals who have a criminal history but no longer pose a threat are not denied an HME or a TWIC. The process is informal, designed for applicants who are not represented by counsel and are not conversant with legal terms and process. We accept hand-written waiver applications, so the applicant does not need to have a computer.

In determining whether to grant a waiver request, we are most interested in the circumstances surrounding the conviction, the applicant's history since the conviction, the length of time the applicant has been out of prison if sentenced to incarceration, and references from employers, probation officers, parole officers, clergy and others who know the applicant and can attest to his or her responsibility and good character. TSA grants the majority of waiver applications received.

6. Immigration Status

Commenters asked the TSA to extend TWIC eligibility to non-resident aliens who are lawfully admitted into the U.S. under visas that permit them to work. Another commenter noted that maritime owners/operators bring in specialists from around the world to complete specialized tasks on vessels, and these workers should be able to apply for and obtain a TWIC. One commenter suggested that applicants should have to show U.S. residence for three years to apply for a TWIC. Several commenters noted that multinational corporations involved in the maritime industry have foreign employees and foreign business partners at U.S. facilities, and these individuals should not have to be escorted through secured facilities or vessels.

The NPRM was drafted to permit non-resident aliens in the U.S. with authorization to work here to apply for and obtain a TWIC, so the first two commenters' concerns are not warranted. TSA and the Coast Guard considered the relatively common employment of foreign specialists in certain maritime job categories when developing the immigration standards. This final rule allows holders of certain categories of nonimmigrant visas, with work authorization, to apply for a TWIC.

For purposes of this discussion, it is helpful to explain that there are two categories of U.S. visas: immigrant and nonimmigrant. As provided in the immigration laws, an immigrant is a foreign national who has been approved for lawful permanent residence in the United States. Immigrants enjoy unrestricted eligibility for employment authorization. Nonimmigrants, on the other hand, are foreign nationals who have permanent residence outside the United States and who are admitted to the United States on a temporary basis. Thus, immigrant visas are issued to qualified persons who intend to live permanently in the United States. Nonimmigrant visas are issued to qualified persons with permanent residence outside the United States, but who are authorized to be in the United States on a temporary basis, usually for tourism, business, study, or short or long-term work. Certain categories of lawful nonimmigrant visas or status allow for restricted employment authorization during the validity period of the visa or status.

An alien holding one of the following visa categories is eligible to apply for a TWIC: (1) H–1B Special Occupations; (2) H–1B1 Free Trade Agreement; (3) E–1 Treaty Trader; (4) E–2 Treaty Investor; (5) E–3 Australian in Specialty Occupation; (6) L–1 Intra Company Executive Transfer; (7) O–1 Extraordinary Ability; or (8) TN North American Free Trade Agreement. In selecting these visa categories, we focused on the professionals and specialized workers who are frequently employed in the maritime industry to work on vessels or other equipment unique to the maritime industry. In addition, we understand that many Canadian and Mexican citizens conduct business at ports in the United States,

and barring them from obtaining a TWIC would create an undue burden on commerce. Also, we are adding foreign nationals who are attending the U. S. Merchant Marine Academy to the group of aliens who may apply for a TWIC, if they are in proper visa status. Finally, we are including applicants from the Marshall Islands, Micronesia, and Palau as eligible to apply for a TWIC. The United States has entered into treaties with these countries and shares close ties with each of them. Citizens of the Marshall Islands, Micronesia, and Palau may reside in the United States indefinitely and have unrestricted authorization to work here.

In order to minimize the likelihood that an applicant with a short-term visa retains a 5-year TWIC, we are requiring the employer of any individual holding an eligible nonimmigrant visa to retrieve the TWIC from the employee when the visa expires, the employer terminates the employment, or the employee otherwise ceases to work for the employer. In addition, we require the employee to surrender the TWIC to the employer. If the employer terminates the employee, or the employee ceases working for the employer, the employer must notify TSA within five business days and provide the TWIC to TSA if possible.

7. Mental Incapacity

One commenter believes that the NPRM inaccurately treats illnesses like drug addiction as indicators of mental incapacity if commitment to an institution results. Another commenter representing port employers stated that some port workers have very low IQs and consequently have been assigned legal guardians, but work successfully in port facilities.

TSA agrees that such applicants can be determined to be qualified to hold a TWIC or HME. As discussed above in the ''TSA Changes to the Proposed Rule,'' TSA has no interest in limiting the ability of mentally-challenged or ill workers to obtain a TWIC. Therefore, TSA is changing the waiver process to permit applicants who have been committed to a mental health facility or declared mentally incapable of handling their affairs to apply for a waiver. TSA will decide these waiver requests on a case-by-case basis. TSA will not necessarily require documentation showing that the disqualifying malady or condition is no longer present. The documentation submitted to TSA in support of the waiver request will be very important in making the waiver determination, however, applicants and/or their representatives should carefully consider and include all available information TSA can use to determine if the applicant poses a security threat.

8. TWIC Expiration and Renewal Periods

Several commenters stated that the TWIC should remain valid for more than five years. Most noted the cost of renewal as the basis for supporting a longer period. Commenters who supported a longer period also commonly argued that the biometric information, fingerprints, generally do not change over long periods of time. One commenter suggested requiring new fingerprints and digital photos only when something occurs to alter them significantly.

The NPRM proposed that a TWIC expire five years after it was issued, at the end of the month in which it was issued. *See* § 1572.21(e). In a new section, § 1572.23, the final rule retains this provision, except that the expiration occurs on the day, rather than end of the month, five years from when it was issued. Therefore, if a TWIC is issued March 20, 2007, it expires at the end of the day March 19, 2012.

As the technology and program mature, we plan to date the expiration of a renewal TWIC five years from the date the previous TWIC expired, so that applicants who begin the renewal process early are not penalized by having the initial 5-year term end early. We would like to provide a 6-month time period for renewal to give full opportunity to individuals to reapply in time to get a new TWIC before the old one expires, even if they are mariners that are away for long periods of time. A six-month time period would also encourage TWIC holders to apply early for renewal so that TSA has sufficient time for vetting of the applicant and to adjudicate an appeal or waiver, if appropriate, before the TWIC expires. However, the TWIC system programming cannot develop that capability by the time enrollment begins.

9. Fees for TWIC

Some commenters stated that the federal government should pay for some or the entire program. The law states that TSA must collect user fees in order to fund all program operations. The federal government has a statutory obligation, therefore, to collect fees in order to pay for program expenses.

Section 520 of the 2004 DHS Appropriations Act requires TSA to collect reasonable fees for providing credentialing and background investigations in the field of transportation. Fees may be collected to pay for the costs of the following: (1) conducting or obtaining a CHRC; (2) reviewing available law enforcement databases, commercial databases, and records of other governmental and international agencies; (3) reviewing and adjudicating requests for waivers and appeals of TSA decisions; and (4) other costs related to performing the security threat assessment or the background records check, or providing the credential. 46 U.S.C. 469. Section 520 requires that any fee collected must be available only to pay for the costs incurred in providing services in connection with performing the security threat assessment or the background records check, or providing the credential. *Id.*

Some commenters said the fee was too high for dock, seasonal, and entry-level workers to pay because their income is low. TSA's fee authority, found in 6 U.S.C. 469, does not authorize TSA to adjust a fee based on the income of the applicant. Rather, Congress requires TSA to set a fee in amounts that are reasonably related to the costs of providing services.

Many commenters were concerned about an applicant having to pay multiple fees for background checks under other programs, such as HMEs. Another commenter stated that industry had already paid for modification and sustaining TSA's Screening Gateway in the HME program, and is essentially paying twice for the Screening Gateway under TWIC. TSA has addressed these concerns in the final rule by reducing the Card Production/Security Threat Assessment Segment for applicants who have already received a comparable threat assessment from DHS, including those for credentialed merchant mariners, HMEs, and FAST card holders.

Other commenters stated that the cost of card production and issuance fees should be separated from the information collection and threat assessment expenses. These commenters recommended that the applicant should only be required to pay for the services used: information collection and threat assessment. According to these commenters, TSA, not applicants, should fund the TSA infrastructure costs of card production, issuance and program management. Similarly, some commenters stated that only the persons who request an appeal or waiver should pay for the cost of adjudicating the security threat assessments and administering the appeal and waiver processes.

TSA agrees that costs should be segregated when possible, and has

worked to segregate costs depending on the service provided. For example, the TSA agent will collect a fee for the services provided by its trusted agents to enroll applicants, and the services to issue replacement cards. TSA will collect a fee for the background investigations only to the extent that it conducts new investigations. TSA will collect the FBI fee only from applicants that will be subject to a fingerprint-based CHRC, not from applicants who already have undergone a comparable CHRC. Congress granted TSA broad fee authority to collect a fee for ''providing the credential,'' and ''any other costs related to providing the credential or performing the background record checks.'' This includes the costs of card production, issuance, and program management. 6 U.S.C. 469(1), (3). Moreover, sec. 469(3) specifically requires TSA to collect a fee for reviewing and adjudicating requests for appeals and waivers.

Commenters were also concerned that fees collected would exceed the cost of implementing the system. However, under OMB guidance on user charges, TSA may charge fees only as sufficient to recover the full cost of providing the product and operating the program, and TSA has worked hard to estimate the costs of the TWIC program as accurately as possible. TSA's analyses of the appropriate costs that make up the fees in this rule include only the costs allowable by law and OMB guidance. OMB Circular A–25.

TWIC credentials will contain numerous complex technologies to make them secure and tamper-proof. The process for obtaining a TWIC is designed to ensure that the identity of each TWIC holder has been verified; that a threat assessment has been completed on that identity; and that each credential issued is positively linked to the rightful holder through the use of biometric technology. There are also significant operational costs associated with the TSA system and program support costs.

Pursuant to the Chief Financial Officers Act of 1990, TSA is required to review these fees no less than every two years. 31 U.S.C. 902(a)(8). Upon review, if it is found that the fees are either too high (*i.e.,* total fees exceed the total cost to provide the services) or too low (*i.e.,* total fees do not cover the total costs to provide the services), the fee will be adjusted. In addition, TSA may increase or decrease the fees described in this regulation for inflation following publication of the final rule. If TSA increases or decreases the fees for this reason, TSA will publish a Notice in the **Federal Register** notifying the public of the change.

Some commenters stated that the fee structure would require companies to pay for a TWIC card for a high volume of seasonal workers who may be gone before their cards are issued. Other commenters were concerned that a diverse range of ''casual'' laborers, such as plumbers, office cleaning crews, vehicle mechanics, utility repairmen, entertainers, and caterers, were omitted from the TWIC population used to calculate fees. These commenters stated that having to escort so many casual laborers into secure areas was impractical and a ''hidden cost.''

TSA derived its population estimate by determining which port workers would be most likely to need unescorted access to secure areas on a regular basis, and therefore, most likely to need a TWIC. TSA estimates that during initial rollout of the program, it will issue TWICs to approximately 770,000 workers who require unescorted access to secure areas of MTSA-regulated facilities. This approach is the product of survey and analysis work by TSA and Coast Guard personnel, using information provided by individual ports, public and private-sector data sources, interviews with sector subject-matter experts, and extrapolation from survey responses. An electrician who comes to the facility two times a year and other ''casual'' laborers may reasonably be escorted in the secure areas and thus may not need obtain a TWIC. Such workers were, therefore, not included in the population estimates.

The final rule requires vessels, facilities, and OCS facilities to escort individuals who do not hold TWICs and enter secure areas. The preamble now provides affected entities with more guidance on how to comply with this provision and the Coast Guard plans to issue a NVIC after publication of the final rule to provide even more clarity on acceptable escort standards. The language in the preamble states that within non-restricted secure areas, operators may simply monitor individuals without TWICs, while they must accompany individuals without TWICs in restricted areas. We anticipate that this guidance will provide operators with more understanding of the requirement, and perhaps more flexibility in implementing it.

Furthermore, we have included two new provisions that may reduce the economic burden of the requirement to provide escorts to individuals without TWICs. First, the final rule will allow facilities to submit to the Coast Guard amendments to their security plans in order to redefine secure areas. If facilities are able to redefine their secure areas in such a way as to focus on highly sensitive areas, and thereby limit the number of individuals who must enter them, then that may limit the costs associated with this requirement.

Second, the final rule allows passenger vessels and ferries to establish employee access areas that are neither public access areas nor secure areas. In these areas employees will be able to work unescorted without a TWIC. We believe that the final rule provides vessels, facilities, and OCS facilities with enough flexibility to accommodate the many of the temporary workers that are prevalent in the maritime industry.

Commenters inquired as to whether lifecycle costs such as yearly maintenance, card management systems, enrollment equipment and PKI certifications were included in the fee assessment. TSA's cost model does include the 5-year life cycle of the TWIC card and the associated costs of that life cycle.

One commenter stated that some applicants will not have credit cards or bank accounts, and that TSA should accept cash. TSA is concerned that the acceptance of cash would introduce problems concerning an audit trail and the potential for fraud. Therefore, the rule requires payment by cashier's check, credit card, or money order. If an applicant does not have a credit card or bank account, he or she can obtain a money order to pay the fee.

10. Implementing TWIC in Other Modes

The NPRM stated that TSA was considering requiring a TWIC in other modes of transportation, and invited comments. Several commenters supported this expansion. Such requests included coordination with other agencies to avoid negatively affecting mariners in later rule making processes, completion of a cost/benefit analysis to other transportation sectors, and insurance of the accurate, efficient, and reliable function of the TWIC in the maritime sector before extension to other transportation sectors. Several commenters urged that TWIC be used as a single biometric card and a single background check for the entire transportation sector. Commenters stated that duplicative credentials and clearances will still be needed because the proposed TWIC is limited to the maritime sector. A commenter noted that access control procedures may or may not differ across port facilities, airport, rail yards, and other facilities and suggested TSA invite comment on this matter.

Other commenters opposed expansion of the use of TWIC, citing burdens to industry, difficulty in translating to other transportation industries, and potential undermining of effective programs already in place. One commenter specifically opposed expansion of the TWIC program, noting that implementation problems and redundant regulatory requirements would significantly impact the propane industry. Some commenters noted that the TWIC program would create a competitive disadvantage for companies that chose to ship products via vessel versus companies with the same products that ship via air or ground. One commenter noted that current law requires a longer look-back frame for airport workers than the TWIC mandates, which would require a change in the law should TWIC be expanded to airport workers.

While TWIC will not supplant all other credentialing or background check requirements, we are working toward reducing the redundancy in background checks to the extent practicable. For instance, the threat assessment requirements for commercial drivers who hold an HME under 49 CFR part 1572 were originally designed to comply with MTSA and to be identical to the requirements for a TWIC. Under this rule, drivers who have completed TSA's security threat assessment for an HME are not be required to undergo a new threat assessment for TWIC until their HME threat assessment expires. These drivers will be required to provide a biometric for use on the TWIC and pay for enrollment services, credential costs, and appropriate program support costs. Similarly, individuals who have a FAST card issued by CBP will not be required to undergo another security threat assessment. *See* 49 CFR 1572.5(e). In addition, Canadian and Mexican drivers who haul hazardous materials and who are required to have a background check similar to that required for U.S. drivers may obtain a TWIC in order to meet that requirement. *See* 49 CFR 1572.201.

In the future TSA may conduct additional rulemaking to incorporate TWIC requirements into other modes of transportation.

D. Comments Related to Economic Issues

In order to evaluate the impact of the proposed rule, TSA and the Coast Guard published a Regulatory Impact Assessment (RIA) in May 2006 in support of the TWIC NPRM. The RIA was posted to the public docket and we received public comments that addressed many aspects of the assessment.

The majority of commenters discussed what they believe to be deficiencies or inaccuracies in our assessment. Several commenters, including individuals, businesses, government entities, and maritime trade associations, questioned some of the analytical assumptions we used to generate the cost estimates for the NPRM. In some instances, we agreed with comments, and used the information contained in them to refine the estimates for the RIA for the final rule. In other cases, we did not concur with comments on the RIA, and therefore did not use the assertions or claims in these comments to modify the assessment completed for the final rule. All comments on the original RIA were considered as part of this rulemaking effort, and have been summarized and responded to below.

1. Whether the Benefits of the Rule Justify the Costs

Although we received many comments to the public docket that supported the security goals of the rule, many individuals and businesses cited the potentially large economic impact of the rule and stated that the costs of the rulemaking action far outweigh the benefits. Individuals and firms from various segments of the maritime transportation industry, including the passenger vessel industry, the offshore marine service industry, the inland towing industry, and others, echoed this sentiment.

Many affected entities, especially operators on the inland waterways and small businesses, advanced a similar line of reasoning, arguing that there is not enough of a security risk to their operations to justify the measures we proposed.

We understand that the compliance costs of the rule represent a significant investment in security for many individuals and businesses. We do not dispute that the final rule may in fact impose considerable costs on many affected entities, including small businesses. As part of the economic analysis required by E.O. 12866, we have made every attempt to include all known costs in the RIA.

We also firmly believe, however, that the benefit of increased security to the U.S. maritime sector warrants the costs of the rule. The vessels, facilities, and OCS facilities affected by this rule represent some of the most important maritime and transportation infrastructure in the United States. Any vessel, facility or OCS facility that is regulated under 33 CFR subchapter H presents a risk of being a target of a transportation security incident, regardless of size and location, as determined by the interim final rule published by the Coast Guard in 2003 (July 1, 2003, 68 FR 39243).

In addition to claiming that the costs of the rule do not justify the benefits, some commenters stated that it is difficult to identify any solid benefits of the proposed rule. Some commenters alleged that the benefits outlined in the NPRM and the RIA were too vague. In particular, many, including the Office of Advocacy of the U.S. Small Business Administration (SBA Office of Advocacy or Advocacy) felt that the claim made by TSA and Coast Guard that the rule would streamline commerce was not well supported in the RIA, especially in light of the potentially high cost of the rule.

The primary benefit of the final rule is increased security to vessels, facilities, and OCS facilities covered under 33 CFR subchapter H. Under the final rule, individuals with unescorted access to secure areas of affected maritime establishments must undergo a security threat assessment and obtain a TWIC—a secure, biometric identification credential—that vessel and facility owners/operators will use to make access control decisions. The Coast Guard will conduct random spot checks of individuals' credentials.

The security threat assessments included in the rule will increase security at vessels and facilities by identifying individuals with dangerous criminal histories and potential ties to terrorism. And the secure, biometric credentials that will be issued under the final rule will allow owners/operators and the Coast Guard to verify that individuals with unescorted access to secure areas have in fact obtained a security threat assessment. Furthermore, even without card readers, TWIC provides greater reliability than existing systems because it presents a uniform appearance with embedded features on the face of the credential that make it difficult to forge or alter. We believe these benefits, in addition to the other security benefits described elsewhere, more than justify the costs of this rule.

In response to many comments received, we have revised the benefits section of the RIA for the final rule. Originally, the RIA for the NPRM stated that the proposal would enhance the flow of commerce by streamlining the number of credentials and access control procedures at U.S. seaports, eliminating the need for several port credentialing offices and systems, and creating an interoperable credential recognizable across the maritime

transportation environment. In their comments, many firms and individuals questioned the validity of these claims and provided specific examples that contradicted our assertions that the rule would facilitate certain business transactions.

We found these arguments compelling enough to remove the benefits to commerce that we originally included in the RIA that we published with the NPRM. After additional analysis, we agree with individuals and firms who questioned the benefits to commerce afforded by the rule. We firmly believe that the rule still has significant security benefits, a description of which still remains in the RIA.

A number of commenters, including Advocacy, referring to MTSA, stated that the law requires transportation security cards, not smart card readers, and that the benefits associated with these requirements do not justify the costs. Individuals and firms representing many sectors of the maritime transportation industry suggested that the requirements in the May 2006 proposal, including the card reader requirements, exceeded the statutory authority of TSA and the Coast Guard.

MTSA provides that DHS must issue biometric transportation security cards and ''prescribe regulations to prevent an individual from entering'' a secure area of a vessel or facility ''unless the individual holds a transportation security card'' or ''is accompanied by another individual who holds a transportation security card.'' 46 U.S.C. 70105(a). It is difficult to conceive of a cost-effective method to satisfy this section of MTSA that does not require an access control device to read the biometric credential. Even assuming an argument can be made successfully that MTSA does not authorize or require the use of biometric smart card readers, TSA and the Coast Guard have broad statutory authority to assess and regulate security in the national transportation system. We believe that the provisions originally proposed in the NPRM, including the card reader requirements, fall well within the statutory authority vested in both agencies by Congress.

As noted elsewhere, however, card reader requirements will be deferred until the readers have been piloted at 5 locations, and the public has had another opportunity to comment, as per the SAFE Port Act. As explained in other parts of this document, TSA and the Coast Guard will address technology requirements in a subsequent notice in the **Federal Register**.

2. Underestimated Compliance Costs

A number of commenters felt that several of the compliance costs estimated in the RIA for the NPRM were understated. Many firms, individuals, and trade associations that commented on compliance cost estimates expressed similar concerns. These concerns are summarized and responded to below.

(a). Biometric Smart Card Reader and Internet Connectivity Costs

Several commenters stated that the cost estimates in the RIA underestimated the expense of purchasing, installing, and maintaining biometric smart card readers. Industry commenters, including facility owners/operators who participated in the TWIC Phase III Prototype, asserted that the hourly wage rates used to develop installation costs were significantly understated, as were costs for maintaining and replacing sensitive electronic equipment that tends to degrade quickly in the marine environment. Other commenters, including the SBA Office of Advocacy, expressed concerns over the availability and reliability of card reader technology. Furthermore, many commenters declared that the cost of internet connectivity necessary to comply with the rule as proposed in the NPRM was excluded from the RIA.

Although we appreciate all comments on our analytical assumptions and cost estimates, these particular comments are no longer germane to this rulemaking because we have removed card reader requirements from the final rule. Therefore, we have also removed all card reader cost estimates from the RIA.

(b). Integration With Legacy Systems

One commenter asserted that the technical requirements included in the NPRM presented serious challenges for other affected government entities, which may have existing access control systems. This commenter claimed that TSA and the Coast Guard did not consider the integration of TWIC with other requirements, such as port authorities that operate mass transit systems or airports, in the cost estimates in the RIA. The commenter went on to state that these agencies may potentially be required to replace large legacy systems to incorporate the TWIC, and to maintain internal consistency and eliminate the expensive redundancy associated with credentialing their workers.

We realize that some affected establishments, both publicly and privately owned, have legacy systems that may need to be replaced or modified to incorporate the TWIC process. However, most of the costs would be associated with biometric readers. Since the requirement for biometric smart card readers has been removed from this final rule, these comments no longer pertain to this rulemaking. As stated earlier, TSA and the Coast Guard will address these issues at a later time. At that time, we will reevaluate estimates, including the cost for vessel and facility owners/operators to integrate new requirements with legacy systems.

(c). Administrative and Recordkeeping Costs

Several commenters stated that we greatly underestimated the administrative and recordkeeping burdens associated with the rule as proposed in the May 2006 NPRM. Citing what they perceived to be an onerous requirement to keep ongoing records of individuals accessing secure areas, many firms and individuals felt the estimates for the recordkeeping provision to be too low.

Moreover, many comments received from industry viewed the cost associated with developing the TWIC addenda to vessel and facility security plans as understated. In discussing the requirement that vessel and facility owners/operators must submit TWIC addenda to their security plans, many in industry opined that this task would involve several days of analysis that was not accounted for in the RIA for the NPRM.

The final rule will not require the recordkeeping measures or TWIC addenda as proposed in the NPRM. As a result, we have removed the estimated cost of these requirements from the RIA for the final rule. If we include these requirements in a future rulemaking, we will reevaluate the cost estimates included in the RIA for the NPRM.

(d). Opportunity Costs of Travel to Enrollment Centers

Many individuals and firms stated that the travel time estimate included in the RIA was too low, thereby underestimating the opportunity cost of traveling to and from TWIC enrollment centers. In their comments, individuals and firms provided time estimates for employees to travel to enrollment centers that ranged anywhere from three hours to several days.

Commenters who live in remote locations, such as Southeast Alaska, were particularly concerned that the estimate in the RIA did not accurately represent the cost to industry. In fact, some individuals and firms provided cost estimates for employee travel that

included estimated air fares, hotel expenses, and per diem allowances.

We partially agree with these comments. Given the uncertainty about the specific locations of enrollment centers and where affected individuals work and live, it was extremely difficult to estimate the amount of time it would take affected individuals to travel to and from TWIC enrollment centers. Furthermore, without information of this nature, we could not determine many costs associated with air or land travel (*i.e.*, air fares, cost of driving a privately owned vehicle, per diem allowances, etc.). For this reason, we excluded these costs from the RIA published with the NPRM, and conducted a different analysis to estimate costs.

To calculate the opportunity cost estimate included in the RIA for the NPRM, we assumed it would take an individual, on average, one and one half hours to complete enrollment. In attempting to calculate this time estimate, we divided the total time necessary to enroll into three components: (1) Travel time; (2) enrollment time; and (3) wait time.

To forecast total travel time, we used an estimate from the Department of Transportation on the average commute time for individuals traveling to work in privately owned vehicles, the primary means of transportation for commuters in the United States. Although clearly not a perfect measure of travel time to a TWIC enrollment center (due to lack of information outlined above), this estimate was 22.49 minutes for a one-way trip. In our total time estimate, we multiplied this number by a factor of two in order to account for travel both to and from an enrollment center.

In order to account for the time needed for workers to enroll at the TWIC enrollment centers, we used data collected by TSA during the TWIC Phase III Prototype on the average amount of time per enrollment. This time estimate was 10.35 minutes.

Finally, we added 30 minutes to the time estimates described above to provide for possible wait time at the enrollment center and other incidental events. These estimates, collectively, gave us an approximate total time estimate of 90 minutes, which we in turn used to calculate the opportunity costs of this requirement. We used this time estimate to calculate the opportunity cost of credential issuance, too.

We acknowledge that this time estimate may have led us to understate the opportunity costs of this provision. For example, individuals living in remote areas may have to travel long distances in order to enroll in the program. (TSA and the Coast Guard note, however, that there may be other individuals who live and work near enrollment centers and may complete the process in less than 90 minutes.)

Although we acknowledge that our calculation of opportunity costs in the NPRM may have underestimated the burden to some employees and employers, we have found it difficult to generate a more credible point estimate for this cost element. Some individual commenters provided us with anecdotal data on the amount of time it would take them to travel to TWIC enrollment centers, with estimates ranging from several hours to multiple days.

However, given the fact that the final enrollment center locations were not published before the end of the comment period, we do not know how these individuals calculated their estimates. Furthermore, we believe that many of the comments submitted on this matter came from individuals who reside the furthest from major seaports and cities. Most enrollment centers are likely to be located in major seaport areas, where the majority of the affected population is likely to reside. In fact, TSA and the Coast Guard revised the original list of seaport communities slated to have an enrollment center after receiving helpful comments from various segments of the maritime industry.

In response to these comments and all of the uncertainty surrounding this time estimate, we decided to develop a range for our cost estimate for the final rule. After reading the many comments on this matter and reviewing our previous assumptions, we concluded that this methodology provided the best way for us to address industry concerns without severely over-or understating the cost of the provision.

To develop the range for this cost estimate, we used the time estimate of one and a half hours included in the NPRM as the lower bound and a time estimate of eight hours as our upper bound. We based the upper bound time estimate on comments received from individuals in the maritime sector. As a primary estimate, we used four hours, or half a work day. We believe this time estimate allowed us to calculate a more accurate estimate of the opportunity costs to individuals and industry. More discussion of this range can be found in the RIA accompanying this final rule.

(e). Cost of Lost Labor Due to Wait Time

Many commenters expressed concern that the amount of time to process a TWIC application would impede their ability to hire new employees. The NPRM preamble stated that facility and vessel owners/operators must notify workers of their responsibility to enroll and that generally, owners/operators should give individuals 60-days notice to begin the process. Many commenters objected to this timeframe, referring to it as a ''60-day waiting period.'' One commenter urged TSA to dedicate additional resources to ensure the system has the capacity to handle the processing load. Other commenters believed that completing the threat assessment in less than 30 days is optimistic.

These commenters also asserted that their operations would suffer as a result of this ''60-day waiting period,'' and that this cost was excluded from RIA. Still others asserted that the ''waiting period'' would encourage vessel owners/operators to operate in violation of the rule or force them to operate with insufficient crew, putting both employers and employees in danger.

Moreover, several commenters, including the SBA Office of Advocacy, discussed how the ''60-day waiting period'' for a new employee to receive a TWIC puts them at a particular disadvantage for attracting seasonal labor. Enterprises operating passenger vessels were particularly concerned about this ''waiting period,'' as they asserted it would make it difficult to hire employees during the summer months, which tend to be the busiest for them.

TSA and the Coast Guard recognize that having employees wait to obtain a TWIC before they can start work is burdensome for some businesses. We understand that businesses in the maritime sector, including large seaport terminal operators, depend heavily on temporary or ''casual'' workforces that are hired with little notice. Furthermore, TSA and the Coast Guard are sensitive to the needs of employers who primarily utilize seasonal labor to staff their facilities and vessels.

It is important to note, however, that TSA and the TWIC program do not have a ''waiting period,'' mandatory or otherwise. Rather, TSA must adjudicate the security threat assessment of each applicant following enrollment and each case necessarily entails processing time. As a general rule, security threat assessments and issuance of a TWIC should take no longer than 30 days. In fact, in TSA's experience completing threat assessments for commercial drivers with hazardous materials endorsements, threat assessments are typically completed in less than 10 days. However, processing time increases for an applicant with a criminal history or other disqualifying

information, and is further lengthened if the applicant initiates an appeal or waiver.

Nevertheless, to address this concern we have included in the final rule a provision that should allow employees to begin work before they receive a TWIC. First, newly hired individuals employed by affected firms can work in secure areas, including restricted areas, as long as they are escorted by an individual with a TWIC. The escort policy was proposed in the NPRM and remains in the final rule. This provision should allow many firms to make minimal adjustments to their current hiring practices, and allow many new hires to start work immediately.

The final rule also creates ''employee access areas,'' allowing passenger vessel and ferry owners/operators more flexibility in implementing the requirements of the rule. An employee access area is a defined space within the access control area of a ferry or passenger vessel that is open to employees but not to passengers. It is not a secure area and does not require a TWIC for unescorted access. It may not include any areas defined as restricted areas in the vessel security plan. We believe that this new provision should reduce the regulatory burden on many small passenger vessels, especially those that primarily utilize and rely on seasonal labor. In fact, we believe this new policy will exclude the vast majority of seasonal employees from even needing a TWIC.

The final rule also includes a new provision that will allow a direct hire new employee to receive limited access for 30 consecutive days to secure areas, including restricted areas, of a vessel or facility provided that the new employee passes a TSA name-based check. If TSA does not act upon a TWIC application within those 30 days, the cognizant Coast Guard COTP may further extend a new hire's access to secure areas for another 30 days. This new policy, which TSA and the Coast Guard developed as a result of comments on the NPRM, is intended to give owners/operators the flexibility to quickly grant new employees who do not yet hold a TWIC access to secure areas. In order to ensure ample security for vessels and facilities, though, there are certain requirements that owners/operators and TWIC applicants must meet under the new provision. These requirements are described elsewhere in this document and in the regulatory text.

By clarifying commenters' misconceptions regarding the ''waiting period,'' and including the new policies described above, we believe the final rule allays several concerns expressed by firms and individuals in the maritime sector. For this reason, we did not include additional cost estimates to account for lost labor attributable to the ''waiting period'' for a TWIC.

(f). Appeals and Waivers

One industry association expressed concern about the cost estimate TSA and Coast Guard included in the RIA for the NPRM to account for applicants to file appeals or waivers with TSA. In arguing that the cost estimate was understated, this association stated that the proposed rule only includes the time preparing correspondence, but a more accurate assessment would include lost wages while the application is being reconsidered.

Although an individual may not receive unescorted access to secure areas while awaiting the determination of an appeal or waiver request, there is nothing in the final rule that would prohibit such an individual from working in a secure area while under the supervision of a credentialed escort. For this reason, we did not include a cost estimate for lost wages while considering this requirement. TSA and the Coast Guard did, however, include cost estimates for employers to provide employees and visitors with escorted access in the RIA.

(g). Cost To Provide Real Estate to Enrollment Providers

A commenter stated that TSA and Coast Guard assume that port facilities will provide space and utilities for enrollment centers, but that the RIA does not account for the direct and opportunity costs for these facilities.

The NPRM did not propose, and the final rule does not require, maritime facilities to supply enrollment providers with space to conduct operations. We therefore did not include this cost in the RIA.

(h). Escorting Costs

Several commenters stated that TSA and the Coast Guard underestimated the cost of complying with the escorting requirements that were proposed in the NRPM. Commenters felt that the escorting requirement would be too burdensome in terms of manpower—several stated that they would need to hire additional personnel—and additional operating costs. Many commenters stated that TSA and the Coast Guard did not take into consideration temporary workforces utilized by many maritime facilities and vessels, which would require escorts when developing this provision. Furthermore, many of these commenters interpreted the definition to require the physical presence of one escort for each individual without a TWIC at all times while in a secure area. Some of these commenters provided examples of situations where the requirement would be too burdensome. For example, one port authority stated that it typically has over 100 temporary workers on site that would require escorts.

We agree with these comments, in part, in regard to the statement that the cost estimates for affected entities to comply with this provision of the rule may have been understated in the RIA. However, we also believe that many affected firms and individuals have misconceptions about what the provision requires of vessels, facilities, and OCS facilities.

As proposed in the NPRM, the escorting requirement is a performance standard rather than a strict definition. After analyzing many comments, we believe some affected individuals and firms may have misinterpreted our intent with respect to this requirement. Therefore, we recognize that some guidance is needed. As discussed elsewhere in this final rule, we expect that, when in an area defined as a restricted area in a vessel or facility security plan, escorting will mean a live, physical escort. Whether it must be a one-to-one escort, or whether there can be one escort for multiple persons, will depend on the specifics of each vessel and/or facility. The Coast Guard will provide additional guidance on what these specifics might be in a NVIC. Within non-restricted secure areas, however, such physical escorting is not required, as long as the method of surveillance or monitoring is sufficient to allow for a quick response should an individual ''under escort'' be observed in an area where he or she has not been authorized to go or is engaging in activities other than those for which escorted access was granted.

With this understanding of the requirement in mind, we estimated in the NPRM that maritime facilities would need 240 additional labor hours on an annual basis in order to comply with this requirement. We did not report compliance costs for this requirement for vessels or OCS facilities and in retrospect, we believe this was an oversight.

In attempting to estimate compliance costs for the NPRM and the final rule, we found that the uncertainty surrounding how affected entities would implement this requirement made it difficult for us to develop accurate compliance cost estimates. Further, the final rule contains several provisions aimed at providing affected entities with regulatory flexibility,

which increases the level of uncertainty in our analysis.

For example, facilities may now submit amendments to their security plans in order to redefine their secure areas to those portions of their facility involved in maritime transportation or at risk of a transportation security incident. By decreasing the size of their secure areas, firms could limit the number of individuals who need a TWIC, and also decrease their escorting compliance costs.

Also, the final rule creates ''employee access areas'' that, as described above, are defined spaces within the access control areas of ferries or passenger vessels that are open to employees but not to passengers. These areas are, by definition, not secure areas and do not require a TWIC for unescorted access. The areas may not include any areas defined as restricted areas in the vessel security plan. This provision, we believe, could provide flexibility to vessels that would otherwise incur high costs to provide employees with escorts.

The final rule also allows owners/operators to provide new employees with limited access to secure areas for 30 consecutive calendar days (and may be extended an additional 30 days at the discretion of the cognizant Coast Guard COTP). Although this provision, in an effort to balance security with commerce, contains certain restrictions, we believe it also may help to limit escorting costs associated with physical accompaniment within restricted areas.

Finally, the provision for passenger access areas, which we originally proposed in the NPRM for passenger vessels, remains in the final rule and provides flexibility for owners/operators offering marine services to passengers. MTSA requires that no one be given unescorted access to secure areas unless they carry a TWIC. To ensure that passenger vessels do not have to require passengers to obtain TWICs or escort passengers at all times while on the vessel, the rule creates the ''passenger access area,'' allowing vessel owners/operators to carve out areas within the secure areas aboard their vessels where passengers are free to move about unescorted. This should also reduce escorting costs.

We believe that the provisions listed above should give owners/operators flexibility to follow the requirements of the rule, including the escorting requirements, without causing undue economic harm. In particular, we believe the rule now allows for regulatory flexibility when it comes to ensuring that facilities and vessels can continue to utilize temporary workforces without incurring high compliance costs.

Even though the rule now provides flexibility for owners/operators with respect to the escorting requirement, we have decided to increase our initial compliance cost estimates for this provision. We concluded that our initial estimates, in light of the helpful comments we received during the public comment period for the NPRM, most likely understated the cost of complying with this provision. The new estimate for the final rule will include compliance costs for vessels and OCS facilities, which we excluded in the NPRM. We have also concluded that a range of compliance cost estimates for this requirement would be more appropriate than a single point estimate, given the several ways in which owners/operators can now minimize their risk of incurring high escorting costs. The adjusted cost estimates are described in more detail in the RIA.

(i). Costs for Redundant Credentials

One employer stated that it already paid fees for employees to obtain port identification credentials. In addition to the fees, the employer commented that it incurred costs while employees took time off from work to obtain the credentials. This commenter asserted that employees will continue to be issued their respective port identification credentials. For example, employees will have to register with all the ports they frequent and pay local administrative costs to be placed on additional port or terminal rosters. This commenter implied that the cost of this redundant process was not accounted for in the RIA.

We realize that the cost of compliance from port to port will vary and that there may be local requirements for personnel to obtain identification credentials other than the TWIC. Private firms are free to create their own credentialing systems and it is beyond the authority of TSA or the Coast Guard to preclude a private company from issuing its own identification card.

However, the TWIC is a unique credential in so far that it provides owners/operators with a means to confidently assess the risk posed by an individual seeking unescorted access to a secure area of a vessel or facility. The distinctive security threat assessment completed by TSA on each TWIC applicant is not replicated by other public sector (*e.g.*, port authorities) or private sector credential providers. Accordingly, we do not believe that the TWIC is a redundant credential. In the RIA for the final rule we have accounted for all costs associated with producing and issuing the TWIC. Additionally, we do not agree that all currently existing port credentials will continue to be required once TWICs are issued and being utilized. We believe that some port authorities and other providers of identifications will eliminate separate credentialing requirements and rely instead upon the TWIC and the security threat assessment done by TSA.

(j). Costs to Shipbuilders

An association of shipbuilders asserted that the NPRM represents a redundant regulatory burden for shipyards. The association noted that many shipyards already comply with DOD security plan regulations, and that these standards, in many instances, provide greater security than the provisions proposed in the NPRM. In its comment to the public docket, the association suggested that such shipyards should be exempt from the requirements of the rule.

Along with other individual shipbuilding companies, the association also expressed concern with several of the assumptions used in the cost estimates for the NPRM. In particular, the association articulated its concern about the population estimate—it stated that a conservative estimate for the number of affected individuals employed at the six shipyards that are members of this particular organization, which include vendors, shipyard employees, and contractors, would exceed 200,000.

In addition, this organization averred that the estimates for most direct and indirect costs of the rule were severely understated. Many of these costs would be pushed onto U.S. taxpayers in the form of higher costs for ships purchased by the U.S. government, including the Coast Guard.

TSA and the Coast Guard are aware that many shipyards must comply with Department of Defense security regulations that govern identification credentials, facility security plans, and other provisions intended to augment U.S. maritime security. However, we do not believe that this rule will affect all shipyards; therefore, we disagree that we have significantly underestimated the shipyard population.

If a shipyard falls within the applicability of the MTSA regulations and is required to submit a facility security plan under 46 U.S.C. 70105, then any individual requiring unescorted access to a secure area is required to have a TWIC. We note, however, that shipyards are specifically exempt from 33 CFR part 105 applicability (*see* 33 CFR 105.110(c)), and would only fall under the facility

security regulations if the shipyard is subject to a separate applicability requirement, such as being regulated under 33 CFR part 154, the oil/hazmat in bulk requirements.

For the reasons stated above, we do not believe that all shipyards will fall under the requirements of the final rule, and therefore disagree that the number of shipyard employees that would need to obtain a TWIC would exceed 200,000. In our population estimate, we calculated that 55,000 individuals working in this industry would initially be affected by the rule, and we continue to believe this is an accurate estimate. Moreover, outside of our shipyard population estimate, we included estimates for contractors/others and site management/administration, two population segments that most likely have some presence in U.S. shipyards.

With respect to understated or omitted cost estimates, TSA and the Coast Guard have made a number of changes to the final rule that should allay some of the concerns expressed by the shipbuilding industry and other shipbuilders. In the RIA for the final rule, we have also adjusted some assumptions and cost estimates to reflect comments received from various sectors of the maritime industry. We have discussed these changes elsewhere in this section and in the RIA. As for increased costs to the U.S. government, we did not have enough information to make a judgment on this assertion.

(k). Rule Will Exacerbate Industry Labor Shortages

Many commenters mentioned that the labor force in the maritime industry is strained, and that the requirements of the final rule, including the security threat assessment standards and user fees, will only intensify the problems associated with a tight labor market. Many firms, concerned about the fee requirements and the security threat assessment standards, believed the rule will give many prospective employees a disincentive to work in the maritime industry. Several commenters also noted that existing employees may not apply for a TWIC due to the security threat assessment.

TSA and the Coast Guard understand that many segments of the maritime transportation sector are experiencing labor shortages. We also believe, however, that the lack of capable employees in many areas of the maritime industry is a function of factors outside the control of TSA or the Coast Guard.

Nevertheless, the final rule may have an impact on some labor markets. TSA and the Coast Guard concur that some individuals—due to the user fees, security threat assessment standards, or other factors—may no longer seek employment at businesses regulated by 33 CFR subchapter H. Short of speculating on this effect, however, we have no way of quantifying the impact to labor markets. In our research, we found no data or information that would have allowed us to measure the potential effects on the labor market of the rule, and commenters did not provide specific data with respect to this issue.

To the extent possible, though, we have drafted the final rule so that it would not adversely affect the supply of labor in the maritime transportation sector. We needed to balance this effort, of course, with the primary security objectives of the rule. The following amendments to the final rule, we believe, will help ease the effect of the regulation on the labor supply:

- Expanding the group of non-U.S. citizens who meet the immigration standards to include foreign nationals who are students at the U.S. Merchant Marine Academy or comparable State school; commercial drivers licensed in Canada or Mexico transporting hazardous materials into and within the U.S.; citizens of Canada or Mexico who are in the United States to conduct business under a NAFTA visa; and a variety of professionals and specialists who work in the U.S. maritime industry on restricted visas;
- Enlarging the response time for applicants to appeal an adverse determination, correct an open criminal disposition, or apply for a waiver from 30 or 45 days to 60 days;
- Expanding the group of applicants eligible to apply for a waiver after being disqualified because of mental incapacity;
- Including a provision for passenger access areas, as proposed in the NPRM;
- Adding a provision for employee access areas on passenger vessels and ferries;
- Allowing facilities to submit amendments to their security plans in order to redefine their secure areas; and
- Allowing new employees who have applied for a TWIC to receive limited access to secure areas for 30 consecutive calendar days (which may be extended an additional 30 days by the cognizant Coast Guard COTP if TSA has not acted upon the TWIC application in the initial 30-day period).

TSA and the Coast Guard have concluded that these provisions both achieve greater security in the maritime sector and mitigate potential adverse impacts to affected labor markets.

(l). Rule Will Increase Congestion and Delays at Maritime Facilities

Some commenters stated that the rule would increase delays and congestion at port terminal access points across the country, thereby increasing logistics and shipping costs. One association representing large domestic and international carriers, as well as stevedores on the West Coast, stated that it was concerned about cargo backups, congestion fines, and late starts that may result from faulty access control system hardware or software that may not withstand the rigors of the marine environment. These costs, the association noted, were excluded from the RIA for the NPRM.

We agree with these commenters that costs associated with congestion, delay, and late starts were not included in the RIA for the NPRM. TSA and the Coast Guard understand that anything that impedes the efficient delivery of waterborne cargo may impose a cost on affected entities and the U.S. economy. At the time of publication of the NPRM, we did not have any data that would have allowed us to estimate the proposed rule's impact on the logistics of waterborne and inland cargo movement.

As stated above, the final rule will not require vessels, facilities, and OCS facilities to use the TWIC in concert with biometric smart card readers at access points. The rule instead mandates that all persons seeking unescorted access to secure areas must present their TWIC for inspection before being granted unescorted access.

Individuals seeking unescorted access to vessels, facilities, and OCS facilities are currently required to show a form of identification as stipulated by 33 CFR subchapter H. Since the final rule requirement simply replaces the current acceptable identification with a TWIC, the rule should not cause any significant delays at facilities or other locations in the maritime transportation sector. Random checks of credentials conducted by the Coast Guard are not expected to cause delays. Furthermore, this change to the proposed rule should not require facilities to establish covered pull-over lanes for trucks seeking to enter their secure areas, as suggested by some commenters. For these reasons, we have excluded these costs from the RIA for the final rule.

(m). Decreased Competitiveness of Regulated Firms

Some firms that deal in international markets stated that they would be at a unique disadvantage under the rule while attempting to compete with

foreign businesses. This theme was presented by international ferries in the Pacific Northwest and repeated by offshore supply vessels operating in the Gulf of Mexico.

Firms that deal solely domestically also commented that the rule would hamper their efforts to compete in markets occupied by businesses not regulated by 33 CFR Subchapter H. Both groups of commenters asserted that TSA and the Coast Guard failed to account for this decrease in competitiveness and corresponding costs in the RIA.

In some markets, the cost of compliance with the final rule may raise some firms' operating expenses and therefore impede their ability to successfully compete with foreign or domestic competitors not subject to the rule. We believe, as previously stated, that the costs are justified by the increased level of security provided by rule. Without data or other information about this potential effect, we could not quantitatively measure it.

However, we also believe that the final rule includes provisions, especially for passenger vessels and ferries, which should allay commenters' concerns about compliance costs and competitiveness. As stated above, new provisions for passenger access areas, employee access areas, and new employees may decrease compliance costs. Also, for certain facilities, the ability to redefine secure areas may decrease the costs of complying with the rule.

International ferries stated that they are suffering from regulatory exhaustion and cannot pass regulatory compliance costs onto their customers.

As stated above, we understand that this rule may impose significant impacts on ferry operators. We have attempted to estimate these impacts to the best of our ability. The final rule contains new provisions that should provide passenger vessels, including ferries, with some flexibility in complying with the rule. This regulatory flexibility may also decrease compliance costs for affected firms.

The provisions for employee and passenger access areas, as described above, were designed to help passenger vessels, including ferries. Also, the provision that allows new employees to receive limited access to secure areas for 30 consecutive days should also decrease concerns about adverse impacts on firms that use seasonal employees.

Commenters from the passenger vessel industry stated that costs would decrease their competitiveness because they are competing against non-marine companies that would not incur regulatory costs. This industry also noted its reliance on seasonal hires may put it at a unique disadvantage when trying to attract labor.

TSA and the Coast Guard recognize that firms in the passenger vessel industry will incur costs under the final rule that some of their competitors may not incur, and that this may decrease their competitiveness. To the best of our ability, we have attempted to accurately estimate compliance costs to all affected entities. However, lack of data on unique markets and firms has made it impossible for us to predict any effects on competitiveness.

We also realize that this final rule presents unique challenges for industries that rely predominately on seasonal workers. As discussed in this section, TSA and Coast Guard have included provisions in the final rule to give these industries flexibility in complying with the rule. For example, the final rule allows ferries and passenger vessels to designate employee and passenger access areas. An employee access area is a defined space within the access control area of a ferry or passenger vessel that is open only to employees whose employment is solely related to passenger service and/or entertainment. It is not a secure area and does not require a TWIC for unescorted access. Passenger access areas were created to ensure that passenger vessels do not have to require passengers to obtain TWICs or escort passengers at all times while on the vessel.

Furthermore, affected entities will now be allowed to give new employees limited access to secure areas for 30 consecutive days, provided the employees have applied for a TWIC and meet the provision outlined in more detail in the regulatory text. This may be extended an additional 30 days by the cognizant Coast Guard COTP if TSA does not act upon the individual's TWIC application within the original 30 days. We believe these provisions will help employers that utilize seasonal employees.

(n). Increased Prices for Consumer and Producer Goods and Service

Some commenters asserted that the rule would increase the price of goods moved by firms in the maritime transportation sector, and that this cost was excluded from the RIA.

Although we think this effect is highly unlikely given the amount of competition in the transportation marketplace, we agree that it could happen in some markets because transportation costs can affect wholesale and retail prices. However, many other factors, such as consumer demand, also affect prices. Commenters did not provide detailed data on specific goods and markets. Due to lack of data on individual markets, we did not attempt to quantify this effect in the RIA for the final rule.

Another commenter stated that the costs of the rule will extend to security personnel and other contractors, who will pass this cost on to their customers, and that this cost was excluded from the RIA.

As stated above, we realize that the cost of compliance may be passed on to customers in some markets. However, prices for goods and services are determined by myriad factors, including factors other than firms' operating costs.

Regulated vessels, facilities and OCS facilities operate in a number of markets and we could not determine which firms would be able to pass compliance costs on to customers. We therefore did not attempt to quantify this potential effect in the RIA.

(o). Additional Recruiting Costs

Many employers commented that the rule would increase their hiring costs and that this burden was excluded from the RIA. For example, some firms noted that they would need to pay application fees for prospective employees and that they might have to offer more incentives to attract new staff members.

TSA and Coast Guard agree that employers in markets where the supply of labor is very tight may incur some additional hiring costs. For example, some employers may find that they will have to pay the TWIC user fees for new employees. In other industries, however, this may not be true. Due to this uncertainty, we did not quantify this potential burden to employers in the RIA.

(p). Decreased Productivity

Some commenters asserted that the rule would decrease employee and employer productivity and that this cost was not included in the cost estimates in the RIA. Specifically, one commenter stated that the rule would impose a negative, one time productivity shock on the maritime industry while firms and individuals adjust to new access control procedures and other requirements.

Although we concur that some firms could suffer decreased productivity under the rule, we encountered difficulty when trying to gauge this potential effect of the rule on affected vessels, facilities and OCS facilities. Even though some commenters claimed productivity would suffer as a result of the rule, we did not receive any quantitative estimates of this effect;

therefore, we did not attempt to quantify this impact in the RIA for the final rule.

Moreover, we believe that industry commenters were most concerned about the effect on productivity that would result from profound changes to many current physical access control systems (*i.e.*, smart card readers) that would have been necessary under the requirements of the NPRM. Because this final rule does not require smart card readers, this concern should be mitigated to some extent.

2. Economic Impact of Secure Area Definition

The SBA Office of Advocacy, as well as several other commenters noted that TWIC may be a costly rule for the maritime industry to absorb. In particular, many facilities noted that the costs of the rule are largely driven by the secure area definition. Some facilities were confused about this definition and requested more guidance.

As stated above, we understand that there is some confusion about the definition of a secure area. A secure area is now defined in the final rule as the area onboard a vessel or at a facility or OCS facility over which the owner/operator has implemented security measures for access control in accordance with a Coast Guard approved security plan. It does not include passenger access areas, employee access areas, or public access areas, as those terms are defined in §§ 104.106, 104.107, and 105.106, respectively, of 33 CFR subchapter H. Facilities subject to part 105 of this subchapter may, with approval of the Coast Guard, designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation security incident. We believe the final rule now provides a clear definition of secure area and that it affords facilities with some flexibility that may ultimately decrease compliance costs.

3. Economic Impact of TWIC User Fees

(a). Fees Are Too High and Will Adversely Impact Employees in the Maritime Industry

Many commenters asserted that the user fees proposed in the NPRM would negatively impact already financially strapped individuals in the maritime workforce. Employers in particular were concerned about individuals' ability to pay the fees, and the effect this could have on the labor force.

We understand that the fees associated with the credential represent a significant investment in security for many individuals and/or businesses. Furthermore, the opportunity cost for individuals to travel to and from enrollment centers also represents a cost to industry and individuals.

The fees associated with obtaining a TWIC represent the cost to TSA of providing all services—including enrollment, security threat assessments, issuance, and the TSA system—related to the credential. TSA cannot meet its statutory mandate without delivering these services, and it cannot deliver these services without collecting user fees. By law, TSA is responsible for collecting user fees to cover the costs of all TWIC program operations. Section 520 of the 2004 DHS Appropriations Act requires TSA to collect reasonable fees for providing credentialing and background investigations in the field of transportation.

During the course of the rulemaking, we contemplated giving a discount on certain fees to employees working at small businesses and other subsets of the population. After careful analysis, we determined that this would not be feasible. First, TSA's fee authority found in 6 U.S.C. 469 does not authorize TSA to adjust a fee based on the income of the applicant. Second, it would be difficult for TSA and the Coast Guard to credibly distinguish individuals working in different segments of the industry.

Where possible, we have made provisions in the rule to ensure that individuals do not pay for redundant criminal history records checks. Furthermore, TSA and the Coast Guard have made every effort to ensure that the fees only cover the cost to TSA of delivering program services. In an effort to make certain that the level of user fees collected by TSA does not exceed the total costs of the program, TSA and the Coast Guard, pursuant to the Chief Financial Officers Act of 1990 (31 U.S.C. 902(a)(8)) will review fees at least every two years.

In addition to taking these steps, the Coast Guard is proposing to combine the number of credentials that mariners are required to carry under Title 46 of the CFR, and to remove the requirement for mariners to travel to a Regional Examination Center (REC). This would reduce the financial burden to mariners as they would only be required to pay one application fee of $45. Mariners would no longer be required to travel to one of 17 RECs unless they need to actually sit for an exam. This would bring significant savings to this population, as many mariners currently have to travel long distances to attain their seafaring credentials.

(b). Responsibility for Credential User Fees and Compliance Costs of the Rule

A number of commenters stated that the Federal government should pay for some portion of the program. In their comments, many firms and individuals noted that the goal of increased security in the United States is a common one, shared broadly by individuals in all parts of the country, and that the cost of providing such security should be borne by all U.S. taxpayers.

As stated above, the law states that TSA must collect user fees in order to fund all program operations. The Federal government has a statutory obligation, therefore, to recover program expenses through fees.

Commenters stated that employers, not applicants, would bear the cost of TWIC user fees. Many industry trade associations and individuals businesses asserted that many employees, especially those with lower incomes, would rather work in other industries than pay the user fees. The burden of covering such fees, therefore, would fall on employers.

TSA and the Coast Guard agree that some employers may pay the TWIC user fees for their employees, although this is not a requirement of the rule. Unfortunately, we have no way of knowing which companies will have to bear the cost of obtaining a TWIC and which companies will require their employees to absorb the cost. Commenters did not provide specific data to substantiate the claim that employees would seek work in other industries rather than pay the fee to obtain a TWIC. Therefore, we did not attempt to estimate this distributional impact in the RIA for the final rule, although we did account for the total cost of this provision.

4. Comments on Estimated Population

(a). Analysis Omitted Populations

Several commenters stated that TSA and the Coast Guard omitted several maritime populations in the RIA for the NPRM. Specifically, a trade association representing U.S. port authorities stated that many port operations rely on temporary workforces, and that many casual laborers are given visitor or temporary passes to allow access. This commenter claimed the size of this casual labor force can be significant. It is concerned about their omission in the rule and questions how much consideration TSA and the Coast Guard gave to these workers. The trade association also noted that while these workers are usually supervised to a certain degree, the proposed rule would

likely still require them to obtain a TWIC or a credentialed escort.

As previously stated in this section, TSA and the Coast Guard believe that the final rule provides enough flexibility to allow business owners to accommodate temporary workers without incurring high costs. Certain facilities operating in the maritime environment will be allowed to submit amendments to their security plans in order to redefine their secure areas. We also believe, as the trade association alluded to in its comment, that many of the individuals in the casual workforce usually receive some sort of oversight during their time of employment in the maritime industry. Although circumstances are unique to each facility and vessel, TSA and Coast Guard believe that many operations, while employing ''casuals'' may already meet the escort requirement of the final rule while employing casuals. This would preclude these individuals from having to obtain a TWIC. For this reason, we did not adjust the population estimate included in the RIA to account for additional temporary workers.

The Edison Electric Institute, the American Public Power Association, and the National Rural Electric Cooperation Association commented that TSA does not appear to have included the 30,000 utility employees who could be subject to the rule. Furthermore, they stated that utilities generally are not in the business of transportation and therefore should not be subject to the rule.

TSA and the Coast Guard recognize that certain facilities regulated by 33 CFR part 105 may have only a small nexus to transportation. For this reason, we have included in the final rule a provision to allow facilities to submit amendments to their security plans that would allow them to adjust the definitions of their secure areas. This would ensure robust security within sensitive transportation areas. For this reason, we did not adjust our population estimate to include employees in the utilities industry.

The requirement that all individuals needing unescorted access to secure areas of 33 CFR subchapter H-regulated facilities would bring into the nexus of transportation workers a plethora of individuals that some commenters believe TSA has not properly accounted for in its estimate of 750,000 affected individuals.

One particular trade association representing the fertilizer industry anticipates delivery personnel, such as Federal Express, United Parcel Service, and the United States Postal Service employees; general contractors, such as plumbers, vehicle mechanics, builders; chemical distributors; college interns; office cleaning crews; food service personnel; utility repairmen and utility/pipeline personnel with right-of-way on facility property to require intermittent access to secure areas of regulated facilities. Because the amount of personnel needing access to a facility is well beyond the nexus of transportation that TSA and the Coast Guard account for in the NPRM, this trade association believes the population estimate needs to be re-examined and proposed again for review as an NPRM.

We fully understand that a number of individuals working in a wide array of occupations would be affected by the final rule. While conducting research to formulate the estimated population, TSA and the Coast Guard examined a number of industries that provide services to affected vessels, facilities, and OCS facilities, such as general contractors, delivery personnel and the like.

In the population estimate included in the RIA for the NPRM, TSA and the Coast Guard estimated that the rule would impact 70,000 contractors and other personnel in the maritime industry. We believe that the occupations listed above by the commenter are included in this estimate; therefore, we did not change the population for the final rule in response to this comment.

One commenter asserted that the rule has an overly expansive scope that is unrelated to the actual risk posed by certain personnel, such as grain elevator personnel, truck drivers and rail carriers delivering inbound grain.

TSA and the Coast Guard firmly believe that all vessels, facilities, and OCS facilities covered by 33 CFR subchapter H are critical maritime assets that are at some risk of being involved in a transportation security incident. Therefore, we believe all personnel with unescorted access to secure areas of these regulated entities should receive a security threat assessment and a TWIC.

An association representing passenger vessels stated that there are probably tens of thousands of vessel wait staff, entertainers, supporters, suppliers, caterers and other persons, who are not identified in the population estimate in the RIA.

We agree with this particular association that some of the entertainers, caterers, and wait staff employed in the passenger vessel industry were most likely not captured in our population estimate in the RIA for the NPRM. This is because we intended for the ''passenger access area'' provision, included in the NPRM, to cover these individuals. Upon reviewing the comments, we determined that many of these individuals would need access to additional areas of the vessel that are not open to passengers and therefore not covered by the ''passenger access provision.'' However, rather than add them in to the population estimate, we added the ''employee access area'' provision, which should preclude entertainers and wait staff, as well as other personnel with only a tangential connection to transportation, from having to obtain a TWIC.

The categories of personnel as ''contractor/other'' and ''vessel operation/port support,'' which are included in the population estimate, likely include the other personnel mentioned by this association, namely the supporters and suppliers. We believe the total population excluded from our initial estimate is far less than the tens of thousands asserted by the passenger vessel industry association.

One commenter stated that the 204,835 mariners that TSA and the Coast Guard estimated would be impacted by the rule in the RIA accounts for credentialed mariners, but omits non-credentialed mariners.

We agree that the approximately 205,000 mariners estimated in the RIA only accounts for credentialed mariners. However, we believe the other mariners that are not required to carry a mariner credential under the existing Coast Guard regulations were included in other areas of our population estimate. For example, in our research on the affected population, we accounted for workers in such categories as vessel operations and port support; barge operators; and offshore liquid bulk. Although we did not specifically calculate the number of mariners without existing credentials, we nevertheless believe they were captured in our population estimate. The comments that we received from industry contained no specific information on this matter, and therefore, we did not adjust our population estimate in response to this comment.

The Owner Operator Independent Drivers Association (OOIDA) asserted that between 500,000 and 1,000,000 truckers access the ports, regularly or occasionally. The association asserted that this population was underestimated in the RIA.

TSA and the Coast Guard value the concern expressed by the trucking trade association about our estimate for the number of commercial truck drivers accessing facilities regulated by 33 CFR subchapter H. While estimating the number of port truckers in the NPRM,

TSA and Coast Guard contacted many subject matter experts and analyzed numerous sources of public data. We found no consensus on the number of truckers regularly accessing facilities affected by this rule. We have, however, adjusted our initial NPRM estimate of affected commercial truck drivers.

After publication of the NPRM, it came to our attention that we may have excluded some foreign commercial truck drivers who operate out of Canada and Mexico. In order to correct this oversight, we have increased our total population estimate by 20,000—to 770,000 from 750,000 to account for this segment of the trucking industry.

Although this upward adjustment to our population estimate may address some of the concerns raised above, TSA and the Coast Guard can find no data to support the claim made by OOIDA that there are between 500,000 and 1,000,000 commercial truck drivers accessing regulated facilities on a regular basis. We note that the facilities covered by this rule represent a fraction of the total maritime facilities operating in the United States, and that the organization provided no specific information about the source of its data used to support its assertion. For these reasons, we have not modified our population estimate beyond the final estimate of 770,000.

(b). Estimates of Employee Turnover for Population Are Too Low

Several commenters stated that the assumed employee turnover rate of 12 percent in the RIA for the NPRM was too low. The extreme employee turnover rates in various segments of the maritime industry, they noted, would make total compliance costs significantly higher than those estimated by TSA and the Coast Guard. Table 5 displays estimates of turnover rates provided by various commenters.

TABLE 5.—TURNOVER RATE ESTIMATES BY COMMENTERS

Industry	Turnover estimate (percent)
Passenger Vessel	70
	100
	200
	50–150
	60
	100
	50–75
	70–100
	>150
	100
	200
Inland Waterways	>50
	30–40
	20–135
Casino	20–40
	28
Trucking	130

TSA and the Coast Guard understand that many firms operating in the maritime industry experience a high level of employee turnover on an annual basis. We concur with many commenters that this is especially true for trucking firms and enterprises that rely heavily on seasonal labor (particularly passenger vessel operators conducting business on the inland waterways).

In attempting to estimate the number of enrollments over the 10-year period of analysis, we focused on utilizing an industry-level estimate for employee turnover, not a firm-level estimate. Namely, we were interested in the rate at which individuals enter and exit the affected industry or industries—not the rate at which they enter and exit unique firms or establishments. This is because an individual who moves from one covered employer in the maritime industry to another covered employer would not need a new TWIC, although such a labor shift would be counted in firm-level turnover estimates. Had we used a firm-level estimate, such as those provided above, we would have overestimated the number of enrollments; we would have, in essence, double counted. We did not receive any comments on industry-level employee turnover rates and, therefore, have not adjusted our estimate of 12 percent in the RIA.

5. Other Economic Comments

One commenter stated that there is a concern about TSA's ability to process applications under the TWIC rulemaking. The commenter was concerned that the number of applications may be far more than TSA and Coast Guard estimates, that system overloads may cause long delays before tight deadlines, and that the possibility for administrative mistakes is enormous.

TSA and the Coast Guard will do everything within their authority to ensure that there are sufficient resources to process all applications submitted to TSA under this rule. Furthermore, procedural safeguards, including new redress processes, will minimize the number of administrative oversights.

Comments submitted by the SBA Office of Advocacy stated that the rule may deter community residents from participating in local security committees, such as the AMS Committees maintained under 33 CFR subchapter H. In many instances, the SBA Office of Advocacy noted, local community residents often provide the greatest protection against security threats because they are most familiar with operations on the ground, and can easily detect anomalies that would indicate a security threat. By deterring these individuals from participating on AMS Committees, the SBA Office of Advocacy questioned whether the rule would do more harm to security than good.

The purpose of this final rule is certainly not to deter individuals from participating in the AMS Committees (other local security organizations would not be subject to the final rule). We recognize the value of these organizations in securing critical U.S. maritime assets, and we agree that, in many instances, local residents are often best qualified to identify suspicious activities and threats. Nevertheless, we also firmly believe that individuals who are members of such organizations should be vetted using security threat assessments in order to ensure that they do not pose a security threat to vital areas of the U.S. maritime transportation sector.

In order to counteract this potential deterrent effect, we changed the requirements in the final rule to ease the burden on AMS Committee members and participants of other local security organizations. The final rule states that AMS Committee members must do one of the following: Receive a name-based threat assessment from TSA, obtain a TWIC, or have passed a comparable security threat assessment, as determined by the FMSC (who is also the Captain of the Port).

6. Impacts to International Trade

Some commenters stated that the rule would have a negative impact on international trade, and that this cost was not accounted for in the RIA.

TSA and the Coast Guard understand that some isolated international markets may be impacted by the final rule. In light of comments received on the public docket, TSA and the Coast Guard acknowledge that the rule could have an impact on international trade. By raising the operating expenses of some firms that engage in international business, the rule could potentially increase the price of goods and services, thereby affecting the flow of commercial transactions across international

borders. However, we think this is unlikely given the amount of competition in many international markets. Furthermore, the prices of goods and services are determined by many factors other than firms' operating costs. We have no information or data that would allow us to estimate this potential effect, and commenters did not provide any specific information with respect to this impact.

7. Comments on the Initial Regulatory Flexibility Analysis

In order to evaluate potential impacts to small entities, as defined by the Regulatory Flexibility Act (RFA) and the SBA Office of Advocacy, TSA and the Coast Guard published an Initial Regulatory Flexibility Analysis (IRFA) in May 2006 in support of the TWIC in the Maritime Sector NPRM. We received several public comments that addressed many facets of the IRFA. As part of this final rulemaking effort, we have summarized and responded to all substantive comments.

(a). The Rule Imposes a Significant Burden on Small Entities and Does Not Meet the Requirements of the Regulatory Flexibility Act

Many commenters, including Advocacy, claimed that the rule imposes a significant burden on small entities as defined by the RFA and that the agencies did not complete an accurate analysis of the impacts of the rule on small entities. Other commenters said that small entities, especially vessels, do not need the level of equipment proposed in the rule for security.

In the IRFA published with the NPRM, TSA and the Coast Guard did not make a determination about whether the NPRM would have a significant economic impact on a substantial number of small entities, and asked for comments on the issue. As demonstrated above, many commenters believe the rule would have a significant economic effect on many small businesses. In making a determination for this final rule, we agree with these comments, and have concluded that the rule will have a significant economic impact on a substantial number of small entities.

However, in drafting the final rule we have made significant changes that we believe will decrease adverse impacts on small businesses. TSA and the Coast Guard do not believe the rule will force small entities to leave the various markets in which they conduct business. In fact, TSA and the Coast Guard made a number of material changes to the original proposal in order to specifically address concerns about its impact on small entities.

First, and perhaps most importantly, small vessels and facilities will no longer need to purchase biometric smart card readers or other equipment in order to comply with the rule. Instead, the Coast Guard will conduct spot checks of credentials with handheld smart card readers. We believe this change will significantly reduce the economic burden on small entities. (As stated elsewhere in this document, however, TSA and the Coast Guard will initiate a future rulemaking that would require the use of such equipment. When this happens, we will reevaluate all costs estimates and impacts to small entities.)

Second, TSA and the Coast Guard have eliminated the recordkeeping provisions from the final rule. This modification should also reduce the burden on small entities.

Third, we have added to the final rule provisions to accommodate newly hired employees at businesses affected by the rule. These employees, after having applied for a TWIC, will be allowed limited access to secure areas for 30 consecutive days, subject to certain restrictions. This 30 day period may be extended an additional 30 days by the cognizant Coast Guard COTP if TSA does not act upon the individual's TWIC application within the original 30 days.

Fourth, we have added to the final rule provisions for employee access areas on passenger vessels and ferries. These areas are defined as spaces within the area over which an owner or operator has implemented security measures for access control. Employee access areas are open only to employees and not passengers; they are not secure areas and therefore do not require a TWIC for unescorted access. As stated above, this should further reduce the burden on some small businesses, especially passenger vessels reliant upon seasonal employment.

Finally, TSA and the Coast Guard will allow certain facilities to submit amendments to their security plans in order to redefine their secure areas. We included this provision in the final rule to give these facilities the opportunity to more closely align and perhaps narrowly focus their secure areas on those areas that are directly related to maritime transportation or most at risk of a transportation security incident. The provision may result in a smaller secure area, which would reduce the number of employees and visitors who may need a TWIC for unescorted access.

Many of these new provisions are designed to help small entities comply with the rule in a cost efficient manner, without sacrificing the security goals of the rule.

The International Association of Drilling Contractors (IADC) asserted that there are many unfounded assumptions regarding the economic impact of the NPRM involving the number of persons that need a TWIC, the rate of personnel turnover, the costs associated with procurement and installation of required equipment, and the recurring costs of maintaining the TWIC and associated equipment. The IADC went on to state that many qualifying small entities provide valuable services. Other commenters voiced similar concerns.

TSA and the Coast Guard acknowledge that there are a number of assumptions in the RIA that we published with the NPRM. Where appropriate, we have modified some of the assumptions in the RIA for the final rule based on input from industry.

Many of the cost estimates and assumptions that generated the most comments (e.g., costs associated with technology requirements and recordkeeping costs) are no longer germane to this rulemaking because of modifications to the final rule. For example, TSA and the Coast Guard will no longer require affected entities to purchase biometric smart card readers or keep records of individuals who access secure areas. While these provisions may be required in a future rulemaking, we will revisit the associated cost estimates at that time. As for the assumed turnover rate, we have addressed that above.

TSA and the Coast Guard disagree with IADC's suggestion that this rulemaking fails to meet the requirements of the RFA. To the best of our ability, we identified the firms affected by the rule, the economic impact to those firms, and the regulatory alternatives contemplated during the rulemaking process. Furthermore, we believe that the final rule includes significant alternatives to the original proposal that should decrease the impact to small entities. We therefore believe that this final rule meets both the letter and the spirit of the RFA.

The SBA Office of Advocacy, expressing concerns raised by several small businesses, asserted that the IRFA for the NPRM failed to include many small businesses in the maritime towing (*e.g.*, tugboats, towboats, and barges) and passenger vessel industries (*e.g.*, ferries; sightseeing, excursion, and dinner boats; gaming vessels; whale watching boats; and eco-tour vessels). The SBA Office of Advocacy also stated that the economic analysis and IRFA failed to include other affected sectors. In its comment, the SBA Office of

Advocacy noted that a charter bus operator picking up cruise ship passengers at a port terminal would need a TWIC (or a credentialed escort) if he or she accessed a secure area. Advocacy recommended that TSA and the Coast Guard re-assess whether the economic analysis and IRFA encompass all regulated sectors.

In light of the comments above, we reviewed the industries identified in the IRFA as being affected by the rule. Many of the small businesses in the maritime towing and passenger vessel industries fall under the North American Industrial Classification System (NAICS) codes 488330 Navigational Services to Shipping; 336611 Ship Building & Repairing; 532411 Commercial Air, Rail, & Water Transportation Equipment Rental and Leasing; 483114 Coastal and Great Lakes Passenger Transportation; and, 48721 Scenic and Sightseeing Transportation, Water. These industries were included in the IRFA that we published along with the NPRM. However, we did not include Gaming Vessels in the IRFA and they will most likely be affected by the final rule.

Based on the comments above, we have included two additional NAICS codes in the FRFA—gaming vessels fall under 713290 Other Gambling Industries and 713210 Casinos (except Casino Hotels).

With respect to the charter bus example cited by Advocacy, TSA and the Coast Guard recognize that some small businesses outside the maritime transportation sector that were not identified in the IRFA may be affected by the final rule. The example given by Advocacy in its comment is plausible—TSA and the Coast Guard do not dispute that charter bus operators may access cruise ship terminals.

For the most part, however, we do not believe that cruise ship terminals and other large facility owners/operators currently allow charter bus operators and other independent firms or visitors to freely move about secure areas without supervision or monitoring. Many of these large facilities where cruise ships dock have reams of valuable cargo on their property and consequently have an economic incentive to monitor visitors, including bus operators. Therefore, we believe that many facilities will choose to use a credentialed escort in many of these instances. For these reasons, we believe the FRFA now identifies the industries that will be affected by this rulemaking.

The American Sail Training Association (ASTA) asserted that the IRFA and NPRM do not appear to take into account vessels such as the tall ships owned by ASTA members because the regulatory analysis focuses on the small businesses included within the subchapter H vessels, facilities and outer continental shelf facilities. ASTA members are not within that category.

Only vessels, facilities and OCS facilities regulated by 33 CFR subchapter H will be required to comply with the requirements of the final rule and incur associated costs. For this reason, we did not consider impacts to vessels not regulated by 33 CFR subchapter H.

(b). The Rule Fails To Meet the Maritime Transportation Security Act

In support of concerns raised by small business representatives, the SBA Office of Advocacy commented that the limited maritime TWIC being proposed exceeds TSA and Coast Guard's statutory mandate. Specifically, Advocacy asserted that MTSA did not require the complex and costly design or the potentially expensive smart card readers that TSA and the Coast Guard proposed in the NRPM. Advocacy also noted that many small businesses felt that there should be a single credential and security threat assessment for the entire transportation sector.

Section 102 of MTSA requires the Secretary of DHS to issue a biometric transportation security card to individuals with unescorted access to secure areas of vessels, facilities, and OCS facilities. MTSA did not specify what type of biometric card the Secretary should issue. We believe the TWIC, which can accommodate many kinds of biometrics, privacy protections, and security mechanisms, meets the letter and spirit of the law.

Also, as previously stated, this final rule will not require vessels, facilities, or OCS facilities to purchase biometric smart card readers. TSA and the Coast Guard will address the technology and card reader issues in the future. We will address comments relating to these issues in the future.

(c). Whether the Rule Meets Previously Stated Goals

Commenters, including the SBA Office of Advocacy, stated that the NPRM fails to meet the objectives of the TWIC concept as originally envisioned, that is, a single biometric card and a single background check for the entire transportation sector. Commenters argued that duplicative credentials and clearances that may include separate state and local requirements may continue to be required because TWIC is limited to the maritime sector. Also, the commenters stated that the original intent of the TWIC was to help ease access to secure areas, not to require a TWIC to enter them.

TWIC is a biometric transportation security card, mandated by sec. 102 of MTSA, which TSA and the Coast Guard are introducing for use in secure areas of the maritime transportation sector. As stated in the preamble to the NPRM, DHS is currently exploring introducing the TWIC into other modes of the transportation sector. In the NPRM, we solicited and received comments on this issue.

With respect to this final rule, the purpose of TWIC is not to facilitate access to secure areas of the national transportation sector, as some individuals asserted in their comments. While attempting to preserve owner/operator's ability to exert control over their secure areas, this final rule adds an additional level of security to these critical areas of the nation's maritime assets through the use of TWIC. The primary objective of TWIC has been, and will be, to increase security without unnecessarily compromising the flow of goods and services in the economy.

Comprehensive security threat assessments are a vital part of this objective. Some commenters expressed concern that the rule would create duplicative threat assessments and credentials. TSA and the Coast Guard have made every effort in this final rule to avoid creating requirements that would cause individuals to obtain redundant security threat assessments. For example, individuals who have recently completed a security threat assessment for an HME, the FAST Program, or one of the Coast Guard's mariner credentialing programs, will not undergo a new TSA security threat assessment as a result of the TWIC rule. TSA will also review other government background checks in order to determine if they are comparable to those being conducted under the authority of this rule. Furthermore, if DHS decides to require TWIC in other modes of the transportation sector, we will make every effort to avoid duplicative or inconsistent security threat assessment standards.

As stated above, several commenters asserted that the rule would require duplicative credentials for some individuals. For example, one commenter suggested that a commercial truck driver who picks up a package at an airport and delivers it to a port terminal may have to hold two credentials under the provisions of the rule. TSA and Coast Guard agree that this scenario is plausible. Some individuals, due to different circumstances, may have to carry multiple credentials. Unfortunately, we

cannot guarantee that individuals affected by the rule will have to carry only one credential. Neither TSA nor the Coast Guard has the legal authority to prevent private companies from issuing their own, proprietary identification credentials. However, TSA and the Coast Guard believe that many private firms currently issuing their own identification credentials may cease to do so after TWIC is introduced, because it may result in a cost-effective solution to existing credentialing systems.

(d). The Rule's Effect on Current Labor Shortage Affecting Small Entities

Several commenters made general remarks about how the TWIC rule will make labor shortage issues worse for small entities. Industry associations, small firms, Advocacy, and individuals all opined that the user fees proposed in the NPRM; the ''wait time'' to obtain a security threat assessment and a credential; and the inconvenience associated with traveling to an enrollment center would all negatively impact the work force utilized by small entities.

TSA and the Coast Guard understand that some areas of the maritime transportation sector are experiencing labor shortages. As noted previously, however, we believe that the shortage of labor in many areas of the maritime industry is a function of factors outside the control of either TSA or the Coast Guard.

Nevertheless, the final rule may have an impact on some labor markets. TSA and Coast Guard concur that some individuals—due to the user fees, security threat assessment policies, or other factors—may no longer seek employment at businesses regulated by 33 CFR subchapter H as a result of this rule. To the extent possible, though, we have drafted the final rule so that it would not adversely affect the already limited supply of labor in certain segments of the maritime transportation sector. We needed to balance this effort, of course, with the primary security objectives of the rule. We believe the following amendments to the final rule will help ease the potential adverse impacts of the rule on the labor supply while achieving the security goals of the rule:

- Provisions to accommodate new hires and persons who have reported their TWIC as lost, damaged, or stolen.
- An allowance for certain facilities to amend their Facility Security Plans (FSPs) to redefine their secure areas, and new definitions for passenger access areas and employee access areas.
- Expanded response time for applicants to appeal an adverse determination, correct an open criminal disposition, or apply for a waiver from 30 or 45 days to 60 days.
- Expanded group of applicants eligible to apply for a waiver after being disqualified because of mental incapacity.
- Expanded the group of non-U.S. nationals who meet the immigration standards to include foreign nationals who are students at the U.S. Merchant Marine Academy or comparable State college; commercial drivers licensed in Canada or Mexico transporting hazardous materials into and within the U.S.; citizens of Canada or Mexico who conduct business in the United States under a NAFTA visa; and a variety of professionals and specialists who work in the U.S. maritime industry on restricted visas.
- Provisions for employee access areas on passenger vessels and ferries.

Some commenters specifically mentioned that being forced to pay the enrollment costs for their employees will be harmful to them. Laying out the same argument as other, larger firms, many small business owners who submitted comments to the docket pointed out that they would not be able to pass application costs onto college students, low wage earners, or other employees that typically work for small businesses.

We note that this is not a requirement of the rule, but we agree that in some markets, owners/operators may pay the TWIC user fees for their employees. This may be especially true for employers that operate in sectors with tight labor markets. In other industries, however, this will probably not be true. For instance, in highly unionized workforces where wages are high and benefits are generous, employers will most likely not be forced to pay TWIC user fees. Due to this high level of uncertainty, we did not quantify this potential burden to employers in the RIA.

Others said that seasonal employees are not able to afford the application fees or the cost of traveling to an enrollment center.

TSA is required by law to recover fees for the costs it incurs to provide all program services. Therefore, the agency cannot make any concessions with respect to the user fee, even for seasonal employees. TSA and the Coast Guard have included some provisions in the final rule that may reduce the burden on seasonal employees. These provisions, such as employee access areas, are detailed above.

Another commenter said that the ''waiting period'' for a TWIC is a hardship for small entities because they will have additional costs involved with interviewing new employees.

As stated earlier, the final rule contains a provision that will allow new employees to have limited access to secure areas for 30 consecutive days, subject to other restrictions detailed in the regulatory text. In addition, this may be extended an additional 30 days by the cognizant Coast Guard COTP if TSA does not act upon the individual's TWIC application within the original 30 days. This provision should ease the burden on small entities.

Some commenters discussed how the burdens employees face in obtaining TWICs are harmful to small entities. Some, for example, said that small companies are competing with larger companies for workers, and larger companies are more competitive because they are more capable of absorbing TWIC enrollment costs. Some commenters said that they will not be able to fill seasonal and short-term positions due to the TWIC requirements. One commenter said that small entities subject to TWIC will not be able to compete with other small service entities that are not subject to TWIC requirements. Another said that they will not be able to compete for labor with other service industries.

One commenter said that the burdens of TWIC on employees will result in further wage increases to retain employees in their industry. Others said that the costs and burdens of TWIC will force employers to go to other industries, which is a hardship for small entities.

TSA and the Coast Guard realize that small businesses face unique challenges in complying with the final rule. We recognize that the rule may impact employees as well as other facets of small entities' businesses. During the rulemaking process, we analyzed several alternatives that would have lessened the impact to small entities.

For example, we examined the possibility of exempting the employees working for small businesses from the requirements of the final rule. Furthermore, we also analyzed the possibility of exempting industries with a high proportion of small businesses (*e.g.*, passenger vessel industry) from the provisions of the rule. Both alternatives were deemed incompatible with the security objective of the rulemaking since 33 CFR subchapter H specifically applies to vessels, facilities, and OCS facilities that have been identified by the Coast Guard as presenting a risk for a transportation security incident.

Moreover, statutory constraints also prohibited us from further considering this option.

TSA and Coast Guard did, however, include a number of new provisions to help small businesses comply with the rule. These provisions, such as the new hire provision, passenger and employee access areas and allowances to certain facilities to redefine secure areas, are detailed elsewhere in this section.

Many commenters, including the SBA Office of Advocacy, expressed concern that businesses utilizing seasonal or temporary workers could be significantly impacted by the rule. For example, small tour boats and sightseeing vessels frequently hire high school and college students to work on the boats during the summer. However, because these employees could be required to obtain a maritime TWIC before they could begin work, the proposed rule could impose significant costs and time burdens on these small businesses.

We realize that seasonal and temporary workers are a vital supply of labor for many passenger vessels and other small businesses regulated by this final rule. We also understand that the requirement to obtain a TWIC may represent a financial burden for some seasonal employees, especially high school and college students who may only work during the summer months. In writing this rule, we looked at several alternatives that would minimize this burden without compromising security.

First, we considered exempting small passenger vessels and other regulated entities utilizing seasonal laborers from the requirements of the rule. This would clearly eliminate any concerns about labor shortages or financial burdens that many small businesses expressed during the comment period for the NPRM. We determined after careful analysis, however, that this alternative would not meet the security objectives that are the rationale for the rule, as passenger vessels subject to the security assessment and plan requirements in 33 CFR part 104 are at high risk for a transportation security incident due to the number of people they transport, which makes them an attractive target for terrorists. TSA's and the Coast Guard's statutory obligations also prevented us from adopting this option.

Second, we investigated the possibility of allowing owners/operators to grant individuals who have applied for a TWIC limited access to secure areas for 30 days. As stated elsewhere, we have included this provision in the final rule, which we hope will reduce the regulatory burden for small entities.

Finally, in another effort to minimize the burden on small vessels, we created employee access areas in this final rule. An employee access area is a defined space within the access control area of a ferry or passenger vessel that is open to employees but not passengers. It is not a secure area and does not require a TWIC for unescorted access. It may not include any areas defined as restricted areas in the vessel security plan. We believe that this new provision should reduce the regulatory burden on many small passenger vessels, especially those that primarily utilize and rely on seasonal labor.

(e). Costs of the Escorting Requirement

Another commenter mentioned that the escorting burden is particularly difficult for small entities since they usually do not have excess crews or manpower to meet these requirements.

We agree that for some small entities the requirement to provide escorts for visitors and others may prove to be a substantial burden. TSA and Coast Guard also do not dispute commenters' claims that many small entities may not have excess employees to handle this provision. We feel, however, that many commenters interpreted the definition of escort to require the physical presence of one escort for each individual without a TWIC at all times while in a secure area. TSA and Coast Guard did not intend this provision to be interpreted in this manner.

Instead, we expect that when in an area defined as a restricted area in a vessel or facility security plan, escorting will mean a live, physical escort. The specifics of each vessel or facility will determine the scope of the escort required. Outside of restricted areas, however, such physical escorting is not necessary, so long as the method of surveillance or monitoring used is adequate to allow for a rapid response should an individual ''under escort'' be observed in an area where he or she has not been authorized to go or is engaging in activities other than those for which access was granted. We believe that this interpretation may significantly decrease the burden of this provision for small entities.

Moreover, in the final rule, TSA and the Coast Guard have taken steps that may further reduce this burden for small businesses. For example, the final rule contains a provision for passenger vessels and ferries to establish employee access areas, which may decrease the need for certain small entities to supply some employee with escorted access to secure areas.

The final rule also contains a provision that allows certain facilities to redefine their secure areas by submitting an amendment to their security plans to the Coast Guard. TSA and the Coast Guard believe that this new allowance may help some small entities limit the burden of providing escorted access to some employees and visitors.

Although TSA and Coast Guard contemplated easing this requirement of the rule for small entities, we ultimately determined that we could not do this without comprising security.

The SBA Office of Advocacy and other commenters noted that it is likely that many businesses will seek to avoid the maritime TWIC requirements by providing (or requiring) the use of dedicated, credentialed escorts as an alternative. Some commenters recommended that TSA and the Coast Guard consider the likelihood that this will occur and whether it changes the cost projections for the proposed rule.

Although we realize that affected entities may comply with the rule in this manner, TSA and the Coast Guard have no information that would allow us to calculate the probability of this occurrence, making it difficult for us to adjust our cost projections. Credentialed escorts are specifically recognized as an acceptable means of complying with the final rule. Each business will evaluate the most cost effective way to comply with the rule, given its operational situation. TSA and the Coast Guard included the escort provision in the rule to potentially reduce the economic burden of the rule, provide flexibility, and maintain security.

(f). Required Equipment Is Too Expensive for Small Companies

Many small entities expressed concern about the cost of equipment. Several small vessels were concerned about how well equipment would work on vessels.

The final rule will not require vessels, facilities, and OCS facilities to purchase and maintain new equipment. TSA and the Coast Guard will address this issue in the future and will revisit all cost estimates and equipments requirements at that time.

E. Comments Beyond the Scope of the Rule

We received many comments concerning issues that are outside the scope of the NPRM. Many suggested port security grants be used to pay for TWICs and TWIC implementation, while others suggested that funding for implementation be made available in the federal budget. One commenter specifically requested a 90/10 matching of federal grant monies be appropriated to offset logistics costs. While these

comments are outside of the scope of the rule, we would like to note that the DHS port security grant program has already been revised to include applications for costs associated with implementing TWIC.

IV. Advisory Committee Recommendations and Responses

We received recommendations from three DHS advisory committees: The National Maritime Security Advisory Committee (NMSAC), the Merchant Personnel Advisory Committee (MERPAC), and the Towing Safety Advisory Committee (TSAC). Each committee reiterated some of the comments that have already been addressed, above, in the ''Discussion of comments and changes'' section. We have not repeated those concerns or comments in this section. Rather, we limit this discussion to those comments or recommendations that are not reflected elsewhere in this final rule.

A. National Maritime Security Advisory Committee (NMSAC)

NMSAC recommended that the final TWIC regulations indicate that if an individual who regularly works in a secure area has not obtained a TWIC, has been denied a TWIC, or has had his or her TWIC revoked, that person cannot have access to secured areas.

We do not agree with this recommendation, as the TWIC requirement only applies to individuals seeking unescorted access to secure areas. An individual who does not have his TWIC, either because he has not obtained one, been denied one, or had it revoked, could still be provided escorted access. Nothing in the final rule, however, requires that the owner or operator of a facility or vessel provide escorted access.

B. Merchant Personnel Advisory Committee (MERPAC)

MERPAC recommended that the Coast Guard delay the implementation of the MMC, separating the implementation of the MMC from the TWIC implementation, until the TWIC program is deemed successful.

This recommendation is more properly addressed in the Coast Guard's Supplemental Notice of Proposed Rulemaking (SNPRM) titled ''Consolidation of Merchant Mariner Qualification Credentials,'' found elsewhere in today's issue of the **Federal Register**. We note, however, that instead of issuing a final rule to implement the MMC, the Coast Guard has instead published an SNPRM, thus accepting at least part of the recommendation to delay MMC implementation.

The committee recommended that Coast Guard and TSA find other funding sources for the TWIC. They further asked that, if this recommendation be rejected, TWIC applicants be required to only pay the actual production costs of the cards, not the administrative costs of TSA.

Congress mandated that TSA fund the TWIC program out of user fees (see sec. 520 of the 2004 DHS Appropriations Act), thus, we are unable to consider this recommendation at this time.

MERPAC recommended that the next round of Port Security Grants be made available to every mariner, transportation worker and owner/operator to pay for this unfunded mandate. We appreciate this comment; however, the Port Security Grant Program is not part of this rulemaking.

MERPAC asked, ''Who will determine how much is the correct amount of profit for this contractor to make off of the American Citizens that will require this identification?'' They added that this program, from information collection to card activation, must be conducted by the U.S. government, not contractor. They requested that ''If there is a stated percentage of profit that is appropriate, that percentage should be included in the rulemaking for comment. When the bi-annual review is published, the percentage of profit should again be broken out, particularly before any increase in fees is approved.''

Nothing in MTSA or the other laws and regulations authorizing the TWIC program prohibits the United States Government from contracting for appropriate commercial services in support of the program. In fact, it is the policy of the United States Government to rely on the private sector for needed commercial services, where appropriate. TSA is, however, committed to reducing the cost of this program to individuals required to obtain the card to the extent possible. To that end, TSA is developing a competitive solicitation for the services. There has been a significant amount of interest on the part of the private sector in this solicitation. Among the evaluation criteria is the reasonableness of the cost as compared to the government's independent cost estimate. In addition, the contracting officer is responsible for ensuring that all contractor costs are fair and reasonable. There is no stated percentage of profit that is appropriate, and therefore we cannot include that percentage in the rulemaking for comment. Instead, we are looking at the overall cost to the public and will use private innovation and competitive process to obtain the best possible overall cost for the public.

MERPAC recommended that TSA facilitate the payment of any fees via the pre-enrollment web site, and that TSA begin the vetting process with information submitted at this Web site. They went on to request that mariners be able to pay the fees required by credit card or cash, and not just money order, check, or wire transfer.

During the initial rollout of the TWIC program, applicants must pay the fee for the credential at the enrollment center, rather than on-line. We may develop processes in the future to accommodate payment during pre-enrollment, but we cannot do so at this point. We will accept credit cards, cashiers checks, or money orders. Accepting cash or personal checks create opportunities for fraud that we wish to avoid.

The committee questioned some language from the NPRM, asking ''[o]n pg 29403, section (e): This section states 'After the individual has been granted access to the facility, the owner/operator may opt to notify the TSA system that access privileges have been granted to this worker at that facility.' MERPAC would like an explanation of this section, as it seems unnecessary.''

The cited language refers to the process known as privilege granting. Under that process, as proposed in the NPRM, one way for a facility or vessel to meet their requirement to validate TWICs (*i.e.*, ensure that they have not been invalidated by TSA) was to tell TSA those individuals to whom they were granting access. This information would be stored in the TSA TWIC database. Then, as cards were invalidated for any reason, the database would ''push'' that information to those facilities or vessels listed as having granted access privileges to that card. The process necessarily involves a centralized access control system at the facility or vessel, and as such would not work as a solution for everyone.

MERPAC asked TSA to explain the two year redesign, mentioned on page 29429 of the NPRM, by explaining what is involved, and explaining why the card holders should pay for said redesign.

The technology for the credential will be improved to add the contactless application and other security features as they become available. These improvements are standard items in complex programs, and as spread across the affected population over time, have a minimal impact on cost.

MERPAC recommended that the rule require TSA to complete each security threat assessment and issue a TWIC within 96 hours from enrollment. They

also recommended that TSA outline the procedures for notification to the applicant when a timely processing cannot be accomplished.

As discussed above, in the section entitled ''Adjudication Time,'' it is not feasible to complete a full threat assessment, including the collection of all of the information required to do so and issue a biometric credential within 96 hours. First, it is important to state that the TWIC program does not have a mandatory ''waiting period.'' Rather, we must adjudicate the security threat assessment of each applicant following enrollment and each case naturally entails processing time. During the initial enrollment rollout, owners/operators must give ample notice to workers so that the threat assessment can be completed before the workers are required to present a TWIC to gain access to secure areas. Our goal is to process security threat assessments and manufacture TWICs within 30 days, and our experience with other programs indicates that this is quite possible. However, processing time may increase for an applicant with a criminal history or other disqualifying information, and when an appeal and/or waiver is required.

The time period needed to complete security threat assessments during the TWIC prototype is not a good model from which to make comparisons. TSA was not able to complete a CHRC during Prototype, because there was not a regulation in place requiring a fingerprint-based check. Therefore, the time needed to complete the threat assessment was much shorter than is typical. However, the Prototype provided data on enrollment and card production processing times. We will process applications as they are received. After applications are received and sent for security threat assessment, individual processing times will vary based on the complexity of the adjudication.

In response to the many comments on adjudication time, TSA is amending the information required for enrollment to help expedite the adjudication process. Most of the new information is voluntary; however, providing it should help TSA complete adjudications more quickly. All of the amendments apply to HME and TWIC applicants. First, applicants who are U.S. citizens born abroad may provide their passport number and CRBA. These documents expedite the adjudication process for applicants who are U.S. citizens born abroad. In addition, applicants who have previously completed a TSA threat assessment should provide the date and program for which it was completed. Applicants should state if they hold a federal security clearance, and if so, the date and agency for which the clearance was performed.

A general review of background checks and security threat assessments across government and in the private sector will show that the processing time for a TWIC or HME is far below the average time to complete an assessment. In any event, as described above in the discussion of the Coast Guard's provisions, we have included provisions in the final rule to provide relief to the owner/operator who needs to provide a new hire with unescorted access to secure areas before the individual's TWIC has been issued.

MERPAC recommended that those persons that need access to vessels subject to MTSA that provide counsel and religious guidance to seafarers should be required to obtain a TWIC, but be exempted from the fees.

We disagree with this recommendation. As already stated, Congress has mandated that all costs of the TWIC program be funded through user fees. Thus, eliminating the fees for one portion of the affected population automatically increases the fee for the remaining population. We do, however, recognize the importance of allowing these individuals access to the mariners they serve. These individuals may be escorted into secure areas if they choose not to obtain TWICs.

MERPAC requested that TSA describe the process for card renewal.

Renewal applications will go through the same process as initial applications: applicants will need to enroll, provide fingerprints, have a new security threat assessment completed, and return to the enrollment center to activate their TWIC.

MERPAC recommended that an additional section be included in the rulemaking, addressing the obligations and training requirements that should be necessary for the employees and managers of the enrollment centers, those employees activating and issuing TWIC cards, and any other employees associated with this program.

We do not agree with this comment. Procedures and standards for the contractor providing enrollment services will be part of the contract between TSA and the contractor. They do not impose obligations on the general public, and as such are not appropriate for inclusion in the regulations. We can assure the committee, however, that these topics will be covered.

MERPAC recommended the TWIC application itself be revised stating, ''Item 10 of [proposed 49 CFR] 1572.17 requires a job description and listing of a primary facility where the card holder anticipates using the card. This information should be removed from the application, so that mariners are not accused again of submitting incomplete applications. The purpose of the collection of this information could be accomplished by changing the attestation on page 29456, which should state that the applicant attests that they have a legitimate need for the card, that they understand its uses and obligations. They should not be asked to attest that the card 'as part of my employment duties' as for an applicant, that may not yet be true.''

The purpose of having the applicant list the job description and primary facility, if known, is to ensure that employers whose employees do not need TWICs do not send their employees to enrollment centers just to get a full background check on them. This information, however, is not required if the applicant does not yet have a job description or primary facility. As such, a blank entry on the application will not prevent it from being processed.

MERPAC noted that we address the need to have employers and their employees notify TSA of a security violation by a person attempting to access a facility with a fraudulent or tampered card, and asked that we also define what the procedures and penalties are for a violation.

It is unclear whether the committee is asking about the penalties for a failure to notify, or if they are asking about the penalties for someone found with a fraudulent or tampered card. In the case of the former, the penalty is found in the general penalty provision of 33 CFR part 101. In the latter case, the penalties are found in 49 CFR part 1572.

MERPAC recommended that foreign riding gangs should be subject to the same requirements as U.S. mariners, and that they be subject to all the same requirements of U.S. mariners: background checks, drug testing, etc.

If foreign riding gangs are currently required to obtain a U.S. MMD, license, COR, or STCW endorsement, they would also be required to obtain an MMC. This regulation does not propose to change the population of people who must obtain a mariner credential. Foreign riding gangs must meet the same requirements for lawful status as any other TWIC applicant. Vessels operating in waters outside of the United States will not need to have TWIC implemented on board, therefore the TWIC provisions will not be applicable to riding gangs if the vessel they are working on is operating in non-U.S. waters.

MERPAC recommended that foreign truck drivers and foreign technicians be specifically addressed in the final rule, providing detailed procedures to accommodate their presence in facilities and on vessels.

We disagree. We have made changes to the final rule that, we believe, will allow foreign workers who are lawfully present in the United States and legitimately working at facilities or on vessels to get a TWIC if their work requires them to have unescorted access to secure areas. Those foreigners who still cannot get a TWIC will need to be escorted, as that term has been clarified elsewhere in this final rule.

MERPAC recommended that all TWIC holders be automatically enrolled in the Trusted Travelers Program, and that facial recognition software should be considered as a means of providing access with a TWIC.

To date, there is no domestic ''Trusted Travelers'' program, and implementing such a program is outside the scope of this rulemaking. The criteria for participants in TSA's ''Registered Traveler'' program are still being developed. We will keep this recommendation in mind for future consideration. Additionally, neither the NPRM nor this final rule prohibit the use of facial recognition software by facilities or vessels, so long as the software is able to integrate with all of the TWIC requirements found in this final rule.

D. Towing Safety Advisory Committee (TSAC)

TSAC requested an investigation on the impact TWIC will have on new/existing marine employees. The committee expressed concern about the costs to commerce, and noted that they believe the costs were undervalued and logic was not applied. They requested an economic analysis about the impact on commerce.

All of the issues raised in this request are addressed, in some form, in the Final Regulatory Assessment for this rule. This document is summarized below, but is also available on the docket at the locations listed in the **ADDRESSES** section above.

They also requested a formal ''task statement'' so they can work with Coast Guard and TSA in the next stage of the rulemaking. We appreciate this offer, and will keep it in mind as we begin developing our second rulemaking (regarding reader requirements).

V. Rulemaking Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review)

This rule is a ''significant regulatory action'' under section 3(f) of Executive Order (E.O.) 12866, Regulatory Planning and Review and therefore has been reviewed by the Office of Management and Budget. E.O. 12866 requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. A Final Assessment is available in both the TSA and Coast Guard dockets where indicated under the ''Public Participation and Request for Comments'' section of this preamble. A summary of the Assessment follows.

Regulatory Impact Assessment Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 (E.O. 12866) directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. § 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, TSA and the Coast Guard have determined that this rule:

1. Is a ''significant regulatory action'' as defined in E.O. 12866.

2. Has a significant economic impact on a substantial number of small entities. We have provided a Final Regulatory Flexibility Analysis, which is available in the Regulatory Impact Assessment that is located on both public dockets.

3. Will not impose significant barriers to international trade.

4. Does not impose an unfunded mandate on State, local, or tribal governments, but does on the private sector as costs exceed the inflation adjusted $100 million threshold in at least one year.

The regulatory impact assessment (RIA) is a joint effort of TSA and the Coast Guard. The reader is cautioned that we did not attempt to replicate precisely the regulatory language in this summary of the RIA; the regulatory text, not the text of the RIA or this summary, is legally binding. A copy of the comprehensive RIA can be found on both public dockets.

Impact Summary

Section 102 of MTSA requires the Secretary of the Department of Homeland Security to issue a biometric transportation security card to individuals with unescorted access to secure areas of vessels and facilities. Under this authority, DHS has developed this final rule, and this summary provides a synopsis of the costs and benefits of the final rule.

Benefits of the Final Rule

The final rule will increase security at vessels, facilities, and OCS facilities regulated by 33 CFR chapter I, subchapter H. It will accomplish this by: (1) Reducing the number of high-risk individuals with unescorted access to secure areas of vessels, facilities, and OCS facilities through the use of robust security threat assessments, and (2) improving access control measures in the maritime transportation sector by permitting only those with biometric credentials to have unescorted access to secure areas of vessels and facilities.

Costs of the Final Rule

In estimating the economic cost of the final rule, we have made a number of adjustments to our original forecast published in the NPRM. First, as the final rule includes significant changes to the NPRM, we have accounted for those modifications in our estimates. For example, the final rule will not require vessel, facility, and OCS facility owners/operators to install and maintain smart card readers for access control purposes, keep access control records, or submit TWIC addenda to security plans. Compliance costs associated with these requirements therefore no longer appear in our estimates for the final rule; however, some of these costs are still reflected in the regulatory alternatives analyzed in the RIA.

Second, we have modified many of our cost estimates in response to comments received from individuals and firms in the maritime industry. Several commenters argued that we understated or failed to identify several costs associated with complying with the rule. In response to these comments, we have adjusted some of our estimates and assumptions. For instance, many

commenters asserted that we underestimated the opportunity cost to travel to TWIC enrollment centers. Based on several comments of this nature, we adjusted our estimate upward.

Third, we have better information with respect to many costs related to TSA's ability to deliver program services. This improved information is reflected in our new estimates.

After making these types of adjustments to our original estimate, we concluded that the 10-year cost of the rule, discounted at 7 percent, would range from $694.3 million to $3.2 billion. Much of the variance in our estimate is attributable to the uncertainty surrounding opportunity cost estimates and escorting cost estimates.

Table 6 displays the 10-year cost estimates for the NPRM and the final rule, discounted at 7 percent. The differences between the two estimates are also shown, with negative numbers appearing in parentheses. Figures showing 10-year cost estimates discounted at 3 percent and 0 percent are displayed in the comprehensive RIA, which is available on the public docket.

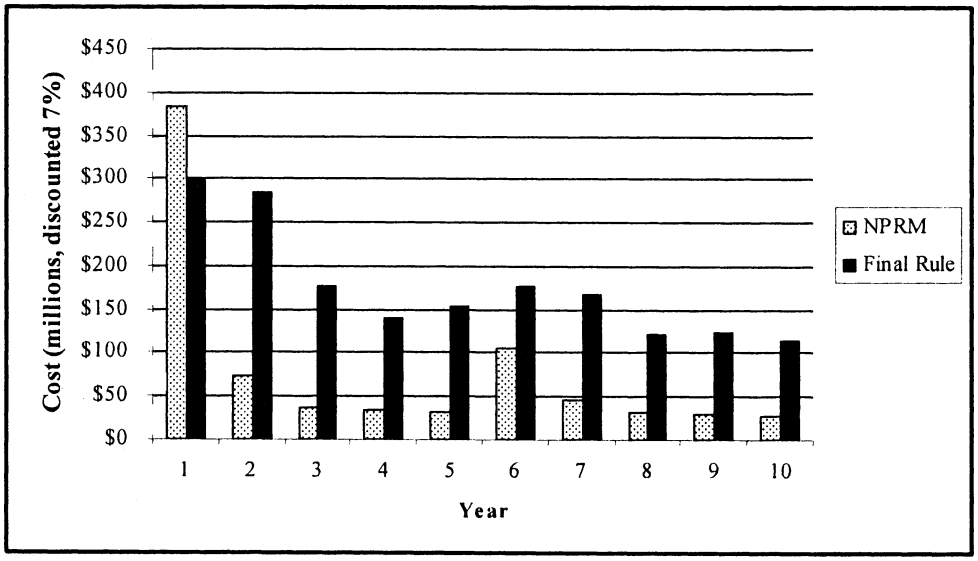
TABLE 6.—COST CHANGE, NPRM TO FINAL RULE

[$ millions, 7 percent discount rate]

Component	NPRM			Final Rule			Difference (Low–High)	Remarks
	Low	Primary	High	Low	Primary	High		
Enrollment Opportunity Costs.	.....	$71.8	.....	$73.8	$196.7	$393.5	$2–$321.7	Public comments on original time estimate and increased population.
Enrollment Service Costs.	.....	91.9	.....	.....	94.9	.....	3.0	Increased population.
Security Threat Assessment Costs.	.....	57.9	.....	.....	57.9	.....	0.0	Increased population but reduced technology costs.
TSA System Costs	.....	27.4	.....	.....	44.3	.....	16.9	Improved internal cost estimates.
Appeals and Waivers Opportunity Costs.	.....	5.7	.....	.....	5.9	.....	0.2	Increased population.
Card Production Cost	.....	29.5	.....	.....	31.9	.....	2.4	Improved internal cost estimates and increased functionality.
Issuance Opportunity Costs.	.....	89.0	.....	123.4	329.2	658.4	34.4–569.4	Public comments on original time estimate and increased population.
Program Office Support Costs.	.....	41.0	.....	.....	19.9	.....	(−21.1)	Improved internal cost estimates.
Compliance Costs, Facilities.	$299.0	312.1	$325.1	82.2	326.5	644.3	(−216.8)–319.2	Public comments on original estimates and changes to proposed requirements.
Compliance Costs, Vessels.	63.1	75.8	88.4	157.7	638.8	1,264.4	94.6–1,176	
Compliance Costs, OCS Facilities.	0.6	0.7	0.8	2.4	10.1	20.1	1.8–19.3	
Total	$777.0	$802.8	$828.6	$694.3	$1,756.3	$3,235.4	($−82.7)–$2,406.8	

As stated above, the primary cost estimates for the final rule differ from those estimated for the NPRM. While certain cost components, such as the card reader costs, were eliminated from the final rule, other adjustments, mainly to the enrollment opportunity cost and escorting cost estimates, caused a net increase in the total primary estimate. Table 7 displays the differences on an annual basis.

Table 7: Differences in Annual Primary Cost Estimates



B. Small Entities

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

In support of the NPRM, we conducted an Initial Regulatory Flexibility Analysis (IRFA) that did not conclude whether the proposed rule would have a significant economic impact on a substantial number of small entities. We solicited comments on the matter in order to become better informed on how the proposed rule would impact affected small entities.

After reviewing the public comments on the IRFA and the modifications to the final rule, we conducted a Final Regulatory Flexibility Analysis (FRFA), which is now available in the RIA on both public dockets. The public comments we received on the IRFA, which we summarized and responded to in the preamble to the final rule, addressed a broad array of issues specific to small entities, including the high cost of biometric smart card readers and other security infrastructure; the potential negative impact to businesses that predominantly utilize seasonal workforces; and the potential adverse effect on firms that must provide escorts for employees seeking access to secure and restricted areas, but do not possess unescorted access authority.

In completing the FRFA, we revised many of our initial cost estimates in response to both comments from industry and the changes to the rule that those comments produced. We have determined that the final rule will have a significant economic impact on a substantial number of small entities. In this summary, we provide a brief description of why our cost estimates have changed, and examples of how we have provided regulatory flexibility for small entities in an attempt to mitigate any adverse economic effects of the rule.

The primary reason for the determination that the rule will have a significant economic impact on small entities is that we have considerably revised our cost estimates for vessels and facilities to provide escorted access to employees and visitors in secure areas. During the public comment period, several individuals and firms expressed concern that we understated our original estimate for this requirement. In response to these comments, we increased our cost estimate for vessels and facilities to comply with this provision of the rule.

The final rule also contains several changes from the NPRM. For example, as stated elsewhere in this preamble, the rule no longer requires vessels, facilities, or OCS facilities to purchase, install, and maintain biometric smart card readers; it does not include the recordkeeping requirements proposed in the NPRM; and affected firms do not have to submit a TWIC addendum to the Coast Guard. These changes also caused us to adjust our cost estimates.

Table 8 displays how our low, primary, and high initial compliance cost estimates, as reported in the IRFA for the NPRM, have changed for small vessels. As previously described, these increased costs to small vessels are primarily a function of our increased cost estimate for small vessels to provide escorts to employees and visitors seeking access to secure and restricted areas.

Table 8: Difference in Initial Cost Estimates for Small Vessels

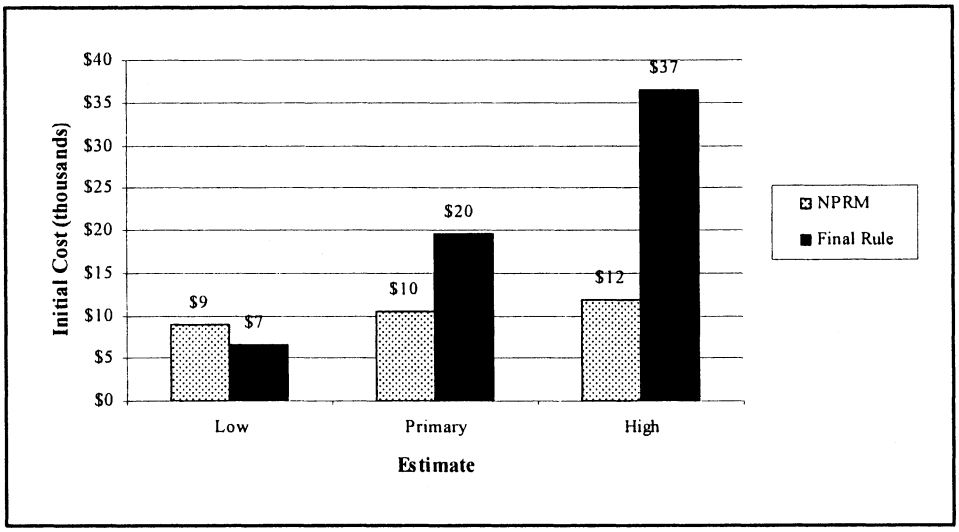
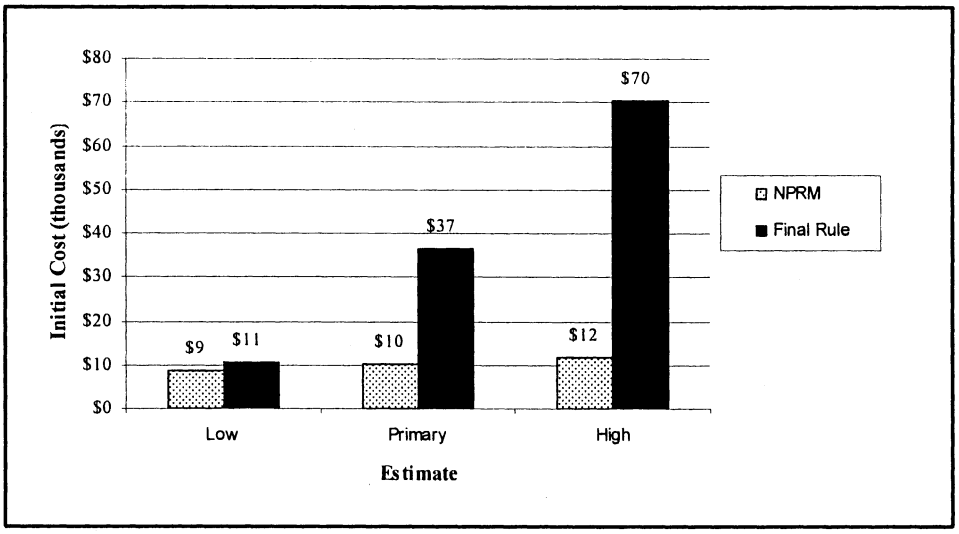


Table 9 shows how we adjusted our low, primary, and high initial compliance cost estimates for small facilities from the NPRM estimates included in the IRFA. Again, the change in cost estimates is principally the result of modifications to our estimates for facilities to provide escorted access to employees and visitors who do not have unescorted access authority. (As there are no small entities that operate facilities on the OCS, we did not estimate compliance costs for these firms under the FRFA.)

Table 9: Difference in Initial Cost Estimate for Small Facilities



Even though we have determined that this rule will have a significant economic impact on a substantial number of small entities, we also believe that the rule provides small entities with a significant amount of flexibility to achieve the requirements of the regulation.

First, and perhaps most importantly, the final rule no longer requires the use of biometric smart card readers by vessels, facilities, and OCS facilities. This should substantial decrease the burden on small entities, as there is no new capital investment required under this rulemaking. Additionally, the Coast Guard will conduct spot checks with hand held readers to ensure that individuals and regulated entities are utilizing the TWIC in a fashion consistent with the requirements of the rule. By completing these checks, the Coast Guard will be able verify the identity of TWIC holders, as well as confirm the validity of their credentials. This should also serve to lower the regulatory burden on small entities by transitioning some of the cost of TWIC verifications to the Federal government.

The recordkeeping requirement proposed in the NPRM has also been dropped from the final rule, as has the requirement for firms to submit TWIC addenda. These alterations should also decrease the cost of compliance to small entities.

The provision for passenger access areas, which we originally proposed in the NPRM for passenger vessels, remains in the final rule and provides flexibility for small entities offering services to passengers. MTSA provides that no one may have unescorted access to secure areas unless they carry a

TWIC. To ensure that passenger vessels do not have to require passengers to obtain TWICs or ensure that passengers are ''escorted'' at all times while on the vessel, the rule creates the ''passenger access area,'' allowing vessel owners/operators to carve out areas within the secure areas aboard their vessels where passengers are free to move about unescorted.

In addition to the passenger access areas, the final rule creates ''employee access areas,'' allowing passenger vessel and ferry owners/operators more flexibility. An employee access area is a defined space within the access control area of a ferry or passenger vessel that is open to employees but not passengers. It is not a secure area and does not require a TWIC for unescorted access. It may not include any areas defined as restricted areas in the vessel security plan. We believe that this new provision should reduce the regulatory burden on many small passenger vessels, especially those that primarily utilize and rely on seasonal labor.

The final rule also includes a new provision that will allow a direct hire new employee to receive limited access to secure areas of a vessel or facility, provided that both the new employee and the owner/operator meet certain stipulations, which are detailed in the regulatory text. This new policy, which TSA and the Coast Guard did not propose in the NPRM, is intended to give owners/operators the flexibility to quickly give new employees who do not yet hold a TWIC access to secure areas.

In addition to making accommodations for new hires, the final rule also includes a provision for individuals who have reported their credential as either lost, damaged, or stolen. Although the provision contains certain caveats that are specified in the regulatory text, this new policy allows an employee missing or unable to use his or her credential to receive limited unescorted access to secure areas, including restricted areas, for seven calendar days.

Further, the final rule also allows certain facilities to submit amendments to their security plans in order to redefine their access control areas, which in turn may reduce their secure areas. By allowing small facilities to more closely focus their access control areas on a portion of their facility directly related to maritime transportation, this may reduce the rule's economic impact on small entities.

Finally, in an effort to maintain security but ensure applicants' rights, the rule now also allows for review by an ALJ in cases where TSA denies a waiver request. Moreover, the final rule extends the response time for applicants to appeal an adverse determination, correct an open criminal disposition, or apply for a waiver to 60 days. In addition, individuals, such as mariners who are at sea for extended periods of time, who legitimately miss the 60-day response time period may petition TSA to reconsider an Initial Determination.

TSA and the Coast Guard believe the policies outlined above provide small entities with flexibility in complying with the rule. We believe the final rule minimizes the adverse economic effects to small business while fulfilling all statutory requirements, as well as TSA's and the Coast Guard's primary objective of increased security.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LCDR Jonathan Maiorine, Commandant (G–PCP–2), United States Coast Guard, 2100 Second Street, SW., Washington, DC 20593; telephone 1 (877) 687–2243. DHS will not retaliate against small entities that question or complain about this rule or any policy or action of DHS.

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

D. Collection of Information

This rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(a), ''collection of information'' includes reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Transportation Worker Identification Credential (TWIC) Program.

Summary of the Collection of Information:

Need for Information: TSA has developed the Transportation Worker Identification Credential (TWIC) as an identification tool that encompasses the authorities of the Aviation and Transportation Security Act of 2001 (ATSA) (Pub. L. 107–71, Sec. 106), and the Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. 107–295, Sec. 102) to perform background checks and issue credentials to workers within the national transportation system. The data to be collected is that biographic and biometric information necessary for TSA to complete the required security threat assessment on individuals who will seek unescorted access to secure areas of vessels and maritime facilities through the use of a TWIC. TWIC cards, when issued, will contain biographic and biometric data necessary to prove identity of the cardholder and to interoperate with access control systems on vessels and at facilities nationwide.

Proposed Use of Information: TSA will use the information to verify the identity of the individual applying for a TWIC and to verify that the person poses no security threat that would preclude issuance of a TWIC.

Description of the Respondents: The respondents to this collection of information will be workers within the national transportation system, specifically individuals who require unescorted access to secure areas of vessels or maritime facilities.

Number of Respondents: Although the number of respondents will vary over three years, TSA estimates that the annualized number of total respondents will be approximately 317,400. Based on research conducted by TSA and the Coast Guard, the total estimated base population that will be affected by TWIC is 750,000. However, TSA estimates that more than seventy percent of the base maritime worker population will enroll in the program in the first year, and the remainder will enroll in year two. Turnover and growth within the affected population is expected to result in another 202,257 respondents.

Frequency of Response: Because renewals for the TWIC will be on a five year basis, for purposes of the Paperwork Reduction Act, to apply for a TWIC, each respondent will be

required to respond once to the enrollment collection. TSA estimates an additional response from the estimated two percent of respondents who will appeal decisions made by the agency with respect to security threat assessments or ask for a waiver from disqualifying offenses. Thus, TSA estimates the number of total annual responses to be approximately 323,800.

Burden of Response: TSA estimates the annual hour burden for enrollment to be 476,129, or one and one half hour per respondent. TSA estimates the annual hour burden for appeals and waiver to be approximately 38,100.

TSA has determined that the information collection and card issuance portion of the TWIC fee will be between $45 and $65 per respondent. This portion of the fee accounts for more than the actual cost of the information collection as it includes cost of the enrollment process, system operations and maintenance, and TWIC distribution.

Estimate of Total Annual Burden: TSA estimates the total annual hour burden as a result of this collection of information to be approximately 514,200. Because the TWIC fee may change over time as actual costs are determined and annualized, TSA estimates total annual fee for respondents to be between $14,283,855 and $20,632,235.

As required by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

The provisions contained in the amendments to Title 33 do not call for a new collection of information under the PRA (44 U.S.C. 3501–3520). While they include potential amendments of vessel or facility security plans, these amendments are covered by an approved collection of information. The approval number from OMB is OMB Control Number(s) 1625–0077 ''Security Plan for Ports, Vessels, Facilities, Outer Continental Shelf Facilities and Other Security-Related Requirements,'' which expires on July 31, 2008.

The new hire provision requirements affecting Homeport will be added to collection 1625–0110 ''Maritime Identification Credentials—Title 33 CFR Part 125'', which expired on November 30, 2006. The three year renewal for 1625–0110 was submitted to OMB on October 6, 2006 and an amendment to that renewal reflecting the proposed changes due to the new hire provisions was submitted to OMB on December 29, 2006. The revision would change the collection, once the TWIC program goes into effect, to make the submission of new hire information voluntary and require owners and operators to receive a positive verification from Homeport prior to granting access to the new hire. The government's need for the information, the type of information to be submitted, the method of submission, and the frequency of submission should not change from the current collection.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a Notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

E. Executive Order 13132 (Federalism)

A rule has implications for federalism under E.O. 13132, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. TSA and Coast Guard have analyzed this final rule under that Order and have determined that it has implications for federalism, for the same reasons that we found federalism impacts for the Coast Guard's previously published MTSA regulations. 68 FR at 60468–9. A summary of the impacts on federalism in this rule follows.

This rule would have a substantial direct effect on States, local governments, or political subdivisions under section 1(a) of the Order when those states owning vessels/facilities are required to implement a TWIC program. It would also preempt State law under section 6(c) of the Order by: Continuing to prevent States from regulating mariners; and continuing to prevent the States from requiring security plans.

Regulations already issued by the Coast Guard under other sections of the MTSA of 2002 cited the need for national standards of security, claimed preemption, and received comments in support of such a scheme. *See,* 68 FR 60448, 60468–60469. (October 23, 2003).

The law is well-settled that States may not regulate in categories expressly reserved for regulation by the Coast Guard. The law also is well-settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89 (2000). Since portions of this proposed rule involve the manning of U.S. vessels and the licensing of merchant mariners, it relates to personnel qualifications. Because the states may not regulate within this category, these portions of this rule do not present new preemption issues under E.O. 13132.

We are only asserting field preemption in those areas where federal regulations have historically dominated the field, such as merchant mariner regulations, or where we are amending regulations that we have previously preempted state regulation, such as the MTSA regulations found in 33 CFR chapter I, subchapter H. States would not be preempted from instituting their own background checks or badging systems in addition to the TWIC.

Some commenters objected to allowing State or local governments to impose credentialing or background check requirements, noting that it results in multiple background checks for workers. We have carefully considered whether State and local governments should be preempted from doing so, and have determined that we are not preempting such State and local activities.

Under this rulemaking, States will not be preempted from instituting their own background checks or badging systems in addition to the TWIC. We note that a State may be the proprietor of ports or port facilities, and as the proprietor is free to set standards for who may enter onto their facilities, as does any other proprietor. In addition, States may have set standards for reasons other than guarding against the threat of terrorism, such as to combat drug smuggling or organized crime. As such they are not regulating in the areas that DHS is regulating.

The Department has also considered an additional federalism matter with respect to the TWIC credential. Section 102 of MTSA, 46 U.S.C. 70105, contains no express exceptions for State and local officials. As noted earlier in this preamble, however, the Department will not with this final rule require State and local officials to obtain a TWIC credential prior to their unescorted access to the ports. The Department's decision reflects the concern that denying port access to State and local officials, including law enforcement officials, may have serious federalism implications, particularly where there is not sufficient evidence of Congress's intent to do so. State law enforcement officials, for example, have authority and emergency aid responsibilities in

and around ports pursuant to laws properly promulgated by State legislatures and consistent with historic State police powers. The incidental application to these State officials of the MTSA's generally applicable requirements—for example, by barring them from secure areas of ports unless they obtain a federal credential—may excessively interfere with the functioning of State governments. *Cf. Printz* v. *United States,* 521 U.S. 898, 932 (1997); *see also Gregory* v. *Ashcroft,* 501 U.S. 452, 460 (1991) (emphasizing importance of State power to prescribe qualifications of its own officials. ''Through the structure of its government and the character of those who exercise government authority, a State defines itself as a sovereign''). We are hesitant to impose such a requirement on State and local governments when Congress has not made its intention in this respect clear and manifest. *See Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218, 230 (1947). The decision to exempt State and local officials from the TWIC requirements thus maintains the role of State and local officials in areas traditionally under their jurisdiction.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. This rule would result in such an expenditure for the private sector, and we discuss the effects of this rule in the Final Regulatory Assessment, which is summarized in the E.O. 12866 section above.

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

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

One commenter disagreed with this statement, stating that any significant new regulation of the transportation system will significantly affect the distribution system, particularly in the short term. The commenter requested a delay in the effective date of the rule along with a longer time period to ensure full compliance with the program. The commenter expressed doubt that there will be an adequate supply of TWIC readers available, adding that the regulations must allow companies to operate until the TWIC system is installed and usable.

We disagree with the commenter. The original MTSA regulations were also a significant new regulation of the maritime transportation system, and we did not see a significant effect on the energy distribution system during the implementation of those regulations. However, we note that the intent of this commenter is being satisfied, as the reader requirements have not been included in the final rule.

L. Technical Standards

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

While the NPRM proposed incorporating a standard, this rule does not. Therefore, we did not consider the use of voluntary consensus standards for this final rule.

M. Environment

The Transportation Worker Identification Credential (TWIC) rule contains a program of activities to improve the safety and security of vessels, facilities, OCS facilities, and U.S. ports. It establishes requirements for secure identification cards, developing application forms, collecting and processing forms, application evaluation criteria, issuing determinations on applications, and use of the identification cards to enhance security at MTSA-regulated facilities and vessels. It will contribute to a higher level of marine safety and security for vessels, facilities, OCS facilities, and U.S. ports.

Initially, implementation of this rule will involve establishing ''enrollment stations'' to collect TWIC applications. The enrollment stations will include a small office, using existing utilities where possible, located in space made available in existing port facilities or other available space within a 25 mile radius of the port facility. If a location does not have a port facility, or enough space, a temporary unit will be provided until either sufficient permanent space is available or the need for the enrollment station no longer exists. To meet the initial surge of enrollments expected, approximately 130 stations (permanent and mobile/temporary) are expected to be operating nationwide. The ongoing/maintenance phase will involve approximately 134 stations.

Once the initial enrollment period is complete and TWICs have been issued to maritime personnel, implementation will involve an inspection of the TWIC by the vessel or facility owner/operator for a worker to gain unescorted access to secure areas of vessels and facilities. The inspection of the TWIC must include:

(i) A match of the photo on the TWIC to the individual presenting the TWIC;

(ii) Verification that the TWIC has not expired; and

(iii) A visual check of the various security features present on the card to ensure that the TWIC has not been forged or tampered.

There are preexisting requirements in 46 U.S.C. 70103(c)(3)(C) and in 33 CFR part 125 that require waterfront facilities and vessels to maintain security plans that implement access control measures including the use of appropriate identification credentials. In addition, current regulations at 33 CFR part 101 establish federal identification standards. At some seaports, States and port operators have also established identification requirements. States and port operators have the option to either replace their existing identification requirements with the TWIC or to maintain their existing identification requirements in addition to the TWIC. In either case, inspection of the TWIC is not expected to add significant time to the entry procedures at any seaport.

The provisions of this rule have been analyzed under the Department of Homeland Security (DHS) Management Directive (MD) 5100.1, Environmental Planning Program, which is the DHS policy and procedures for implementing the National Environmental Policy Act (NEPA), and related E.O.s and requirements. Based on a review of current practices and expected changes that would result from this rule, there would be no significant environmental impact in requiring those entering the port facility to display the TWIC card in addition to or as a substitute for their regular identification as a flash pass. There are no extraordinary circumstances presented by this rule that would limit the use of a CATEX under MD 5100.1, Appendix A, paragraph 3.2. The implementation of this rule is categorically excluded under the following categorical exclusions (CATEX) listed in MD 5100.1, Appendix A, Table 1: CATEX A1 (personnel, fiscal, management and administrative activities); CATEX A3 (promulgation of rules, issuance of rulings or interpretations); and CATEX A4 (information gathering, data analysis and processing, information dissemination, review, interpretation and development of documents). CATEX B3 (proposed activities and operations to be conducted in an existing structure that would be compatible with and similar in scope to ongoing functional uses) and CATEX B 11 (routine monitoring and surveillance activities that support law enforcement or homeland security and defense operations) would also be applicable.

VI. Solicitation of Comments

TSA is soliciting public comments on the card replacement fee. The NPRM estimated that the card replacement fee would be $36. Since issuance of the NPRM, TSA has learned that the costs associated with replacing the card will be higher than anticipated. In this preamble, an explanation of the differences appears in section I, Background, under Fees. TSA now estimates that it will cost TSA $60 per card to issue replacements. Because this cost is significantly higher than proposed, TSA invites public comment on this issue. This Final Rule establishes the card replacement fee at $36. TSA will issue cards at the $36.00 fee but proposes to increase this fee to $60. TSA invites comment on the proposed increase of the Card Replacement Fee.

List of Subjects

33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 103

Facilities, Harbors, Maritime security, Ports, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 104

Incorporation by reference, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

33 CFR Part 105

Facilities, Maritime security, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 106

Facilities, Maritime security, Outer Continental Shelf, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 125

Administrative practice and procedure, Harbors, Reporting and recordkeeping requirements, Security measures, Vessels.

46 CFR Part 10

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

49 CFR Part 1515

Appeals, Commercial drivers license, Criminal history background checks, Explosives, Facilities, Hazardous materials, Incorporation by reference, Maritime security, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

49 CFR Part 1540

Air carriers, Airports, Aviation safety, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1570

Appeals, Commercial drivers license, Criminal history background checks, Explosives, Facilities, Hazardous materials, Incorporation by reference, Maritime security, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

49 CFR Part 1572

Appeals, Commercial drivers license, Criminal history background checks, Explosives, Facilities, Hazardous materials, Incorporation by reference, Maritime security, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

The Amendments

■ For the reasons listed in the preamble, the Coast Guard amends 33 CFR parts 101, 103, 104, 105, 106, 125; and 46 CFR parts 10, 12, and 15 and the Transportation Security Administration adds or amends 49 CFR parts 1515, 1570, and 1572 as follows:

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD

PART 101—MARITIME SECURITY: GENERAL

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 101.105 add, in alphabetical order, definitions for the terms escorting, personal identification number (PIN), recurring unescorted access, secure area, TWIC, TWIC

program, and unescorted access, to read as follows:

§ 101.105 Definitions.

* * * * *

Escorting means ensuring that the escorted individual is continuously accompanied while within a secure area in a manner sufficient to observe whether the escorted individual is engaged in activities other than those for which escorted access was granted. This may be accomplished via having a side-by-side companion or monitoring, depending upon where the escorted individual will be granted access. Individuals without TWICs may not enter restricted areas without having an individual who holds a TWIC as a side-by-side companion, except as provided in §§ 104.267, 105.257, and 106.262 of this subchapter.

* * * * *

Personal Identification Number (PIN) means a personally selected number stored electronically on the individual's TWIC.

* * * * *

Recurring unescorted access means authorization to enter a vessel on a continual basis after an initial personal identity and credential verification.

* * * * *

Secure Area means the area on board a vessel or at a facility or outer continental shelf facility over which the owner/operator has implemented security measures for access control in accordance with a Coast Guard approved security plan. It does not include passenger access areas, employee access areas, or public access areas, as those terms are defined in §§ 104.106, 104.107, and 105.106, respectively, of this subchapter. Vessels operating under the waivers provided for at 46 U.S.C. 8103(b)(3)(A) or (B) have no secure areas. Facilities subject to part 105 of this subchapter may, with approval of the Coast Guard, designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation security incident as their secure areas.

* * * * *

TWIC means a valid, non-revoked transportation worker identification credential, as defined and explained in 49 CFR part 1572.

TWIC Program means those procedures and systems that a vessel, facility, or outer continental shelf facility (OCS) must implement in order to assess and validate TWICs when maintaining access control.

* * * * *

Unescorted access means having the authority to enter and move about a secure area without escort.

* * * * *

■ 3. Add § 101.514 to read as follows:

§ 101.514 TWIC Requirement.

(a) All persons requiring unescorted access to secure areas of vessels, facilities, and OCS facilities regulated by parts 104, 105 or 106 of this subchapter must possess a TWIC before such access is granted, except as otherwise noted in this section. A TWIC must be obtained via the procedures established by TSA in 49 CFR part 1572.

(b) Federal officials are not required to obtain or possess a TWIC. Except in cases of emergencies or other exigent circumstances, in order to gain unescorted access to a secure area of a vessel, facility, or OCS facility regulated by parts 104, 105 or 106 of this subchapter, a federal official must present his/her agency issued, HSPD 12 compliant credential. Until each agency issues its HSPD 12 compliant cards, Federal officials may gain unescorted access by using their agency's official credential. The COTP will advise facilities and vessels within his or her area of responsibility as agencies come into compliance with HSPD 12.

(c) Law enforcement officials at the State or local level are not required to obtain or possess a TWIC to gain unescorted access to secure areas. They may, however, voluntarily obtain a TWIC where their offices fall within or where they require frequent unescorted access to a secure area of a vessel, facility or OCS facility.

(d) Emergency responders at the State, or local level are not required to obtain or possess a TWIC to gain unescorted access to secure areas during an emergency situation. They may, however, voluntarily obtain a TWIC where their offices fall within or where they desire frequent unescorted access to a secure area of a vessel, facility or OCS facility in non-emergency situations.

(e) Before September 25, 2008, mariners do not need to obtain or possess a TWIC but may be provided unescorted access to secure areas of vessels, facilities, and OCS facilities regulated by parts 104, 105 or 106 of this subchapter if they are able to show one of the following:

(1) A valid Merchant Mariner Document (MMD);

(2) A valid Merchant Mariner License and a valid photo identification; or

(3) A valid Certificate of Registry and a valid photo identification.

■ 4. Revise § 101.515 to read as follows:

§ 101.515 TWIC/Personal Identification.

(a) Persons not described in § 101.514 of this part shall be required to present personal identification in order to gain entry to a vessel, facility, and OCS facility regulated by parts 104, 105 or 106 of this subchapter. These individuals must be under escort, as that term is defined in § 101.105 of this part, while inside a secure area. This personal identification must, at a minimum, meet the following requirements:

(1) Be laminated or otherwise secure against tampering;

(2) Contain the individual's full name (full first and last names, middle initial is acceptable);

(3) Contain a photo that accurately depicts that individual's current facial appearance; and

(4) Bear the name of the issuing authority.

(b) The issuing authority in paragraph (a)(4) of this section must be:

(1) A government authority, or an organization authorized to act of behalf of a government authority; or

(2) The individual's employer, union, or trade association.

(c) Vessel, facility, and OCS facility owners and operators must permit law enforcement officials, in the performance of their official duties, who present proper identification in accordance with this section and § 101.514 of this part to enter or board that vessel, facility, or OCS facility at any time, without delay or obstruction. Law enforcement officials, upon entering or boarding a vessel, facility, or OCS facility, will, as soon as practicable, explain their mission to the Master, owner, or operator, or their designated agent.

(d) *Inspection of credential.* (1) Each person who has been issued or possesses a TWIC must present the TWIC for inspection upon a request from TSA, the Coast Guard, or other authorized DHS representative; an authorized representative of the National Transportation Safety Board; or a Federal, State, or local law enforcement officer.

(2) Each person who has been issued or who possesses a TWIC must allow his or her TWIC to be read by a reader and must submit his or her reference biometric, such as a fingerprint, and any other required information, such as a PIN, to the reader, upon a request from TSA, the Coast Guard, other authorized DHS representative; or a Federal, State, or local law enforcement officer.

PART 103—MARITIME SECURITY: AREA MARITIME SECURITY

■ 5. The authority citation for part 103 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70102, 70103, 70104, 70112; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No, 0170.1.

■ 6. Revise § 103.305(c) to read as follows:

§ 103.305 Composition of an Area Maritime Security (AMS) Committee.

* * * * *

(c) Members appointed under this section serve for a term of not more than five years. In appointing members, the FMSC should consider the skills required by § 103.410 of this part. With the exception of credentialed Federal, state and local officials, all AMS Committee members shall have a name-based terrorist check from TSA, hold a TWIC, or have passed a comparable security threat assessment, if they need access to SSI as determined by the FMSC.

■ 7. Revise § 103.505(f) to read as follows:

§ 103.505 Elements of the Area Maritime Security (AMS) plan.

* * * * *

(f) Measures to prevent unauthorized access to designated restricted areas within the port (e.g., TWIC);

* * * * *

PART 104—MARITIME SECURITY: VESSELS

■ 8. The authority citation for part 104 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 9. Amend § 104.105 by redesignating paragraph (d) as paragraph (f) and adding new paragraphs (d) and (e) to read as follows:

§ 104.105 Applicability.

* * * * *

(d) The TWIC requirements found in this part do not apply to foreign vessels.

(e) The TWIC requirements found in this part do not apply to mariners employed aboard vessels moored at U.S. facilities only when they are working immediately adjacent to their vessels in the conduct of vessel activities.

* * * * *

■ 10. Add § 104.106 to read as follows:

§ 104.106 Passenger access area.

(a) A ferry, passenger vessel, or cruise ship may designate areas within the vessel as passenger access areas.

(b) A passenger access area is a defined space, within the area over which the owner or operator has implemented security measures for access control, of a ferry, passenger vessel, or cruise ship that is open to passengers. It is not a secure area and does not require a TWIC for unescorted access.

■ 11. Add § 104.107 to read as follows:

§ 104.107 Employee access area.

(a) A ferry or passenger vessel, excluding cruise ships, may designate areas within the vessel as employee access areas.

(b) An employee access area is a defined space, within the area over which the owner or operator has implemented security measures for access control, of a ferry or passenger vessel that is open only to employees and not to passengers. It is not a secure area and does not require a TWIC for unescorted access.

(c) Employee access areas may not include any areas defined as restricted areas in the VSP.

■ 12. Amend § 104.115 by adding paragraphs (c) and (d) to read as follows:

§ 104.115 Compliance dates.

* * * * *

(c) Persons required to obtain a TWIC under this part may enroll beginning after the date set by the Coast Guard in a Notice to be published in the **Federal Register**. This notice will be directed to all facilities and vessels within a specific COTP zone.

(d) By September 25, 2008, vessel owners or operators subject to paragraph (b) of this section and not excluded by § 104.105(d) of this part must be operating in accordance with the TWIC provisions found within this part.

■ 13. Amend § 104.120 by adding paragraph (c) to read as follows:

§ 104.120 Compliance documentation.

* * * * *

(c) Each vessel owner or operator who designates a passenger or employee access area (as those terms are defined in §§ 104.106 and 104.107 of this part) on their vessel must keep on board the vessel with their approved VSP a clear, visual representation (such as a vessel schematic) of where those designated areas fall. This need not be submitted to the Coast Guard for approval until incorporated into the VSP at the next VSP submittal (either renewal or amendment), but must be made available to the Coast Guard upon request.

Subpart B—Vessel Security Requirements

■ 14. Revise § 104.200(b) to read as follows:

§ 104.200 Owner or operator.

* * * * *

(b) For each vessel, the vessel owner or operator must:

(1) Define the security organizational structure for each vessel and provide all personnel exercising security duties or responsibilities within that structure with the support needed to fulfill security obligations;

(2) Designate, in writing, by name or title, a Company Security Officer (CSO), a Vessel Security Officer (VSO) for each vessel, and identify how those officers can be contacted at any time;

(3) Ensure personnel receive training, drills, and exercises enabling them to perform their assigned security duties;

(4) Inform vessel personnel of their responsibility to apply for and maintain a TWIC, including the deadlines and methods for such applications, and of their obligation to inform TSA of any event that would render them ineligible for a TWIC, or which would invalidate their existing TWIC;

(5) Ensure vessel security records are kept;

(6) Ensure that adequate coordination of security issues takes place between vessels and facilities; this includes the execution of a Declaration of Security (DoS);

(7) Ensure coordination of shore leave, transit, or crew change-out for vessel personnel, as well as access through the facility of visitors to the vessel (including representatives of seafarers' welfare and labor organizations), with facility operators in advance of a vessel's arrival. Vessel owners or operators may refer to treaties of friendship, commerce, and navigation between the U.S. and other nations in coordinating such leave. The text of these treaties can be found at *http://www.marad.dot.gov/Programs/treaties.html;*

(8) Ensure security communication is readily available;

(9) Ensure coordination with and implementation of changes in Maritime Security (MARSEC) Level;

(10) Ensure that security systems and equipment are installed and maintained;

(11) Ensure that vessel access, including the embarkation of persons and their effects, is controlled;

(12) Ensure that TWIC procedures are implemented as set forth in this part, including;

(i) Ensuring that only individuals who hold a TWIC and are authorized to be in secure areas are permitted to escort;

(ii) Identifying what action is to be taken by an escort, or other authorized individual, should individuals under escort engage in activities other than those for which escorted access was granted; and

(iii) Notifying vessel employees, and passengers if applicable, of what parts of the vessel are secure areas, employee access areas, and passenger access areas, as applicable, and ensuring such areas are clearly marked.

(13) Ensure that restricted areas are controlled and TWIC provisions are coordinated, if applied to such restricted areas;

(14) Ensure that protocols consistent with § 104.265(c) of this part, for dealing with individuals requiring access who report a lost, damaged, or stolen TWIC, or who have applied for and not yet received a TWIC, are in place;

(15) Ensure that cargo and vessel stores and bunkers are handled in compliance with this part;

(16) Ensure restricted areas, deck areas, and areas surrounding the vessel are monitored;

(17) Provide the Master, or for vessels on domestic routes only, the CSO, with the following information:

(i) Parties responsible for appointing vessel personnel, such as vessel management companies, manning agents, contractors, concessionaires (for example, retail sales outlets, casinos, etc.);

(ii) Parties responsible for deciding the employment of the vessel, including time or bareboat charters or any other entity acting in such capacity; and

(iii) In cases when the vessel is employed under the terms of a charter party, the contract details of those documents, including time or voyage charters; and

(18) Give particular consideration to the convenience, comfort, and personal privacy of vessel personnel and their ability to maintain their effectiveness over long periods; and

(19) If applicable, ensure that protocols consistent with § 104.267 of this part, for dealing with newly hired employees who have applied for and not yet received a TWIC, are in place.

■ 15. Amend § 104.210 by adding paragraphs (a)(5), (b)(2)(xv) and (c)(15) to read as follows:

§ 104.210 Company Security Officer (CSO).

(a) * * *

(5) The CSO must maintain a TWIC.

(b) * * *

(2) * * *

(xv) Knowledge of TWIC requirements

(c) * * *

(15) Ensure the TWIC program is being properly implemented.

■ 16. Amend § 104.215 by adding paragraphs (a)(6), (b)(7) and (c)(12) to read as follows:

§ 104.215 Vessel Security Officer (VSO).

(a) * * *

(6) The VSO must maintain a TWIC.

(b) * * *

(7) TWIC

(c) * * *

(12) Ensure TWIC programs are in place and implemented appropriately.

■ 17. Amend § 104.220 by revising the introductory paragraph and adding paragraph (n) to read as follows:

§ 104.220 Company or vessel personnel with security duties.

Company and vessel personnel responsible for security duties must maintain a TWIC, and must have knowledge, through training or equivalent job experience, in the following, as appropriate:

* * * * *

(n) Relevant aspects of the TWIC program and how to carry them out.

■ 18. Amend § 104.225 by adding paragraph (f) to read as follows:

§ 104.225 Security training for all other personnel.

* * * * *

(f) Relevant aspects of the TWIC program and how to carry them out.

■ 19. Revise § 104.265 to read as follows:

§ 104.265 Security measures for access control.

(a) *General.* The vessel owner or operator must ensure the implementation of security measures to:

(1) Deter the unauthorized introduction of dangerous substances and devices, including any device intended to damage or destroy persons, vessels, facilities, or ports;

(2) Secure dangerous substances and devices that are authorized by the owner or operator to be on board;

(3) Control access to the vessel; and

(4) Prevent an unescorted individual from entering an area of the vessel that is designated as a secure area unless the individual holds a duly issued TWIC and is authorized to be in the area.

(b) The vessel owner or operator must ensure that the following are specified:

(1) The locations providing means of access to the vessel where access restrictions or prohibitions are applied for each Maritime Security (MARSEC) Level, including those points where TWIC access control provisions will be applied. ''Means of access'' include, but are not limited, to all:

(i) Access ladders;

(ii) Access gangways;

(iii) Access ramps;

(iv) Access doors, side scuttles, windows, and ports;

(v) Mooring lines and anchor chains; and

(vi) Cranes and hoisting gear;

(2) The identification of the types of restriction or prohibition to be applied and the means of enforcing them;

(3) The means used to establish the identity of individuals not in possession of a TWIC and procedures for escorting, in accordance with § 101.515 of this subchapter; and

(4) Procedures for identifying authorized and unauthorized persons at any MARSEC level.

(c) The vessel owner or operator must ensure that a TWIC program is implemented as follows:

(1) All persons seeking unescorted access to secure areas must present their TWIC for inspection before being allowed unescorted access, in accordance with § 101.514 of this subchapter. Inspection must include:

(i) A match of the photo on the TWIC to the individual presenting the TWIC;

(ii) Verification that the TWIC has not expired; and

(iii) A visual check of the various security features present on the card to determine whether the TWIC has been tampered with or forged.

(2) If an individual cannot present a TWIC because it has been lost, damaged or stolen, and he or she has previously been granted unescorted access to the vessel and is known to have had a valid TWIC, the individual may be given unescorted access to secure areas for a period of no longer than seven consecutive calendar days provided that:

(i) The individual has reported the TWIC as lost, damaged, or stolen to TSA as required in 49 CFR 1572.19(f);

(ii) The individual can present another identification credential that meets the requirements of § 101.515 of this subchapter; and

(iii) There are no other suspicious circumstances associated with the individual's claim of loss or theft.

(3) If an individual cannot present his or her TWIC for any other reason than outlined in paragraph (2) of this section, he or she may not be granted unescorted access to the secure area. The individual must be under escort, as that term is defined in part 101 of this subchapter, at all times when inside a secure area.

(4) With the exception of persons granted access according to paragraph (2) of this section, all persons granted unescorted access to secure areas of the vessel must be able to produce his or her TWIC upon request.

(5) There must be disciplinary measures in place to prevent fraud and abuse.

(6) The vessel's TWIC program should be coordinated, when practicable, with identification and TWIC access control measures of facilities or other transportation conveyances that interface with the vessel.

(d) If the vessel owner or operator uses a separate identification system, ensure that it complies and is coordinated with TWIC provisions in this part.

(e) The vessel owner or operator must establish in the approved VSP the frequency of application of any security measures for access control, particularly if these security measures are applied on a random or occasional basis.

(f) *MARSEC Level 1.* The vessel owner or operator must ensure security measures in this paragraph are implemented to:

(1) Employ TWIC as set out in paragraph (c) of this section.

(2) Screen persons, baggage (including carry-on items), personal effects, and vehicles for dangerous substances and devices at the rate specified in the approved VSP, except for government-owned vehicles on official business when government personnel present identification credentials for entry;

(3) Conspicuously post signs that describe security measures currently in effect and clearly state that:

(i) Boarding the vessel is deemed valid consent to screening or inspection; and

(ii) Failure to consent or submit to screening or inspection will result in denial or revocation of authorization to board;

(4) Check the identification of any person not holding a TWIC and seeking to board the vessel, including vessel passengers, vendors, personnel duly authorized by the cognizant government authorities, and visitors. This check includes confirming the reason for boarding by examining at least one of the following:

(i) Joining instructions;

(ii) Passenger tickets;

(iii) Boarding passes;

(iv) Work orders, pilot orders, or surveyor orders;

(v) Government identification; or

(vi) Visitor badges issued in accordance with an identification system implemented under paragraph (d) of this section.

(5) Deny or revoke a person's authorization to be on board if the person is unable or unwilling, upon the request of vessel personnel or a law enforcement officer, to establish his or her identity in accordance with this part or to account for his or her presence on board. Any such incident must be reported in compliance with this part;

(6) Deter unauthorized access to the vessel;

(7) Identify access points that must be secured or attended to deter unauthorized access;

(8) Lock or otherwise prevent access to unattended spaces that adjoin areas to which passengers and visitors have access;

(9) Provide a designated area on board, within the secure area, or in liaison with a facility, for conducting inspections and screening of people, baggage (including carry-on items), personal effects, vehicles and the vehicle's contents;

(10) Ensure vessel personnel are not subjected to screening, of the person or of personal effects, by other vessel personnel, unless security clearly requires it;

(11) Conduct screening in a way that takes into full account individual human rights and preserves the individual's basic human dignity;

(12) Ensure the screening of all unaccompanied baggage;

(13) Ensure checked persons and their personal effects are segregated from unchecked persons and their personal effects;

(14) Ensure embarking passengers are segregated from disembarking passengers;

(15) Ensure, in liaison with the facility, a defined percentage of vehicles to be loaded aboard passenger vessels are screened prior to loading at the rate specified in the approved VSP;

(16) Ensure, in liaison with the facility, all unaccompanied vehicles to be loaded on passenger vessels are screened prior to loading; and

(17) Respond to the presence of unauthorized persons on board, including repelling unauthorized boarders.

(g) *MARSEC Level 2.* In addition to the security measures required for MARSEC Level 1 in this section, at MARSEC Level 2, the vessel owner or operator must ensure the implementation of additional security measures, as specified for MARSEC Level 2 in the approved VSP. These additional security measures may include:

(1) Increasing the frequency and detail of screening of people, personal effects, and vehicles being embarked or loaded onto the vessel as specified for MARSEC Level 2 in the approved VSP, except for government-owned vehicles on official business when government personnel present identification credentials for entry;

(2) X-ray screening of all unaccompanied baggage;

(3) Assigning additional personnel to patrol deck areas during periods of reduced vessel operations to deter unauthorized access;

(4) Limiting the number of access points to the vessel by closing and securing some access points;

(5) Denying access to visitors who do not have a verified destination;

(6) Deterring waterside access to the vessel, which may include, in liaison with the facility, providing boat patrols; and

(7) Establishing a restricted area on the shore side of the vessel, in close cooperation with the facility.

(h) *MARSEC Level 3.* In addition to the security measures required for MARSEC Level 1 and MARSEC Level 2, the vessel owner or operator must ensure the implementation of additional security measures, as specified for MARSEC Level 3 in the approved VSP. The additional security measures may include:

(1) Screening all persons, baggage, and personal effects for dangerous substances and devices;

(2) Performing one or more of the following on unaccompanied baggage:

(i) Screen unaccompanied baggage more extensively, for example, x-raying from two or more angles;

(ii) Prepare to restrict or suspend handling unaccompanied baggage; or

(iii) Refuse to accept unaccompanied baggage on board;

(3) Being prepared to cooperate with responders and facilities;

(4) Limiting access to the vessel to a single, controlled access point;

(5) Granting access to only those responding to the security incident or threat thereof;

(6) Suspending embarkation and/or disembarkation of personnel;

(7) Suspending cargo operations;

(8) Evacuating the vessel;

(9) Moving the vessel; or

(10) Preparing for a full or partial search of the vessel.

■ 20. Add § 104.267 to read as follows:

§ 104.267 Security measures for newly hired employees.

(a) Newly-hired vessel employees may be granted entry to secure areas of the vessel for up to 30 consecutive calendar days prior to receiving their TWIC provided all of the requirements in paragraph (b) of this section are met, and provided that the new hire is accompanied by an individual with a TWIC while within the secure areas of the vessel. If TSA does not act upon a TWIC application within 30 days, the cognizant Coast Guard COTP may

further extend access to secure areas for another 30 days. The Coast Guard will determine whether, in particular circumstances, certain practices meet the condition of a new hire being accompanied by another individual with a TWIC. The Coast Guard will issue guidance for use in making these determinations.

(b) Newly-hired vessel employees may be granted the access provided for in paragraph (a) of this section only if:

(1) The new hire has applied for a TWIC in accordance with 49 CFR part 1572 by completing the full enrollment process, paying the user fee, and is not currently engaged in a waiver or appeal process. The vessel owner or operator or Vessel Security Officer (VSO) must have the new hire sign a statement affirming this, and must retain the signed statement until the new hire receives a TWIC;

(2) The vessel owner or operator or the VSO enters the following information on the new hire into the Coast Guard's Homeport website (*http://homeport.uscg.mil*):

(i) Full legal name, including middle name if one exists;

(ii) Date of birth;

(iii) Social security number (optional);

(iv) Employer name and 24 hour contact information; and

(v) Date of TWIC enrollment;

(3) The new hire presents an identification credential that meets the requirements of § 101.515 of this subchapter;

(4) There are no other circumstances that would cause reasonable suspicion regarding the new hire's ability to obtain a TWIC, and the vessel owner or operator or VSO have not been informed by the cognizant COTP that the new hire poses a security threat; and

(5) There would be an adverse impact to vessel operations if the new hire is not allowed access.

(c) This section does not apply to any individual being hired as a Company Security Officer (CSO) or VSO, or any individual being hired to perform vessel security duties.

(d) The new hire may not begin working on board the vessel under the provisions of this section until the owner, operator, or VSO receives notification, via Homeport or some other means, the new hire has passed an initial name check.

Subpart D—Vessel Security Plan (VSP)

■ 21. Revise § 104.405(a)(10) and (b) to read as follows:

§ 104.405 Format of the Vessel Security Plan (VSP).

(a) * * *

(10) Security measures for access control, including designated passenger access areas and employee access areas;

* * * * *

(b) The VSP must describe in detail how the requirements of subpart B of this part will be met. VSPs that have been approved by the Coast Guard prior to March 26, 2007, do not need to be amended to describe their TWIC procedures until the next regularly scheduled resubmission of the VSP.

PART 105—MARITIME SECURITY: FACILITIES

■ 22. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No, 0170.1.

■ 23. Amend § 105.115 by adding paragraphs (c), (d), and (e) to read as follows:

§ 105.115 Compliance dates.

* * * * *

(c) Facility owners or operators wishing to designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation security incident as their secure area(s) must do so by submitting an amendment to their Facility Security Plan to their cognizant COTP, in accordance with § 105.415 of this part, by July 25, 2007.

(d) Persons required to obtain a TWIC under this part may enroll beginning after the date set by the Coast Guard in a Notice to be published in the **Federal Register**. This notice will be directed to all facilities and vessels within a specific COTP zone.

(e) Facility owners or operators must be operating in accordance with the TWIC provisions in this part by the date set by the Coast Guard in a Notice to be published in the **Federal Register**. This Notice will be published at least 90 days before compliance must begin, and will be directed to all facilities within a specific Captain of the Port zone, based on whether enrollment has been completed in that zone. Unless an earlier compliance date is specified in this manner, all facility owner or operators will need to implement their TWIC provisions no later than September 25, 2008.

Subpart B—Facility Security Requirements

■ 24. Revise § 105.200(b) to read as follows:

§ 105.200 Owner or operator.

* * * * *

(b) For each facility, the facility owner or operator must:

(1) Define the security organizational structure and provide each person exercising security duties and responsibilities within that structure the support needed to fulfill those obligations;

(2) Designate, in writing, by name or by title, a Facility Security Officer (FSO) and identify how the officer can be contacted at any time;

(3) Ensure that a Facility Security Assessment (FSA) is conducted;

(4) Ensure the development and submission for approval of an FSP;

(5) Ensure that the facility operates in compliance with the approved FSP;

(6) Ensure that the TWIC program is properly implemented as set forth in this part, including:

(i) Ensuring that only individuals who hold a TWIC and are authorized to be in the secure area in accordance with the FSP are permitted to escort;

(ii) Identifying what action is to be taken by an escort, or other authorized individual, should individuals under escort engage in activities other than those for which escorted access was granted; and

(iii) Notifying facility employees, and passengers if applicable, of what parts of the facility are secure areas and public access areas, as applicable, and ensuring such areas are clearly marked.

(7) Ensure that restricted areas are controlled and TWIC provisions are coordinated, if applied to such restricted areas;

(8) Ensure that adequate coordination of security issues takes place between the facility and vessels that call on it, including the execution of a Declaration of Security (DoS) as required by this part;

(9) Ensure coordination of shore leave for vessel personnel or crew change-out, as well as access through the facility for visitors to the vessel (including representatives of seafarers' welfare and labor organizations), with vessel operators in advance of a vessel's arrival. In coordinating such leave, facility owners or operators may refer to treaties of friendship, commerce, and navigation between the U.S. and other nations. The text of these treaties can be found at *http://www.marad.dot.gov/Programs/treaties.html;*

(10) Ensure, within 12 hours of notification of an increase in MARSEC Level, implementation of the additional security measures required for the new MARSEC Level;

(11) Ensure security for unattended vessels moored at the facility;

(12) Ensure the report of all breaches of security and transportation security incidents to the National Response Center in accordance with part 101 of this chapter;

(13) Ensure consistency between security requirements and safety requirements;

(14) Inform facility personnel of their responsibility to apply for and maintain a TWIC, including the deadlines and methods for such applications, and of their obligation to inform TSA of any event that would render them ineligible for a TWIC, or which would invalidate their existing TWIC;

(15) Ensure that protocols consistent with section 105.255(c) of this part, for dealing with individuals requiring access who report a lost, damaged, or stolen TWIC, or who have applied for and not yet received a TWIC, are in place; and

(16) If applicable, ensure that protocols consistent with § 105.257 of this part, for dealing with newly hired employees who have applied for and not yet received a TWIC, are in place.

■ 25. Amend § 105.205 by adding paragraphs (a)(4), (b)(2)(xv) and (c)(19) to read as follows:

§ 105.205 Facility Security Officer (FSO).

(a) * * *

(4) The FSO must maintain a TWIC.

(b) * * *

(2) * * *

(xv) Knowledge of TWIC requirements.

(c) * * *

(19) Ensure the TWIC program is being properly implemented.

■ 26. Amend § 105.210 by revising the introductory paragraph and adding paragraph (n) to read as follows:

§ 105.210 Facility personnel with security duties.

Facility personnel responsible for security duties must maintain a TWIC, and must have knowledge, through training or equivalent job experience, in the following, as appropriate:

* * * * *

(n) Familiar with all relevant aspects of the TWIC program and how to carry them out.

■ 27. Amend § 105.215 by adding paragraph (f) to read as follows:

§ 105.215 Security training for all other facility personnel.

* * * * *

(f) Familiar with all relevant aspects of the TWIC program and how to carry them out.

■ 28. Revise § 105.255 to read as follows:

§ 105.255 Security measures for access control.

(a) *General.* The facility owner or operator must ensure the implementation of security measures to:

(1) Deter the unauthorized introduction of dangerous substances and devices, including any device intended to damage or destroy persons, vessels, facilities, or ports;

(2) Secure dangerous substances and devices that are authorized by the owner or operator to be on the facility;

(3) Control access to the facility; and

(4) Prevent an unescorted individual from entering an area of the facility that is designated as a secure area unless the individual holds a duly issued TWIC and is authorized to be in the area.

(b) The facility owner or operator must ensure that the following are specified:

(1) The locations where restrictions or prohibitions that prevent unauthorized access are applied for each MARSEC Level, including those points where TWIC access control provisions will be applied. Each location allowing means of access to the facility must be addressed;

(2) The types of restrictions or prohibitions to be applied and the means of enforcing them;

(3) The means used to establish the identity of individuals not in possession of a TWIC, in accordance with § 101.515 of this subchapter, and procedures for escorting them;

(4) Procedures for identifying authorized and unauthorized persons at any MARSEC level; and

(5) The locations where persons, personal effects and vehicle screenings are to be conducted. The designated screening areas should be covered to provide for continuous operations regardless of the weather conditions.

(c) The facility owner or operator must ensure that a TWIC program is implemented as follows:

(1) All persons seeking unescorted access to secure areas must present their TWIC for inspection before being allowed unescorted access, in accordance with § 101.514 of this subchapter. Inspection must include:

(i) A match of the photo on the TWIC to the individual presenting the TWIC;

(ii) Verification that the TWIC has not expired; and

(iii) A visual check of the various security features present on the card to determine whether the TWIC has been tampered with or forged.

(2) If an individual cannot present a TWIC because it has been lost, damaged or stolen, and he or she has previously been granted unescorted access to the facility and is known to have had a valid TWIC, the individual may be given unescorted access to secure areas for a period of no longer than 7 consecutive calendar days if:

(i) The individual has reported the TWIC as lost, damaged, or stolen to TSA as required in 49 CFR 1572.19(f);

(ii) The individual can present another identification credential that meets the requirements of § 101.515 of this subchapter; and

(iii) There are no other suspicious circumstances associated with the individual's claim of loss or theft.

(3) If an individual cannot present his or her TWIC for any other reason than outlined in paragraph (c)(2) of this section, he or she may not be granted unescorted access to the secure area. The individual must be under escort, as that term is defined in part 101 of this subchapter, at all times when inside of a secure area.

(4) With the exception of persons granted access according to paragraph (c)(2) of this section, all persons granted unescorted access to secure areas of the facility must be able to produce his or her TWIC upon request.

(5) There must be disciplinary measures in place to prevent fraud and abuse.

(6) The facility's TWIC program should be coordinated, when practicable, with identification and TWIC access control measures of vessels or other transportation conveyances that use the facility.

(d) If the facility owner or operator uses a separate identification system, ensure that it complies and is coordinated with TWIC provisions in this part.

(e) The facility owner or operator must establish in the approved Facility Security Plan (FSP) the frequency of application of any access controls, particularly if they are to be applied on a random or occasional basis.

(f) *MARSEC Level 1.* The facility owner or operator must ensure the following security measures are implemented at the facility:

(1) Implement TWIC as set out in paragraph (c) of this section.

(2) Screen persons, baggage (including carry-on items), personal effects, and vehicles, for dangerous substances and devices at the rate specified in the approved FSP, excluding government-owned vehicles on official business when government personnel present identification credentials for entry;

(3) Conspicuously post signs that describe security measures currently in effect and clearly state that:

(i) Entering the facility is deemed valid consent to screening or inspection; and

(ii) Failure to consent or submit to screening or inspection will result in denial or revocation of authorization to enter.

(4) Check the identification of any person not holding a TWIC and seeking entry to the facility, including vessel passengers, vendors, personnel duly authorized by the cognizant government authorities, and visitors. This check shall include confirming the reason for boarding by examining at least one of the following:

(i) Joining instructions;

(ii) Passenger tickets;

(iii) Boarding passes;

(iv) Work orders, pilot orders, or surveyor orders;

(v) Government identification; or

(vi) Visitor badges issued in accordance with an identification system implemented under paragraph (d) of this section.

(5) Deny or revoke a person's authorization to be on the facility if the person is unable or unwilling, upon the request of facility personnel or a law enforcement officer, to establish his or her identity in accordance with this part or to account for his or her presence. Any such incident must be reported in compliance with this part;

(6) Designate restricted areas and provide appropriate access controls for these areas;

(7) Identify access points that must be secured or attended to deter unauthorized access;

(8) Deter unauthorized access to the facility and to designated restricted areas within the facility;

(9) Screen by hand or device, such as x-ray, all unaccompanied baggage prior to loading onto a vessel; and

(10) Secure unaccompanied baggage after screening in a designated restricted area and maintain security control during transfers between the facility and a vessel.

(g) *MARSEC Level 2*. In addition to the security measures required for MARSEC Level 1 in this section, at MARSEC Level 2, the facility owner or operator must ensure the implementation of additional security measures, as specified for MARSEC Level 2 in their approved FSP. These additional security measures may include:

(1) Increasing the frequency and detail of the screening of persons, baggage, and personal effects for dangerous substances and devices entering the facility;

(2) X-ray screening of all unaccompanied baggage;

(3) Assigning additional personnel to guard access points and patrol the perimeter of the facility to deter unauthorized access;

(4) Limiting the number of access points to the facility by closing and securing some access points and providing physical barriers to impede movement through the remaining access points;

(5) Denying access to visitors who do not have a verified destination;

(6) Deterring waterside access to the facility, which may include, using waterborne patrols to enhance security around the facility; or

(7) Except for government-owned vehicles on official business when government personnel present identification credentials for entry, screening vehicles and their contents for dangerous substances and devices at the rate specified for MARSEC Level 2 in the approved FSP.

(h) *MARSEC Level 3*. In addition to the security measures required for MARSEC Level 1 and MARSEC Level 2, at MARSEC level 3, the facility owner or operator must ensure the implementation of additional security measures, as specified for MARSEC Level 3 in their approved FSP. These additional security measures may include:

(1) Screening all persons, baggage, and personal effects for dangerous substances and devices;

(2) Performing one or more of the following on unaccompanied baggage:

(i) Screen unaccompanied baggage more extensively; for example, x-raying from two or more angles;

(ii) Prepare to restrict or suspend handling of unaccompanied baggage; or

(iii) Refuse to accept unaccompanied baggage.

(3) Being prepared to cooperate with responders and facilities;

(4) Granting access to only those responding to the security incident or threat thereof;

(5) Suspending access to the facility;

(6) Suspending cargo operations;

(7) Evacuating the facility;

(8) Restricting pedestrian or vehicular movement on the grounds of the facility; or

(9) Increasing security patrols within the facility.

■ 28. Add § 105.257 to read as follows:

§ 105.257 Security measures for newly-hired employees.

(a) Newly-hired facility employees may be granted entry to secure areas of the facility for up to 30 consecutive calendar days prior to receiving their TWIC provided all of the requirements in paragraph (b) of this section are met, and provided that the new hire is accompanied by an individual with a TWIC while within the secure areas of the facility. If TSA does not act upon a TWIC application within 30 days, the cognizant Coast Guard COTP may further extend access to secure areas for another 30 days. The Coast Guard will determine whether, in particular circumstances, certain practices meet the condition of a new hire being accompanied by another individual with a TWIC. The Coast Guard will issue guidance for use in making these determinations.

(b) Newly-hired facility employees may be granted the access provided for in paragraph (a) of this section if:

(1) The new hire has applied for a TWIC in accordance with 49 CFR part 1572 by completing the full enrollment process, paying the user fee, and is not currently engaged in a waiver or appeal process. The facility owner or operator or the Facility Security Officer (FSO) must have the new hire sign a statement affirming this, and must retain the signed statement until the new hire receives a TWIC;

(2) The facility owner or operator or the FSO enters the following information on the new hire into the Coast Guard's Homeport website (*http://homeport.uscg.mil*):

(i) Full legal name, including middle name if one exists;

(ii) Date of birth;

(iii) Social security number (optional);

(iv) Employer name and 24 hour contact information; and

(v) Date of TWIC enrollment.

(3) The new hire presents an identification credential that meets the requirements of § 101.515 of this subchapter;

(4) There are no other circumstances that would cause reasonable suspicion regarding the new hire's ability to obtain a TWIC, and the facility owner or operator or FSO have not been informed by the cognizant COTP that the new hire poses a security threat; and

(5) There would be an adverse impact to facility operations if the new hire is not allowed access.

(c) This section does not apply to any individual being hired as a FSO, or any individual being hired to perform facility security duties.

(d) The new hire may not begin working at the facility under the provisions of this section until the owner, operator, or FSO receives notification, via Homeport or some other means, the new hire has passed an initial name check.

■ 29. Amend § 105.285 by revising paragraph (a)(4) to read as follows:

§ 105.285 Additional requirements—passenger and ferry facilities.

(a) * * *

(4) Deny passenger access to secure and restricted areas unless escorted by

authorized facility security personnel; and

* * * * *

■ 30. Revise § 105.290 to read as follows:

§ 105.290 Additional requirements—cruise ship terminals.

At all MARSEC Levels, in coordination with a vessel moored at the facility, the facility owner or operator must ensure the following security measures:

(a) Screen all persons, baggage, and personal effects for dangerous substances and devices;

(b) Check the identification of all persons seeking to enter the facility. Persons holding a TWIC shall be checked as set forth in this part. For persons not holding a TWIC, this check includes confirming the reason for boarding by examining passenger tickets, boarding passes, government identification or visitor badges, or work orders;

(c) Designate holding, waiting, or embarkation areas within the facility's secure area to segregate screened persons and their personal effects awaiting embarkation from unscreened persons and their personal effects;

(d) Provide additional security personnel to designated holding, waiting, or embarkation areas within the facility's secure area; and

(e) Deny individuals not holding a TWIC access to secure and restricted areas unless escorted.

■ 31. Amend § 105.296 by adding paragraph (a)(4) to read as follows:

§ 105.296 Additional requirements—barge fleeting facilities.

(a) * * *

(4) Control access to the barges once tied to the fleeting area by implementing TWIC as described in § 105.255 of this part.

* * * * *

Subpart D—Facility Security Plan (FSP)

■ 32. Revise § 105.405(a)(10) and (b) to read as follows:

§ 105.405 Format and content of the Facility Security Plan (FSP).

(a) * * *

(10) Security measures for access control, including designated public access areas;

* * * * *

(b) The FSP must describe in detail how the requirements of subpart B of this part will be met. FSPs that have been approved by the Coast Guard prior to March 26, 2007, do not need to be amended to describe their TWIC procedures until the next regularly scheduled resubmission of the FSP.

PART 106—MARITIME SECURITY: OUTER CONTINENTAL SHELF (OCS) FACILITIES

■ 33. The authority citation for part 106 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 34. Amend § 106.110 by adding paragraphs (d) and (e) to read as follows:

§ 106.110 Compliance dates.

* * * * *

(d) Persons required to obtain a TWIC under this part may enroll beginning after the date set by the Coast Guard in a Notice to be published in the **Federal Register**. This notice will be directed to all facilities and vessels within a specific COTP zone.

(e) Facility owners or operators must be operating in accordance with the TWIC provisions in this part by the date set by the Coast Guard in a Notice to be published in the **Federal Register**. This Notice will be published at least 90 days before compliance must begin, and will be directed to all facilities within a specific Captain of the Port zone, based on whether enrollment has been completed in that zone. Unless an earlier compliance date is specified in this manner, all facility owner or operators will need to implement their TWIC provisions no later than September 25, 2008.

■ 35. Revise § 106.200(b) to read as follows:

§ 106.200 Owner or operator.

* * * * *

(b) For each OCS facility, the OCS facility owner or operator must:

(1) Define the security organizational structure for each OCS facility and provide each person exercising security duties or responsibilities within that structure the support needed to fulfill those obligations;

(2) Designate in writing, by name or title, a Company Security Officer (CSO) and a Facility Security Officer (FSO) for each OCS facility and identify how those officers can be contacted at any time;

(3) Ensure that a Facility Security Assessment (FSA) is conducted;

(4) Ensure the development and submission for approval of a Facility Security Plan (FSP);

(5) Ensure that the OCS facility operates in compliance with the approved FSP;

(6) Ensure that the TWIC program is properly implemented as set forth in this part, including:

(i) Ensuring that only individuals who hold a TWIC and are authorized to be in the secure area are permitted to escort; and

(ii) Identifying what action is to be taken by an escort, or other authorized individual, should individuals under escort engage in activities other than those for which escorted access was granted.

(7) Ensure that adequate coordination of security issues takes place between OCS facilities and vessels, including the execution of a Declaration of Security (DoS) as required by this part;

(8) Ensure, within 12 hours of notification of an increase in MARSEC Level, implementation of the additional security measures required by the FSP for the new MARSEC Level;

(9) Ensure all breaches of security and security incidents are reported in accordance with part 101 of this subchapter;

(10) Ensure consistency between security requirements and safety requirements;

(11) Inform OCS facility personnel of their responsibility to apply for and maintain a TWIC, including the deadlines and methods for such applications, and of their obligation to inform TSA of any event that would render them ineligible for a TWIC, or which would invalidate their existing TWIC;

(12) Ensure that protocols consistent with § 106.260(c) of this part, for dealing with individuals requiring access who report a lost, damaged, or stolen TWIC, or who have applied for and not yet received a TWIC, are in place; and

(13) If applicable, ensure that protocols consistent with § 106.262 of this part, for dealing with newly hired employees who have applied for and not yet received a TWIC, are in place.

■ 36. Amend § 106.205 by adding paragraphs (a)(4), (c)(13) and (d)(13) to read as follows:

§ 106.205 Company Security Officer (CSO).

(a) * * *

(4) The CSO must maintain a TWIC.

* * * * *

(c) * * *

(13) Knowledge of TWIC requirements.

(d) * * *

(13) Ensure the TWIC program is being properly implemented.

■ 37. Amend § 106.210 by adding paragraphs (a)(4) and (c)(15) to read as follows:

§ 106.210 OCS Facility Security Officer (FSO).

(a) * * *

(4) The FSO must maintain a TWIC.

* * * * *

(c) * * *

(15) Ensure the TWIC program is properly implemented.

■ 38. Amend § 106.215 by revising the introductory paragraph and redesignating paragraphs (k) and (l) as (l) and (m), respectively, and adding new paragraph (k) to read as follows:

§ 106.215 Company of OCS facility personnel with security duties.

Company and OCS facility personnel responsible for security duties must maintain a TWIC, and must have knowledge, through training or equivalent job experience, in the following, as appropriate:

* * * * *

(k) Familiarity with all relevant aspects of the TWIC program and how to carry them out;

* * * * *

■ 39. Amend § 106.220 by adding paragraph (f) to read as follows:

§ 106.220 Security training for all other OCS personnel.

* * * * *

(f) Familiarity with all relevant aspects of the TWIC program and how to carry them out.

■ 40. Revise § 106.260 to read as follows:

§ 106.260 Security measures for access control.

(a) *General.* The OCS facility owner or operator must ensure the implementation of security measures to:

(1) Deter the unauthorized introduction of dangerous substances and devices, including any device intended to damage or destroy persons, vessels, or the OCS facility;

(2) Secure dangerous substances and devices that are authorized by the OCS facility owner or operator to be on board;

(3) Control access to the OCS facility; and

(4) Prevent an unescorted individual from entering the OCS facility unless the individual holds a duly issued TWIC and is authorized to be on the OCS facility.

(b) The OCS facility owner or operator must ensure that the following are specified:

(1) All locations providing means of access to the OCS facility where access restrictions or prohibitions are applied for each security level to prevent unauthorized access, including those points where TWIC access control procedures will be applied;

(2) The identification of the types of restriction or prohibition to be applied and the means of enforcing them;

(3) The means used to establish the identity of individuals not in possession of a TWIC and the means by which they will be allowed access to the OCS facility; and

(4) Procedures for identifying authorized and unauthorized persons at any MARSEC level.

(c) The OCS facility owner or operator must ensure that a TWIC program is implemented as follows:

(1) All persons seeking unescorted access to secure areas must present their TWIC for inspection before being allowed unescorted access, in accordance with § 101.514 of this subchapter. Inspection must include:

(i) A match of the photo on the TWIC to the individual presenting the TWIC;

(ii) Verification that the TWIC has not expired; and

(iii) A visual check of the various security features present on the card to determine whether the TWIC has been tampered with or forged.

(2) If an individual cannot present a TWIC because it has been lost, damaged or stolen, and he or she has previously been granted unescorted access to the facility and is known to have had a valid TWIC, the individual may be given unescorted access to secure areas for a period of no longer than seven consecutive calendar days if:

(i) The individual has reported the TWIC as lost, damaged or stolen to TSA as required in 49 CFR 1572.19(f);

(ii) The individual can present another identification credential that meets the requirements of § 101.515 of this subchapter; and

(iii) There are no other suspicious circumstances associated with the individual's claim of loss or theft.

(3) If an individual cannot present his or her TWIC for any other reason than outlined in paragraph (c)(2) of this section, he or she may not be granted unescorted access to the secure area. The individual must be under escort, as that term is defined in part 101 of this subchapter, at all times when inside of a secure area.

(4) With the exception of persons granted access according to paragraph (c)(2) of this section, all persons granted unescorted access to secure areas of the facility must be able to produce his or her TWIC upon request.

(5) There must be disciplinary measures in place to prevent fraud and abuse.

(6) The facility's TWIC program should be coordinated, when practicable, with identification and TWIC access control measures of vessels or other transportation conveyances that use the facility.

(d) If the OCS facility owner or operator uses a separate identification system, ensure that it is coordinated with identification and TWIC systems in place on vessels conducting operations with the OCS facility.

(e) The OCS facility owner or operator must establish in the approved Facility Security Plan (FSP) the frequency of application of any access controls, particularly if they are to be applied on a random or occasional basis.

(f) *MARSEC Level 1.* The OCS facility owner or operator must ensure the following security measures are implemented at the facility:

(1) Implement TWIC as set out in paragraph (c) of this section.

(2) Screen persons and personal effects going aboard the OCS facility for dangerous substances and devices at the rate specified in the approved FSP;

(3) Conspicuously post signs that describe security measures currently in effect and clearly stating that:

(i) Boarding an OCS facility is deemed valid consent to screening or inspection; and

(ii) Failure to consent or submit to screening or inspection will result in denial or revocation of authorization to be on board;

(4) Check the identification of any person seeking to board the OCS facility, including OCS facility employees, passengers and crews of vessels interfacing with the OCS facility, vendors, and visitors and ensure that non-TWIC holders are denied unescorted access to the OCS facility;

(5) Deny or revoke a person's authorization to be on board if the person is unable or unwilling, upon the request of OCS facility personnel or a law enforcement officer, to establish his or her identity in accordance with this part or to account for his or her presence on board. Any such incident must be reported in compliance with this part;

(6) Deter unauthorized access to the OCS facility;

(7) Identify access points that must be secured or attended to deter unauthorized access;

(8) Lock or otherwise prevent access to unattended spaces that adjoin areas to which OCS facility personnel and visitors have access;

(9) Ensure OCS facility personnel are not required to engage in or be subjected to screening, of the person or of personal effects, by other OCS facility personnel, unless security clearly requires it;

(10) Provide a designated secure area on board, or in liaison with a vessel interfacing with the OCS facility, for

conducting inspections and screening of people and their personal effects; and

(11) Respond to the presence of unauthorized persons on board.

(g) *MARSEC Level 2.* In addition to the security measures required for MARSEC Level 1 in this section, at MARSEC Level 2, the OCS facility owner or operator must ensure the implementation of additional security measures, as specified for MARSEC Level 2 in the approved FSP. These additional security measures may include:

(1) Increasing the frequency and detail of screening of people and personal effects embarking onto the OCS facility as specified for MARSEC Level 2 in the approved FSP;

(2) Assigning additional personnel to patrol deck areas during periods of reduced OCS facility operations to deter unauthorized access;

(3) Limiting the number of access points to the OCS facility by closing and securing some access points; or

(4) Deterring waterside access to the OCS facility, which may include, providing boat patrols.

(h) *MARSEC Level 3.* In addition to the security measures required for MARSEC Level 1 and MARSEC Level 2, at MARSEC level 3, the facility owner or operator must ensure the implementation of additional security measures, as specified for MARSEC Level 3 in their approved FSP. The additional security measures may include:

(1) Screening all persons and personal effects for dangerous substances and devices;

(2) Being prepared to cooperate with responders;

(3) Limiting access to the OCS facility to a single, controlled access point;

(4) Granting access to only those responding to the security incident or threat thereof;

(5) Suspending embarkation and/or disembarkation of personnel;

(6) Suspending the loading of stores or industrial supplies;

(7) Evacuating the OCS facility; or

(8) Preparing for a full or partial search of the OCS facility.

■ 41. Add § 106.262 to read as follows:

§ 106.262 Security measures for newly-hired employees.

(a) Newly-hired OCS facility employees may be granted entry to secure areas of the OCS facility for up to 30 consecutive calendar days prior to receiving their TWIC provided all of the requirements in paragraph (b) of this section are met, and provided that the new hire is accompanied by an individual with a TWIC while within the secure areas of the OCS facility. If TSA does not act upon a TWIC application within 30 days, the cognizant Coast Guard COTP may further extend access to secure areas for another 30 days. The Coast Guard will determine whether, in particular circumstances, certain practices meet the condition of a new hire being accompanied by another individual with a TWIC. The Coast Guard will issue guidance for use in making these determinations.

(b) Newly-hired OCS facility employees may be granted the access provided for in paragraph (a) of this section if:

(1) The new hire has applied for a TWIC in accordance with 49 CFR part 1572 by completing the full enrollment process, paying the user fee, and is not currently engaged in a waiver or appeal process. The OCS facility owner or operator or Facility Security Officer (FSO) must have th enew hire sign a statement affirming this, and must retain the signed statement until the new hire receives a TWIC;

(2) The OCS facility owner or operator or the FSO enters the following information on the new hire into the Coast Guard's Homeport Web site (*http://homeport.uscg.mil*):

(i) Full legal name, including middle name if one exists;

(ii) Date of birth;

(iii) Social security number (optional);

(iv) Employer name and 24 hour contact information; and

(v) Date of TWIC enrollment.

(3) The new hire presents an identification credential that meets the requirements of § 101.515 of this subchapter;

(4) There are no other circumstances that would cause reasonable suspicion regarding the new hire's ability to obtain a TWIC, and the OCS facility owner or operator or FSO have not been informed by the cognizant COTP that the individual poses a security threat; and

(5) There would be an adverse impact to OCS facility operations if the new hire is not allowed access.

(c) This section does not apply to any individual being hired as a Company Security Officer or FSO, or any individual being hired to perform OCS facility security duties.

(d) The new hire may not begin working at the OCS facility under the provisions of this section until the owner, operator, or FSO receives notification, via Homeport or some other means, the new hire has passed an initial name check.

■ 42. Revise § 106.405(b) to read as follows:

§ 106.405 Format and content of the Facility Security Plan (FSP).

* * * * *

(b) The FSP must describe in detail how the requirements of Subpart B of this part will be met. FSPs that have been approved by the Coast Guard prior to March 26, 2007 do not need to be amended to describe their TWIC procedures until the next regularly scheduled resubmission of the FSP.

PART 125—IDENTIFICATION CREDENTIALS FOR PERSONS REQUIRING ACCESS TO WATERFRONT FACILITIES OR VESSELS

■ 43. The authority citation for part 125 is revised to read as follows:

Authority: R.S. 4517, 4518, secs. 19, 2, 23 Stat. 58, 118, sec. 7, 49 Stat. 1936, sec. 1, 40 Stat. 220; 46 U.S.C. 570–572, 2, 689, and 70105; 50 U.S.C. 191, E.O. 10173, E.O. 10277, E.O. 10352, 3 CFR, 1949–1953 Comp. pp. 356, 778, 873.

■ 44. In § 125.09, revise paragraph (f) and add paragraph (g) to read as follows:

§ 125.09 Identification credentials.

* * * * *

(f) Transportation Worker Identification Credential.

(g) Such other identification as may be approved by the Commandant from time to time.

Title 46—Shipping

Chapter I—Coast Guard

PART 10—LICENSING OF MARITIME PERSONNEL

■ 45. The authority citation for part 10 continues to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, and 8906; E.O. 10173; Department of Homeland Security Delegation No. 0170.1. sec. 11.107 is also issued under the authority of 44 U.S.C. 3507.

■ 46. Add new § 10.113 to read as follows:

§ 10.113 Transportation Worker Identification Credential.

By September 25, 2008 all mariners holding an active License, Certificate of Registry or STCW endorsement issued under this part must hold a valid Transportation Worker Identification Credential (TWIC) issued by the Transportation Security Administration under 49 CFR part 1572. Failure to obtain or hold a valid TWIC may serve as a basis for suspension or revocation of a mariner's license, COR or STCW endorsement under 46 U.S.C. 7702 and 7703.

PART 12—CERTIFICATION OF SEAMEN

■ 47. The authority citation for part 12 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701, and 70105; Department of Homeland Security Delegation No. 0170.1.

■ 48. Add new § 12.01–11 to read as follows:

§ 12.01–11 Transportation Worker Identification Credential.

By September 25, 2008 all mariners holding a Merchant Mariner's Document or STCW endorsement issued under this part must hold a valid Transportation Worker Identification Credential (TWIC) issued by the Transportation Security Administration under 49 CFR part 1572. Failure to obtain or hold a valid TWIC may serve as a basis for suspension or revocation of a mariner's license, COR or STCW endorsement under 46 U.S.C. 7702 and 7703.

PART 15—MANNING REQUIREMENTS

■ 49. The authority citation for part 15 is revised to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906, 9102, and 70105; and Department of Homeland Security Delegation No. 0170.1.

■ 50. Add new § 15.415 to read as follows:

§ 15.415 Transportation Worker Identification Credential.

By September 25, 2008 a person may not employ or engage an individual, and an individual may not serve in a position in which an individual is required by law or regulation to hold an active License, Merchant Mariner Document (MMD), Certificate of Registry (COR), or STCW endorsement, unless the individual holds a valid Transportation Worker Identification Credential (TWIC). All mariners holding an active License, MMD, COR or STCW endorsement issued by the Coast Guard must hold a valid TWIC issued by the Transportation Security Administration under 49 CFR part 1572.

Title 49—Transportation

Chapter XII—Transportation Security Administration

Subchapter A—Administrative and Procedural Rules

■ 51. Add a new part 1515 to subchapter A to read as follows:

PART 1515—APPEAL AND WAIVER PROCEDURES FOR SECURITY THREAT ASSESSMENTS FOR INDIVIDUALS

Sec.

1515.1 Scope.
1515.3 Terms used in this part.
1515.5 Appeal of Initial Determination of Threat Assessment based on criminal conviction, immigration status, or mental capacity.
1515.7 Procedures for waiver of criminal offenses, immigration status, or mental capacity standards.
1515. 9 Appeal of security threat assessment based on other analyses.
1515.11 Review by administrative law judge and TSA Final Decision Maker.

Authority: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

§ 1515.1 Scope.

(a) *Appeal.* This part applies to applicants who are appealing an Initial Determination of Threat Assessment or an Initial Determination of Threat Assessment and Immediate Revocation in a security threat assessment as described in:

(1) 49 CFR part 1572 for a hazardous materials endorsement (HME) or a Transportation Worker Identification Credential (TWIC); or

(2) 49 CFR part 1540, Subpart C, for air cargo workers.

(b) *Waivers.* This part applies to applicants for an HME or TWIC who undergo a security threat assessment described in 49 CFR part 1572 and are eligible to request a waiver of certain standards.

§ 1515.3 Terms used in this part.

The terms used in 49 CFR parts 1500, 1540, 1570, and 1572 also apply in this part. In addition, the following terms are used in this part:

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Applicant means an individual who has applied for one of the security threat assessments identified in 49 CFR 1515.1. This includes an individual who previously applied for and was found to meet the standards for the security threat assessment but TSA later determined that the individual poses a security threat.

Date of service means—

(1) In the case of personal service, the date of personal delivery to the residential address listed on the application;

(2) In the case of mailing with a certificate of service, the date shown on the certificate of service;

(3) In the case of mailing and there is no certificate of service, 10 days from the date mailed to the address designated on the application as the mailing address;

(4) In the case of mailing with no certificate of service or postmark, the date mailed to the address designated on the application as the mailing address shown by other evidence; or

(5) The date on which an electronic transmission occurs.

Day means calendar day.

Final Agency Order means an order issued by the TSA Final Decision Maker.

Decision denying a review of a waiver means a document issued by an administrative law judge denying a waiver requested under 49 CFR 1515.7.

Mail includes U.S. mail, or use of an express courier service.

Party means the applicant or the agency attorney.

Personal delivery includes hand-delivery or use of a contract or express messenger service, but does not include the use of Government interoffice mail service.

Properly addressed means a document that shows an address contained in agency records, a residential, business, or other address submitted by a person on any document provided under this subpart, or any other address shown by other reasonable and available means.

Substantial Evidence means such relevant evidence as a reasonable person might accept as adequate to support a conclusion.

Security threat assessment means the threat assessment for which the applicant has applied, as described in 49 CFR 1515.1.

TSA Final Decision Maker means the Administrator, acting in the capacity of the decision maker on appeal, or any person to whom the Administrator has delegated the Administrator's decision-making authority. As used in this subpart, the *TSA Final Decision Maker* is the official authorized to issue a final decision and order of the Administrator.

§ 1515.5 Appeal of Initial Determination of Threat Assessment based on criminal conviction, immigration status, or mental capacity.

(a) *Scope.* This section applies to applicants appealing from an Initial Determination of Threat Assessment that was based on one or more of the following:

(1) TSA has determined that an applicant for an HME or a TWIC has a disqualifying criminal offense described in 49 CFR 1572.103.

(2) TSA has determined that an applicant for an HME or a TWIC does

not meet the immigration status requirements as described in 49 CFR 1572.105.

(3) TSA has determined that an applicant for an HME or a TWIC is lacking mental capacity as described in 49 CFR 1572.109.

(b) *Grounds for appeal.* An applicant may appeal an Initial Determination of Threat Assessment if the applicant is asserting that he or she meets the standards for the security threat assessment for which he or she is applying.

(1) *Initiating an appeal.* An applicant initiates an appeal by submitting a written reply to TSA, a written request for materials from TSA, or by requesting an extension of time in accordance with § 1515.5(f). If the applicant does not initiate an appeal within 60 days of receipt, the Initial Determination of Threat Assessment becomes a Final Determination of Threat Assessment.

(i) In the case of an HME, TSA also serves a Final Determination of Threat Assessment on the licensing State.

(ii) In the case of a mariner applying for TWIC, TSA also serves a Final Determination of Threat Assessment on the Coast Guard.

(iii) In the case of a TWIC, TSA serves a Final Determination of Threat Assessment on the appropriate Federal Maritime Security Coordinator (FMSC).

(2) *Request for materials.* Within 60 days of the date of service of the Initial Determination of Threat Assessment, the applicant may serve upon TSA a written request for copies of the materials upon which the Initial Determination was based.

(3) *TSA response.* (i) Within 60 days of receiving the applicant's request for materials, TSA serves the applicant with copies of the releasable materials upon the applicant on which the Initial Determination was based. TSA will not include any classified information or other protected information described in paragraph (f) of this section.

(ii) Within 60 days of receiving the applicant's request for materials or written reply, TSA may request additional information or documents from the applicant that TSA believes are necessary to make a Final Determination.

(4) *Correction of records.* If the Initial Determination of Threat Assessment was based on a record that the applicant believes is erroneous, the applicant may correct the record, as follows:

(i) The applicant contacts the jurisdiction or entity responsible for the information and attempts to correct or complete information contained in his or her record.

(ii) The applicant provides TSA with the revised record, or a certified true copy of the information from the appropriate entity, before TSA determines that the applicant meets the standards for the security threat assessment.

(5) *Reply.* (i) The applicant may serve upon TSA a written reply to the Initial Determination of Threat Assessment within 60 days of service of the Initial Determination, or 60 days after the date of service of TSA's response to the applicant's request for materials under paragraph (b)(1) of this section, if the applicant served such request. The reply must include the rationale and information on which the applicant disputes TSA's Initial Determination.

(ii) In an applicant's reply, TSA will consider only material that is relevant to whether the applicant meets the standards applicable for the security threat assessment for which the applicant is applying.

(6) *Final determination.* Within 60 days after TSA receives the applicant's reply, TSA serves a Final Determination of Threat Assessment or a Withdrawal of the Initial Determination as provided in paragraphs (c) or (d) of this section.

(c) *Final Determination of Threat Assessment.* (1) If the Assistant Administrator concludes that an HME or TWIC applicant does not meet the standards described in 49 CFR 1572.103, 1572.105, or 1572.109, TSA serves a Final Determination of Threat Assessment upon the applicant. In addition—

(i) In the case of an HME, TSA serves a Final Determination of Threat Assessment on the licensing State.

(ii) In the case of a TWIC, TSA serves a Final Determination of Threat Assessment on the Coast Guard.

(2) The Final Determination includes a statement that the Assistant Administrator has reviewed the Initial Determination, the applicant's reply and any accompanying information, and any other materials or information available to him or her, and has determined that the applicant poses a security threat warranting denial of the security threat assessment for which the applicant has applied.

(d) *Withdrawal of Initial Determination.* If the Assistant Administrator or Assistant Secretary concludes that the applicant does not pose a security threat, TSA serves a Withdrawal of the Initial Determination upon the applicant, and the applicant's employer where applicable.

(e) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose classified information to the applicant, as defined in E.O. 12968 sec. 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

(f) *Extension of time.* TSA may grant an applicant an extension of time of the limits for good cause shown. An applicant's request for an extension of time must be in writing and be received by TSA within a reasonable time before the due date to be extended; or an applicant may request an extension after the expiration of a due date by sending a written request describing why the failure to file within the time limits was excusable. TSA may grant itself an extension of time for good cause.

(h) *Judicial review.* For purposes of judicial review, the Final Determination of Threat Assessment constitutes a final TSA order of the determination that the applicant does not meet the standards for a security threat assessment, in accordance with 49 U.S.C. 46110. The Final Determination is not a final TSA order to grant or deny a waiver, the procedures for which are in 49 CFR 1515.7 and 1515.11.

(i) *Appeal of immediate revocation.* If TSA directs an immediate revocation, the applicant may appeal this determination by following the appeal procedures described in paragraph (b) of this section. This applies—

(1) If TSA directs a State to revoke an HME pursuant to 49 CFR 1572.13(a).

(2) If TSA invalidates a TWIC by issuing an Initial Determination of Threat Assessment and Immediate Revocation pursuant to 49 CFR 1572.21(d)(3).

§ 1515.7 Procedures for waiver of criminal offenses, immigration status, or mental capacity standards.

(a) *Scope.* This section applies to the following applicants:

(i) An applicant for an HME or TWIC who has a disqualifying criminal offense described in 49 CFR 1572.103(a)(5) through (a)(12) or 1572.103(b) and who requests a waiver.

(ii) An applicant for an HME or TWIC who is an alien under temporary protected status as described in 49 CFR 1572.105 and who requests a waiver.

(iii) An applicant applying for an HME or TWIC who lacks mental capacity as described in 49 CFR 1572.109 and who requests a waiver.

(b) *Grounds for waiver.* TSA may issue a waiver of the standards described in paragraph (a) and grant an HME or TWIC if TSA determines that an applicant does not pose a security threat based on a review of information described in paragraph (c) of this section.

(c) *Initiating waiver.* (1) An applicant initiates a waiver as follows:

(i) Providing to TSA the information required in 49 CFR 1572.9 for an HME or 49 CFR 1572.17 for a TWIC.

(ii) Paying the fees required in 49 CFR 1572.405 for an HME or in 49 CFR 1572.501 for a TWIC.

(iii) Sending a written request to TSA for a waiver at any time, but not later than 60 days after the date of service of the Final Determination of Threat Assessment. The applicant may request a waiver during the application process, or may first pursue some or all of the appeal procedures in 49 CFR 1515.5 to assert that he or she does not have a disqualifying condition.

(2) In determining whether to grant a waiver, TSA will consider the following factors, as applicable to the disqualifying condition:

(i) The circumstances of the disqualifying act or offense.

(ii) Restitution made by the applicant.

(iii) Any Federal or State mitigation remedies.

(iv) Court records or official medical release documents indicating that the applicant no longer lacks mental capacity.

(v) Other factors that indicate the applicant does not pose a security threat warranting denial of the HME or TWIC.

(d) *Grant or denial of waivers.* (1) The Assistant Administrator will send a written decision granting or denying the waiver to the applicant within 60 days of service of the applicant's request for a waiver, or longer period as TSA may determine for good cause.

(2) In the case of an HME, if the Assistant Administrator grants the waiver, the Assistant Administrator will send a Determination of No Security Threat to the licensing State within 60 days of service of the applicant's request for a waiver, or longer period as TSA may determine for good cause.

(3) In the case of a mariner applying for a TWIC, if the Assistant Administrator grants the waiver, the Assistant Administrator will send a Determination of No Security Threat to the Coast Guard within 60 days of service of the applicant's request for a waiver, or longer period as TSA may determine for good cause.

(4) If the Assistant Administrator denies the waiver the applicant may seek review in accordance with 49 CFR 1515.11. A denial of a waiver under this section does not constitute a final order of TSA as provided in 49 U.S.C. 46110.

(e) *Extension of time.* TSA may grant an applicant an extension of the time limits for good cause shown. An applicant's request for an extension of time must be in writing and be received by TSA within a reasonable time before the due date to be extended; or an applicant may request an extension after the expiration of a due date by sending a written request describing why the failure to file within the time limits was excusable. TSA may grant itself an extension of time for good cause.

§ 1515.9 Appeal of security threat assessment based on other analyses.

(a) *Scope.* This section applies to an applicant appealing an Initial Determination of Threat Assessment as follows:

(1) TSA has determined that the applicant for an HME or TWIC poses a security threat as provided in 49 CFR 1572.107.

(2) TSA had determined that an air cargo worker poses a security threat as provided in 49 CFR 1540.205.

(b) *Grounds for appeal.* An applicant may appeal an Initial Determination of Threat Assessment if the applicant is asserting that he or she does not pose a security threat. The appeal will be conducted in accordance with the procedures set forth in 49 CFR 1515.5(b), (e), and (f) and this section.

(c) *Final Determination of Threat Assessment.* (1) If the Assistant Administrator concludes that the applicant poses a security threat, following an appeal, TSA serves a Final Determination of Threat Assessment upon the applicant. In addition—

(i) In the case of an HME, TSA serves a Final Determination of Threat Assessment on the licensing State.

(ii) In the case of a TWIC, TSA serves a Final Determination of Threat Assessment on the Coast Guard.

(iii) In the case of an air cargo worker, TSA serves a Final Determination of Threat Assessment on the operator.

(2) The Final Determination includes a statement that the Assistant Administrator has reviewed the Initial Determination, the applicant's reply and any accompanying information, and any other materials or information available to him or her, and has determined that the applicant poses a security threat warranting denial of the security threat assessment for which the applicant has applied.

(d) *Withdrawal of Initial Determination.* If the Assistant Administrator concludes that the applicant does not pose a security threat, TSA serves a Withdrawal of the Initial Determination upon the applicant, and the applicant's employer where applicable.

(e) *Further review.* If the Assistant Administrator denies the appeal, the applicant may seek review in accordance with § 1515.11 of this part. A Final Determination issued under this section does not constitute a final order of TSA as provided in 49 U.S.C. 46110.

(f) *Appeal of immediate revocation.* If TSA directs an immediate revocation, the applicant may appeal this determination by following the appeal procedures described in paragraph (b) of this section. This applies—

(1) If TSA directs a State to revoke an HME pursuant to 49 CFR 1572.13(a).

(2) If TSA invalidates a TWIC by issuing an Initial Determination of Threat Assessment and Immediate Revocation pursuant to 49 CFR 1572.21(d)(3).

(3) If TSA withdraws a Determination of No Threat issued for an air cargo worker.

§ 1515.11 Review by administrative law judge and TSA Final Decision Maker.

(a) *Scope.* This section applies to the following applicants:

(1) An applicant who seeks review of a decision by TSA denying a request for a waiver under 49 CFR 1515.7.

(2) An applicant for an HME or a TWIC who has been issued a Final Determination of Threat Assessment on the grounds that he or she poses a security threat after an appeal as described in 49 CFR 1515.9.

(3) An air cargo worker who has been issued a Final Determination of Threat Assessment after an appeal as described in 49 CFR 1515.9.

(b) *Request for review.* No later than 30 calendar days from the date of service of the decision by TSA denying a waiver or of the Final Determination of Threat Assessment, the applicant may request a review. The review will be conducted by an administrative law judge who possesses the appropriate security clearance necessary to review classified or otherwise protected information and evidence. If the applicant fails to seek review within 30 calendar days, the Final Determination of Threat Assessment will be final with respect to the parties.

(1) The request for review must clearly state the issue(s) to be considered by the administrative law judge (ALJ), and include the following documents in support of the request:

(i) In the case of a review of a denial of waiver, a copy of the applicant's request for a waiver under 49 CFR 1515.7, including all materials provided by the applicant to TSA in support of the waiver request; and a copy of the decision issued by TSA denying the waiver request. The request for review may not include evidence or information that was not presented to TSA in the appeal under § 1515.9. The ALJ may consider only evidence or

information that was presented to TSA in the appeal. If the applicant has new evidence or information, the applicant must file a new appeal under § 1515.9 and the pending request for review of the Final Determination will be dismissed.

(ii) In the case of a review of a Final Determination of Threat Assessment, a copy of the Initial Notification of Threat Assessment and Final Notification of Threat Assessment; and a copy of the applicant's appeal under 49 CFR 1515.9, including all materials provided by the applicant to TSA in support of the appeal. The request for review may not include evidence or information that was not presented to TSA in the appeal under § 1515.9. The ALJ may consider only evidence or information that was presented to TSA in the appeal. If the applicant has new evidence or information, the applicant must file a new appeal under § 1515.9 and the pending request for review of the Final Determination will be dismissed.

(2) The applicant may include in the request for review a request for an in-person hearing before the ALJ.

(3) The applicant must file the request for review with the ALJ Docketing Center, U.S. Coast Guard, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202–4022, ATTN: Hearing Docket Clerk.

(c) *Extension of Time.* The ALJ may grant an extension of the time limits described in this section for good cause shown. A request for an extension of time must be in writing and be received by the ALJ within a reasonable time before the due date to be extended; or an applicant may request an extension after the expiration of a due date by sending a written request describing why the failure to file within the time limits was excusable. This paragraph does not apply to time limits set by the administrative law judge during the hearing.

(d) *Duties of the Administrative Law Judge.* The ALJ may:

(1) Receive information and evidence presented to TSA in the request for a waiver under 49 CFR 1515.7 or an appeal under 49 CFR 1515.9.

(2) Consider the following criteria to determine whether a request for an in-person hearing is warranted:

(i) The credibility of evidence or information submitted in the applicant's request for a waiver; and

(ii) Whether TSA's waiver denial was made in accordance with the governing regulations codified at 49 CFR part 1515 and 49 CFR part 1572.

(3) Give notice of and hold conferences and hearings;

(4) Administer oaths and affirmations;

(5) Examine witnesses;

(6) Regulate the course of the hearing including granting extensions of time limits; and

(7) Dispose of procedural motions and requests, and issue a decision.

(e) *Hearing.* If the ALJ grants a request for a hearing, except for good cause shown, it will begin within 60 calendar days of the date of receipt of the request for hearing. The hearing is a limited discovery proceeding and is conducted as follows:

(1) If applicable and upon request, TSA will provide to the applicant requesting a review an unclassified summary of classified evidence upon which the denial of the waiver or Final Determination was based.

(i) TSA will not disclose to the applicant, or the applicant's counsel, classified information, as defined in E.O. 12968 section 1.1(d).

(ii) TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure by law or regulation.

(2) The applicant may present the case by oral testimony, documentary, or demonstrative evidence, submit rebuttal evidence, and conduct cross-examination, as permitted by the ALJ. Oral testimony is limited to the evidence or information that was presented to TSA in the request for a waiver or during the appeal. The Federal Rules of Evidence may serve as guidance, but are not binding.

(3) The ALJ will review any classified information on an ex parte, in camera basis, and may consider such information in rendering a decision if the information appears to be material and relevant.

(4) The standard of proof is substantial evidence on the record.

(5) The parties may submit proposed findings of fact and conclusions of law.

(6) If the applicant fails to appear, the ALJ may issue a default judgment.

(7) A verbatim transcript will be made of the hearing and will be provided upon request at the expense of the requesting party. In cases in which classified or otherwise protected evidence is received, the transcript may require redaction of the classified or otherwise protected information.

(8) The hearing will be held at TSA's Headquarters building or, on request of a party, at an alternate location selected by the administrative law judge for good cause shown.

(f) *Decision of the Administrative Law Judge.* (1) The record is closed once the certified transcript and all documents and materials have been submitted for the record.

(2) The ALJ issues an unclassified written decision to the applicant no later than 30 calendar days from the close of the record and serves the decision on the parties. The ALJ may issue a classified decision to TSA.

(3) The ALJ's decision may be appealed by either party to the TSA Final Decision Maker in accordance with paragraph (g).

(i) In the case of review of a waiver denial, unless appealed to the TSA Final Decision Maker, if the ALJ upholds the denial of the applicant's request for waiver, TSA will issue a Final Order Denying a Waiver to the applicant.

(ii) In the case of review of a waiver denial, unless appealed to the TSA Final Decision Maker, if the ALJ reverses the denial of the applicant's request for waiver, TSA will issue a Final Order granting a waiver to the applicant; and

(A) In the case of an HME, send a Determination of No Security Threat to the licensing State.

(B) In the case applicant for a TWIC, send a Determination of No Security Threat to the Coast Guard.

(C) In the case of an air cargo worker, send a Determination of No Security Threat to the operator.

(iii) In the case of review of an appeal under 49 CFR 1515.9, unless appealed to the TSA Final Decision Maker, if the ALJ determines that the applicant poses a security threat, TSA will issue a Final Order of Threat Assessment to the applicant.

(iv) In the case of review of an appeal under 49 CFR 1515.9, unless appealed to the TSA Final Decision Maker, if the ALJ determines that the applicant does not pose a security threat, TSA will issue a Withdrawal of the Final Determination to the applicant, and to the applicant's employer where applicable.

(g) *Review by the TSA Final Decision Maker.* (1) Either party may request that the TSA Final Decision Maker review the ALJ's decision by serving the request no later than 30 calendar days after the date of service of the decision of the ALJ.

(i) The request must be in writing, served on the other party, and may only address whether the decision is supported by substantial evidence on the record.

(ii) No later than 30 calendar days after receipt of the request, the other party may file a response.

(2) The ALJ will provide the TSA Final Decision Maker with a certified transcript of the hearing and all unclassified documents and material submitted for the record. TSA will

provide any classified materials previously submitted.

(3) No later than 60 calendar days after receipt of the request, or if the other party files a response, 30 calendar days after receipt of the response, or such longer period as may be required, the TSA Final Decision Maker issues an unclassified decision and serves the decision on the parties. The TSA Final Decision Maker may issue a classified opinion to TSA, if applicable. The decision of the TSA Final Decision Maker is a final agency order.

(i) In the case of review of a waiver denial, if the TSA Final Decision Maker upholds the denial of the applicant's request for waiver, TSA issues a Final Order Denying a Waiver to the applicant.

(ii) In the case of review of a waiver denial, if the TSA Final Decision Maker reverses the denial of the applicant's request for waiver, TSA will grant the waiver; and

(A) In the case of an HME, send a Determination of No Security Threat to the applicant and to the licensing State.

(B) In the case of a TWIC, send a Determination of No Security Threat to the applicant and to the Coast Guard.

(C) In the case of an air cargo worker, send a Determination of No Security Threat to the applicant and the operator.

(iii) In the case of review of an appeal under 49 CFR 1515.9, if the TSA Final Decision Maker determines that the applicant poses a security threat, TSA will issue a Final Order of Threat Assessment to the applicant.

(iv) In the case of review of an appeal under 49 CFR 1515.9, if the TSA Final Decision Maker determines that the applicant does not pose a security threat, TSA will issue a Withdrawal of the Final Determination to the applicant, and to the applicant's employer where applicable.

(h) *Judicial Review of a Final Order Denying a Waiver.* A person may seek judicial review of a final order of the TSA Final Decision Maker as provided in 49 U.S.C. 46110.

■ 52. Revise subpart C, part 1540 to read as follows:

Subpart C—Security Threat Assessments

Sec.

1540.201 Applicability and terms used in this subpart.
1540.203 Operator responsibilities.
1540.205 Procedures for security threat assessment.
1540.207 [Reserved]
1540.209 Security threat assessment fee.

Subpart C—Security Threat Assessments

§ 1540.201 Applicability and terms used in this subpart.

(a) This subpart includes the procedures that certain aircraft operators, foreign air carriers, and indirect air carriers must use to have security threat assessments done on certain individuals pursuant to 49 CFR 1544.228, 1546.213, 1548.7, 1548.15, and 1548.16. This subpart applies to the following:

(1) Each aircraft operator operating under a full program or full all-cargo program described in 49 CFR 1544.101(a) or (h).

(2) Each foreign air carrier operating under a program described in 49 CFR 1546.101(a), (b), or (e).

(3) Each indirect air carrier operating under a security program described in 49 CFR part 1548.

(4) Each individual with, or applying for, unescorted access to cargo under one of the programs described in (a)(1) through (a)(3) of this section.

(5) Each proprietor, general partner, officer, director, or owner of an indirect air carrier as described in 49 CFR 1548.16.

(b) For purposes of this subpart—

Applicant means the individuals listed in paragraph (a)(4) and (a)(5) of this section.

Operator means an aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section.

(c) An applicant poses a security threat under this subpart when TSA determines that he or she is known to pose or suspected of posing a threat—

(1) To national security;

(2) To transportation security; or

(3) Of terrorism.

§ 1540.203 Operator responsibilities.

(a) Each operator subject to this subpart must ensure that each applicant described in § 1540.201(a)(4) and (a)(5) completes the Security Threat Assessment described in this section.

(b) Each operator must:

(1) Authenticate the identity of the applicant by—

(i) Reviewing two forms of identification, one of which must be a government-issued picture identification; or

(ii) Other means approved by TSA.

(2) Submit to TSA a Security Threat Assessment application for each applicant that is signed by the applicant and that includes:

(i) Legal name, including first, middle, and last; any applicable suffix; and any other names used previously.

(ii) Current mailing address, including residential address if it differs from the current mailing address, and all other residential addresses for the previous five years, and e-mail address, if the individual has an e-mail address.

(iii) Date and place of birth.

(iv) Social security number (submission is voluntary, although failure to provide it may delay or prevent completion of the threat assessment).

(v) Gender.

(vi) Country of citizenship, and if naturalized in the United States, date of naturalization and certificate number.

(vii) Alien registration number, if applicable.

(viii) The following statement reading:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 49 U.S.C. 5103a. *Purpose:* This information is needed to verify your identity and to conduct a Security Threat Assessment to evaluate your suitability for completing the functions required by this position. Failure to furnish your SSN may result in delays in processing your application, but will not prevent completion of your Security Threat Assessment. Furnishing the other information is also voluntary; however, failure to provide it may delay or prevent the completion of your Security Threat Assessment, without which you may not be granted authorization to have unescorted access to air cargo subject to TSA security requirements. *Routine Uses:* Routine uses of this information include disclosure to TSA contractors or other agents who are providing services relating to the Security Threat Assessments; to appropriate governmental agencies for law enforcement or security purposes, or in the interests of national security; and to foreign and international governmental authorities in accordance with law and international agreement. For further information, please consult DHS/TSA 002 Transportation Security Threat Assessment System.

The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact, on this application can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code), and may be grounds for denial of authorization or in the case of parties regulated under this section, removal of authorization to operate under this chapter, if applicable.

(3) Retain the applicant's signed Security Threat Assessment application, and any communications with TSA regarding the applicant's application, for 180 days following the end of the applicant's service to the operator.

(c) Records under this section may include electronic documents with electronic signature or other means of

personal authentication, where accepted by TSA.

§ 1540.205 Procedures for security threat assessment.

(a) *Contents of security threat assessment.* The security threat assessment TSA conducts includes an intelligence-related check and a final disposition.

(b) *Intelligence-related check.* To conduct an intelligence-related check, TSA completes the following procedures:

(1) Reviews the applicant information required in 49 CFR 1540.203(b);

(2) Searches domestic and international Government databases to determine if an applicant meets the requirements of 49 CFR 1540.201(c) or to confirm an applicant's identity; and

(3) Adjudicates the results in accordance with 49 CFR 1540.201(c).

(c) *Final disposition.* Following completion of the procedures described in paragraph (b), the following procedures apply, as appropriate:

(1) TSA serves a Determination of No Security Threat on the applicant and the operator, if TSA determines that the applicant meets the security threat assessment standards in 49 CFR 1540.201(c).

(2) TSA serves an Initial Determination of Threat Assessment on the applicant and the operator, if TSA determines that the applicant does not meet the security threat assessment standards in 49 CFR 1540.201(c). The Initial Determination of Threat Assessment includes—

(i) A statement that TSA has determined that the applicant poses a security threat;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.9; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination, or does not request an extension of time within 60 days of the Initial Determination of Threat Assessment in order to file an appeal, the Initial Determination becomes a Final Determination of Security Threat Assessment.

(3) If the applicant does not appeal the Initial Determination of Threat Assessment, TSA serves a Final Determination of Threat Assessment on the operator and the applicant.

(e) *Withdrawal by TSA.* TSA serves a Withdrawal of the Initial Determination of Threat Assessment on the individual and a Determination of No Security Threat on the operator, if the appeal results in a determination that the individual does not pose a security threat.

§ 1540.207 [Reserved].

§ 1540.209 Security threat assessment fee.

(a) *Imposition of fees.* The fee of $28 is required for TSA to conduct a security threat assessment for an applicant.

(b) *Remittance of fees.* (1) The fee required under this subpart must be remitted to TSA, in a form and manner acceptable to TSA, each time the applicant or an aircraft operator, foreign air carrier, or indirect air carrier submits the information required under § 1540.203 to TSA.

(2) Fees remitted to TSA under this subpart must be payable to the ''Transportation Security Administration'' in U.S. currency and drawn on a U.S. bank.

(3) TSA will not issue any fee refunds, unless a fee was paid in error.

Subchapter D—Maritime and Land Transportation Security

■ 53. Revise part 1570 to read as follows:

PART 1570—GENERAL RULES

Sec.

1570.1 Scope.
1570.3 Terms used in this subchapter.
1570.5 Fraud and intentional falsification of records.
1570.7 Fraudulent use or manufacture; responsibilities of persons.
1570.9 Inspection of credential.
1570.11 Compliance, inspection, and enforcement.

Authority: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

§ 1570.1 Scope.

This part applies to any person involved in land or maritime transportation as specified in this subchapter.

§ 1570.3 Terms used in this subchapter.

For purposes of this subchapter:

Adjudicate means to make an administrative determination of whether an applicant meets the standards in this subchapter, based on the merits of the issues raised.

Alien means any person not a citizen or national of the United States.

Alien registration number means the number issued by the U.S. Department of Homeland Security to an individual when he or she becomes a lawful permanent resident of the United States or attains other lawful, non-citizen status.

Applicant means a person who has applied for one of the security threat assessments identified in this subchapter.

Assistant Administrator for Threat Assessment and Credentialing (Assistant Administrator) means the officer designated by the Assistant Secretary to administer the appeal and waiver programs described in this part, except where the Assistant Secretary is specifically designated in this part to administer the appeal or waiver program. The Assistant Administrator may appoint a designee to assume his or her duties.

Assistant Secretary means Assistant Secretary for Homeland Security, Transportation Security Administration (Assistant Secretary), the highest ranking TSA official, or his or her designee, and who is responsible for making the final determination on the appeal of an intelligence-related check under this part.

Commercial drivers license (CDL) is used as defined in 49 CFR 383.5.

Convicted means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this subchapter, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this subchapter.

Determination of No Security Threat means an administrative determination by TSA that an individual does not pose a security threat warranting denial of an HME or a TWIC.

Federal Maritime Security Coordinator (FMSC) has the same meaning as defined in 46 U.S.C. 70103(a)(2)(G); is the Captain of the Port (COTP) exercising authority for the COTP zones described in 33 CFR part 3, and is the Port Facility Security Officer as described in the International Ship and Port Facility Security (ISPS) Code, part A.

Final Determination of Threat Assessment means a final administrative determination by TSA, including the resolution of related appeals, that an individual poses a security threat warranting denial of an HME or a TWIC.

Hazardous materials endorsement (HME) means the authorization for an individual to transport hazardous materials in commerce, an indication of which must be on the individual's commercial driver's license, as provided in the Federal Motor Carrier Safety Administration (FMCSA) regulations in 49 CFR part 383.

Imprisoned or imprisonment means confined to a prison, jail, or institution for the criminally insane, on a full-time basis, pursuant to a sentence imposed as the result of a criminal conviction or finding of not guilty by reason of insanity. Time spent confined or restricted to a half-way house, treatment facility, or similar institution, pursuant to a sentence imposed as the result of a criminal conviction or finding of not guilty by reason of insanity, does not constitute imprisonment for purposes of this rule.

Incarceration means confined or otherwise restricted to a jail-type institution, half-way house, treatment facility, or another institution, on a full or part-time basis, pursuant to a sentence imposed as the result of a criminal conviction or finding of not guilty by reason of insanity.

Initial Determination of Threat Assessment means an initial administrative determination by TSA that an individual poses pose a security threat warranting denial of an HME or a TWIC.

Initial Determination of Threat Assessment and Immediate Revocation means an initial administrative determination that an individual poses a security threat that warrants immediate revocation of an HME or invalidation of a TWIC. In the case of an HME, the State must immediately revoke the HME if TSA issues an Initial Determination of Threat Assessment and Immediate Revocation. In the case of a TWIC, TSA invalidates the TWIC when TSA issues an Initial Determination of Threat Assessment and Immediate Revocation.

Invalidate means the action TSA takes to make a credential inoperative when it is reported as lost, stolen, damaged, no longer needed, or when TSA determines an applicant does not meet the security threat assessment standards of 49 CFR part 1572.

Lawful permanent resident means an alien lawfully admitted for permanent residence, as defined in 8 U.S.C. 1101(a)(20).

Maritime facility has the same meaning as ''facility'' together with ''OCS facility'' (Outer Continental Shelf facility), as defined in 33 CFR 101.105.

Mental health facility means a mental institution, mental hospital, sanitarium, psychiatric facility, and any other facility that provides diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

National of the United States means a citizen of the United States, or a person who, though not a citizen, owes permanent allegiance to the United States, as defined in 8 U.S.C. 1101(a)(22), and includes American Samoa and Swains Island.

Owner/operator with respect to a maritime facility or a vessel has the same meaning as defined in 33 CFR 101.105.

Revocation means the termination, deactivation, rescission, invalidation, cancellation, or withdrawal of the privileges and duties conferred by an HME or TWIC, when TSA determines an applicant does not meet the security threat assessment standards of 49 CFR part 1572.

Secure area means the area on board a vessel or at a facility or outer continental shelf facility, over which the owner/operator has implemented security measures for access control, as defined by a Coast Guard approved security plan. It does not include passenger access areas or public access areas, as those terms are defined in 33 CFR 104.106 and 105.106 respectively. Vessels operating under the waivers provided for at 46 U.S.C. 8103(b)(3)(A) or (B) have no secure areas. Facilities subject to 33 CFR chapter I, subchapter H, part 105 may, with approval of the Coast Guard, designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation security incident as their secure areas.

Security threat means an individual whom TSA determines or suspects of posing a threat to national security; to transportation security; or of terrorism.

Sensitive security information (SSI) means information that is described in, and must be managed in accordance with, 49 CFR part 1520.

State means a State of the United States and the District of Columbia.

Transportation Worker Identification Credential (TWIC) means a Federal biometric credential, issued to an individual, when TSA determines that the individual does not pose a security threat.

Withdrawal of Initial Determination of Threat Assessment is the document that TSA issues after issuing an Initial Determination of Security Threat, when TSA determines that an individual does not pose a security threat that warrants denial of an HME or TWIC.

§ 1570.5 Fraud and intentional falsification of records.

No person may make, cause to be made, attempt, or cause to attempt any of the following:

(a) Any fraudulent or intentionally false statement in any record or report that is kept, made, or used to show compliance with the subchapter, or exercise any privileges under this subchapter.

(b) Any reproduction or alteration, for fraudulent purpose, of any record, report, security program, access medium, or identification medium issued under this subchapter or pursuant to standards in this subchapter.

§ 1570.7 Fraudulent use or manufacture; responsibilities of persons.

(a) No person may use or attempt to use a credential, security threat assessment, access control medium, or identification medium issued or conducted under this subchapter that was issued or conducted for another person.

(b) No person may make, produce, use or attempt to use a false or fraudulently created access control medium, identification medium or security threat assessment issued or conducted under this subchapter.

(c) No person may tamper or interfere with, compromise, modify, attempt to circumvent, or circumvent TWIC access control procedures.

(d) No person may cause or attempt to cause another person to violate paragraphs (a)–(c) of this section.

§ 1570.9 Inspection of credential.

(a) Each person who has been issued or possesses a TWIC must present the TWIC for inspection upon a request from TSA, the Coast Guard, or other authorized DHS representative; an authorized representative of the National Transportation Safety Board; or a Federal, State, or local law enforcement officer.

(b) Each person who has been issued or who possesses a TWIC must allow his or her TWIC to be read by a reader and must submit his or her reference biometric, such as a fingerprint, and any other required information, such as a PIN, to the reader, upon a request from TSA, the Coast Guard, other authorized DHS representative; or a Federal, State, or local law enforcement officer.

§ 1570.11 Compliance, inspection, and enforcement.

(a) Each owner/operator must allow TSA, at any time or place, to make any inspections or tests, including copying records, to determine compliance of an owner/operator with—

(1) This subchapter and part 1520 of this chapter; and

(2) 46 U.S.C. 70105 and 49 U.S.C. 114.

(b) At the request of TSA, each owner/operator must provide evidence of compliance with this subchapter and part 1520 of this chapter, including copies of records.

■ 54. Revise part 1572 to read as follows:

PART 1572—CREDENTIALING AND SECURITY THREAT ASSESSMENTS

Subpart A—Procedures and General Standards

Sec.
1572.1 Applicability.
1572.3 Scope.
1572.5 Standards for security threat assessments.
1572.7 [Reserved]
1572.9 Applicant information required for HME security threat assessment.
1572.11 Applicant responsibilities for HME security threat assessment.
1572.13 State responsibilities for issuance of hazardous materials endorsement.
1572.15 Procedures for HME security threat assessment.
1572.17 Applicant information required for TWIC security threat assessment.
1572.19 Applicant responsibilities for a TWIC security threat assessment.
1572.21 Procedures for TWIC security threat assessment.
1572.23 TWIC expiration.
1572.24–1572.40 [Reserved]

Subpart B—Qualification Standards for Security Threat Assessments

1572.101 Scope.
1572.103 Disqualifying criminal offenses.
1572.105 Immigration status.
1572.107 Other analyses.
1572.109 Mental capacity.
1572.111–1572.139 [Reserved]

Subpart C—Transportation of Hazardous Materials From Canada or Mexico To and Within the United States by Land Modes

1572.201 Transportation of hazardous materials via commercial motor vehicle from Canada or Mexico to and within the United States.
1572.203 Transportation of explosives from Canada to the United States via railroad carrier.

Subpart D—[Reserved]

Subpart E—Fees for Security Threat Assessments for Hazmat Drivers

1572.400 Scope and definitions.
1572.401 Fee collection options.
1572.403 Procedures for collection by States.
1572.405 Procedures for collection by TSA.

Subpart F—Fees for Security Threat Assessments for Transportation Worker Identification Credential (TWIC)

1572.500 Scope.
1572.501 Fee collection.

Authority: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

Subpart A—Procedures and General Standards

§ 1572.1 Applicability.

This part establishes regulations for credentialing and security threat assessments for certain maritime and land transportation workers.

§ 1572.3 Scope.

This part applies to—

(a) State agencies responsible for issuing a hazardous materials endorsement (HME); and

(b) An applicant who—

(1) Is qualified to hold a commercial driver's license under 49 CFR parts 383 and 384, and is applying to obtain, renew, or transfer an HME; or

(2) Is applying to obtain or renew a TWIC in accordance with 33 CFR parts 104 through 106 or 46 CFR part 10.

§ 1572.5 Standards for security threat assessments.

(a) *Standards.* TSA determines that an applicant poses a security threat warranting denial of an HME or TWIC, if—

(1) The applicant has a disqualifying criminal offense described in 49 CFR 1572.103;

(2) The applicant does not meet the immigration status requirements described in 49 CFR 1572.105;

(3) TSA conducts the analyses described in 49 CFR 1572.107 and determines that the applicant poses a security threat; or

(4) The applicant has been adjudicated as lacking mental capacity or committed to a mental health facility, as described in 49 CFR 1572.109.

(b) *Immediate Revocation/Invalidation.* TSA may invalidate a TWIC or direct a State to revoke an HME immediately, if TSA determines during the security threat assessment that an applicant poses an immediate threat to transportation security, national security, or of terrorism.

(c) *Violation of FMCSA Standards.* The regulations of the Federal Motor Carrier Safety Administration (FMCSA) provide that an applicant is disqualified from operating a commercial motor vehicle for specified periods, if he or she has an offense that is listed in the FMCSA rules at 49 CFR 383.51. If records indicate that an applicant has committed an offense that would disqualify the applicant from operating a commercial motor vehicle under 49 CFR 383.51, TSA will not issue a Determination of No Security Threat until the State or the FMCSA determine that the applicant is not disqualified under that section.

(d) *Waiver.* In accordance with the requirements of § 1515.7, applicants may apply for a waiver of certain security threat assessment standards.

(e) *Comparability of Other Security Threat Assessment Standards.* TSA may determine that security threat assessments conducted by other governmental agencies are comparable to the threat assessment described in this part, which TSA conducts for HME and TWIC applicants.

(1) In making a comparability determination, TSA will consider—

(i) The minimum standards used for the security threat assessment;

(ii) The frequency of the threat assessment;

(iii) The date of the most recent threat assessment; and

(iv) Whether the threat assessment includes biometric identification and a biometric credential.

(2) To apply for a comparability determination, the agency seeking the determination must contact the Assistant Program Manager, Attn: Federal Agency Comparability Check, Hazmat Threat Assessment Program, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

(3) TSA will notify the public when a comparability determination is made.

(4) An applicant, who has completed a security threat assessment that is determined to be comparable under this section to the threat assessment described in this part, must complete the enrollment process and provide biometric information to obtain a TWIC, if the applicant seeks unescorted access to a secure area of a vessel or facility. The applicant must pay the fee listed in 49 CFR 1572.503 for information collection/credential issuance.

(5) TSA has determined that the security threat assessment for an HME under this part is comparable to the security threat assessment for TWIC.

(6) TSA has determined that the security threat assessment for a FAST card, under the Free and Secure Trade program administered by U.S. Customs and Border Protection, is comparable to the security threat assessment described in this part.

§ 1572.7 [Reserved].

§ 1572.9 Applicant information required for HME security threat assessment.

An applicant must supply the information required in this section, in a form acceptable to TSA, when applying to obtain or renew an HME. When applying to transfer an HME from

one State to another, 49 CFR 1572.13(e) applies.

(a) Except as provided in (a)(12) through (16), the applicant must provide the following identifying information:

(1) Legal name, including first, middle, and last; any applicable suffix; and any other name used previously.

(2) Current and previous mailing address, current residential address if it differs from the current mailing address, and e-mail address if available. If the applicant prefers to receive correspondence and notification via e-mail, the applicant should so state.

(3) Date of birth.

(4) Gender.

(5) Height, weight, hair color, and eye color.

(6) City, state, and country of birth.

(7) Immigration status and, if the applicant is a naturalized citizen of the United States, the date of naturalization.

(8) Alien registration number, if applicable.

(9) The State of application, CDL number, and type of HME(s) held.

(10) Name, telephone number, facsimile number, and address of the applicant's current employer(s), if the applicant's work for the employer(s) requires an HME. If the applicant's current employer is the U.S. military service, include branch of the service.

(11) Whether the applicant is applying to obtain, renew, or transfer an HME or for a waiver.

(12) Social security number. Providing the social security number is voluntary; however, failure to provide it will delay and may prevent completion of the threat assessment.

(13) Passport number. This information is voluntary and may expedite the adjudication process for applicants who are U.S. citizens born abroad.

(14) Department of State Consular Report of Birth Abroad. This information is voluntary and may expedite the adjudication process for applicants who are U.S. citizens born abroad.

(15) Whether the applicant has previously completed a TSA threat assessment, and if so the date and program for which it was completed. This information is voluntary and may expedite the adjudication process for applicants who have completed a TSA security threat assessment.

(16) Whether the applicant currently holds a federal security clearance, and if so, the date of and agency for which the clearance was performed. This information is voluntary and may expedite the adjudication process for applicants who have completed a federal security threat assessment.

(b) The applicant must provide a statement, signature, and date of signature that he or she—

(1) Was not convicted, or found not guilty by reason of insanity, of a disqualifying crime listed in 49 CFR 1572.103(b), in a civilian or military jurisdiction, during the seven years before the date of the application, or is applying for a waiver;

(2) Was not released from incarceration, in a civilian or military jurisdiction, for committing a disqualifying crime listed in 49 CFR 1572.103(b), during the five years before the date of the application, or is applying for a waiver;

(3) Is not wanted, or under indictment, in a civilian or military jurisdiction, for a disqualifying criminal offense identified in 49 CFR 1572.103, or is applying for a waiver;

(4) Was not convicted, or found not guilty by reason of insanity, of a disqualifying criminal offense identified in 49 CFR 1572.103(a), in a civilian or military jurisdiction, or is applying for a waiver;

(5) Has not been adjudicated as lacking mental capacity or committed to a mental health facility involuntarily or is applying for a waiver;

(6) Meets the immigration status requirements described in 49 CFR 1572.105;

(7) Has or has not served in the military, and if so, the branch in which he or she served, the date of discharge, and the type of discharge; and

(8) Has been informed that Federal regulations, under 49 CFR 1572.11, impose a continuing obligation on the HME holder to disclose to the State if he or she is convicted, or found not guilty by reason of insanity, of a disqualifying crime, adjudicated as lacking mental capacity, or committed to a mental health facility.

(c) The applicant must certify and date receipt the following statement:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 5103a. Purpose: This information is needed to verify your identity and to conduct a security threat assessment to evaluate your suitability for a hazardous materials endorsement for a commercial driver's license. Furnishing this information, including your SSN or alien registration number, is voluntary; however, failure to provide it will delay and may prevent completion of your security threat assessment. Routine Uses: Routine uses of this information include disclosure to the FBI to retrieve your criminal history record; to TSA contractors or other agents who are providing services relating to the security threat assessments; to appropriate governmental agencies for licensing, law enforcement, or security purposes, or in the interests of national security; and to foreign and international governmental authorities in accordance with law and international agreement.

(d) The applicant must certify and date receipt the following statement, immediately before the signature line:

The information I have provided on this application is true, complete, and correct, to the best of my knowledge and belief, and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact on this application can be punished by fine or imprisonment or both (*See* section 1001 of Title 18 United States Code), and may be grounds for denial of a hazardous materials endorsement.

(e) The applicant must certify the following statement in writing:

I acknowledge that if the Transportation Security Administration determines that I pose a security threat, my employer, as listed on this application, may be notified. If TSA or other law enforcement agency becomes aware of an imminent threat to a maritime facility or vessel, TSA may provide limited information necessary to reduce the risk of injury or damage to the facility or vessel.

§ 1572.11 Applicant responsibilities for HME security threat assessment.

(a) *Surrender of HME.* If an individual is disqualified from holding an HME under 49 CFR 1572.5(c), he or she must surrender the HME to the licensing State. Failure to surrender the HME to the State may result in immediate revocation under 49 CFR 1572.13(a) and/or civil penalties.

(b) *Continuing responsibilities.* An individual who holds an HME must surrender the HME as required in paragraph (a) of this section within 24 hours, if the individual—

(1) Is convicted of, wanted, under indictment or complaint, or found not guilty by reason of insanity, in a civilian or military jurisdiction, for a disqualifying criminal offense identified in 49 CFR 1572.103; or

(2) Is adjudicated as lacking mental capacity, or committed to a mental health facility, as described in 49 CFR 1572.109; or

(3) Renounces or loses U.S. citizenship or status as a lawful permanent resident; or

(4) Violates his or her immigration status, and/or is ordered removed from the United States.

(c) *Submission of fingerprints and information.* (1) An HME applicant must submit fingerprints and the information required in 49 CFR 1572.9, in a form acceptable to TSA, when so notified by the State, or when the applicant applies to obtain or renew an HME. The procedures outlined in 49 CFR 1572.13(e) apply to HME transfers.

(2) When submitting fingerprints and the information required in 49 CFR 1572.9, the fee described in 49 CFR 1572.503 must be remitted to TSA.

§ 1572.13 State responsibilities for issuance of hazardous materials endorsement.

Each State must revoke an individual's HME immediately, if TSA informs the State that the individual does not meet the standards for security threat assessment in 49 CFR 1572.5 and issues an Initial Determination of Threat Assessment and Immediate Revocation.

(a) No State may issue or renew an HME for a CDL, unless the State receives a Determination of No Security Threat from TSA.

(b) Each State must notify each individual holding an HME issued by that State that he or she will be subject to the security threat assessment described in this part as part of an application for renewal of the HME, at least 60 days prior to the expiration date of the individual's HME. The notice must inform the individual that he or she may initiate the security threat assessment required by this section at any time after receiving the notice, but no later than 60 days before the expiration date of the individual's HME.

(c) The State that issued an HME may extend the expiration date of the HME for 90 days, if TSA has not provided a Determination of No Security Threat or a Final Determination of Threat Assessment before the expiration date. Any additional extension must be approved in advance by TSA.

(d) Within 15 days of receipt of a Determination of No Security Threat or Final Determination of Threat Assessment from TSA, the State must—

(1) Update the applicant's permanent record to reflect:

(i) The results of the security threat assessment;

(ii) The issuance or denial of an HME; and

(iii) The new expiration date of the HME.

(2) Notify the Commercial Drivers License Information System (CDLIS) operator of the results of the security threat assessment.

(3) Revoke or deny the applicant's HME if TSA serves the State with a Final Determination of Threat Assessment.

(e) For applicants who apply to transfer an existing HME from one State to another, the second State will not require the applicant to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing State, not to exceed five years, expires.

(f) A State that is not using TSA's agent to conduct enrollment for the security threat assessment must retain the application and information required in 49 CFR 1572.9, for at least one year, in paper or electronic form.

§ 1572.15 Procedures for HME security threat assessment.

(a) *Contents of security threat assessment.* The security threat assessment TSA completes includes a fingerprint-based criminal history records check (CHRC), an intelligence-related background check, and a final disposition.

(b) *Fingerprint-based check.* In order to conduct a fingerprint-based CHRC, the following procedures must be completed:

(1) The State notifies the applicant that he or she will be subject to the security threat assessment at least 60 days prior to the expiration of the applicant's HME, and that the applicant must begin the security threat assessment no later than 30 days before the date of the expiration of the HME.

(2) Where the State elects to collect fingerprints and applicant information, the State—

(i) Collects fingerprints and applicant information required in 49 CFR 1572.9;

(ii) Provides the applicant information to TSA electronically, unless otherwise authorized by TSA;

(iii) Transmits the fingerprints to the FBI/Criminal Justice Information Services (CJIS), in accordance with the FBI/CJIS fingerprint submission standards; and

(iv) Retains the signed application, in paper or electronic form, for one year and provides it to TSA, if requested.

(3) Where the State elects to have a TSA agent collect fingerprints and applicant information—

(i) TSA provides a copy of the signed application to the State;

(ii) The State retains the signed application, in paper or electronic form, for one year and provides it to TSA, if requested; and

(iii) TSA transmits the fingerprints to the FBI/CJIS, in accordance with the FBI/CJIS fingerprint submission standards.

(4) TSA receives the results from the FBI/CJIS and adjudicates the results of the check, in accordance with 49 CFR 1572.103 and, if applicable, 49 CFR 1572.107.

(c) *Intelligence-related check.* To conduct an intelligence-related check, TSA completes the following procedures:

(1) Reviews the applicant information required in 49 CFR 1572.9.

(2) Searches domestic and international Government databases described in 49 CFR 1572.105, 1572.107, and 1572.109.

(3) Adjudicates the results of the check in accordance with 49 CFR 1572.103, 1572.105, 1572.107, and 1572.109.

(d) *Final disposition.* Following completion of the procedures described in paragraphs (b) and/or (c) of this section, the following procedures apply, as appropriate:

(1) TSA serves a Determination of No Security Threat on the State in which the applicant is authorized to hold an HME, if TSA determines that an applicant meets the security threat assessment standards described in 49 CFR 1572.5.

(2) TSA serves an Initial Determination of Threat Assessment on the applicant, if TSA determines that the applicant does not meet the security threat assessment standards described in 49 CFR 1572.5. The Initial Determination of Threat Assessment includes—

(i) A statement that TSA has determined that the applicant poses a security threat warranting denial of the HME;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.5 or 1515.9, as applicable; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination, or does not request an extension of time within 60 days of receipt of the Initial Determination in order to file an appeal, the Initial Determination becomes a Final Determination of Security Threat Assessment.

(3) TSA serves an Initial Determination of Threat Assessment and Immediate Revocation on the applicant, the applicant's employer where appropriate, and the State, if TSA determines that the applicant does not meet the security threat assessment standards described in 49 CFR 1572.5 and may pose an imminent threat to transportation or national security, or of terrorism. The Initial Determination of Threat Assessment and Immediate Revocation includes—

(i) A statement that TSA has determined that the applicant poses a security threat warranting immediate revocation of an HME;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.5(h) or 1515.9(f), as applicable; and

(iv) A statement that if the applicant chooses not to appeal TSA's

determination within 60 days of receipt of the Initial Determination and Immediate Revocation, the Initial Determination and Immediate Revocation becomes a Final Determination of Threat Assessment.

(4) If the applicant does not appeal the Initial Determination of Threat Assessment or Initial Determination of Threat Assessment and Immediate Revocation, TSA serves a Final Determination of Threat Assessment on the State in which the applicant applied for the HME, the applicant's employer where appropriate, and on the applicant, if the appeal of the Initial Determination results in a finding that the applicant poses a security threat.

(5) If the applicant appeals the Initial Determination of Threat Assessment or the Initial Determination of Threat Assessment and Immediate Revocation, the procedures in 49 CFR 1515.5 or 1515.9 apply.

(6) Applicants who do not meet certain standards in 49 CFR 1572.103, 1572.105, or 1572.109 may seek a waiver in accordance with 49 CFR 1515.7.

§ 1572.17 Applicant information required for TWIC security threat assessment.

An applicant must supply the information required in this section, in a form acceptable to TSA, when applying to obtain or renew a TWIC.

(a) Except as provided in (a)(12) through (16), the applicant must provide the following identifying information:

(1) Legal name, including first, middle, and last; any applicable suffix; and any other name used previously.

(2) Current and previous mailing address, current residential address if it differs from the current mailing address, and e-mail address if available. If the applicant wishes to receive notification that the TWIC is ready to be retrieved from the enrollment center via telephone rather than e-mail address, the applicant should state this and provide the correct telephone number.

(3) Date of birth.

(4) Gender.

(5) Height, weight, hair color, and eye color.

(6) City, state, and country of birth.

(7) Immigration status, and

(i) If the applicant is a naturalized citizen of the United States, the date of naturalization;

(ii) If the applicant is present in the United States based on a Visa, the type of Visa, the Visa number, and the date on which it expires; and

(iii) If the applicant is a commercial driver licensed in Canada and does not hold a FAST card, a Canadian passport.

(8) If not a national or citizen of the United States, the alien registration number and/or the number assigned to the applicant on the U.S. Customs and Border Protection Arrival-Departure Record, Form I–94.

(9) Except as described in paragraph (a)(9)(i) of this section, the reason that the applicant requires a TWIC, including, as applicable, the applicant's job description and the primary facility, vessel, or maritime port location(s) where the applicant will most likely require unescorted access, if known. This statement does not limit access to other facilities, vessels, or ports, but establishes eligibility for a TWIC.

(i) Applicants who are commercial drivers licensed in Canada or Mexico who are applying for a TWIC in order to transport hazardous materials in accordance with 49 CFR 1572.201 and not to access secure areas of a facility or vessel, must explain this in response to the information requested in paragraph (a)(9) of this section.

(10) The name, telephone number, and address of the applicant's current employer(s), if working for the employer requires a TWIC. If the applicant's current employer is the U.S. military service, include the branch of the service. An applicant whose current employer does not require possession of a TWIC, does not have a single employer, or is self-employed, must provide the primary vessel or port location(s) where the applicant requires unescorted access, if known. This statement does not limit access to other facilities, vessels, or ports, but establishes eligibility for a TWIC.

(11) If a credentialed mariner or applying to become a credentialed mariner, proof of citizenship as required in 46 CFR chapter I, subchapter B.

(12) Social security number. Providing the social security number is voluntary; however, failure to provide it will delay and may prevent completion of the threat assessment.

(13) Passport number, city of issuance, date of issuance, and date of expiration. This information is voluntary and may expedite the adjudication process for applicants who are U.S. citizens born abroad.

(14) Department of State Consular Report of Birth Abroad. This information is voluntary and may expedite the adjudication process for applicants who are U.S. citizens born abroad.

(15) Whether the applicant has previously completed a TSA threat assessment, and if so the date and program for which it was completed. This information is voluntary and may expedite the adjudication process for applicants who have completed a TSA security threat assessment.

(16) Whether the applicant currently holds a federal security clearance, and if so, the date of and agency for which the clearance was performed. This information is voluntary and may expedite the adjudication process for applicants who have completed a federal security threat assessment.

(b) The applicant must provide a statement, signature, and date of signature that he or she—

(1) Was not convicted, or found not guilty by reason of insanity, of a disqualifying crime listed in 49 CFR 1572.103(b), in a civilian or military jurisdiction, during the seven years before the date of the application, or is applying for a waiver;

(2) Was not released from incarceration, in a civilian or military jurisdiction, for committing a disqualifying crime listed in 49 CFR 1572.103(b), during the five years before the date of the application, or is applying for a waiver;

(3) Is not wanted, or under indictment, in a civilian or military jurisdiction, for a disqualifying criminal offense identified in 49 CFR 1572.103, or is applying for a waiver;

(4) Was not convicted, or found not guilty by reason of insanity, of a disqualifying criminal offense identified in 49 CFR 1572.103(a), in a civilian or military jurisdiction, or is applying for a waiver;

(5) Has not been adjudicated as lacking mental capacity, or committed to a mental health facility involuntarily, or is applying for a waiver;

(6) Meets the immigration status requirements described in 49 CFR 1572.105;

(7) Has, or has not, served in the military, and if so, the branch in which he or she served, the date of discharge, and the type of discharge; and

(8) Has been informed that Federal regulations under 49 CFR 1572.19 impose a continuing obligation on the TWIC holder to disclose to TSA if he or she is convicted, or found not guilty by reason of insanity, of a disqualifying crime, adjudicated as lacking mental capacity, or committed to a mental health facility.

(c) Applicants, applying to obtain or renew a TWIC, must submit biometric information to be used for identity verification purposes. If an individual cannot provide the selected biometric, TSA will collect an alternative biometric identifier.

(d) The applicant must certify and date receipt the following statement:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 5103a. Purpose: This information is needed to verify your identity

and to conduct a security threat assessment to evaluate your suitability for a Transportation Worker Identification Credential. Furnishing this information, including your SSN or alien registration number, is voluntary; however, failure to provide it will delay and may prevent completion of your security threat assessment. Routine Uses: Routine uses of this information include disclosure to the FBI to retrieve your criminal history record; to TSA contractors or other agents who are providing services relating to the security threat assessments; to appropriate governmental agencies for licensing, law enforcement, or security purposes, or in the interests of national security; and to foreign and international governmental authorities in accordance with law and international agreement.

(e) The applicant must certify the following statement in writing:

As part of my employment duties, I am required to have unescorted access to secure areas of maritime facilities or vessels in which a Transportation Worker Identification Credential is required; I am now, or I am applying to be, a credentialed merchant mariner; or I am a commercial driver licensed in Canada or Mexico transporting hazardous materials in accordance with 49 CFR 1572.201.

(f) The applicant must certify and date receipt the following statement, immediately before the signature line:

The information I have provided on this application is true, complete, and correct, to the best of my knowledge and belief, and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact on this application, can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code), and may be grounds for denial of a Transportation Worker Identification Credential.

(g) The applicant must certify the following statement in writing:

I acknowledge that if the Transportation Security Administration determines that I pose a security threat, my employer, as listed on this application, may be notified. If TSA or other law enforcement agency becomes aware of an imminent threat to a maritime facility or vessel, TSA may provide limited information necessary to reduce the risk of injury or damage to the facility or vessel.

§ 1572.19 Applicant responsibilities for a TWIC security threat assessment.

(a) *Implementation schedule.* Except as provided in paragraph (b) of this section, applicants must provide the information required in 49 CFR 1572.17, when so directed by the owner/operator.

(b) *Implementation schedule for certain mariners.* An applicant, who holds a Merchant Mariner Document (MMD) issued after February 3, 2003, and before the March 26, 2007, or a Merchant Marine License (License) issued after January 13, 2006, and before March 26, 2007, must submit the information required in this section, but is not required to undergo the security threat assessment described in this part.

(c) *Surrender of TWIC.* The TWIC is property of the Transportation Security Administration. If an individual is disqualified from holding a TWIC under 49 CFR 1572.5, he or she must surrender the TWIC to TSA. Failure to surrender the TWIC to TSA may result in immediate revocation under 49 CFR 1572.5(b) and/or civil penalties.

(d) *Continuing responsibilities.* An individual who holds a TWIC must surrender the TWIC, as required in paragraph (a) of this section, within 24 hours if the individual—

(1) Is convicted of, wanted, under indictment or complaint, or found not guilty by reason of insanity, in a civilian or military jurisdiction, for a disqualifying criminal offense identified in 49 CFR 1572.103; or

(2) Is adjudicated as lacking mental capacity or committed to a mental health facility, as described in 49 CFR 1572.109; or

(3) Renounces or loses U.S. citizenship or status as a lawful permanent resident; or

(4) Violates his or her immigration status and/or is ordered removed from the United States.

(e) *Submission of fingerprints and information.* (1) TWIC applicants must submit fingerprints and the information required in 49 CFR 1572.17, in a form acceptable to TSA, to obtain or renew a TWIC.

(2) When submitting fingerprints and the information required in 49 CFR 1572.17, the fee required in 49 CFR 1572.503 must be remitted to TSA.

(f) *Lost, damaged, or stolen credentials.* If an individual's TWIC is damaged, or if a TWIC holder loses possession of his or her credential, he or she must notify TSA immediately.

§ 1572.21 Procedures for TWIC security threat assessment.

(a) *Contents of security threat assessment.* The security threat assessment TSA conducts includes a fingerprint-based criminal history records check (CHRC), an intelligence-related check, and a final disposition.

(b) *Fingerprint-based check.* The following procedures must be completed to conduct a fingerprint-based CHRC:

(1) Consistent with the implementation schedule described in 49 CFR 1572.19(a) and (b), and as required in 33 CFR 104.200, 105.200, or 106.200, applicants are notified.

(2) During enrollment, TSA—

(i) Collects fingerprints, applicant information, and the fee required in 49 CFR 1572.17;

(ii) Transmits the fingerprints to the FBI/CJIS in accordance with the FBI/CJIS fingerprint submission standards.

(iii) Receives and adjudicates the results of the check from FBI/CJIS, in accordance with 49 CFR 1572.103 and, if applicable, 49 CFR 1572.107.

(c) *Intelligence-related check.* To conduct an intelligence-related check, TSA completes the following procedures:

(1) Reviews the applicant information required in 49 CFR 1572.17;

(2) Searches domestic and international Government databases required to determine if the applicant meets the requirements of 49 CFR 1572.105, 1572.107, and 1572.109;

(3) Adjudicates the results of the check in accordance with 49 CFR 1572.103, 1572.105, 1572.107, and 1572.109.

(d) *Final disposition.* Following completion of the procedures described in paragraphs (b) and/or (c) of this section, the following procedures apply, as appropriate:

(1) TSA serves a Determination of No Security Threat on the applicant if TSA determines that the applicant meets the security threat assessment standards described in 49 CFR 1572.5. In the case of a mariner, TSA also serves a Determination of No Security Threat on the Coast Guard.

(2) TSA serves an Initial Determination of Threat Assessment on the applicant if TSA determines that the applicant does not meet the security threat assessment standards described in 49 CFR 1572.5. The Initial Determination of Threat Assessment includes—

(i) A statement that TSA has determined that the applicant poses a security threat warranting denial of the TWIC;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.5 or 1515.9, as applicable; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination, or does not request an extension of time within 60 days of receipt of the Initial Determination in order to file an appeal, the Initial Determination becomes a Final Determination of Security Threat Assessment.

(3) TSA serves an Initial Determination of Threat Assessment and Immediate Revocation on the applicant, the applicant's employer

where appropriate, the FMSC, and in the case of a mariner applying for a TWIC, on the Coast Guard, if TSA determines that the applicant does not meet the security threat assessment standards described in 49 CFR 1572.5 and may pose an imminent security threat. The Initial Determination of Threat Assessment and Immediate Revocation includes—

(i) A statement that TSA has determined that the applicant poses a security threat warranting immediate revocation of a TWIC and unescorted access to secure areas;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.5(h) or 1515.9(f), as applicable; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination and Immediate Revocation, the Initial Determination and Immediate Revocation becomes a Final Determination of Threat Assessment.

(4) If the applicant does not appeal the Initial Determination of Threat Assessment or Initial Determination of Threat Assessment and Immediate Revocation, TSA serves a Final Determination of Threat Assessment on the FMSC and in the case of a mariner, on the Coast Guard, and the applicant's employer where appropriate.

(5) If the applicant appeals the Initial Determination of Threat Assessment or the Initial Determination of Threat Assessment and Immediate Revocation, the procedures in 49 CFR 1515.5 or 1515.9 apply.

(6) Applicants who do not meet certain standards in 49 CFR 1572.103, 1572.105, or 1572.109 may seek a waiver in accordance with 49 CFR 1515.7.

§ 1572.23 TWIC expiration.

(a) A TWIC expires five years after the date it was issued at the end of the calendar day, except as follows:

(1) The TWIC was issued based on a determination that the applicant completed a comparable threat assessment. If issued pursuant to a comparable threat assessment, the TWIC expires five years from the date on the credential associated with the comparable threat assessment.

(2) The applicant is in a lawful nonimmigrant status category listed in 1572.105(a)(7), and the status expires, the employer terminates the employment relationship with the applicant, or the applicant otherwise ceases working for the employer. Under any of these circumstances, TSA deems the TWIC to have expired regardless of the expiration date on the face of the TWIC.

(b) TSA may issue a TWIC for a term less than five years to match the expiration of a visa.

§§ 1572.24—1572.40 [Reserved]

Subpart B—Standards for Security Threat Assessments

§ 1572.101 Scope.

This subpart applies to applicants who hold or are applying to obtain or renew an HME or TWIC, or transfer an HME. Applicants for an HME also are subject to safety requirements issued by the Federal Motor Carrier Safety Administration under 49 CFR part 383 and by the State issuing the HME, including additional immigration status and criminal history standards.

§ 1572.103 Disqualifying criminal offenses.

(a) *Permanent disqualifying criminal offenses.* An applicant has a permanent disqualifying offense if convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction of any of the following felonies:

(1) Espionage or conspiracy to commit espionage.

(2) Sedition, or conspiracy to commit sedition.

(3) Treason, or conspiracy to commit treason.

(4) A federal crime of terrorism as defined in 18 U.S.C. 2332b(g), or comparable State law, or conspiracy to commit such crime.

(5) A crime involving a transportation security incident. A transportation security incident is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area, as defined in 46 U.S.C. 70101. A work stoppage, or other nonviolent employee-related action, resulting from an employer-employee dispute is not a transportation security incident.

(6) Improper transportation of a hazardous material under 49 U.S.C. 5124, or a State law that is comparable.

(7) Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device. An explosive or explosive device includes, but is not limited to, an explosive or explosive material as defined in 18 U.S.C. 232(5), 841(c) through 841(f), and 844(j); and a destructive device, as defined in 18 U.S.C. 921(a)(4) and 26 U.S.C. 5845(f).

(8) Murder.

(9) Making any threat, or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a state or government facility, a public transportations system, or an infrastructure facility.

(10) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et seq, or a State law that is comparable, where one of the predicate acts found by a jury or admitted by the defendant, consists of one of the crimes listed in paragraph (a) of this section.

(11) Attempt to commit the crimes in paragraphs (a)(1) through (a)(4).

(12) Conspiracy or attempt to commit the crimes in paragraphs (a)(5) through (a)(10).

(b) *Interim disqualifying criminal offenses.* (1) The felonies listed in paragraphs (b)(2) of this section are disqualifying, if either:

(i) the applicant was convicted, or found not guilty by reason of insanity, of the crime in a civilian or military jurisdiction, within seven years of the date of the application; or

(ii) the applicant was incarcerated for that crime and released from incarceration within five years of the date of the TWIC application.

(2) The interim disqualifying felonies are:

(i) Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon. A firearm or other weapon includes, but is not limited to, firearms as defined in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5 845(a), or items contained on the U.S. Munitions Import List at 27 CFR 447.21.

(ii) Extortion.

(iii) Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering where the money laundering is related to a crime described in paragraphs (a) or (b) of this section. Welfare fraud and passing bad checks do not constitute dishonesty, fraud, or misrepresentation for purposes of this paragraph.

(iv) Bribery.

(v) Smuggling.

(vi) Immigration violations.

(vii) Distribution of, possession with intent to distribute, or importation of a controlled substance.

(viii) Arson.

(ix) Kidnapping or hostage taking.

(x) Rape or aggravated sexual abuse.

(xi) Assault with intent to kill.

(xi) Robbery.

(xii) Conspiracy or attempt to commit the crimes in this paragraph (b).

(xiii) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, *et seq.*, or a1036, or comparable State law that is comparable, other than the violations listed in paragraph (a)(10) of this section., for fraudulent entry into secure seaport areas.

(xiv) Conspiracy or attempt to commit the crimes in this paragraph (b).

(c) *Under want, warrant, or indictment.* An applicant who is wanted, or under indictment in any civilian or military jurisdiction for a felony listed in this section, is disqualified until the want or warrant is released or the indictment is dismissed.

(d) *Determination of arrest status.* (1) When a fingerprint-based check discloses an arrest for a disqualifying crime listed in this section without indicating a disposition, TSA will so notify the applicant and provide instructions on how the applicant must clear the disposition, in accordance with paragraph (d)(2) of this section.

(2) The applicant must provide TSA with written proof that the arrest did not result in conviction for the disqualifying criminal offense, within 60 days after the service date of the notification in paragraph (d)(1) of this section. If TSA does not receive proof in that time, TSA will notify the applicant that he or she is disqualified. In the case of an HME, TSA will notify the State that the applicant is disqualified, and in the case of a mariner applying for TWIC, TSA will notify the Coast Guard that the applicant is disqualified.

§ 1572.105 Immigration status.

(a) An individual applying for a security threat assessment for a TWIC or HME must be a national of the United States or—

(1) A lawful permanent resident of the United States;

(2) A refugee admitted under 8 U.S.C. 1157;

(3) An alien granted asylum under 8 U.S.C. 1158;

(4) An alien in valid M–1 nonimmigrant status who is enrolled in the United States Merchant Marine Academy or a comparable State maritime academy. Such individuals may serve as unlicensed mariners on a documented vessel, regardless of their nationality, under 46 U.S.C. 8103.

(5) A nonimmigrant alien admitted under the Compact of Free Association between the United States and the Federated States of Micronesia, the United States and the Republic of the Marshall Islands, or the United States and Palau.

(6) An alien in lawful nonimmigrant status who has unrestricted authorization to work in the United States, except—

(i) An alien in valid S–5 (informant of criminal organization information) lawful nonimmigrant status;

(ii) An alien in valid S–6 (informant of terrorism information) lawful nonimmigrant status;

(iii) An alien in valid K–1 (Fianco(e)) lawful nonimmigrant status; or

(iv) An alien in valid K–2 (Minor child of Fianco(e)) lawful nonimmigrant status.

(7) An alien in the following lawful nonimmigrant status who has restricted authorization to work in the United States—

(i) C–1/D Crewman Visa

(ii) H–1B Special Occupations;

(ii) H–1B1 Free Trade Agreement;

(iv) E–1 Treaty Trader;

(v) E–3 Australian in Specialty Occupation;

(vi) L–1 Intracompany Executive Transfer;

(vii) O–1 Extraordinary Ability; or

(viii) TN North American Free Trade Agreement.

(8) A commercial driver licensed in Canada or Mexico who is admitted to the United States under 8 CFR 214.2(b)(4)(i)(E) to conduct business in the United States.

(b) Upon expiration of a nonimmigrant status listed in paragraph (a)(7) of this section, an employer must retrieve the TWIC from the applicant and provide it to TSA.

(c) Upon expiration of a nonimmigrant status listed in paragraph (a)(7) of this section, an employee must surrender his or her TWIC to the employer.

(d) If an employer terminates an applicant working under a nonimmigrant status listed in paragraph (a)(7) of this section, or the applicant otherwise ceases working for the employer, the employer must notify TSA within 5 business days and provide the TWIC to TSA if possible.

(e) Any individual in removal proceedings or subject to an order of removal under the immigration laws of the United States is not eligible to apply for a TWIC.

(f) To determine an applicant's immigration status, TSA will check relevant Federal databases and may perform other checks, including the validity of the applicant's alien registration number, social security number, or I–94 Arrival-Departure Form number.

§ 1572.107 Other analyses.

(a) TSA may determine that an applicant poses a security threat based on a search of the following databases:

(1) Interpol and other international databases, as appropriate.

(2) Terrorist watchlists and related databases.

(3) Any other databases relevant to determining whether an applicant poses, or is suspected of posing, a security threat, or that confirm an applicant's identity.

(b) TSA may also determine that an applicant poses a security threat, if the search conducted under this part reveals extensive foreign or domestic criminal convictions, a conviction for a serious crime not listed in 49 CFR 1572.103, or a period of foreign or domestic imprisonment that exceeds 365 consecutive days.

§ 1572.109 Mental capacity.

(a) An applicant has mental incapacity, if he or she has been—

(1) Adjudicated as lacking mental capacity; or

(2) Committed to a mental health facility.

(b) An applicant is adjudicated as lacking mental capacity if—

(1) A court, board, commission, or other lawful authority has determined that the applicant, as a result of marked subnormal intelligence, mental illness, incompetence, condition, or disease, is a danger to himself or herself or to others, or lacks the mental capacity to conduct or manage his or her own affairs.

(2) This includes a finding of insanity by a court in a criminal case and a finding of incompetence to stand trial; or a finding of not guilty by reason of lack of mental responsibility, by any court, or pursuant to articles 50a and 76b of the Uniform Code of Military Justice (10 U.S.C. 850a and 876b).

(c) An applicant is committed to a mental health facility if he or she is formally committed to a mental health facility by a court, board, commission, or other lawful authority, including involuntary commitment and commitment for lacking mental capacity, mental illness, and drug use. This does not include commitment to a mental health facility for observation or voluntary admission to a mental health facility.

§§ 1572.111 through 1572.139 [Reserved]

Subpart C—Transportation of Hazardous Materials From Canada or Mexico To and Within the United States by Land Modes

§ 1572.201 Transportation of hazardous materials via commercial motor vehicle from Canada or Mexico to and within the United States.

(a) *Applicability.* This section applies to commercial motor vehicle drivers licensed by Canada and Mexico.

(b) *Terms used in this section.* The terms used in 49 CFR parts 1500, 1570, and 1572 also apply in this subpart. In addition, the following terms are used in this subpart for purposes of this section:

FAST means Free and Secure Trade program of the Bureau of Customs and Border Protection (CBP), a cooperative effort between CBP and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the border.

Hazardous materials means material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of material that listed as a select agent or toxin in 42 CFR part 73.

(c) *Background check required.* A commercial motor vehicle driver who is licensed by Canada or Mexico may not transport hazardous materials into or within the United States unless the driver has undergone a background check similar to the one required of U.S.-licensed operators with a hazardous materials endorsement (HME) on a commercial driver's license, as prescribed in 49 CFR 1572.5.

(d) *FAST card.* A commercial motor vehicle driver who holds a current Free and Secure Trade (FAST) program card satisfies the requirements of this section. Commercial motor vehicle drivers who wish to apply for a FAST program card must contact the FAST Commercial Driver Program, Bureau of Customs and Border Protection (CBP), Department of Homeland Security.

(e) *TWIC.* A commercial motor vehicle driver who holds a TWIC satisfies the requirements of this section. Commercial vehicle drivers who wish to apply for a TWIC must comply with the rules in 49 CFR part 1572.

§ 1572.203 Transportation of explosives from Canada to the United States via railroad carrier.

(a) *Applicability.* This section applies to railroad carriers that carry explosives from Canada to the United States, using a train crew member who is not a U.S. citizen or lawful permanent resident alien of the United States.

(b) *Terms under this section.* For purposes of this section:

Customs and Border Protection (CBP) means the Bureau of Customs and Border Protection, an agency within the U.S. Department of Homeland Security.

Explosive means a material that has been examined by the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, in accordance with 49 CFR 173.56, and determined to meet the definition for a Class 1 material in 49 CFR 173.50.

Known railroad carrier means a person that has been determined by the Governments of Canada and the United States to be a legitimate business, operating in accordance with all applicable laws and regulations governing the transportation of explosives.

Known offeror means an offeror that has been determined by the Governments of Canada and the United States to be a legitimate business, operating in accordance with all applicable laws and regulations governing the transportation of explosives.

Known train crew member means an individual used to transport explosives from Canada to the United States, who has been determined by the Governments of Canada and the United States to present no known security concern.

Lawful permanent resident alien means an alien lawfully admitted for permanent residence, as defined by 8 U.S.C. 1101(a)(20).

Offeror means the person offering a shipment to the railroad carrier for transportation from Canada to the United States, and may also be known as the ''consignor'' in Canada.

Railroad carrier means ''railroad carrier'' as defined in 49 U.S.C. 20102.

(c) *Prior approval of railroad carrier, offeror, and train crew member.* (1) No railroad carrier may transport in commerce any explosive into the United States from Canada, via a train operated by a crew member who is not a U.S. national or lawful permanent resident alien, unless the railroad carrier, offeror, and train crew member are identified on a TSA list as a known railroad carrier, known offeror, and known train crew member, respectively.

(2) The railroad carrier must ensure that it, its offeror, and each of its crew members have been determined to be a known railroad carrier, known offeror, and known train crew member, respectively. If any has not been so determined, the railroad carrier must submit the following information to Transport Canada:

(i) The railroad carrier's identification, including—

(A) Official name;

(B) Business number;

(C) Any trade names; and

(D) Address.

(ii) The following information about any offeror of explosives whose shipments it will carry:

(A) Official name.

(B) Business number.

(C) Address.

(iii) The following information about any train crew member the railroad carrier may use to transport explosives into the United States from Canada, who is neither a U.S. national nor lawful permanent resident alien:

(A) Full name.

(B) Both current and most recent prior residential addresses.

(3) Transport Canada will determine whether the railroad carrier and offeror are legitimately doing business in Canada and will also determine whether the train crew members present no known problems for purposes of this section. Transport Canada will notify TSA of these determinations by forwarding to TSA lists of known railroad carriers, offerors, and train crew members and their identifying information.

(4) TSA will update and maintain the list of known railroad carriers, offerors, and train crew members and forward the list to CBP.

(5) Once included on the list, the railroad carriers, offerors, and train crew members need not obtain prior approval for future transport of explosives under this section.

(d) *TSA checks.* TSA may periodically check the data on the railroad carriers, offerors, and train crew members to confirm their continued eligibility, and may remove from the list any that TSA determines is not known or is a threat to security.

(e) *At the border.* (1) Train crew members who are not U.S. nationals or lawful permanent resident aliens. Upon arrival at a point designated by CBP for inspection of trains crossing into the United States, the train crew members of a train transporting explosives must provide sufficient identification to CBP to enable that agency to determine if each crew member is on the list of known train crew members maintained by TSA.

(2) *Train crew members who are U.S. nationals or lawful permanent resident aliens.* If CBP cannot verify that the crew member is on the list and the crew member is a U.S. national or lawful permanent resident alien, the crew

member may be cleared by CBP upon providing—

(i) A valid U.S. passport; or

(ii) One or more other document(s), including a form of U.S. Federal or state Government-issued identification with photograph, acceptable to CBP.

(3) *Compliance.* If a carrier attempts to enter the U.S. without having complied with this section, CBP will deny entry of the explosives and may take other appropriate action.

Subpart D—[Reserved]

Subpart E—Fees for Security Threat Assessments for Hazmat Drivers

§ 1572.400 Scope and definitions.

(a) *Scope.* This part applies to—

(1) States that issue an HME for a commercial driver's license;

(2) Individuals who apply to obtain or renew an HME for a commercial driver's license and must undergo a security threat assessment under 49 CFR part 1572; and

(3) Entities who collect fees from such individuals on behalf of TSA.

(b) *Terms.* As used in this part:

Commercial driver's license (CDL) is used as defined in 49 CFR 383.5.

Day means calendar day.

FBI Fee means the fee required for the cost of the Federal Bureau of Investigation (FBI) to process fingerprint records.

Information Collection Fee means the fee required, in this part, for the cost of collecting and transmitting fingerprints and other applicant information under 49 CFR part 1572.

Threat Assessment Fee means the fee required, in this part, for the cost of TSA adjudicating security threat assessments, appeals, and waivers under 49 CFR part 1572.

TSA agent means an entity approved by TSA to collect and transmit fingerprints and applicant information, in accordance with 49 CFR part 1572, and fees in accordance with this part.

§ 1572.401 Fee collection options.

(a) *State collection and transmission.* If a State collects fingerprints and applicant information under 49 CFR part 1572, the State must collect and transmit to TSA the Threat Assessment Fee, in accordance with the requirements of 49 CFR 1572.403. The State also must collect and remit the FBI, in accordance with established procedures.

(b) *TSA agent collection and transmission.* If a TSA agent collects fingerprints and applicant information under 49 CFR part 1572, the agent must—

(1) Collect the Information Collection Fee, Threat Assessment Fee, and FBI Fee, in accordance with procedures approved by TSA;

(2) Transmit to TSA the Threat Assessment Fee, in accordance with procedures approved by TSA; and

(3) Transmit to TSA the FBI Fee, in accordance with procedures approved by TSA and the FBI.

§ 1572.403 Procedures for collection by States.

This section describes the procedures that a State, which collects fingerprints and applicant information under 49 CFR part 1572; and the procedures an individual who applies to obtain or renew an HME, for a CDL in that State, must follow for collection and transmission of the Threat Assessment Fee and the FBI Fee.

(a) *Imposition of fees.* (1) The following Threat Assessment Fee is required for TSA to conduct a security threat assessment, under 49 CFR part 1572, for an individual who applies to obtain or renew an HME: $34.

(2) The following FBI Fee is required for the FBI to process fingerprint identification records and name checks required under 49 CFR part 1572: the fee collected by the FBI under Pub. L. 101–515.

(3) An individual who applies to obtain or renew an HME, or the individual's employer, must remit to the State the Threat Assessment Fee and the FBI Fee, in a form and manner approved by TSA and the State, when the individual submits the application for the HME to the State.

(b) *Collection of fees.* (1) A State must collect the Threat Assessment Fee and FBI Fee, when an individual submits an application to the State to obtain or renew an HME.

(2) Once TSA receives an application from a State for a security threat assessment under 49 CFR part 1572, the State is liable for the Threat Assessment Fee.

(3) Nothing in this subpart prevents a State from collecting any other fees that a State may impose on an individual who applies to obtain or renew an HME.

(c) *Handling of fees.* (1) A State must safeguard all Threat Assessment Fees, from the time of collection until remittance to TSA.

(2) All Threat Assessment Fees are held in trust by a State for the beneficial interest of the United States in paying for the costs of conducting the security threat assessment, required by 49 U.S.C. 5103a and 49 CFR part 1572. A State holds neither legal nor equitable interest in the Threat Assessment Fees, except for the right to retain any accrued interest on the principal amounts collected pursuant to this section.

(3) A State must account for Threat Assessment Fees separately, but may commingle such fees with other sources of revenue.

(d) *Remittance of fees.* (1) TSA will generate and provide an invoice to a State on a monthly basis. The invoice will indicate the total fee dollars (number of applicants times the Threat Assessment Fee) that are due for the month.

(2) A State must remit to TSA full payment for the invoice, within 30 days after TSA sends the invoice.

(3) TSA accepts Threat Assessment Fees only from a State, not from an individual applicant for an HME.

(4) A State may retain any interest that accrues on the principal amounts collected between the date of collection and the date the Threat Assessment Fee is remitted to TSA, in accordance with paragraph (d)(2) of this section.

(5) A State may not retain any portion of the Threat Assessment Fee to offset the costs of collecting, handling, or remitting Threat Assessment Fees.

(6) Threat Assessment Fees, remitted to TSA by a State, must be in U.S. currency, drawn on a U.S. bank, and made payable to the ''Transportation Security Administration.''

(7) Threat Assessment Fees must be remitted by check, money order, wire, or any other payment method acceptable to TSA.

(8) TSA will not issue any refunds of Threat Assessment Fees.

(9) If a State does not remit the Threat Assessment Fees for any month, TSA may decline to process any HME applications from that State.

§ 1572.405 Procedures for collection by TSA.

This section describes the procedures that an individual, who applies to obtain or renew an HME for a CDL, must follow if a TSA agent collects and transmits the Information Collection Fee, Threat Assessment Fee, and FBI Fee.

(a) *Imposition of fees.* (1) The following Information Collection Fee is required for a TSA agent to collect and transmit fingerprints and applicant information, in accordance with 49 CFR part 1572: $38.

(2) The following Threat Assessment Fee is required for TSA to conduct a security threat assessment, under 49 CFR part 1572, for an individual who applies to obtain or renew an HME: $34.

(3) The following FBI Fee is required for the FBI to process fingerprint identification records required under 49 CFR part 1572: The fee collected by the FBI under Pub. L. 101–515.

(4) An individual who applies to obtain or renew an HME, or the individual's employer, must remit to the TSA agent the Information Collection Fee, Threat Assessment Fee, and FBI Fee, in a form and manner approved by TSA, when the individual submits the application required under 49 CFR part 1572.

(b) *Collection of fees.* A TSA agent will collect the fees required under this section, when an individual submits an application to the TSA agent, in accordance with 49 CFR part 1572.

(c) *Remittance of fees.* (1) Fees required under this section, which are remitted to a TSA agent, must be made in U.S. currency, drawn on a U.S. bank, and made payable to the ''Transportation Security Administration.''

(2) Fees required under this section must be remitted by check, money order, wire, or any other payment method acceptable to TSA.

(3) TSA will not issue any refunds of fees required under this section.

(4) Applications, submitted in accordance with 49 CFR part 1572, will be processed only upon receipt of all applicable fees under this section.

Subpart F—Fees for Security Threat Assessments for Transportation Worker Identification Credential (TWIC)

§ 1572.500 Scope.

(a) *Scope.* This part applies to—

(1) Individuals who apply to obtain or renew a Transportation Worker Identification Credential and must undergo a security threat assessment under 49 CFR part 1572; and

(2) Entities that collect fees from such individuals on behalf of TSA.

(b) *Terms.* As used in this part:

TSA agent means the entity approved by TSA to collect and transmit fingerprints and applicant information, and collect fees in accordance with this part.

§ 1572.501 Fee collection.

(a) *When fee must be paid.* When an applicant submits the information and fingerprints required under 49 CFR part 1572 to obtain or renew a TWIC, the fee must be remitted to TSA or its agent in accordance with the requirements of this section. Applications submitted in accordance with 49 CFR part 1572 will be processed only upon receipt of all required fees under this section.

(b) *Standard TWIC Fee.* The fee to obtain or renew a TWIC, other than for those identified in paragraph (a)(2) of this section, will be announced in the **Federal Register** after January 25, 2007. This fee is made up of the total of the following segments:

(1) The Enrollment Segment covers the cost for TSA or its agent to enroll applicants.

(2) The Full Card Production/Security Threat Assessment Segment covers the cost for TSA to conduct a security threat assessment.

(3) The FBI Segment covers the cost for the FBI to process fingerprint identification records under Pub. L. 101–515 and is $22. If the FBI amends this fee, TSA or its agent will collect the amended fee.

(c) *Reduced TWIC Fee.* The fee to obtain a TWIC when the applicant has undergone a comparable threat assessment in connection with an HME, a FAST card, other threat assessment deemed to be comparable under 49 CFR 1572.5(d), or holds an Merchant Mariner Document or Merchant Mariner License, will be announced in the **Federal Register** after January 25, 2007. This fee is made up of the following segments:

(1) The Enrollment Segment; and

(2) The Reduced Card Production/Security Threat Assessment Segment.

(d) *Card Replacement Fee.* The fee to replace a TWIC that has been lost, stolen, or damaged will be announced in the **Federal Register** after January 25, 2007.

(e) *Form of fee.* The TSA vendor will collect the fee required to obtain or renew a TWIC and will determine the method of acceptable payment, subject to approval by TSA.

(f) *Refunds.* TSA will not issue any refunds of fees required under this section.

(g) *Inflation adjustment.* The fees prescribed in this section, except the FBI fee, may be adjusted annually on or after October 1, 2007, by publication of an inflation adjustment. A final rule in the **Federal Register** will announce the inflation adjustment. The adjustment shall be a composite of the Federal civilian pay raise assumption and non-pay inflation factor for that fiscal year issued by the Office of Management and Budget for agency use in implementing OMB Circular A–76, weighted by the pay and non-pay proportions of total funding for that fiscal year. If Congress enacts a different Federal civilian pay raise percentage than the percentage issued by OMB for Circular A–76, the Department of Homeland Security may adjust the fees to reflect the enacted level. The required fee shall be the amount prescribed in paragraphs (a)(1)(i) and (a)(1)(ii), plus the latest inflation adjustment.

Dated: December 26, 2006.

Thad W. Allen,

Commandant, United States Coast Guard.

Dated: December 30, 2006.

Kip Hawley,

Assistant Secretary, Transportation Security Administration.

[FR Doc. 07–19 Filed 1–24–07; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 1, 20, 70, 95, 101, 110, 141, 155, 156, 160, 162, 163, 164, and 165

46 CFR Parts 1, 4, 5, 10, 11, 12, 13, 14, 15, 16, 26, 28, 30, 31, 35, 42, 58, 61, 78, 97, 98, 105, 114, 115, 122, 125, 131, 151, 166, 169, 175, 176, 185, 196, 199, 401 and 402

Docket No. USCG–2006–24371

RIN 1625–AB02

Consolidation of Merchant Mariner Qualification Credentials

AGENCY: United States Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard issues this Supplemental Notice of Proposed Rulemaking (SNPRM) for the Consolidation of Merchant Mariner Qualification Credentials rulemaking project to amend its Notice of Proposed Rulemaking (NPRM) published in May 2006. The purpose of this SNPRM is to address comments received from the public on the NPRM, revise the proposed rule based on those comments, and provide the public with an additional opportunity to comment on the proposed revisions. This revised proposed rule would work in tandem with the joint final rule published by the Coast Guard and the Transportation Security Administration (TSA) published elsewhere in today's **Federal Register** entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License''.

DATES: Comments and related material must reach the Docket Management Facility on or before April 25, 2007.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2006–24371 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: For questions concerning this proposed rule, call Mr. Luke Harden (G–PSO–1), United States Coast Guard, 2100 Second Street, SW., Washington, DC 20593; telephone 1–877–687–2243.

For questions concerning viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001; telephone (202) 493–0402.

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1. MERPAC strongly recommends that TSA remove mariners from the TWIC project.
2. Given the size, complexity, and impact of these three rulemaking proposals; MERPAC recommends an extension of the comment period for at least another ninety days.
3. MERPAC recommends that the Coast Guard delay implementation of the MMC, separating the implementation of the MMC from the TWIC implementation.
4. MERPAC believes that this rulemaking exceeds the authority of the Coast Guard to create a consolidated credential.
5. Page 29464 states that there are no changes to the qualifications, experience, examinations, classes and other requirements needed, and that this is just a reorganization of existing regulations.
6. The Coast Guard needs to protect a mariner's financial information by removing the requirement to place the applicants Social Security Number on the face of the form of payment.
7. MERPAC suggests the removal of the language in section 10.211(e).
8. Section 10.217 allows the Coast Guard to designate other Coast Guard locations to provide service to applicants for MMCs, and MERPAC applauds this addition.
9. Section 10.225 states that mariners must surrender their old MMC, but 10.227 states that the mariner can retain an expired document.
10. MERPAC recommends that the Coast Guard create an MMC that is convenient for the mariner.
11. MERPAC recommends that the Coast Guard begin a new rulemaking that would harmonize the criminal background checks with TSA standards.
12. MERPAC recommends that Coast Guard remove the self-disclosure portion of the application process.
13. MERPAC has concerns about the appeal process, and encourages the agencies to further define and explain this process.
14. MERPAC recommends that Coast Guard redesign the rulemaking to assure that mariners can make application for their TWIC and their MMC simultaneously.
15. MERPAC recommends that the Coast Guard and TSA develop an interim clearance process be provided to a mariner, and that mariners be allowed to train and work, while awaiting a final determination.
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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2006–24371), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material only once. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ inches by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like the Coast Guard to acknowledge receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this rulemaking [24371], and click on ''Search.'' You may also visit the Docket Management Facility in Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

II. Background and Purpose

On May 22, 2006, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** titled ''Consolidation of Merchant Mariner Qualification Credentials.'' (71 FR 29462). The NPRM included a 45-day comment period, and announced four public meetings that were held in Newark, NJ, Tampa, FL, St. Louis, MO, and Long Beach, CA.

During the comment period for the NPRM, the Coast Guard received over 100 requests, both in writing in the docket for this rulemaking and in person at the public meetings, for additional time to comment. These requests came from individuals, large and small businesses, industry organizations, and members of Congress. Among other things, these comments stated that the 45 day comment period did not provide enough time to comment on the NPRM or on the accompanying Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License rule (''TWIC rule'') NPRM published the same day (71 FR 29395). Concerns were raised that the 45 day public review period prevented a thorough analysis of the proposed rulemakings.

After considering these requests, the Coast Guard chose not to extend the comment period on the NPRM, but instead to publish this Supplementary Notice of Proposed Rulemaking (SNPRM). This SNPRM should provide the public with more opportunity to participate in the rulemaking process than would have been provided by an extension of the comment period for the NPRM. This SNPRM addresses those substantive comments received during the NPRM comment period, proposes changes to the regulatory text as a result of those comments, solicits additional input on key points of interest, and most importantly, provides an additional opportunity for the public to comment on these proposed regulatory changes.

Public comment is sought on all proposed regulatory changes, not just those that are newly introduced in this SNPRM. The changes that were proposed in the NPRM were discussed in that document and are not discussed again in the preamble to this SNPRM. The regulatory text at the end of this document reflects the combination of the changes proposed in the NPRM as well as those changes that were made to the NPRM as a result of public comments and additional Coast Guard review. The Coast Guard seeks public comment on the regulatory text provided in this SNPRM, not the text provided in the NPRM. The preamble of the NPRM should be referenced as an aid, however, because it discusses changes that may not have been altered between the NPRM and SNPRM, and it is a useful tool to locate where proposed text originated in our current regulations. Because of the large number of amendatory instructions and numerous changes made to the proposed regulations since the NPRM, to further aid the public's review of this SNPRM, a redline version of the rule text, showing all changes to the text from the NPRM to the SNPRM, is available in the public docket for this rulemaking.

III. Discussion of the Proposed Rulemaking

This rulemaking was precipitated by the promulgation of the Maritime Transportation Security Act (MTSA), which included a requirement in 46 U.S.C. 70105 that the Secretary of the Department of Homeland Security issue a biometric transportation security card to, among others, every ''individual issued a license, certificate of registry,

or merchant mariners document under part E of subtitle II of this title''. The Secretary designated the TWIC as this biometric security card, and tasked the Transportation Security Administration (TSA) to promulgate regulations implementing TWIC. Similarly, on October 13, 2006, the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Pub.L. 109–347) was enacted. Among other things, the SAFE Port Act mandates concurrent processing of a mariner's TWIC and MMD by TSA and the Coast Guard. This mandate was not created for license applicants, however the Coast Guard has voluntarily extended concurrent processing to licenses as well, as discussed below.

TSA, with support from the Coast Guard, published a joint final rule for the TWIC regulatory project elsewhere in today's **Federal Register**. That final rule sets out the application requirements and implementation schedule for the TWIC. TSA will soon begin issuing the TWIC and will enroll port and vessel employees over a period of 18 months in over 125 TWIC enrollment centers.

All credentialed merchant mariners are required by 46 U.S.C. 70105 and the TWIC rule to apply for and obtain a TWIC. To apply for a TWIC, a mariner must appear in person at a TWIC enrollment center to be fingerprinted, photographed and show proof of identification. The new TWIC application requirements are duplicative for mariners. Currently, all mariners applying for a merchant mariner's document (MMD), merchant mariner's license (license) and/or certificate of registry (COR) must appear in person at a Coast Guard Regional Examination Center (REC) to be fingerprinted by and show proof of identification to an REC employee. The appearance requirement in the TWIC rule is less burdensome on mariners, however, because there will be over 125 TWIC enrollment centers vice the 17 RECs. This rule proposes to remove the requirement that mariners appear at an REC. As proposed in this SNPRM, once a mariner appears in person to apply for their TWIC, they can complete their entire MMC application process by mail unless an examination is required. Also, since TSA will be verifying the identity of and conducting a security threat assessment for all TWIC applicants, this rulemaking also proposes to remove the Coast Guard security and identity vetting requirements for mariners. This proposed rulemaking would remove those application requirements made duplicative by the TWIC rule.

The creation of the TWIC requirement increases the number of credentials that a mariner may be required to carry to five. To streamline the process and lessen the number of credentials that a mariner must carry, this rulemaking proposes to consolidate the license, MMD, COR and STCW endorsement into one credential, called the Merchant Mariner Credential (MMC). The MMC would be issued to every qualified mariner and would contain the mariner's photograph and other identity information currently shown on the MMD as well as endorsements reflecting the individual's particular job qualifications. The mariner's job qualifications would appear in the form of endorsements on the MMC. Endorsements currently associated with a License or COR would be referred to as officer endorsements, those currently provided on the MMD would be referred to as rating endorsements, and those currently appearing on the STCW endorsement would continue to be referred to as STCW endorsements. A full list of the available endorsements is provided in proposed 46 CFR 10.109. If this rulemaking goes into effect, mariners would hold two separate, but linked credentials: a TWIC as the MTSA-required biometric security card, and the MMC as the consolidated qualification credential for merchant mariners.

To consolidate the merchant mariner qualification documents into one, it is necessary to consolidate the Coast Guard's application and procedural regulatory requirements for MMDs, licenses, CORs and STCW endorsements that are currently contained in 46 CFR parts 10 and 12. As proposed in this rulemaking, part 10 would contain only those application and procedural requirements necessary to obtain the MMC for all applicants. Those requirements for licenses, that are currently in part 10 but are not directly applicable to all credential applicants, have been moved to create a new part 11. Part 12 would continue to hold only those requirements exclusive to ratings that do not directly apply to the procedures for application.

In this proposed rulemaking, although there are a large number of terminology changes proposed throughout titles 33 and 46 CFR, almost all of the proposed substantive changes were made in part 10. The large number of changes outside part 10 contain mostly editorial changes, removing references to the terms ''license'', ''MMD'', ''COR'', ''certificate'', ''document'', etc that would no longer be appropriate, and replacing them with the terms ''MMC'', ''credential'', ''endorsement'', ''officer endorsement'', ''rating endorsement'', etc. as appropriate.

Throughout this rulemaking, where possible, existing regulatory language was retained to minimize changes to the qualifications, experience, examinations, classes and other requirements needed to serve as a merchant mariner. At times, however, it was necessary to make substantive changes to the regulatory text in order to consolidate the application requirements for ratings and officers, or to simplify the application process.

The regulatory changes proposed in this SNPRM are intended to serve as a benefit to merchant mariners. This rulemaking is intended to take advantage of the TWIC requirement, and use it to reduce the travel burden on mariners and consolidate the credentialing process. It is not only expected to reduce the financial burden on mariners by removing the requirement that they travel to one of 17 Coast Guard RECs, but also improve clarity, reduce the processing time currently creating backlogs at the RECs, and reduce the number of fees paid to the Coast Guard by mariners.

If the regulatory changes proposed in this SNPRM are made final, it is not expected that they would become effective until approximately August, 2008. The delay in effectiveness coincides with the TWIC roll out schedule and is necessary to allow all mariners to obtain a TWIC before it is a prerequisite for the MMC. In addition, it allows for the construction and testing of the system that would transmit all applicants' personal data from TSA to the Coast Guard.

IV. Quick Summary of Differences Between This SNPRM and the Coast Guard's Current Regulations

This list is not intended to include every proposed change to the regulations, but provides a quick reference summary of some of the most important changes proposed.

General

- Creates the merchant mariner credential (MMC), which would contain the elements of the MMD, license, COR and STCW endorsement, reducing the total number of credentials a mariner could be required to hold to two: The MMC and the TWIC.
- Phases in the MMC over a period of five years to begin approximately August 2008.
- Transfers the security and identity vetting portion of the merchant mariner credentialing process entirely to TSA.

• Provides a complete list of officer, rating and STCW endorsements that a mariner could have on their MMC.

• Reorganizes 46 CFR parts 10 and 12, and adds a new part 11.

• Combines the definitions for Subpart B in part 10, with the exception of those in part 16.

• Makes non-substantive, linguistic changes throughout titles 33 and 46 of the CFR to reflect the new MMC, endorsements, and TWIC.

Fees

• Reduces the number of $45 issuance fees a mariner would have to pay.

• Includes a credit card as an acceptable method of payment.

• Removes the requirement that a full social security number be written on the face of all checks and money orders.

Application Process

• Requires an applicant to apply for a TWIC before they can apply for an MMC, but the applications may be processed simultaneously.

• Requires that an applicant must hold a TWIC before an MMC will be issued.

• Provides that an applicant's fingerprints, photograph, proof of citizenship and, if applicable, FBI number, criminal record, and/or proof of legal resident alien status will be received by the Coast Guard from TSA, not directly from the applicant.

Travel

• Removes the requirement for mariners to appear in person at a Coast Guard REC to be fingerprinted by, and show proof of identification to, an REC employee.

• Allows mariners to apply for an MMC entirely by mail unless an examination is required.

• Allows oaths to be taken by a notary and submitted by mail.

• Creates the ability for the Coast Guard to designate other facilities, in addition to RECs, to provide MMC services to applicants.

Citizenship

• Revises the regulations to clearly state that cadets at the United States Merchant Marine Academy are allowed to receive MMCs regardless of citizenship or alien status. This is a statutory requirement and is currently done under our regulations, but is not expressly stated.

Criminal Record Review

• Removes the criminal record review requirement for duplicates.

• Changes the Coast Guard criminal record review to remove crimes against national security.

Medical and Physical Requirements

• Resolves contradictory requirements for those who may currently perform exams for MMDs and licenses, and adds licensed nurse practitioners to the list of those who may perform, witness or review mariner tests, exams or demonstrations.

• Restates the requirement that pilots and those serving as pilots submit their annual physical to the Coast Guard, previously implemented through a **Federal Register** Notice.

• Restates the requirement that pilots and those serving as pilots submit their annual chemical test for dangerous drugs to the Coast Guard, previously implemented through a **Federal Register** notice.

• Clarifies the requirements for demonstrations of physical ability.

• Clarifies the STCW physical requirements for those mariners who would serve on vessels to which STCW applies.

• Requires hearing tests when the medical practitioner conducting the general medical exam has concerns that an applicant's ability to hear may impact maritime safety.

• Adds specifics about the hearing tests to provide information for medical professionals and applicants.

• Requires a demonstration of physical ability if the medical practitioner conducting the general medical exam is concerned that an applicant's physical ability may impact maritime safety, or if the mariner must pass a demonstration of physical ability but not a general medical exam.

• Specifies that if a state license issued to a medical doctor or professional nurse contains limitations, any staff officer endorsement issued will reflect the same limitation.

Expiration Dates

• Consolidates all expiration dates into one so that mariners do not have multiple qualification credentials or endorsements expiring on multiple days. (However, the TWIC and MMC expiration dates need not match.)

Memorabilia

• Requires mariners to return MMCs to the Coast Guard upon expiration, issuance of a duplicate and issuance of a renewal, but if the mariner submits a written request with their credential, the Coast Guard will return the cancelled MMC to the mariner.

Duplicates

• Requires proof that a mariner holds a valid TWIC before a duplicate MMC will be issued.

• Provides that during the five year phase in of the MMC, if a mariner requests a duplicate of their MMD, COR, STCW endorsement or license, the duplicate will be issued in the form of an MMC.

Renewal

• Removes the 1 year limitation on renewals.

• Introduces the Document of Continuity to replace the continuity endorsement placed on a license or MMD. The Document of Continuity would have no expiration date or fee unlike the current continuity endorsement.

Suspension, Revocation, and Appeal

• Includes failure to hold a TWIC as a basis for suspension and revocation of a mariner's MMC, MMD, license, COR and/or STCW endorsement.

• States that a mariner who has either been denied issuance of a TWIC or whose TWIC has been revoked by TSA will be deemed by the Coast Guard to be a security risk.

• Advises that the Coast Guard will not review TSA decisions to deny or revoke a TWIC.

V. Discussion of Comments and Changes

As discussed above, the Coast Guard conducted four public meetings for this rulemaking. We also received over 200 documents in the written docket. The Towing Safety Advisory Committee (TSAC) and the Merchant Marine Personnel Advisory Committee (MERPAC) were also asked to provide recommendations to the Coast Guard on the NPRM (USCG–2006–24371). This section addresses those comments and recommendations received.

A. Comments From the Docket or Public Meetings

The following comments were either submitted in writing to the docket for the MMC NPRM or orally at one of the four public meetings. All written comments received and transcripts from the public meetings are available for inspection in the public docket for this rulemaking.

1. Comments Regarding TWIC

We received numerous comments to the docket regarding the TWIC. Because this rulemaking project has its own docket number (USCG–2006–24371) and the TWIC rulemaking project has two dockets, one for the Coast Guard

portion (USCG–2006–24196) and one for the TSA portion (TSA–2006–24191), there were three dockets in which the public could comment. Most commenters submitted their comments to both rulemaking projects in one document, submitted to all three dockets. Comments regarding the TWIC rulemaking are inappropriate for discussion in this rulemaking. They are not addressed in this SNPRM, but are addressed in the TWIC final rule.

2. General Objection to the Rulemaking

We received six comments generally objecting to the NPRM that did not provide enough specificity for individual response. We do not agree with these comments, and are proceeding with this SNPRM.

3. Course of the Rulemaking

We received one comment recommending that the Coast Guard proceed with an Interim Rule rather than a Final Rule, two comments recommending that we go forward with a SNPRM and four comments requesting that the Coast Guard withdraw the rulemaking and propose an alternative.

We agree with the two comments that sought an SNPRM, and as previously discussed, this SNPRM provides a 90 day comment period to allow for public comment on our revised proposed rule. An Interim Rule would be inappropriate at this time as Interim Rules would not allow us to take into account the comments received by the public before becoming effective and they typically become effective upon publication, or soon thereafter. This SNPRM proposes that these regulatory changes not go into effect until approximately August 2008. This delay will allow the Coast Guard to accept and apply additional public comments before the proposed regulations go into effect as well as provide all mariners ample time to obtain TWICs before making the TWIC mandatory for issuance of the MMC. As for withdrawing the rulemaking, the Coast Guard believes that this rulemaking is beneficial and is opposed to withdrawal.

4. Appeals

We received seven comments either requesting a clarification of the appeal process for TWICs and MMCs, or requesting that an appeal process be created. We also received 12 comments asking that an Administrative Law Judge review the appeals on rejection of the TWIC, and/or expressing displeasure over the automatic loss of the MMC if a mariner's TWIC is revoked.

An individual who is denied a TWIC should not be working as a credentialed merchant mariner. According to the language of 46 U.S.C. 70105, a TWIC will be issued to an individual unless that individual poses a security risk. 46 U.S.C. 7703 and 7702, which provide for the suspension or revocation of mariner credentials, state that a mariner's credential may be suspended or revoked if the holder is a security risk who poses a threat to the safety or security of a vessel or to a public or commercial structure located within or adjacent to the marine environment. Allowing the Coast Guard to suspend or revoke a mariner's MMC or other credential for failure to hold a valid TWIC, is therefore, necessary and appropriate. The Coast Guard has determined, however, that automatically invalidating a mariner's credential upon notification from TSA that a mariner's TWIC has been revoked, or that their application has been denied, without a hearing, is improper. The language of 46 CFR 10.203(b) has been changed to remove the automatic invalidation.

If an MMC is issued, unless the situation calls for temporary suspension under 46 U.S.C. 7702, or the circumstances call for suspension and revocation for a reason other than security, the Coast Guard would not begin suspension and revocation proceedings until we were notified that the applicant had fully exhausted his or her TSA appeal rights. If the Coast Guard is notified by TSA that final agency action has occurred and a mariner has either been denied a TWIC or their TWIC has been revoked, the Coast Guard would begin suspension and revocation action against the individual's MMC. The suspension and revocation procedures for the MMC would remain the same as those presently used. The Coast Guard will not review a TSA decision regarding the issuance or revocation of a TWIC. Decisions regarding the issuance and revocation of TWICs are solely the responsibility of TSA. The Coast Guard does not have the authority to review, in any way, TSA decisions with respect to the issuance or revocation of TWICs. Language to this effect has been added to the proposed regulations in this SNPRM at 46 CFR 10.235(g) and 10.237(c).

The appeal processes for the MMC would remain the same as those presently used; the right of appeal for an applicant receiving an unfavorable decision during the application process remains in 46 CFR 1.03. The right of appeal associated with suspension and revocation remains as stated in 46 CFR 5.701. The proposed regulations have retained the paper appeal process for the Coast Guard's refusal to issue an MMC. Similarly, if a mariner is issued a license or document, he or she would be a ''holder'' of that license or document, and would be given a hearing before an Administrative Law Judge (ALJ) before adverse action, such as suspension and revocation, would be taken against that credential.

All appeals regarding the issuance or revocation of TWICs would be handled by TSA under the TWIC appeal process. That process involves a paper appeal for all denials, and the use of an ALJ for appeals of waiver decisions. For more information on the TWIC appeal process, please see the TWIC Final Rule published elsewhere in today's **Federal Register**.

5. Applicability

We received six comments opposing the proposed regulatory requirement that all merchant mariners hold a TWIC. Exemptions were requested for cadets, entry level ratings, officers serving aboard vessels that do not need a vessel security plan, and captains of Subchapter T (46 CFR parts 175 to 185) or smaller vessels.

The requirement for all credentialed mariners to hold a TWIC is contained in 46 U.S.C. 70105 and implemented in the TWIC final rule published elsewhere in today's **Federal Register**. By the terms of that statute, all mariners issued a credential under part E of subtitle II of Title 46 U.S.C. (currently the MMD, license and COR, and if this proposed rule becomes effective, the MMC), as well as all individuals seeking unescorted access to secure areas of 33 CFR Subchapter H vessels or facilities must obtain a TWIC. This is a statutory requirement imposed by Congress that the Coast Guard cannot alter through regulation. In addition to the statutory mandate, exempting classes of credentialed mariners from the TWIC requirement would be problematic because it would exempt those individuals from the identity and security review which would no longer be performed by the Coast Guard. No changes have been made in this SNPRM to exempt certain classes of mariners from the TWIC or MMC requirements.

One comment requested clarification on how the proposed 46 CFR 10.211 would affect requirements in section 312 of the Coast Guard and Maritime Transportation Act of 2006 that allow foreign riding gangs for 60 days at a time.

Section 10.211 discusses the criminal record review process for the MMC. If the foreign riding gangs are currently required to obtain a U.S. MMD, license, COR or STCW endorsement, they would be required to obtain an MMC. This

includes passing all requirements for the MMC, including the criminal record review, citizenship and TWIC requirements. This proposed regulation would not change the population of people who must obtain a mariner credential.

One comment requested clarification on how 46 CFR 10.211 would affect foreign security teams who are not mariners, but provide security services on U.S.-flagged vessels and need unescorted access on the vessel.

Generally, individuals who are not merchant mariners and are not currently required to hold a MMD, license, COR or STCW endorsement would not be required to get an MMC. The MMC merely changes the form in which the MMD, license, COR and STCW endorsements appear by consolidating them into one document. Anyone who currently has to hold one or more of those credentials would be required to hold an MMC. Individuals who are not required to get an MMC will not be required to undergo the criminal record review set out in section 10.211. More specifically, individuals who are engaged, employed, or serve on board a vessel of at least 100 gross tons, as measured under 46 U.S.C. 14502, or an alternate tonnage measured under section 14302 (except as set out in 46 U.S.C. 8701(a)) are currently required to obtain an MMD. In general this is interpreted by the Coast Guard to mean that any individual engaged or employed in the business of the ship, or a person whose efforts contribute to accomplishing the ships' business whether or not the person is involved with the operation of the vessel, must obtain an MMD, and therefore would be required to obtain an MMC. For additional information on the requirements for seamen on U.S. documented vessels and foreign vessels within U.S. jurisdiction, see Commandant Instruction M16000.8B, Marine Safety Manual Volume III, chapter 20, section E.

6. Application Process

We received one comment regarding the complexity of the application process and requesting that it be streamlined. We received eight comments that this rulemaking will hurt the ability of industry to recruit and retain qualified mariners.

The Coast Guard believes that the consolidation of the 46 U.S.C., subtitle II, part E credentials and the removal of the requirement that mariners travel to one of the 17 REC locations will serve as a benefit to mariners, and therefore, aid the industry's ability to recruit and retain employees. This rulemaking seeks to streamline the application process by removing the appearance requirement; through the consolidation and clarification of existing requirements; by reducing the number of issuance fees that must be paid to the Coast Guard; and through the sharing of information between TSA and the Coast Guard.

This proposed rulemaking should remove duplication of effort by the government and applicants resulting in a cost savings. The requirement that all merchant mariners obtain a TWIC, and the cost and burden associated with that requirement, is contained in the TWIC final rule which is published elsewhere in today's **Federal Register** and will go into effect even before the comment period on this SNPRM will close. If you believe that the regulatory changes in this proposed rulemaking, not the TWIC rulemaking, will add a burden, or will limit your ability to recruit and retain qualified mariners, please submit a comment to the docket explaining your concerns in detail.

Two comments requested a web-based application process and tracking.

This is something that the Coast Guard is contemplating. Although such a process is not in place at this time, 46 CFR 10.209(d) as currently proposed would support such an option, as it states that the written portion of the application may be submitted by mail, fax, ''or other electronic means.''

One comment sought a single application process for the TWIC and MMC and another comment sought a more streamlined process stating ''there is nearly a 50 percent failure rate in applying for the MMD due to multiple forms and information''. Finally, there were four comments received that were concerned that the consolidation would result in an increase in paperwork.

We acknowledge that the new requirement to apply for a TWIC will result in an increase in the overall number of applications that must be submitted by mariners because they will need to submit an application for the TWIC and a separate application for the MMC. We are making every feasible attempt to reduce the burden on applicants from the requirement added by the TWIC rule. Because TSA will share the fingerprint, photograph, proof of citizenship and, if applicable, FBI number, criminal record and/or proof of legal resident alien status with the Coast Guard, we propose to remove the requirement that all merchant mariners travel to one of 17 RECs. Instead, the proposed regulation would allow mariners to apply for the MMC by mail after applying for a TWIC and visiting one of the approximately 125 TWIC enrollment centers located throughout the country. The restructuring of the merchant mariner credentialing process is an ongoing and incremental process. This proposed consolidation of credentials and the associated TWIC rulemaking are only a small piece in the envisioned effort. The restructuring of the National Maritime Center (NMC), the publishing of additional Navigation and Vessel Inspection Circulars (NVICs), guidance documents, and future rulemaking projects are all intended to improve and streamline the merchant mariner credentialing process, reduce the review periods, and lower the application failure rate.

It is not feasible at this time for TWIC enrollment centers to receive and analyze the safety and suitability information necessary to determine whether a mariner should be issued an MMC. The Coast Guard is cooperating with TSA to shift the responsibility for reviewing the identification and security threat portion of the application for MMCs from the Coast Guard to TSA. However, because more than identity and security related issues are involved with merchant mariner credentialing, the Coast Guard will remain in control of those portions of the evaluation that address whether an individual is a safe and suitable person who should be authorized to serve in the merchant marine. Maintenance of the merchant marine is an area in which the Coast Guard has a long-standing history of regulation, and is one which we are inherently more qualified to manage. On the other hand, the security of our nation's transportation industry is the statutory responsibility of TSA, and should not be taken over by the Coast Guard. The creation of an identification credential which could span all sectors of the transportation industry is outside the scope of Coast Guard responsibility and expertise. The TWIC is best left in the hands of TSA with Coast Guard assistance with respect to vessels, ports, and merchant mariners. Due to the vastly different purpose and need associated with the TWIC and the MMC, the Coast Guard and TSA have opted not to consolidate their application processes and reviews into one.

One comment was received that sought walk-in service at the RECs, not only a mail submission process.

Mariners will have the option of submitting their MMC application entirely by mail, and would not be required to visit one of the 17 RECs unless an examination is required for the endorsement they seek. Some endorsements require written examination as currently provided in 46 CFR 10.901 (proposed § 11.901, in this SNPRM). The RECs, however, will

remain open and accessible to mariners for purposes other than the examinations. Mariners will still be able to walk into an REC to submit their applications in person, ask questions, and seek in-person guidance.

We received one comment that mariners will be required to hold both an MMD and a TWIC until the phase-in period is complete.

While this is true, it is temporary and necessary in order to facilitate a smooth transition while reducing the burden on mariners as much as possible. The Coast Guard is honoring the five year validity period of a mariner's current MMD, license, COR or STCW endorsement to meet our statutory obligations under 46 U.S.C. 7107 and 7302, as well as prevent mariners from undergoing an unnecessary early renewal. The MMC will be phased in over a five-year period, because it will be issued as mariners' current credentials expire.

During the five-year phase-in period of the MMC, when a mariner's MMD expires, he or she will apply for an MMC, not another MMD. The Coast Guard envisions that we will begin issuing MMCs exclusively once the TWIC becomes mandatory for all mariners. According to the TWIC implementation schedule, the TWIC will be phased in over an 18 month period, during which time individuals will be enrolled in the TWIC program at locations across the country. Although other vessel/facility workers are required to apply for a TWIC during their particular vessel/facility's scheduled enrollment period, merchant mariners are allowed to visit any of the TWIC enrollment centers at any time during the 18 month initial enrollment period. It is important to note, however, that vessels or facilities may begin to use the TWIC for access control once enrollment has been completed in their geographic location. Because mariners are inherently mobile, they may need to visit one of the vessels or facilities that have begun requiring the TWIC for access control before the end of the 18 month period. An interim measure has been created in the TWIC rule that will give mariners access to secure areas of 33 CFR Subchapter H regulated vessels and facilities with their MMD, or their license or COR and a valid photo ID until full TWIC enrollment has been completed.

The Coast Guard does not envision that this rule will become effective until TWICs are mandatory for all credentialed mariners. Because the Coast Guard will continue to issue MMDs, licenses, CORs and STCW endorsements under our current regulations until this rule becomes effective, for up to five years after the TWIC becomes mandatory individuals holding MMDs will also hold a TWIC until their MMD expires. The TWIC is an identity credential that Congress made mandatory for all merchant mariners as well as those seeking unescorted access to secure areas of 33 CFR Subchapter H regulated vessels and facilities. It does not contain the rating endorsements that appear on the MMD. Conversely, the MMD does not contain the electronic biometric information found on the TWIC, and does not satisfy the goal of having one unique credential for unescorted access. Until an MMC is issued containing the mariner's rating information, mariners will have to hold both a TWIC and an MMD.

In this SNPRM the Coast Guard is proposing to begin issuing MMCs in approximately August 2008. This 20 month delay coincides with the completion of the TWIC initial enrollment period. It is possible that the Coast Guard could begin issuing mariner credentials in the form of MMCs within the TWIC enrollment period if the credentialing material and production machinery is available before that time. In addition, it is possible that the Coast Guard and TSA could begin sharing application information before August 2008 if the technology infrastructure has been established and fully tested before that date.

7. Authority

We received 20 comments alleging that the Coast Guard lacks the legal authority to consolidate the MMD, COR and license into the MMC. More specifically, 13 of these 20 comments focused on the authority to change licenses to officer endorsements. We received one additional comment that claimed the Coast Guard is ''attempting a regulatory short cut'' through this regulation rather than through a legislative change proposal.

The proposed change will not affect the legal standing of merchant marine officers. Section 10.201 in the proposed rulemaking describes the characteristics and purpose of the MMC, explaining that it combines the elements of the MMD, COR, license and any other required endorsements (such as STCW) into a single document. This is a valid exercise of the Coast Guard's broad authority under 46 U.S.C. Part E. With respect to licenses, 46 U.S.C. 7101 provides the Coast Guard authority to issue licenses to various classes of qualified applicants. The Code is not specific regarding the required form of the mariner's credentials, including the license, allowing the Coast Guard to exercise discretion through the rulemaking process.

''Merchant Mariner Credential'' is merely the term used to describe the document issued by the Coast Guard that incorporates the mariner's license with the MMD and other endorsements into one; with endorsements listed on it depending on the mariner's qualifications. The term ''Officer Endorsement'' is merely the term used to describe the qualifications of the mariner which are defined as licenses in the current regulations. The mariner's actual capacity to serve in the merchant marine as specified by the endorsements on his or her MMC is unchanged by this proposed rulemaking.

8. Burden

We received 17 comments that generally objected to the additional cost associated with this rulemaking, three comments that objected to the regulatory burden on mariners and one comment that complained of duplicative fees and costs to mariners. We received six comments that these proposed rules will seriously burden the operation of U.S.-flagged vessels and mariners without providing a genuine increase in security. We received three comments that the TWIC and MMC program costs would affect U.S. commerce negatively.

The Coast Guard disagrees with these comments. This proposed rule should neither create an additional cost or burden on mariners or U.S.-flagged vessels, nor should it negatively affect U.S. commerce. This rulemaking is intended to reduce the burdens on mariners and streamline the credentialing process. It should have little or no effect on the operation of U.S.-flagged vessels or U.S. commerce as these vessels are already required to hire only properly qualified and credentialed merchant mariners. If a mariner must currently hold a MMD, license, COR or STCW endorsement, he or she will be required to get an MMC in lieu of the MMD, license, COR or STCW endorsement. It does not add to, or subtract from, the population of mariners who would need to apply for credentials. It should not have a negative impact on employers, and if anything, it should be seen as a benefit because mariners would no longer need to take time away from work to travel to an REC to apply for their credential. In addition, the determination of security risk associated with the TWIC is no more stringent than that analysis currently employed for any of those four current credentials. Mariners should actually see at least two tangible benefits from this rule: (1) A reduction

in issuance fees for those holding multiple mariner credentials; and (2) the reduction of the cost and burden associated with the requirement to travel to an REC.

It is important to note that although this rule relies upon the TWIC rule to function properly, it is separate and distinct from the TWIC rule and that rule's statutory mandate requiring the issuance of a biometric transportation security card. Costs associated with the TWIC are discussed in that rulemaking and should not be attributed to this rulemaking.

Under the current regulations, applicants pay a $45 issuance fee for each credential that they apply for. Under the proposed rulemaking applicants would only apply for a single MMC and as a result would only be required to pay one $45 issuance fee regardless of the number of endorsements that they carry. Any mariner who would, under the current rules, require multiple mariner qualification documents, would benefit from this change in the fee structure. In addition, approximately 14,000 mariners have more than one credential without aligned expiration dates. The differences in these expiration dates would require multiple trips to an REC. The issuance of the MMC would be of particular benefit to those mariners as it would require them to track and update only one document. In addition, there would be no user fee charged, at all, for the issuance of a Document of Continuity, which is the proposed replacement for the license or MMD with a continuity endorsement. The Document of Continuity is discussed below in the comments received about continuity.

This rulemaking also proposes to remove the requirement that all mariners travel to an REC to be fingerprinted by, and show proof of identification to, an REC employee. Instead, since the proposed TWIC rule would require these same individuals to visit one of the many TWIC enrollment centers to supply this information, the Coast Guard and TSA have agreed to electronically share the information necessary to complete the Coast Guard's safety and suitability analysis. The TWIC rule anticipates that there will be more than 125 initial TWIC enrollment centers established nation-wide for enrollment. Although the final number of TWIC enrollment centers that will remain open after initial enrollment is not known at this time, it is almost certain that there will be significantly more than the 17 Coast Guard RECs. By allowing mariners to visit TWIC enrollment centers instead of RECs, this proposed rule would provide a potential benefit to mariners by reducing their time and travel costs currently required to receive a credential.

The Coast Guard asserts that the overall cost for mariners associated with this rulemaking would actually decrease or remain the same and would serve to provide more flexibility to mariners since there would be more TWIC enrollment centers than RECs.

We received one comment alleging that the rule is an unfunded mandate that does not provide for appropriate partnership between government and industry.

The Coast Guard disagrees, and does not believe that this proposed rulemaking will result in an unfunded mandate. The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. As discussed above, this rulemaking is actually expected to reduce costs associated with the credentialing of merchant mariners. In addition, it should not affect any cost expenditure upon a State, local or tribal government or private sector entity, and if it does create an increase in cost to any of those entities it should be well below $100,000,000 in any one year.

We received one comment that sought a particular economic review of the financial impact of the rule on tall ship operators, and one that sought an economic review of the financial impact of the rule on training vessels.

The economic impact of this proposed rulemaking is addressed in detail in the Regulatory Evaluation section below. Further economic review will take place between this SNPRM and any further rulemaking. If you believe that the consolidation of merchant mariner credentials (not the requirement that merchant mariners must obtain a TWIC) will negatively affect your business, please submit a detailed comment to this SNPRM. If such information is confidential commercial information, please mark the comment accordingly and submit it to Mr. Luke Harden at the address listed above in **FOR FURTHER INFORMATION CONTACT.**

9. Citizenship

One comment noted that the citizenship exemption for Operator of Uninspected Passenger Vessels (OUPV) was removed from the regulatory text although the preamble table stated that it was retained.

This error has been corrected. In accordance with 46 U.S.C. 7102, licenses and CORs for individuals on documented vessels may be issued only to citizens of the United States. The Coast Guard has historically interpreted the statute to allow an exemption for alien OUPVs who do not work on documented vessels. Removal of this exemption from the regulatory text was unintentional. Corrections have been made to 46 CFR 10.221, table 10.239 and 11.467 accordingly. These individuals will still be required to meet the citizenship requirements for the TWIC set out in that rule in the new 49 CFR 1572.17. Although the Coast Guard does not believe that requiring a TWIC for OUPVs on undocumented vessels will cause many individuals to lose their mariner credentials, we are unable to create an exception from the TWIC requirement. It is clear in 46 U.S.C. 70105 that all credentialed merchant mariners must hold a TWIC. If an individual holds a license or an MMC with an officer endorsement as OUPV, they must have a TWIC. Since this proposed regulation is not expected to become effective until approximately August 2008, foreign mariners should have time to meet the requirements to obtain a TWIC, if possible.

On October 17, 2006, Congress passed the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). In that Act, Congress amended 46 U.S.C. 8103 to permit an alien allowed to be employed in the U.S. under the Immigration and Nationality Act who meets additional requirements for service as a steward aboard large passenger vessels to obtain an MMD. Although language has not been proposed in this rulemaking to address this new statutory authority, the Coast Guard is aware of it and is initiating a separate rulemaking to address these new requirements.

We received four comments inquiring about the citizenship requirements for the crews of Offshore Supply Vessels (OSVs) and Mobile Offshore Drilling Units (MODUs) in foreign waters.

This question appears to seek clarification as to the language of 46 CFR 15.720(a) and (b), which provide for the waiver of the citizenship requirements in 46 U.S.C. 8103(a) and (b). The substance of 15.720(a) and (b) has not been removed in this proposed regulation. In the SNPRM, citizenship requirements continue to be waived for OSVs operating in a foreign port and MODUs operating beyond the water above the U.S. Outer Continental Shelf as they are in the Coast Guard's current regulations.

One comment expressed displeasure that lawful non-immigrants with work authorizations would be precluded from obtaining a credential even though they

may be lawfully employed on certain U.S.-flagged vessels and may require an endorsement in the performance of their duties. Four comments objected to limiting the issuance of MMCs to aliens admitted for permanent residence.

No changes to the regulations have been made as a result of these comments. The citizenship and alien status requirements are set by statute and cannot be changed by the Coast Guard through regulation. Statutory requirements in 46 U.S.C. 7102 mandate that licenses may only be issued to U.S. citizens. The Coast Guard has carved out of that language an exception for OUPVs serving on undocumented vessels, but the statutory language provides no additional room for exception. With respect to MMDs, 46 U.S.C. 8103 restricts the issuance of MMCs to aliens who present acceptable documentary evidence that they are lawfully admitted to the U.S. for permanent residence and cadets enrolled at the U.S. Merchant Marine Academy. The proposed 10.221 would not change the current requirements except that it now clearly states that credentials may be issued to cadets enrolled at the U.S. Merchant Marine Academy. This would not be a change from our statutory requirement or current practice.

Four comments requested a clarification of the immigration status requirements for the TWIC and their relationship to the MMC.

A full discussion of the immigration status requirements for the TWIC is beyond the scope of this rulemaking. That said, all merchant mariners holding a MMD, license, COR or STCW endorsement are required to obtain a TWIC. Therefore all credentialed merchant mariners must be U.S. citizens or would be required to meet the immigration requirements for the TWIC which are contained in the proposed TWIC rulemaking at 49 CFR 1572.105. Mariners who are not U.S. citizens and cannot meet those citizenship requirements, will not be issued a TWIC, and will be unable to obtain an MMC. With the exception of some alien holders of OUPV licenses, however, all mariners who are currently able to meet the citizenship or immigration requirements for the MMD or license will be able to meet the citizenship or immigration requirements for the TWIC.

10. Concurrent Processing of Applications

We received 32 comments about the current processing time for Coast Guard merchant mariner credentials. We received two comments that this rulemaking would increase the backlog of applications, and eight comments that the TWIC and MMC will slow the documentation process. Four comments were unclear as to whether the TWIC was required before the MMC. One comment suggested that the Coast Guard issue the MMC without the requirement for having a TWIC. Finally, we received 60 comments requesting concurrent processing of applications.

The Coast Guard acknowledges that mariners are dissatisfied with the current processing time for merchant mariner applications. This proposed rulemaking is one of the many ongoing projects that the Coast Guard is undertaking in an effort to streamline the process and reduce backlog. This proposed consolidation of credentials and the associated TWIC rulemaking are only a piece of this effort. The restructuring of the NMC, the creation of additional NVICs, guidance documents, as well as current and future rulemaking projects are all intended to reduce the evaluation period.

In addition to the Coast Guard's voluntary effort at restructuring the mariner credentialing process and attempting to reduce processing time, the recently passed SAFE Port Act mandates concurrent processing of a mariner's TWIC and MMD by TSA and the Coast Guard. The Coast Guard agrees that processing the MMC only after the TWIC has been issued could potentially increase this backlog and be overly burdensome to the mariner. As a result, changes have been made to 46 CFR 10.225(b)(2) to allow new applicants to apply for their MMC if they either hold a valid TWIC or can prove that they have applied for one in the past 30 days. The MMC application could be processed simultaneously with the individual's TWIC application. However, because of the Coast Guard's need to obtain biometric and biographic information submitted by the applicant at a TWIC enrollment center, the TWIC application must be submitted before the MMC application. In addition, because of the need to ensure that the applicant's identity has been verified and that he or she has been determined not to pose a security risk, the Coast Guard proposes to retain the requirement that the TWIC be issued to the applicant before an MMC would be issued. Because applicants for renewals, duplicates, or modifications should already hold a valid TWIC, concurrent processing should not be an issue for those applicants.

11. Continuity Licenses

One commenter was concerned about the loss of the continuity license. Another comment stated that the proposed certificate of continuity would be insufficient to meet the ''significant amount of pride in the maritime industry evidenced by holding a license'', and recommended that we issue the MMC with continuity endorsement but exempt it from the TWIC requirement.

Although the actual continuity license has been removed from the regulations in this proposed rulemaking, the concept of the continuity license was retained. The concept existed in the NPRM at 46 CFR 10.227(i), and continues to exist in this SNPRM at 46 CFR 10.227(e), but has been revised substantially from the language proposed in the NPRM.

As proposed in this SNPRM, the Document of Continuity would take the place of the inactive ''continuity'' license or MMD renewal. The Coast Guard recognizes that one of the main purposes for the continuity document is to allow those mariners temporarily working ashore to apply as a renewal rather than as an original should they decide to return to active status after a period of inactivity. The language of the MTSA at 46 U.S.C. 70105, however, requires all holders of merchant mariner credentials issued under title 46 U.S.C. subtitle II, part E (the MMD, license, COR, and MMC) to hold a TWIC. The continuity license is a license, and is issued under 46 U.S.C. subtitle II, part E, therefore all mariners holding a continuity license must get a TWIC. The Coast Guard does not have the authority to limit this statutory requirement to certain classes of mariners. We thought it over-burdensome and unnecessary to require individuals who are not serving as merchant mariners to undergo the expense and burden of obtaining a TWIC, and thought that the addition of a TWIC requirement could reduce the number of mariners that would be available for service in a time of national need.

To avoid imposing the TWIC requirement on inactive mariners, we created the concept of a Document of Continuity. The Document of Continuity would not be an MMC, MMD, license or COR, and would not authorize a mariner to serve. It would not be issued under 46 U.S.C. subtitle II, part E. It is technically a receipt, issued by the OCMI, acknowledging that the mariner once held a valid credential. To obtain a Document of Continuity, a mariner would submit the same paperwork to the Coast Guard as they would currently submit to get a license or MMD with a continuity endorsement, except that mariners would also be required to return the credential being renewed so that it can be canceled. Since a

Document of Continuity will be issued only as a means to reserve an inactive mariner's ability to apply as a renewal at some time in the future, the mariner should not need to work under the authority of that credential while the Coast Guard processes their application and should not be burdened by the requirement to submit their current credential for cancellation. Photocopies would no longer be accepted.

The Document of Continuity would be issued free of charge (applicants for licenses or MMDs with a continuity endorsement are currently charged $45), and the Document of Continuity would have no expiration date (licenses or MMDs with a continuity endorsement are currently valid for only 5 years). Mariners who are working on shore and are not serving as merchant mariners, but who would prefer to hold an MMC may apply for and receive an MMC after meeting all of the requirements for renewal set out in 46 CFR10.227, including but not limited to obtaining a TWIC, meeting the medical and physical requirements in 46 CFR 10.215 and being drug tested.

12. Definitions

Four comments requested a definition of the term ''entry level mariner''. A definition has been added to proposed 46 CFR 10.107 of this SNPRM.

One comment requested a definition of ''DDE''. The definition for the term ''designated duty engineer'' existed in section 10.107 of the NPRM; we added the acronym for the term (''DDE'') to the definition in this SNPRM.

Four comments requested a definition of the term ''U.S.C.G sector''. The term has been removed in favor of retaining the broader term ''Officer in Charge, Marine Inspection'', or ''OCMI'', which is defined in section 10.107.

One comment requested revision of the definition of ''conviction'' to read ''a final judgment of guilty in a criminal case''. We have chosen to retain the definition of the term ''conviction'' as the requested language is too vague and would omit many convictions that the Coast Guard currently uses to determine whether an individual is safe and suitable to serve in the merchant marine.

13. Editing

Many small editorial changes were requested throughout the NPRM. Due to the large number of these requests, and because of their non-substantive nature, they are not discussed here individually. Most of the requested changes were made in the SNPRM. The following is a discussion of some of the more in-depth comments requesting editorial changes:

One comment pointed out an inconsistent use of the term ''valid'' through out the regulations. Although the Coast Guard recognizes that the regulations in Subchapter B could be written more clearly, since most of the language and inconsistency exists in the current regulations, this change is one that would be best handled in a separate rulemaking when the Coast Guard revises Subchapter B to make such linguistic changes throughout the subchapter.

Four comments requested a clarification of the intent behind 46 CFR 10.217(c)(3), and four comments noted that that section uses the undefined terms ''regular certificates'', ''temporary permit'', and ''permanent certificate''.

The language regarding Merchant Marine Details at locations other than the RECs came directly from the current 46 CFR 12.02–3(b). In the NPRM, the language was expanded from ''Coast Guard Merchant Marine Details abroad'' to ''Coast Guard Merchant Marine Details'', to allow for more operational flexibility. Upon additional review of the intent and language of the provision, the term ''abroad'' has been reinserted into the regulation in this SNPRM. Also, this provision currently exists for unlicensed personnel only, and was inadvertently extended to all mariners in the NPRM. Language has been added in this SNPRM to restrict this provision to ratings. Currently, 46 CFR 12.02–3(b) is intended to allow mariners who require a replacement or renewal of a Coast Guard issued credential to obtain temporary certificates from Coast Guard facilities while overseas. This provision is rarely used, and is typically associated with the need to support mariners assisting in international conflicts. It was last used during Operation Iraqi Freedom. Because the terms used in this section were merely carried over from the existing regulations, definitions of the terms noted in the comment were not added at this time.

Four comments requested a clarification of the relationship of 46 CFR 14.205 to 46 U.S.C. 8103(e).

The proposed change to 46 CFR 14.205 merely adds the TWIC and replaces the word ''license'' with ''credential'' for those items that a merchant mariner must present to the master or individual in charge of the vessel before engagement for a voyage upon which shipping articles are required. Individuals must present all those items that are ''required by law for the service the mariner would perform''. If the mariner is required by law to carry a credential, he or she will have to present it before signing shipping articles. This requirement stems from the requirement in 46 U.S.C. 10306 which requires mariners to exhibit an MMD before signing shipping articles. Since the MMD will now be in the form of an MMC, and a TWIC is a requirement for an MMC, the TWIC and any other required ''credential'' must be exhibited. 46 U.S.C. 8103(e) involves the waiver of citizenship requirements for individuals (other than master and radio officer) on a documented vessel on a foreign voyage which must hire foreign mariners to fill a vacancy until the vessel returns to a port where a U.S. citizen can be obtained for the position. The current and proposed Coast Guard regulations include this waiver provision in 46 CFR 15.720(a).

We received one comment requesting that 46 CFR 10.219 be revised to allow payment with cash and credit cards when applying by mail, to conform to the allowable payment options for personal appearance.

As a result of this comment, 46 CFR 10.219(d) has been revised in this SNPRM, and credit card payment is proposed as an acceptable form of payment. Due to the risk of theft, the Coast Guard will not accept cash payment through the mail.

Three commenters requested that references to shipping commissioners be removed throughout the regulations to be consistent with amended statutes since shipping commissioners no longer exist.

46 CFR 12.10–1 has been revised in this SNPRM to remove the term shipping commissioner. The removal of that term throughout the Coast Guard's regulations will be considered in a separate rulemaking.

Two comments noted an inconsistent use of quotation marks throughout the NPRM.

We disagree. When quotation marks are used in conjunction with directions to the **Federal Register**, such as remove the word ''the'' and add, in its place, the word ''for'', the quotation marks all appear to be used consistently. Quotation marks have also been used around the actual endorsement placed upon the MMC, such as an endorsement as ''Master''. This is the proper use of quotation marks. We recognize that throughout the regulations, quotations have not been placed around the endorsement in this fashion. This is an editorial change that will be considered in the contemplated Subchapter B revision.

Four comments stated that the list of endorsements in proposed 10.109 are incomplete and restrictive.

We agree, and have revised 46 CFR 10.109 to include the missing endorsements.

Two comments requested a title for 46 CFR Part 11.

We have entitled Part 11 ''OFFICER ENDORSEMENTS''.

One comment requested that we replace the words ''not more than'' with the words ''less than''.

We disagree with this request. Because the term ''not more than'' includes ''equal to'', and ''less than'' does not, this would change the meaning of the terminology as well as the current tonnage endorsements, and it would change the regulated populations of the various officer tonnage categories. A further review of these terms is envisioned in the STCW rulemaking that is currently in development.

14. Expiration Dates

We received two comments seeking an explanation of how the validity date for training certificates would align with the uniform expiration date of the MMC. We received three additional comments that the radar observer endorsement should align with the MMC expiration date.

As proposed in this rulemaking, there is no relationship between the expiration date of the MMC and the underlying training certificates. The MMC, and any endorsements on it, will be valid for a set 5 year period. It will be the mariner's responsibility to ensure that at the time of application their training is up to date, and that they ensure that their training certificates remain valid throughout the period of endorsement. Changes have been made to 46 CFR 11.480(g) to remove the requirement that the month and year of the radar-observer certificate appear on the MMC. Similarly, section 11.480(k) has been removed because it will be unnecessary to synchronize dates when there will only be one date on the new MMC. Finally, 46 CFR 15.815 has been revised to require mariners to have readily available evidence that they hold a valid radar-observer certificate. This will allow mariners the flexibility to maintain the actual certificate at home or at an employer's office, but still allow them to provide proof of compliance to inspectors.

Four comments were received that opposed aligning the expiration dates of the TWIC and MMC, and one comment was received in favor of making the expiration dates align.

It is not expected that mariners will be required to align the expiration dates for the TWIC and MMC. A mariner must hold a valid TWIC before an MMC will be issued, and failure to hold a valid TWIC may be grounds for suspension and revocation of an MMC, but the expiration dates do not need to match. Requiring them to match would cause the period of validity of the MMC to be shorter than five years due to the time it takes to apply for and process the TWIC and MMC applications. It would also remove the ability for the Coast Guard to allow mariners to apply for a renewal MMC at any time during the validity period (and up to 1 year after expiration) as proposed in this rulemaking, because the renewal periods for a TWIC remain limited. If mariners are required to match the expiration dates of their credentials, they would have to renew their MMC on the same schedule as their TWIC. Mariners are not prohibited from voluntarily aligning their expiration dates, but it is not required.

15. Format of the MMC

We received a large number of comments on the format of the MMC. Five comments wanted the biometric TWIC card to also contain the qualification information proposed for the MMC. Four comments wanted to do away with the TWIC, and instead, modify the MMC to include biometric data and an embedded chip. Nine comments wanted to retain the MMD, but modify it to include biometrics and an embedded chip. One comment generally objected to having a TWIC in addition to the MMC. One comment generally requested one card for the MMC/MMD and TWIC. One comment stated that the MMD is sufficient for mariners because the criminal record and immigration status are already reviewed. Finally one comment sought a more thorough analysis of why a single card cannot be issued.

Through 46 U.S.C. 70105, Congress has directed the Secretary of the Department of Homeland Security to issue a biometric transportation security card to all individuals who need unescorted access to secure areas designated in a vessel or facility security plan; individuals issued credentials under part E of subtitle II of Title 46 U.S.C. (credentialed mariners); vessel pilots; individuals working on a towing vessel that pushes, pulls, or hauls alongside a tank vessel; certain individuals with access to security sensitive information; and other individuals engaged in port security activities.

The House Committee Report, written when the statute was still a bill, but contained the language that was passed, states ''Section 70105 establishes a national standard for issuance of biometric transportation security cards whose purpose is to control access to secure terminal areas to only authorized personnel.'' The Department of Homeland Security has interpreted this language, and the language of the statute itself, to exhibit a Congressional intent that the Secretary create a single biometric identification credential. This national biometric transportation security card is to be used at all 33 CFR Subchapter H regulated vessels and facilities by everyone to whom the statute applies. Such a uniform requirement would improve security and reduce fraud through the creation of a single, recognizable identity credential instead of multiple credentials that would be dependant on the type of function that the individual would serve at the vessel or facility.

The population of individuals covered by 46 U.S.C. 70105 includes a large number of individuals outside of the merchant marine. Altering the MMD to include biometric capabilities would not only fail to satisfy the requirement for all of the people to whom the Secretary must issue the credential, but it would not even cover the entire population of mariners that are affected by the statutory mandate. Altering the MMD to include biometric capabilities would cover only those people who carry an MMD. As of December 31, 2005, of the total estimated 205,000 merchant mariner population, 67,637 held only an MMD; 41,343 mariners held both a license and MMD; and 27,790 mariners held a license, MMD and STCW endorsement (the remainder hold a license only, which is not an identity document).

Allowing the MMD to serve as an alternate to TWIC would violate this concept of a single uniform nationwide credential for all. Also for this reason, we have opted not to consolidate the merchant mariner credentials into the MMC with a biometric chip. Although this option would be more expansive because it would at least create a uniform biometric credential for all merchant mariners, it would not reach the other categories of people included under the 46 U.S.C. 70105 requirement, and would therefore violate the intent and benefits that could be derived from a single nationwide standard.

There are many other reasons why the Department of Homeland Security has chosen not to place a biometric on the MMD or MMC in an attempt at satisfying this statutory mandate. One of these reasons is cost. The process proposed in this SNPRM would allow all mariners to apply for their MMC entirely by mail. Mariners would apply for their TWIC by going to one of the

over 125 TWIC enrollment centers to be fingerprinted, photographed, and show proof of identification and citizenship status. TSA would then share this information electronically with the Coast Guard. This proposed regulation would result in a cost savings for mariners because it would completely remove the need for all mariners to travel to one of the 17 Coast Guard RECs. As proposed, the Coast Guard would no longer conduct identity verification and security vetting. If the MMD or MMC was to be re-vamped to include a TWIC-like biometric chip, then those mariners who would get the MMD or MMC would have to travel to one of the 17 RECs, instead of the 125 TWIC enrollment centers, to submit their application information. This would be more of an inconvenience to the mariner, as 125 locations are more likely to provide a shorter travel distance than the Coast Guard's current 17 REC locations.

TWIC enrollment centers are for the gathering of information from TWIC applicants only. Even if that were not the case, the collection of application information, security vetting and the maintenance of the database make up most of TSA's TWIC program expenses. If mariners were allowed to register for a biometric MMD or MMC at a TWIC enrollment center, they would still incur the security and application costs even if they weren't applying for a TWC. In that situation, the cost to mariners would increase, while the security benefit of a uniform credential would be lost.

The addition of a biometric chip to either the MMD or MMC would also significantly increase the costs to produce the card. Right now, this SNPRM does not propose to change the fees for the MMC from those that are currently charged for the license and MMD. If the Coast Guard changed the MMD or MMC to conform to the TWIC technology, the cost of the credential would increase.

The final option considered was to incorporate all of the merchant mariner qualification information onto the TWIC. This is a goal that the Coast Guard hopes to reach some time in the future; however, it is simply not feasible at this time. STCW requires foreign port state control officers to be able to read a mariner's qualification credentials, and not all countries have the ability to read smart cards. It is impractical, and for some it may be impossible, to print all of the information that will appear on an MMC on the face of the TWIC. In addition, although the technology continues to advance, the type of technology used for the TWIC does not offer sufficient storage for all of the information that the Coast Guard would need to put on the MMC. At some point in the future the Coast Guard hopes that new technology will be available, costs will be reduced, and international capabilities will exist to make this a viable alternative.

For these reasons, the Coast Guard and TSA have opted to present two separate, but linked credentials: a TWIC as the biometric security card required in 46 U.S.C. 70105, and the MMC as the consolidated qualification credential for merchant mariners.

We also received comments regarding the format of the MMC. One comment objected to a certificate suitable for framing, and sought a credential similar in size to the current MMD. One comment sought either a laminated card or a frameable document. Two comments requested a laminated card, and another two comments sought a smaller, wallet-size credential.

For the reasons stated above, a laminated wallet-sized card, much like the current MMD or the proposed TWIC, is not feasible at this time due to international requirements and technological limitations.

The Coast Guard is also considering a passport-style credential. The passport credential would have a thick, sturdy cover like the U.S. passport, would have a page with the individual's photograph and biographic information, and would have pages inside that would contain a mariner's endorsements. STCW endorsements, for example, could be contained on the center sheet and would contain all of the information necessary to meet the STCW convention and code requirements. Officer endorsements could be contained on opposing pages and would not contain personal privacy information so that the credential could be opened to that page for posting aboard vessels to satisfy the requirements of 46 U.S.C. 7110. Several other nations have already adopted a passport style document as the primary mariner qualification credential. The Coast Guard is currently investigating this option and the costs associated with this format. We are concerned that a credential that costs significantly more to produce could result in a future increase in user fees.

Finally, two comments stated that the proposed format does not meet the needs of blue-water or domestic mariners, and requested that the Coast Guard seek guidance from mariners on the format.

We explicitly request public input on this subject during the comment period for this SNPRM. Draft samples of a certificate format and passport style format are available for inspection in the public docket for this rulemaking. Please provide information as to the type of credential that would best serve your needs and still meet domestic and international requirements. Please provide comments on format, cost, production possibilities, technology availability, or any information you believe could help.

16. General

One commenter disagreed with the assertion that mariners could be required to carry up to five credentials.

The Coast Guard disagrees. A mariner could hold up to five credentials if the credentials are not consolidated. These five credentials are the MMD, license, COR, STCW endorsement and TWIC. For some mariners, the STCW endorsement is printed on the license, but in most cases the STCW endorsement is a separate document. As of July 16, 2006, 139,791 mariners held a license, 63,466 mariners held an MMD, 530 mariners held a COR, 49,994 mariners held an STCW endorsement, and 13 mariners held all four.

Ten commenters were completely against the consolidation of credentials.

The comments received to this point have not persuaded the Coast Guard to abandon our proposal to consolidate the merchant mariner credentials. This proposal will ultimately result in the simplification of procedures, increased national security, decreased costs and increased efficiency.

We received one comment that the Coast Guard has been unable to ascertain and report on the number and type of valid licenses and MMDs in existence at any time, suggesting a limitation on our ability to call on mariners in response to a national emergency.

We disagree that this information is not readily available, or that we have been unable to ascertain or report on this information. The Coast Guard maintains an electronic database with this information and can retrieve it whenever necessary. As stated above, as of July 16, 2006, 139,791 mariners held a license, 63,466 mariners held an MMD, 530 mariners held a COR, 49,994 mariners held an STCW endorsement, and 13 mariners held all four.

17. International Agreements

Seven comments stated that the proposed MMC fails to address the ILO 185 Convention, and two comments generally recommended that we harmonize the MMC with international standards.

The MMC will be harmonious with the International Convention on

Standards of Training, Certification, and Watchkeeping for Seafarers, 1978 as amended (STCW). However, efforts will not be taken to conform the MMC to the requirements of the International Labour Organization Seafarers' Identity Document Convention (Revised), 2003 (ILO–185) at this time. As the United States is not a signatory to ILO–185, no plans have been made at this time to produce an identification document complying with that particular standard. The Coast Guard will ensure that the MMC conforms to those international agreements to which the United States is a party.

18. Information Sharing

We received one comment requesting a process where TSA routinely notifies CG of TWIC evaluations.

The process for transferring data between TSA and the Coast Guard has not been finalized at this time. As currently envisioned, however, TSA would have the ability to push information to the Coast Guard upon notification by the applicant that they are a merchant mariner or applying to become a merchant mariner, and the Coast Guard would have the ability to pull application data directly from TSA upon receipt of an MMC application. The Coast Guard would also have access to TSA's Identity Management System (IDMS) to allow us to verify that the applicant holds a valid TWIC. Furthermore, if a mariner's TWIC is revoked, TSA will notify the Coast Guard so that after the applicant exhausts the TWIC appeal process, we could initiate suspension and revocation action against the individual's MMC.

19. Interim Credentials

We received one comment recommending that 46 CFR 10.209 be amended to allow the issuance of an interim MMC for applicants who have been approved for a TWIC and have simultaneously applied for the MMC but are awaiting final MMC approval. An additional comment requested that the Coast Guard issue MMCs without a TWIC for seasonal workers.

The statutory requirements of 46 U.S.C. 70105 do not provide for the exemption of seasonal workers from the obligation for all credentialed merchant mariners to hold a TWIC. The general requirement to hold a TWIC is discussed further in the TWIC final rule published elsewhere in today's **Federal Register**. The Coast Guard seeks additional pubic comment with respect to the issuance of interim MMCs. In 46 U.S.C. 7302(g), the Coast Guard was given the statutory authority to issue an interim credential to the following people:

(1) An individual to be employed as gaming personnel, entertainment personnel, wait staff, or other service personnel on board a passenger vessel not engaged in foreign service, with no duties, including emergency duties, related to the navigation of the vessel or the safety of the vessel, its crew, cargo or passengers; or

(2) An individual seeking renewal of a rating endorsement, or qualifying for a supplemental rating endorsement.

This interim credential could only be valid for up to 120 days and could only be issued one time to the people covered in paragraph (1) above. This statute gives the Coast Guard the authority to issue these interim credentials, but does not make them mandatory.

At this time, the Coast Guard is not in favor of adding interim MMCs to the regulations. We have amended the proposed regulations to include concurrent applications, which should speed the application process, and we believe that adding in the processing time to issue an interim credential would add a burden onto REC personnel which would negate the time benefit created by this concurrent review change. In addition, it is imperative that the Coast Guard verify that an individual has all required qualifications before they are allowed to serve aboard a commercial vessel. Ensuring that the individual is not a security risk through the TWIC is only a part of the merchant mariner credentialing process. The potential risks to life and property and the inherently dangerous nature of a career in the merchant marine creates a heightened need to ensure that the individual is a safe and suitable person for the job.

Although the Coast Guard is not currently in favor of adding interim credentials to our regulations, we specifically seek public comment on this issue to aid us in making a final decision.

We received one comment requesting a transition period that would permit mariners to continue working even if their current credentials are expired, as long as they can demonstrate that they have applied for and are awaiting a TWIC.

As discussed above, the security review is only a part of the merchant mariner credentialing process. Expiration dates are created so that a mariner's background and professional qualifications can be re-evaluated every five years to ensure that they are still qualified to hold that credential. Under the proposed regulations, although mariners will not be allowed to work after the credential expires, they will be allowed to renew their credentials at any time before expiration and up to one year after expiration, so mariners are free to renew their MMC at whatever time is most convenient to them. It will be up to the mariner to ensure that he or she applies for renewal early enough to ensure that they always hold a valid MMC.

20. Invalid Credentials

Four comments requested that the Coast Guard require mariners to send an invalid credential to the Coast Guard for cancellation, but agree to return the canceled credential to the mariner for sentimental purposes; and two additional comments requested that we resolve the inconsistency in the NPRM regarding the return of cancelled credentials.

We have revised 10.209(g), 10.225(b)(5), 10.227(d)(4) and (e)(2)(i), 10.223(c)(5), 10.231(c)(5) and 10.233(c) in response to these comments. The requirement to return credentials that are expired, invalid, or have been renewed remains; however, mariners may request in writing, at the time of submission, that the canceled credential be returned to them after cancellation.

21. License Creep

We received five comments requesting that the MMC be effective upon the original renewal date regardless of when the mariner applied for renewal.

The Coast Guard is aware of the ''license creep'' problem, and is working to solve it. License creep occurs because although a mariner's credential is technically valid for a five year term, they must apply to renew that credential before the close of that five year term so that there will not be a gap between when their new credential is issued and the old one expires. Mariners frequently find themselves applying for renewal many months before the expiration of their credential to ensure that they will receive their new credential in time. Licenses, MMDs (and as proposed, MMCs) are valid for five years from the date of issuance. This means that if their renewal is issued before the expiration date of the credential being renewed, the mariner loses the period of time they could have served on their expiring credential measured from the date the new credential is issued to the expiration date of the expiring credential. Essentially, the five-year validity term ''creeps'' back with each renewal.

The comments suggested that the Coast Guard issue renewal credentials with an effective date that would match the expiration date of their expiring credential so that there is continuity in validity and the preservation of a full five-year validity term. We deliberated over this comment for quite some time. In the end, we determined that the solution presented by the comments requires further research due to possible legal implications. Statutory limitations were placed on the Coast Guard by Congress in 46 U.S.C. 7702 and 7703 that restrict those bases on which we may initiate suspension and revocation procedures against a mariner's credential. Certain paragraphs in those sections only allow the Coast Guard to seek suspension and revocation against a mariner's credential for actions that they take while acting under the authority of the credential. The concern is that a mariner cannot be acting under the authority of a credential that is not yet effective. The Coast Guard can initiate suspension and revocation actions against a mariner's current credential for those acts done while acting under the authority of that credential, but that suspension and revocation action may not legally apply to a renewed credential that has already been issued but would become effective at some point in the future.

Considering other methods of solving the license creep issue, we also thought about linking the MMC expiration date to an applicant's birth date, much like the method used for state driver's licenses. We realized that this option, too, would not be feasible. It would punish applicants who sought to renew early after applying for new endorsements in the middle of the credential's validity period. They would receive those endorsements, but they would not be effective until their next birthday, so they would not be able to work in those jobs until that date. The same problem would occur with respect to new applicants. Unless the credential was actually issued on their birthday, it would either be shorter than the five year period (validity began in the past) or there would be a gap during which the mariner would not be able to work (validity would begin at some point in the future). Furthermore, making the credential effective on their last birthday would not only fail to solve the problem, but it would be a clear violation of 46 U.S.C. 7106 and 46 U.S.C. 7302(f) which state that credentials issued must be valid for five year periods and may be renewed for five year periods. This language provides no leeway to shorten or lengthen the validity period of the credentials.

These are only two of the regulatory options the Coast Guard has considered to end the problem of license creep. We will continue to analyze this issue and will attempt to address it in the final rule if a legally sufficient solution can be arranged. We encourage public comment on this issue, and welcome any solutions that the public wishes to propose. In the meantime we suggest that mariners request delayed issuance, in writing, at the time they submit their renewal applications. According to National Maritime Center (NMC) Policy Letter 09–03, RECs have been directed by the Commanding Officer of the National Maritime Center (NMC) to delay issuance of renewed credentials upon written request from the applicant. This policy was created in direct response to the license creep problem and has been in effect at the RECs since 2003. A copy of this policy letter is available in the public docket for this rulemaking.

22. Loss of License as Separate Credential

We received six comments expressing displeasure that the Coast Guard is proposing to change the license to a generic credential, 10 comments objecting to the license being substituted by a card, and 23 comments objecting to the loss of a license as a separate credential.

The Coast Guard is considering various formats for the MMC. We expressly request input as to how the credential should be arranged, the form in which it should appear, and methods that could be employed to differentiate between officers and ratings. The final document must balance the recognition of a mariner's accomplishment with the benefits of efficiency and savings associated with combining multiple credentials into one document. As noted above, we have received comments requesting that the MMC come in various forms, including 8.5 x 11, passport size, card size, and laminated. We are taking all of these comments into consideration and are working to create a credential that will satisfy the needs of mariners while being as cost efficient as possible.

The Coast Guard is also considering a different format of the MMC for officers and ratings. If it was passport style, perhaps the cover of an MMC with officer endorsements would appear in a different color from that of an MMC without officer endorsements. If it were in an 8.5 x 11 format, perhaps the MMC containing officer endorsements could have a distinctive border around it, a seal, or some other feature that would distinguish it from an MMC without officer endorsements.

As discussed above, at this time the Coast Guard has not been persuaded that there is a compelling need to retain the separate credentialing process for officers and ratings which would outweigh the benefits associated with the combined credential. In addition to the cost benefits associated with the omission of the requirement to appear at an REC resulting from the integration of the TWIC, the combined credential would serve to reduce issuance fees, and would allow for more streamlined and efficient processing at the RECs. Also, the consolidation of the regulations would remove the many inconsistencies that currently exist between the requirements and process associated with approving MMDs and licenses in our current regulations. If a format other than an 8.5 x 11 non-laminated sheet of paper is selected, the combined credential would reduce the likelihood of tearing and water damage that is currently associated with the license. It would assist the Master of a vessel when determining a mariner's qualifications under 46 CFR 15.401. It would aid the mariner in the renewal process by providing only one credential with one expiration date vice many. Finally, as of December 31, 2005, 41,343 mariners held both a license and MMD, and as of July 16, 2006, 13 mariners actually held all four credentials; the consolidation would reduce the number of credentials that they have to carry and issuance fees that they have to pay. For these reasons, the Coast Guard continues to believe that the consolidation of credentials is a good idea and continues forward with the concept in this SNPRM.

23. Medical

We received four comments that objected to the incorporation of medical and physical guidance contained in Navigation and Vessel Inspection Circulars (NVICs) without public review.

Policy guidance regarding the regulatory medical and physical requirements is contained in NVIC 2–98 which is available to the public in many places including the Internet at *http://www.uscg.mil/hq/g-m/nvic/index.htm.* The Coast Guard is currently working on a revision of NVIC 2–98, which has been provided to the public for comment and is available through the Docket Management System at docket number USCG–2006–25080, but is not yet final as of the signature date of this SNPRM. This proposed regulation does not seek to incorporate either NVIC by

reference. The intent of the sentence placed into 46 CFR 10.215(a) in the NPRM was to merely highlight that there is additional guidance on medical and physical competence issued by the Coast Guard. Due to the apparent confusion caused by that sentence, it has been removed.

One comment stated that 46 CFR 10.215 should address problems with medical issues, but provided insufficient information to determine what problems the commenter believed needs to be addressed.

One comment opposed allowing nurse practitioners to perform, witness, or review the required test, exam or demonstration in proposed section 10.215. Three comments, however, approved of the change and requested that nurse practitioners also be allowed to consult with the Coast Guard in the recommendation of a waiver.

Under our current regulations, licensed physician assistants are allowed to conduct these exams. There have been no problems with this policy. Licensed nurse practitioners are also recognized as independent mid-level practitioners within the medical community. No problems are contemplated with allowing nurse practitioners to provide this service as well. As a result, we have also amended proposed section 10.215(g) in this SNPRM to allow licensed nurse practitioners to consult with the Coast Guard with respect to medical waivers.

One comment suggested that we remove the table and text of section 10.215 or correct it to remove STCW standards that have been incorrectly applied to domestic mariners.

The table of section 10.215 provides a quick reference source for a mariner to determine what test, exam or demonstration applies to the endorsement sought. It is intended to supplement the regulatory text. Changes have been made to the table as a result of this comment to reflect the differences between the requirements for all mariners and those that apply only to individuals serving on vessels to which STCW applies.

The requirement for a demonstration of physical ability has been removed for staff officers, applicants seeking an endorsement for proficiency in survival craft, and food handlers serving on vessels to which STCW does not apply. As a practical matter, however, staff officers and those seeking endorsements for proficiency in survival craft typically will have rating or officer endorsements that would already require the applicant to satisfy this requirement. The language in the table was also revised to limit the requirement for ratings to pass a demonstration of physical ability. It now reads: ''Ratings, including entry-level, serving on vessels to which STCW applies, other than those listed above''. This conforms to the exception for non-STCW mariners that existed in paragraph (e) in the NPRM and has carried over to the SNPRM. Also in the NPRM, the demonstration of physical ability was required for all food handlers, not just those to whom STCW applies. Food handlers have now been broken down to those to whom STCW applies, and those it does not.

Also, as a result of this comment, paragraph (e) was revised to further limit the demonstration of physical ability requirement to only those applicants whose medical practitioner, during the performance of the applicant's general medical exam, becomes concerned that the applicant's physical ability may impact maritime safety. It would also apply to those applicants who are not required to pass a general medical exam. This change was made because during the general medical exam, a medical practitioner should be able to determine whether an applicant's physical ability would impact maritime safety. If this is not a concern, requiring a demonstration of physical ability is not necessary. Finally, a new paragraph (h) has been added to the end of the section to specifically exclude individuals only seeking MMCs with staff officer endorsements from the requirements of section 10.215.

One comment recommended that the certifying person should be required to certify that they are familiar with the Coast Guard's physical standards and the rigors of marine employment.

The Coast Guard disagrees with this recommendation. Requiring medical professionals to sign such an additional statement is unnecessary. Forms CG–719K and CG–719K/E include a partial list of physical demands for performing the duties of a merchant mariner. In addition, medical professionals are referred to NVIC 2–98 discussed above, and the regulations. These notices should be sufficient to provide a minimal familiarization as to the Coast Guard's physical standards and the rigors of marine employment.

One comment sought penalties for mariners who supply false information to certifying physicians and/or employers or who fail to disclose material information about their physical condition.

The Coast Guard agrees with the general sentiment of this comment, but disagrees that such a change needs to be placed in our regulations. 18 U.S.C. 1001 provides criminal penalties for making a false official statement to the Federal government. That statutory penalty applies to any mariner that falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry. The penalty is up to five years in prison and/or a $5,000 fine, and that increases if the offense involves international or domestic terrorism. This penalty would apply to any material misrepresentation or omission directly to the Coast Guard in the application, or any material misrepresentation or omission to the mariner's physician or employer that would affect the Coast Guard's credentialing decision.

We received 18 comments stating the inclusion of additional hearing standards in 10.215(c) are unnecessary, and one additional comment that the hearing test thresholds in that section are overly prescriptive and should be substituted with a more performance-based approach that is tied to the mariner's duties on the vessel.

Section 10.215(c) has been rewritten in this SNPRM. It has been revised to limit the categories of mariners who must undergo the hearing exam, and provides more information to medical professionals conducting the exam. In the NPRM, the introductory text to paragraph (c) referred to a different test than the hearing thresholds discussed in subparagraphs (c) (1) and (2). This was clarified and corrected in the SNPRM. In addition, in subparagraphs (c) (1) and (2), the word ''should'' was replaced with the word ''must'', as the proposed hearing thresholds would be requirements, not general suggestions.

Finally, as a result of these comments, the newly proposed language would require a hearing test only if the medical professional conducting the general medical exam has concerns regarding the applicant's ability to hear, and a waiver may be requested if a mariner can pass one test but not another. We opted not to tie the hearing thresholds to each mariner's particular duties on the vessel in favor of minimal requirements that all mariners must meet. Such a standard for all mariners is less subjective and serves a safety purpose in that all mariners should be able to hear at the same minimum level.

We received 29 comments stating that the language of proposed 10.215(e) created an unnecessary burden on the mariner and physician by requiring the physician to travel to a vessel to document a mariner's physical ability.

The Coast Guard does not contemplate that every mariner must demonstrate physical ability, nor do we contemplate requiring medical professionals to travel to vessels to complete this test. It has, however, always been the responsibility of the medical professional to attest that the mariner is able to meet the physical requirements of the job. The information contained within 10.215(e) provides clarity as to the level of fitness necessary in the maritime industry and the level of satisfaction the medical professional must achieve to determine that the applicant meets these standards.

All eight of the enumerated abilities that must be satisfied to pass a demonstration of physical ability are able to be reviewed in a medical office. For example, a person standing on one leg anywhere can show no disturbance in the sense of balance; any ladder or staircase can be used to show ability to climb up and down vertical ladders and inclined stairs; and any obstruction of similar height can be used to show that a person can step over a door sill or coaming. Furthermore, weights can be used to show that the applicant would have the ability to grasp, lift and manipulate tools, and move hands and arms to open and close valve wheels; a general medical exam should detect a disease that would prevent normal movement and physical activity, or the ability to respond to a visual or audible alarm; finally, the ability to stand and walk for extended periods could be shown anywhere as could the determination as to whether the applicant is capable of normal conversation.

These enumerated abilities were taken from the STCW Code Table B–I/9–2, which is guidance on the assessment of minimum entry-level and in-service physical abilities for seafarers. These standards have been deemed effective minimum standards for mariners in the international community and the Coast Guard believes that they are good standards to employ in order to ensure that U.S. mariners have the physical ability to do their job without injuring themselves or others.

24. National Driver Register

We received one comment requesting that proposed 46 CFR 10.213(g)(1) be amended to add additional drug testing while on the vessel. Another comment requested that the three-year look back period in proposed 10.213(c) be extended to five years. Finally, another comment requested that land-based driving under the influence (DUI) convictions be given less weight than marine-based DUI convictions, and that the burden placed on the mariner to establish qualification should be changed so that the burden after a land-based DUI should not be as high as the burden associated with marine-based convictions.

The purpose of this rulemaking is to consolidate the merchant mariner qualification credentials. It is not intended to completely revise 46 CFR Subchapter B. These three comments are outside the scope of this rulemaking, but revisions to the drug testing requirements and evaluation criteria may be considered by the Coast Guard in subsequent rulemaking projects.

Twenty comments objected to an unlimited NDR check.

The Coast Guard did not intend to propose an unlimited NDR check in the NPRM. Paragraph 10.213(b) in the NPRM contained language that currently exists in our regulations regarding criminal record review, but was inadvertently moved into the NDR section of the NPRM. That section has been moved to 46 CFR 10.211(l) in this SNPRM. For the offenses described in section 205 of the National Driver Register Act of 1982, as amended, the Coast Guard will not be doing an unlimited look back in the NDR, but will only look at those crimes listed in that Act that are provided in the course of the criminal record review. The law allows the Coast Guard to look back beyond three years only when individuals have ongoing suspensions or revocation for NDR Act offenses. This is not an unlimited NDR check. The Coast Guard appreciates notification of this error.

25. Port Access

We received one comment that the Coast Guard should ensure that the international community accepts the TWIC as a replacement MMD for shore leave.

We agree and will provide information on the MMC and TWIC programs to the International Maritime Organization for communication to other parties.

One comment stated that the MMD, not the TWIC or MMC, should meet the standards for an identification credential and allow access to ports.

Under the statutory requirements of 46 U.S.C. 70105, a biometric identification credential (the TWIC) must be created by the Secretary to allow individuals unescorted access to all 33 CFR Subchapter H regulated vessels and facilities. The MMD does not satisfy the requirements of 46 U.S.C. 70105. For the reasons discussed above in ''Format of the MMC'', the TWIC and MMD will not be combined at this time.

26. Posting

Seven comments stated that the requirement to post the license would be affected by this proposed rulemaking project.

The Coast Guard disagrees with these comments. We have not changed the requirement for posting an officer's qualification credential. This posting requirement is required by 46 U.S.C. 7110 and cannot be changed by Coast Guard regulation. The format of the MMC will be designed so that posting of the officer endorsement will be possible while also protecting the mariner's private personal information from view.

27. Preemption

One comment was received that States should not be allowed to permissibly bar a mariner access based on stricter criteria than the TWIC and MMC.

The MMC would be a qualification credential that would also contain a mariner's identity information, but would not be used to obtain access to port facilities. This comment, and the issues of State preemption, are discussed in the TWIC rulemaking and are beyond the scope of this MMC rulemaking.

28. Personal Privacy

Five comments objected to the requirement in the NPRM at 46 CFR 10.219(d) (2), that the front of all checks or money orders must contain the applicant's full social security number.

Although the social security number requirement proposed in section 10.219 in the NPRM was carried over from our current regulations, due to the increased concern over identity theft nationwide the Coast Guard is proposing an alternative in this SNPRM. Section 10.219(d)(4) has been revised to require that all checks and money orders contain the applicant's full legal name and last four digits of their social security number. The full legal name is necessary to link the individual to the payment, and the last four digits of the social security number would be used to differentiate between mariners who may have common names.

Two comments were received that stated a general concern for the protection of privacy information.

The Coast Guard is extremely concerned about the recent rise in identity theft and recognizes the need to protect personal privacy information. We have proposed several measures in this proposed rulemaking to protect that

information. We have proposed an alternative to the social security number requirement discussed above, we intend to design the MMC so that personal privacy information will not be visible when posted under the requirement in 46 U.S.C. 7110, and we will develop and test a secure electronic data sharing system for the transmission of mariners' application information from TSA to the Coast Guard before this rule would become effective.

29. Public Meetings

We received 12 comments to the docket requesting additional public meetings on the MMC NPRM.

We encourage public participation in this rulemaking. However, the Coast Guard received a relatively small number of comments on this rulemaking during the joint MMC/TWIC public meetings held in May and June 2006, and additional public meetings will not be held on the TWIC rulemaking project during the 90 day comment period for this MMC SNPRM. For those reasons, the Coast Guard does not intend to hold additional public meetings on this rulemaking at this time. Written and oral comments are given equal weight in the rulemaking process. Please submit written comments to the docket for this rulemaking project, which is available by conducting a simple search for docket number 24371 at *http://www.dms.dot.gov*. If, after reading this SNPRM, you believe that additional public meetings would be beneficial, please submit a request to the docket explaining why one would be beneficial. If the Coast Guard determines that additional public meetings would aid this rulemaking, we will provide advance notice in the **Federal Register**.

30. Regulatory Requirements

We received five comments that this rulemaking fails to resolve outstanding issues in the STCW Interim Rule published June 26, 1997 at 62 FR 34505.

This rulemaking is not intended to close or finalize the STCW rulemaking project. A Coast Guard rulemaking team is currently working on a Supplementary Notice of Proposed Rulemaking for that project that will address the public comments received on that Interim Rule, propose additional changes to the regulations to conform U.S. regulations to the STCW Code and Convention, and take additional public comment.

We received two comments that this rulemaking fails to resolve outstanding issues within the MMD and Licensing Interim Rules.

This rulemaking project is not intended to close or finalize either the Validation of Merchant Mariner's Vital Information and Issuance of Coast Guard Merchant Mariner's Documents (MMDs) (docket number USCG–2003–14500, the ''MMD rule''), or Validation of Merchant Mariner's Vital Information and Issuance of Coast Guard Merchant Mariner's Licenses and Certificates of Registry (docket number USCG–2004–17455, the ''Licensing rule''), projects. The Coast Guard intends to publish final rules on those projects to address the public comments received, and make any appropriate adjustments to the regulatory text as a result of those comments. This MMC rulemaking would, however, effectively address the bulk of the negative comments received to those rulemaking projects by removing the requirement that mariners appear at least once at one of the 17 RECs to be fingerprinted by, and show identification to, an REC employee. The majority of the comments received in the dockets to those rulemakings complained that the location of the 17 RECs require mariners to travel a great distance.

This proposed MMC rulemaking would remove, or at least reduce, that burden on mariners by removing the REC requirement and allowing them to apply for the MMC entirely by mail unless an examination is required. Instead, mariners would complete the fingerprint and identification portion of the MMC application process at one of the many TWIC enrollment centers spread across the country. This rulemaking, although proposing to remove the appearance requirement, will not finalize or close either the MMD or Licensing rulemaking projects. Final rules for those projects are expected to be drafted and published after the completion of this rulemaking project and the STCW rulemaking project discussed above.

One comment stated that the current language of our regulations in Subchapter B is poorly written and contains many issues that have not been addressed by this rulemaking. It suggested that we start from scratch, rewriting the Subchapter, instead of continuing to use existing regulatory language.

In this rulemaking, the Coast Guard decided to use the existing regulatory language wherever possible. This was done in an effort to make as few substantive changes as possible while consolidating the credentials into one while also adapting the system to transfer the security and identity verification process to TSA. The Coast Guard is currently undertaking many different actions, both regulatory and non-regulatory, to improve the merchant mariner credentialing process. There are currently five open Coast Guard rulemaking projects involving Subchapter B: (1) This rule, (2) the MMD rule, (3) the Licensing rule, (4) Implementation of 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (docket number USCG–2004–17914, the ''STCW rule''), and (5) Training and Service Requirements for Merchant Marine Officers (the ''Radar rule'') (docket number USCG–2006–26202). Each of these rulemaking projects is intended to address different issues within Subchapter B. Once these five rulemaking projects are completed, the Coast Guard intends to open a sixth rulemaking project unofficially referred to as the Subchapter B Revision, which would clean up the entire subchapter, to improve upon clarity, readability, correct editorial inconsistencies and make non-substantive procedural changes.

Three comments pointed out that the MMC NPRM did not appear in the Spring 2006 Regulatory Agenda.

The commenters are correct. At the time that information for the Spring 2006 Regulatory Agenda data call was requested, the substance of this regulation was incorporated into the TWIC rulemaking project, so it was not independently referenced. Now that it has been separated from TWIC and is an independent rulemaking project, it has been assigned Regulatory Identification Number 1625–AB02 and was included in the Fall 2006 Regulatory Agenda.

Three comments requested that the Coast Guard slow implementation of the TWIC and MMC.

Discussion of the implementation schedule of the TWIC is outside the scope of this rulemaking however, implementation of the card reader requirements has been delayed. A discussion of the TWIC implementation schedule and the delay in implementation of the reader requirements is provided in the TWIC final rule published elsewhere in today's **Federal Register**.

With respect to the MMC, if made effective, the proposed regulations in this SNPRM would not be implemented until approximately August 2008. This long delay before implementation has been proposed to allow all merchant mariners to obtain a TWIC before this proposed regulation would make it mandatory for the issuance of an MMC. The delay would also allow time for the Coast Guard to develop the form of the new credential and produce a sufficient

supply before the date of issuance. Furthermore, the delay would provide time to build and test the system that will transmit each MMC applicant's digital photograph, fingerprints, proof of identification, proof of citizenship, and if applicable, the applicant's criminal record and proof of legal resident alien status to the Coast Guard from TSA. The protection of this personal data is extremely important to the Coast Guard and TSA and we have planned this delay to allow sufficient time to test the system to ensure the security of that data. In addition, the new credential would be phased in over a five year period. A mariner would not be required to obtain an MMC until he or she either chooses to renew or upgrade their current MMD, license, COR or STCW endorsement, or they chose to apply for an MMC after this proposed rule is made effective. We find any additional delay to be unnecessary.

One comment stated that this is a substantive rulemaking.

We agree. This is a substantive, non-significant rulemaking. It proposes substantive changes to the Coast Guard's regulations that are not merely procedural or technical in nature, but will actually affect the public. Because this is a substantive rulemaking, the Coast Guard has published both an NPRM and SNPRM in the **Federal Register** and is seeking public comment to assist us in the rulemaking process.

We received one comment requesting that the Coast Guard hold the MMC regulatory project in abeyance until the TWIC regulatory project becomes final.

We agree in part with the commenter. The TWIC regulatory project published a final rule elsewhere in today's **Federal Register**. That final rule will become effective 60 days from today. This SNPRM, however, will remain open for a 90 day comment period after which it will be withdrawn, amended, or made effective through the publication of a final rule. At this time, the Coast Guard expects that a final rule would not be published for this rulemaking until some time in 2007, and that it would not become effective until approximately August 2008. This long period of time will allow enough time for the receipt and analysis of public comments, and would allow mariners to obtain a TWIC before this rulemaking would make them mandatory for the issuance of MMCs. The estimated August 2008 time period coincides with the expected close of the TWIC initial rollout period as established by today's TWIC final rule. As the MMC is reliant upon the TWIC enrollment, not the TWIC card readers, we are not tying this MMC rule to the card reader portion of the TWIC rulemaking project.

31. Renewals and Duplicates

We received one comment that requested a lower standard of safety and suitability review for renewals and duplicates than that required for originals; one comment that requested no safety and suitability review for renewals and duplicates; and one comment stating that a mandatory criminal history review for duplicates will add unnecessary time to the application review process.

We agree in part. We agree that requiring a mariner to undergo an additional safety and suitability review simply to obtain a duplicate credential with the same expiration date as the lost credential is unnecessary. A mariner who has undergone a safety and suitability review to obtain his or her five-year credential should not have to undergo an entirely new review, and the time associated with that review, simply because he or she lost the first credential. Changes have been made in this SNPRM to sections 10.211(b) and 10.229(f) to remove that requirement. This change should result in a reduction in the processing time for duplicate credentials.

The Coast Guard disagrees that mariners seeking renewals should be exempt from a safety and suitability review or that they should be subjected to a lesser standard. As an example, an officer could be involved in a DUI in year three of his credential, and in year four, he or she could be convicted of another. Under the existing and proposed regulations, that mariner would no longer be eligible for a license or MMC with an officer endorsement. Exempting that mariner from the safety and suitability review at renewal would prohibit the Coast Guard from learning of those DUI offenses. The Coast Guard, industry and international community rely on the safety and suitability review in the credential application process to ensure that merchant mariners working aboard commercial vessels do not present a safety hazard, and that they actually have the qualifications necessary to serve in their applicable grade and/or rating. Simply because a mariner was deemed safe and suitable at the initial application for their credential does not mean that they should be held to a lesser standard for the remainder of their career. To do so would essentially make the expiration date on the credential meaningless. Subjecting renewal applicants to a lesser standard would only increase the possibility of more safety incidents at sea, which is something the Coast Guard is working hard to prevent.

The Coast Guard sees a need for, and a value in, each and every one of its safety and suitability related disqualifying offenses and qualification requirements. Creating a lesser standard or removing them entirely for renewals would almost certainly lead to an increase in safety incidents, and would not be in the best interests of safety of life at sea.

32. Suspension and Revocation

One commenter was concerned about the effect that suspension or revocation would have on the remaining endorsements to a mariner's MMC when some, but not all of that mariner's endorsements are suspended or revoked.

Amendments have been made to 46 CFR 10.235(b) and (d) to address this issue. If one or more of a mariner's endorsements are revoked, the Coast Guard will issue an MMC containing any remaining endorsements for which the holder is qualified.

33. Safety and Suitability

We received one comment that sought a change in the suspension period for operating a vessel under the influence of illegal drugs to greater than one year and an increase in the assessment period so that it is longer than that applied to shore-based violations.

This recommendation is beyond the scope of this rulemaking, which is not intended to alter the safety and suitability assessment requirements. This rulemaking is intended only to make those changes necessary to consolidate the credentials, and streamline the application process. This recommendation may be considered, however, in future rulemaking projects.

We received two comments that requested the Coast Guard recognize expungements.

Like the comment discussed above, this comment is outside the scope of this rulemaking; however, the reason the Coast Guard does not automatically recognize expungements is that each State varies in the crimes and associated time periods after which they will grant record expungements. Some States grant expungements in a shorter time period than the assessment periods in subchapter B. Because there is no set national standard for expungement of State crimes within our assessment period, the Coast Guard has chosen to continue to review criminal records regardless of expungement.

One commenter requested that the Coast Guard provide an exact methodology and judgment criteria for

our safety and suitability review and how it is affected by TWIC.

The Coast Guard's safety and suitability review will not be affected by TWIC other than that if a mariner is not granted a TWIC he or she cannot be granted an MMC, therefore making the Coast Guard's safety and suitability determination unnecessary. The TWIC will remove the security review from the Coast Guard's credentialing process, but it will not otherwise affect the Coast Guard's determination as to whether an individual is a safe and suitable person to serve in the merchant marine. The crimes that will prohibit an applicant from receiving a TWIC are no more expansive than those that would prohibit an applicant from receiving an MMD or license under the Coast Guard's current regulations.

With respect to the methodology and judgment criteria for our safety and suitability review, the Coast Guard has the authority to review an applicant's safety and suitability under Chapters 71 and 73 of Title 46, United States Code. To determine whether a mariner is a safe and suitable person, the Coast Guard reviews that applicant's full application material. All training, sea service, medical evaluations, records, and criminal records are reviewed for this determination. A person fails to meet the safe and suitable person standard when the circumstances indicate that the person's character and habits of life would support the belief that permitting such a person to serve under the credential and/or endorsement sought would clearly be a threat to the safety of life or property, detrimental to good discipline, or adverse to the interests of the United States. The definition for ''safe and suitable person'' in 46 CFR.107 has been modified in this SNPRM to include these judgment criteria.

34. Miscellaneous Comments Outside the Scope of This Rulemaking

We received two comments requesting that we include well-control training program provisions to 46 CFR 10.470.

This request is outside the scope of this rulemaking as it does not involve the consolidation of credentials or the process for reviewing mariner credential applications. The Coast Guard has chosen not to include these program provisions in the regulations at this time.

We received one comment requesting the Coast Guard to revise the tonnage service requirements for license upgrades.

This too, is beyond the scope of this rulemaking; however, it will be addressed in the upcoming STCW rulemaking project.

We received one comment requesting consistency with respect to the 12-hour service time requirement.

Such a change is beyond the scope of this rulemaking; however, the Coast Guard has recently disseminated guidance to our application evaluators on this issue to assist in the consistent application of the 12-hour service time requirement. Additionally, in this SNPRM we have removed the language from the definition of ''day'' in 46 CFR 10.107.

35. Support for the Rulemaking

The Coast Guard received the following comments in support of the NPRM:

27 comments agreed with the need for increased rational national security measures.

One comment supported the proposal to renew credentials by mail.

One comment supported the proposal to allow oaths to be taken before a notary public and be submitted by mail.

Two comments supported the consolidation of credentials into one document and the associated $45 reduction in cost associated with renewing multiple credentials.

One comment supported the five year phase in period, saying that it will greatly reduce the backlog of applications and give mariners the opportunity to complete the process at a convenient time.

Three comments supported the proposal for numerous mobile enrollment centers and the associated ease in staff burdens at the RECs. One of those commenters also encouraged TSA to establish an enrollment facility at large refineries and petrochemical facilities. The location of TSA's enrollment facilities are discussed in the TWIC rulemaking.

18 comments were generally in favor of consolidating the merchant mariner credentials, and four of those comments went further to state that in general, the changes proposed to the MMC are beneficial to the mariner and include several positive features that will make the systems simpler and more user friendly.

One comment encouraged the sharing of information between the Coast Guard and TSA.

One comment stated that the option to renew MMCs at any time prior to the expiration of the old credentials is common sense and more convenient for mariners.

36. Travel

We received one comment that sought an increase in the number of application and examination centers; one comment that showed a general confusion about the appearance requirement; and 10 comments complaining about the heavy burden on mariners caused by the requirement to travel to an REC.

If this proposed MMC regulation goes into effect, mariners will only have to travel to the REC if an examination is required. The MMC application process could be done entirely by mail. There would no longer be a requirement to appear at one of the 17 RECs at least once in the application process. Instead, mariners are required by the TWIC rule to travel to one of the approximately 125 TWIC enrollment centers spread across the country. It is expected that there will be approximately 125 TWIC enrollment centers for initial rollout, however, the exact number, their locations, and the number that will remain in operation after initial roll out has yet to be determined. This information will not be known until a contract is awarded, but the Coast Guard is working with TSA to locate them in areas that will reduce the travel burden on mariners.

The TWIC/MMC enrollment process would work like this: To begin, a mariner would have the option of going online to provide pre-enrollment information for the TWIC to reduce the amount of time at the TWIC enrollment center. They would then travel to one of the many TWIC enrollment centers to be fingerprinted, photographed, show proof of ID and complete the TWIC application process. At any time after they have applied for their TWIC, the mariner would be able to mail his or her MMC application to the Coast Guard. The Coast Guard would then contact TSA to obtain electronic copies of the applicant's fingerprints, photograph, ID, and if applicable criminal record, FBI number and proof of alien status. If an examination is required, the mariner would be contacted to schedule the examination after the initial evaluation is completed. Once the TWIC has been issued, the MMC application approved, and the examination(s), if necessary, are completed, the MMC would be mailed to the applicant.

The RECs would remain open and mariners would be allowed to apply in person or seek assistance from REC personnel if they choose. Although the RECs would remain available to the mariner, mandatory appearance would no longer be required. This proposed change should result in a cost savings to mariners. The reduction in burden and the expected cost benefits from this proposed rulemaking are discussed further in the Regulatory Evaluation section below.

We received one comment seeking more detail on how mariners can select an application location.

The TWIC enrollment center locations will be established by TSA. Just like the current process with Coast Guard RECs, merchant mariners would be allowed to appear at any TWIC enrollment center they choose. TSA will be conducting initial enrollment on a rolling basis, standing up enrollment centers in different locations in phases. Merchant mariners are allowed to visit any of the TWIC enrollment centers at any time during the 18 month initial enrollment period. Some vessels or facilities may begin to use the TWIC for access control once enrollment has been completed in their geographic location. Because mariners are inherently mobile, they may need to visit one of the vessels or facilities that begin to use TWIC earlier in the initial enrollment period and a temporary exception has been created that will allow unescorted access to vessels and facilities with MMD or picture identification in addition to license or COR. This temporary exception only applies during the initial roll out period. All credentialed merchant mariners must obtain a TWIC by September 25, 2008. For more information on TWIC enrollment and the implications for merchant mariners, please read the TWIC final rule published elsewhere in today's **Federal Register**.

37. Vetting

One comment requested that the Coast Guard remove 46 CFR 10.211(e) because it applies to security vetting and mariners are entitled to disclosure of the reason for denial in all cases.

We agree in part. The entire paragraph has not been removed, but it has been amended. The language in question was inserted in the NPRM in case an applicant was refused a credential based on confidential national security information that was not releasable to the public, or even to the applicant. If this rulemaking becomes effective, the Coast Guard would only be vetting mariners for safety and suitability, no longer making a determination as to security threat, so there should not be a situation in which we would encounter such a protected reason for denial. Accordingly, paragraph 10.211(e) has been amended in this SNPRM to remove the words: ''unless the Coast Guard determines that such disclosure of information is prohibited by law, regulation, or agency policy''. The language also appeared at 46 CFR 10.237(b) in the NPRM. That section has been moved in this SNPRM to 46 CFR 10.237(a) and has also been revised to remove this language.

One comment requested that the Coast Guard ensure consistency between the TWIC and MMC with respect to homicide.

In this instance, the Coast Guard believes that the inconsistency in the disqualifying crimes for TWIC and the MMC is appropriate. The TWIC regards murder as a permanently disqualifying crime for security vetting under 49 CFR 1572.103 of the proposed TWIC regulations. As with the current hazardous materials endorsement regulations, TWIC applicants will be allowed to seek waivers of disqualifying crimes. With respect to the hazardous materials endorsement, these waiver requests have been frequently granted. The Coast Guard has consistently split homicide into the categories of intentional (*i.e.*, murder) and unintentional, with the assessment period for intentional homicide being a minimum of 7 to a maximum of 20 years. This assessment period has not been changed in these proposed regulations.

The crimes listed in 46 CFR table 10.211(g) rarely overlap with the TWIC disqualifying crimes, but when they do, it is because that crime has a link to national security as well as safety and suitability. The Coast Guard and TSA would be reviewing these crimes for very different purposes. A record that may not rise to the level of a national security threat may rise to the level of a safety risk. The Coast Guard believes that we must retain those crimes that have a nexus to safety in the event that they are waived by TSA after the determination that the individual does not pose a threat to national security. Because of the remote locations and isolation associated with the mariner's workplace, the Coast Guard intends to continue reviewing intentional and unintentional homicide convictions in our safety and suitability review as we have for decades.

One comment stated that the Coast Guard should accept the American Bureau of Shipping (ABS) identification process and background check as meeting the TWIC process and issue TWIC cards based on it.

The background check and issuance of the TWIC is outside the scope of this rulemaking. Discussion of the TWIC background check and requirements for issuance can be found in the TWIC final rule published elsewhere in today's **Federal Register**.

One commenter stated that the current vetting process conducted by the Coast Guard for mariners meets or exceeds the standards of the hazardous materials endorsement vetting process proposed for TWIC. We also received one comment that the Coast Guard should enhance our vetting process to meet the requirements of 46 U.S.C. 70105.

Since February 3, 2003 for MMDs, and January 13, 2006 for licenses, the Coast Guard vetting process has met the TWIC vetting standards with respect to merchant mariners. Because of this, we have worked with TSA to create an exemption from the criminal record review and a related reduction in the TWIC application fee for mariners holding credentials issued after those dates. To remove the duplication of effort, and reduce the size of the MMC review process, this SNPRM would completely remove the Coast Guard's security vetting process and transfer that review entirely to TSA. MMDs and licenses do not, however, meet the standards for the 46 U.S.C. 70105 mandated biometric identity credential. For the reasons discussed above in ''Format of the MMC'', the MMD, license and proposed MMC will not be able to meet the format and readability standards that would exist with the TWIC.

We received 41 comments stating that the Coast Guard and TSA should not conduct duplicate background checks. We received five additional comments that only one background check should be conducted and that it should be done by the Coast Guard, and one comment generally objecting to the Coast Guard conducting background checks. We received one comment that the Coast Guard and TSA should not conduct duplicate identity verification.

At this time, the option of having either TSA or the Coast Guard conduct all required background checks for individuals who require both an MMC and the TWIC is not feasible. TSA has established a system and process for ensuring individuals applying for the TWIC undergo a consistent security threat assessment and the USCG already has the authority and process in place for conducting the required safety and suitability checks for mariners. To create a new and unique system of background checks for approximately one fifth of the expected initial TWIC population would create the need for additional infrastructure within one agency and raise costs for the government and the entire TWIC population. In addition, the Coast Guard has more expertise and authority over the merchant marine than TSA and is in a much better position to determine whether an applicant is safe and suitable to serve in the merchant marine at the grade or rating sought. At this

time, the most efficient and cost effective method available for issuing TWICs to credentialed mariners is to have TSA conduct the security threat assessment and issue the identity document (TWIC) while the USCG issues qualifications on the MMC.

In addition, requiring only one criminal record review for both security and safety related crimes by one agency would negatively impact mariner flexibility. If only one background check were to occur, mariners would be required to apply for their MMC only at the time they applied for their TWIC. As currently proposed, the MMC and TWIC expiration dates need not align. This allows an individual who works at a port to decide later that he or she wants to become a merchant mariner. In addition, for those mariners who already hold a MMD, license or COR, they need not renew their credential upon the initial issuance of their TWIC because the effective period of their current credential is not affected by this proposed regulation. If we were to require only one background check by TSA for all mariners, the mariner credential would have to come into line with the expiration date of the TWIC. Requiring mariners who already hold credentials to renew so that their credential's expiration date matches their TWIC expiration date is currently impossible from a legal standpoint due to the statutory requirement that licenses and MMDs have a five year validity period under 46 U.S.C. 7106 and 46 U.S.C. 7302. Such a requirement would inherently shorten that five year duration. Finally, requiring only one security/safety/suitability criminal record review by TSA at the time of application would affect individuals who would like to seek raises in grade or new endorsements on their MMC during the five year validity period. The list of disqualifying offenses for officers is more extensive than that for ratings. Requiring TSA to run a new background check simply to determine a mariner's safety and suitability, when a TWIC application is not in process, would be improper.

Finally, both agencies will not verify the applicant's identity. The applicant will show proof of identity to TSA who will then share that identity information with the Coast Guard. The Coast Guard will trust TSA's identity verification determination. The only reasons we will require the identity information from TSA are (1) We need to affix the mariner's photograph to the MMC; (2) we need to verify the individual's age before issuing certain endorsements; and (3) we need to verify that the applicant meets the citizenship requirements for the endorsement sought because the citizenship requirements for the MMC are more strict than those required for the TWIC. The citizenship requirements for the MMC are established by statute in 46 U.S.C. chapters 71 and 73, and appear in proposed 46 CFR 10.221. These requirements have not been changed from the current citizenship requirements for MMDs, licenses or CORs.

On October 17, 2006, Congress passed the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). In that Act, Congress amended 46 U.S.C. 8103 to permit an alien allowed to be employed in the U.S. under the Immigration and Nationality Act who meets additional requirements for service as a steward aboard large passenger vessels to obtain an MMD. Although language has not been proposed in this rulemaking to address this new statutory authority, the Coast Guard is aware of it and is initiating a separate rulemaking to address these new requirements.

We received three comments expressing concern that the TWIC background check will prevent an individual from obtaining an MMC.

With very few exceptions, the TWIC requirements are equal to, if not less than, those requirements currently in Coast Guard regulations for MMDs, licenses and CORs. Furthermore, TWIC applicants are allowed to seek a waiver of any disqualifying offense, and appeals of negative waiver determinations are determined by an Administrative Law Judge. By the language of 46 U.S.C. 70105, ''The Secretary shall issue a biometric transportation security card to an individual specified in paragraph (2), unless the Secretary decides that the individual poses a security risk under subsection (c) warranting denial of the card.'' If, under the current Coast Guard regulatory program, an individual applies for a MMD, license, COR or STCW endorsement, and that individual is deemed a security risk, the individual's application will be denied. If the individual is deemed ineligible for a TWIC, they should not be granted an MMC.

We received one comment expressing concern that applicants would be able to get a TWIC but would be denied an MMC because of higher standards.

The standards for the MMC and the TWIC are intentionally different, because the intent and purpose of the credentials are different. The TWIC is intended to prevent individuals who pose a terrorism security risk from gaining access to secure areas of title 33 CFR Subchapter H regulated vessels and facilities. The MMC, however, is intended to serve as a certificate of identity and a certificate of service, specifying the grade and rating in which the holder is qualified to serve on board commercial vessels. More individuals will qualify to receive a TWIC (because they do not pose a security risk) than would possess all of the qualifications necessary to serve as a merchant mariner aboard commercial vessels.

The qualification standards for the MMC have been kept, in large part, the same as those that are currently required to obtain an MMD, license, COR or STCW endorsement. With few exceptions as set out in this SNPRM, and the NPRM published May 22, 2006 in the **Federal Register** at 71 FR 29462, the standards for mariners have remained the same. Just as in the current regulations, if a mariner poses either a safety risk, or a security risk, he or she would be denied a mariner credential. Higher qualification standards are necessary for the MMC than for the TWIC as it will include a safety and suitability assessment due to the inherently dangerous nature of a career in the merchant marine, and the remote location and isolated workplaces associated with maritime transportation.

We received two comments that mariner fingerprints are already on file with the Coast Guard and therefore there should be no need for mariners to travel to a TWIC enrollment center to provide them again.

Although mariners are currently required to visit Coast Guard RECs to be fingerprinted, because the Coast Guard has had no use for the fingerprints other than to obtain the applicant's Federal Bureau of Investigation (FBI) criminal record, these fingerprints are not stored by the Coast Guard. The fingerprint images are immediately transferred to the FBI for processing, where they become property of the FBI. These fingerprints are not returned to the Coast Guard.

We received one comment that MMCs should not be denied based on statutes that impose strict criminal liability or liability based upon ordinary negligence or criminal violations of environmental law.

We disagree. The crimes listed in 46 CFR 10.211(g) were not changed from the Coast Guard's current credentialing regulations, because of their nexus to safety and the determination of suitability for the merchant marine. The only crimes that do not appear in these proposed regulations but exist in our current regulations are those involving national security. Those crimes would be removed because TSA is reviewing

them and the Coast Guard does not need to conduct a duplicate review of those offenses.

As for crimes based on statutes that impose strict criminal liability or liability based on ordinary negligence, the Coast Guard has determined that lack of intent should not exempt individuals from being considered a risk to safety or considered unsuitable for the rank or rating sought. Acting negligently, or failing to take reasonable care to meet a specific standard of conduct established to protect against an unreasonable risk of harm to others, resulting in a conviction for one or more of the offenses listed in 10.211(g) is certainly behavior that could denote an increased likelihood that the individual could pose a risk to safety. Furthermore, engaging in inherently dangerous activity is typically associated with strict liability crimes, and shows that the individual is likely to act in reckless or risky behavior that could result in a safety incident or otherwise make the individual unsuitable for the merchant marine.

Finally, the Coast Guard believes that individuals who have criminal violations of environmental laws involving the improper handling of pollutants or hazardous materials could pose a risk to the safety of the environment and could be unsuitable to serve in the merchant marine. Individuals with prior records of improper handling of pollutant materials have an increased likelihood of causing further damage to the environment if provided access to the large amount of pollutant material and possibly hazardous material aboard commercial vessels. The disqualifying criminal offenses have not been altered in this proposed rulemaking with respect to criminal violations of environmental laws.

We received four comments that opposed the Coast Guard's requirement for self disclosure of criminal convictions.

The Coast Guard disagrees, and has not eliminated the requirement for applicants to disclose possible or actual disqualifying crimes for several reasons. First, there is no guarantee that an arrest and conviction are documented in automated police records, particularly those police records maintained at the State and local levels. Disclosure of this information provides the Coast Guard the ability to know where to start looking in the correct Federal, State or local databases, either electronically or by mail, if records are not accessible through electronic means. Second, people assume new identities to either hide on-going or past criminal activities, or just as a matter of course (marriage, nickname, etc.) which makes it difficult to locate records and verify that they actually relate to the applicant. Third, there is no worldwide criminal record database. Without personal disclosure of foreign convictions, it is extremely difficult for the Coast Guard to know which countries to approach for records. Finally, requiring full disclosure from applicants supported by background checks demonstrate that the Coast Guard is putting as many processes in place as possible to ensure that the highest standards are met before issuing something as important as merchant mariner credentials. We welcome comments on the possibility of limiting this disclosure requirement to only those convictions not previously disclosed on a merchant mariner application.

B. Recommendations From Advisory Committees

The following recommendations were received from the Towing Safety Advisory Committee:

1. Extend the Public Comment Period 90 Days

As discussed above, in lieu of extending the public comment period on the NPRM 90 days, we have published this SNPRM addressing the comments already received, and providing additional changes to the proposed regulation in light of those comments. A 90 day comment period has been provided for this SNPRM.

2. Provide for Additional Public Meetings in the Gulf Coast, Great Lakes and Northwest

We encourage public participation in this rulemaking, however, the Coast Guard received a relatively small number of comments on this rulemaking during the joint TWIC/MMC public meetings held in May and June 2006, and additional public meetings will not be held on the TWIC rulemaking project during the 90 day comment period for this SNPRM. For those reasons, the Coast Guard does not intend to hold additional public meetings on this rulemaking at this time.

Written and oral comments are given equal weight in the rulemaking process. Please submit written comments to the docket for this rulemaking project, which is available by conducting a simple search for docket number 24371 at *http://www.dms.dot.gov*. If, after reading this SNPRM, you believe that additional public meetings would be beneficial, please submit a request to the docket explaining why one would be beneficial. If the Coast Guard determines that additional public meetings would aid this rulemaking, we will provide advance notice in the **Federal Register**.

The following recommendations were received from the Merchant Marine Personnel Advisory Committee (MERPAC):

1. MERPAC strongly recommends that TSA remove mariners from the TWIC project. TSA should modify the existing credential that most mariners already have, as this document, with the photo of each mariner already meets the standards called for in 46 U.S.C. 70105. By updating and creating new biometrics in the existing MMD, or creating a new MMC, mariners could meet the intent of TSA without the duplicative effort of the TWIC.

Through 46 U.S.C. 70105, Congress has directed the Secretary of the Department of Homeland Security to issue a biometric transportation security card to all individuals who need unescorted access to secure areas designated in a vessel or facility security plan; individuals issued credentials under part E of subtitle II of Title 46 U.S.C. (credentialed mariners); vessel pilots; individuals working on a towing vessel that pushes, pulls, or hauls alongside a tank vessel; certain individuals with access to security sensitive information; and other individuals engaged in port security activities.

The House Committee Report, written when the statute was still a bill, but contained the language that was passed, states ''Section 70105 establishes a national standard for issuance of biometric transportation security cards whose purpose is to control access to secure terminal areas to only authorized personnel.'' The Department of Homeland Security has interpreted this language, and the language of the statute itself, to exhibit a Congressional intent that the Secretary create a single biometric identification credential. This national biometric transportation security card is to be used at all 33 CFR Subchapter H regulated vessels and facilities by everyone to whom the statute applies. Such a uniform requirement would improve security and reduce fraud through the creation of a single, recognizable identity credential instead of multiple credentials that would be dependant on the type of function that the individual would serve at the vessel or facility.

The population of individuals covered by 46 U.S.C. 70105 includes a large number of individuals outside of the merchant marine. Altering the MMD to include biometric capabilities would not only fail to satisfy the requirement

for all of the people to whom the Secretary must issue the credential, but it would not even cover the entire population of mariners that are affected by the statutory mandate. Altering the MMD to include biometric capabilities would cover only those people who carry an MMD. As of December 31, 2005, of the total estimated 205,000 merchant mariner population, 67,637 held only an MMD; 41,343 mariners held both a license and MMD; and 27,790 mariners held a license, MMD and STCW endorsement (the remainder hold a license only, which is not an identity document).

Allowing the MMD to serve as an alternate to TWIC would violate this concept of a single uniform nation-wide credential for all. Also for this reason, we have opted not to consolidate the merchant mariner credentials into the MMC with a biometric chip. Although this option would be more expansive because it would at least create a uniform biometric credential for all merchant mariners, it would not reach the other categories of people included under the 46 U.S.C. 70105 requirement, and would therefore violate the intent and benefits that could be derived from a single nation-wide standard.

There are many other reasons why the Department of Homeland Security has chosen not to place a biometric on the MMD or MMC in an attempt at satisfying this statutory mandate. One of these reasons is cost. The process proposed in this SNPRM would allow all mariners to apply for their MMC entirely by mail. Mariners would apply for their TWIC by going to one of the over 125 TWIC enrollment centers to be fingerprinted, photographed, show proof of identification and citizenship status. TSA would then share this information electronically with the Coast Guard. This proposed regulation would result in a cost savings for mariners because it would completely remove the need for all mariners to travel to one of the 17 Coast Guard RECs. As proposed, the Coast Guard would no longer conduct identity verification and security vetting. If the MMD or MMC was to be re-vamped to include a TWIC-like biometric chip, then those mariners who would get the MMD or MMC would have to travel to one of the 17 RECs, instead of the 125 TWIC enrollment centers, to submit their application information. This would be more of an inconvenience to the mariner as 125 locations are more likely to provide a shorter travel distance than the Coast Guard's current 17 REC locations.

TWIC enrollment centers are for the gathering of information from TWIC applicants only. Even if that were not the case, the collection of application information, security vetting and the maintenance of the database make up most of TSA's TWIC program expenses. The only cost that would be saved if mariners were allowed to apply there but not required to actually hold a TWIC would be the actual production cost of the TWIC card itself. Because those expenses must be recovered in user fees, this would result in a fee to mariners even if a TWIC card wasn't actually issued.

Adding a chip to either the MMD or MMC would also add costs. Adding a biometric chip to either the MMD or MMC would be more expensive to produce. Right now, this SNPRM does not propose to change the fees for the MMC from those that are currently charged for the license and MMD. If the Coast Guard changed the MMD or MMC to conform to the TWIC technology, the cost of the credential would increase.

The final option considered was to incorporate all of the merchant mariner qualification information onto the TWIC. This is a goal that the Coast Guard hopes to reach some time in the future; however, it is simply not feasible at this time. STCW requires foreign port state control officers to be able to read a mariner's qualification credentials, and not all countries have the ability to read smart cards. It is impractical, and for some it may be impossible, to print all of the information that will appear on an MMC on the face of the TWIC. At some point in the future the Coast Guard hopes that new technology will be available, costs will be reduced, and international capabilities will exist to make this a viable alternative.

For these reasons, the Coast Guard and TSA have opted to present two separate, but linked credentials: a TWIC as the biometric security card required in 46 U.S.C. 70105, and the MMC as the consolidated qualification credential for merchant mariners.

2. Given the size, complexity, and impact of these three rulemaking proposals, MERPAC recommends an extension of the comment period for at least another ninety days. For example, many U.S. mariners are onboard vessels for over three months at a time. They will not have an opportunity to comment under this truncated comment period. U.S. mariners are low-risk, there does not seem to be any overriding national security interest that would necessitate such a short comment period. It is better to implement it correctly the first time.

We agree with the need to provide merchant mariners additional time to comment on these complex regulations. For that reason, we have published this SNPRM, addressing the comments received to date and republishing the complete proposed regulatory text reflecting changes made in light of those comments. The Coast Guard has provided a 90 day comment period to collect comments to this SNPRM.

3. MERPAC recommends that the Coast Guard delay implementation of the MMC, separating the implementation of the MMC from the TWIC implementation, until the TWIC program is deemed successful.

Delay has been built into the timeline for the proposed implementation of this rulemaking. If made effective, the proposed regulations in this MMC SNPRM would not be implemented until approximately August 2008. This long delay before implementation has been proposed to allow all merchant mariners to obtain a TWIC before this proposed regulation would make it mandatory for the issuance of an MMC. The delay would also allow time for the Coast Guard to develop the form of the new credential and produce a sufficient supply before the date of issuance. Furthermore, the delay would provide time to build and test the system that will transmit each MMC applicant's digital photograph, fingerprints, proof of identification, proof of citizenship, and if applicable, the applicant's criminal record and proof of legal resident alien status to the Coast Guard from TSA. The protection of this personal data is extremely important to the Coast Guard and TSA and we have planned this delay to allow sufficient time to test the system to ensure the security of that data. In addition, the new credential would be phased in over a five year period. A mariner would not be required to obtain an MMC until he or she either chooses to renew or upgrade their current MMD, license, COR or STCW endorsement, or they chose to apply for an MMC after this proposed rule is made effective. We find any additional delay unnecessary.

4. MERPAC believes that this rulemaking exceeds the authority of the Coast Guard to create a consolidated credential, eliminating the existing system of documents and licenses, without amending the existing U.S. Code. We believe that a more thorough review of this change and its effect on all aspects of licensing and application is needed.

The proposed change will not affect the legal standing of merchant mariners. 46 CFR 10.201 in the proposed rulemaking describes the characteristics and purpose of the MMC, explaining that it combines the elements of the MMD, COR, license and any other

required endorsements (such as STCW) into a single document. This is a valid exercise of the Coast Guard's broad authority under 46 U.S.C. Part E, Chapters 71, 73, 75 and 77. With respect to licenses, 46 U.S.C. 7101 provides the Coast Guard authority to issue licenses to various classes of applicants found so qualified. The Code is not specific regarding the required form of the mariner's credentials, including the license, allowing the Coast Guard to exercise discretion through the rulemaking process.

''Merchant Mariner Credential'' is merely the term used to describe the certificate issued by the Coast Guard that incorporates the mariner's license with the MMD and other endorsements into one document with endorsements to be listed on the document depending on the mariner's qualifications. The term ''Officer Endorsement'' is merely the term used to describe the qualifications of the mariner, which are described as licenses in the current regulations. The mariner's actual capacity to serve in the merchant marine as specified by the endorsements on the MMC is unchanged by this proposed rulemaking.

5. Page 29464 of the May 22, 2006, proposed rule states that there are no changes to the qualifications, experience, examinations, classes and other requirements needed, and that this is just a reorganization of existing regulations. As there are new and changed requirements, such as physical standards and hearing standards, this statement should be honored and all changes removed. Accordingly, the text of 10.215 and Table 10.215(a) should be removed or corrected to assure that STCW standards are not incorrectly applied to domestic mariners. MERPAC believes this guidance to be confusing, incomplete, incorrect and damaging to the domestic mariners as written.

The intent of that preamble statement in the NPRM was to advise that this rulemaking is intended to accomplish a reorganization of the regulatory text, amend the regulations to consolidate the MMD, license, COR, STCW endorsement, and consolidate the application procedures. Its purpose is not to overhaul the qualification, experience, training or other requirements set out in parts 10 and 12. It is true, however, that some substantive changes were necessary to accomplish this task. In addition, we acknowledge that there have been a number of proposed changes to the medical standards section (46 CFR 10.215) that were not necessary for the consolidation, but were made to add clarification or improve upon the regulations. Many changes to section 10.215 have been made in this SNPRM to remove changes that were proposed in the NPRM, or to alter those recommended changes.

6. The Coast Guard needs to protect a mariner's financial information by removing the requirement to place the applicant's Social Security Number on the face of the form of payment. Fees should be collected by credit card through the mail or by phone.

The requirement that applicants write their full social security number on the face of checks or money orders has been removed. The social security number requirement proposed in 46 CFR 10.219 in the NPRM was carried over from our current regulations, but due to the increased concern over identity theft nationwide the Coast Guard is proposing an alternative in this SNPRM. Section 10.219(d)(4) has been revised to require that all checks and money orders contain the applicant's full legal name and last four digits of their social security number. The full legal name is necessary to link the individual to the payment, and the last four digits of the social security number would be used to differentiate between mariners who may have common names. In addition, 10.219(d)(2) has been revised in this SNPRM to propose credit cards as an acceptable form of payment.

7. MERPAC suggests the removal of the language in section 10.211(e). Since the Coast Guard will not be conducting background checks for disqualification due to security and terrorism, this paragraph seems inappropriate. The language here states, ''The applicant will be notified in writing of the reason or reasons for disapproval, unless the Coast Guard determines that the disclosure of information is prohibited by law, regulation or agency policy, in which case the reason(s) will not be disclosed.'' Mariners are entitled to due process, and denial based on the crimes in table 10.211(g) should be transparent to the mariner, in order to respond with the appeal that this rule authorizes.

We agree. The first portion of that statement in 10.211(e) was retained in this SNPRM, but the second half was removed. The language in question was inserted in the NPRM in case an applicant was refused a credential based on confidential national security information that was not releasable to the public, or even to the applicant. If this rulemaking becomes effective, the Coast Guard would only be vetting mariners for safety and suitability, no longer making a determination as to security threat, so there should not be a situation in which we would encounter such a protected reason for denial. Accordingly, paragraph 10.211(e) has been amended in this SNPRM to remove the words: ''unless the Coast Guard determines that such disclosure of information is prohibited by law, regulation or agency policy''. The language also appeared at 46 CFR 10.237(b) in the NPRM. That section has been moved in this SNPRM to 46 CFR 10.237(a) and has also been revised to remove this language.

8. Section 10.217 allows the Coast Guard to designate other Coast Guard locations to provide service to applicants for MMCs, and MERPAC applauds this addition.

We appreciate this comment, and thank you for the recognition of this benefit.

9. Section 10.225 states that mariners must surrender their old MMC, but 10.227 states that the mariner can retain an expired document. Mariners should be allowed to keep expired documents and licenses.

We agree and have revised 10.209(g), 10.225(b)(5), 10.227(d)(4) and (e)(2)(i), 10.223(c)(5), 10.231(c)(5), and 10.233(c) accordingly. The requirement to return credentials that are expired, invalid, or have been renewed remains; however, mariners may request in writing, at the time of submission, that the canceled credential be returned to them after cancellation.

10. MERPAC recommends that the Coast Guard create an MMC that is convenient for the mariner. They should consider a small document that is either wallet sized, or resembles a passport, that is more durable and easier for the mariner to transport.

Thank you for your support and assistance. We look forward to working with MERPAC as we develop the new credential.

11. MERPAC recommends that the Coast Guard begin a new rulemaking that would harmonize the criminal background checks with TSA standards so that mariners are only subject to one background check, at one cost. The Coast Guard should use the same standards of criminal conviction as TSA.

At this time, the option of having either TSA or the Coast Guard conduct all required background checks for individuals who require both an MMC and the TWIC is not feasible. TSA has established a system and process for ensuring individuals applying for the TWIC undergo a consistent security threat assessment and the USCG already has the authority and process in place for conducting the required safety and suitability checks for mariners. To create a new and unique system of background checks for approximately

one fifth of the expected initial TWIC population would create the need for additional infrastructure within one agency and raise costs for the government and the entire TWIC population. In addition, the Coast Guard has more expertise and authority over the merchant marine than TSA and is in a much better position to determine whether an applicant is safe and suitable to serve in the merchant marine at the rate or rating sought. At this time, the most efficient and cost effective method available for issuing TWICs to credentialed mariners is to have TSA conduct the security threat assessment and issue the identity document (TWIC) while the USCG issues qualifications on the MMC.

In addition, requiring only one criminal record review for both security and safety related crimes by one agency would negatively impact mariner flexibility. If only one background check were to occur, mariners would be required to apply for their MMC only at the time they applied for their TWIC. As currently proposed, the MMC and TWIC expiration dates need not align. This allows an individual who works at a port to decide later that he or she wants to become a merchant mariner. In addition, for those mariners who already hold a MMD, license or COR, they need not renew their credential upon the initial issuance of their TWIC because the effective period of their current credential is not affected by this proposed regulation. If we were to require only one background check by TSA for all mariners, the mariner credential would have to come into line with the expiration date of the TWIC. Requiring mariners who already hold credentials to renew so that their credential's expiration date matches their TWIC expiration date is currently impossible from a legal standpoint due to the statutory requirement that licenses and MMDs have a five-year validity period under 46 U.S.C. 7106 and 46 U.S.C. 7302. Such a requirement would inherently shorten that five-year duration. Finally, requiring only one security/safety/suitability criminal record review by TSA at the time of application would affect individuals who would like to seek raises in grade or new endorsements on their MMC during the five-year validity period. The list of disqualifying offenses for officers is more extensive than that for ratings. Requiring TSA to run a new background check simply to determine a mariner's safety and suitability when a TWIC application is not in process would be improper.

Finally, the Coast Guard disagrees that the disqualifying crimes for the TWIC should match those for the MMC. The standards for the MMC and the TWIC are intentionally different as the intent behind the need for the credentials are diverse. The TWIC is intended to prevent individuals who pose a terrorism security risk from gaining access to secure areas of 33 CFR Subchapter H regulated vessels and facilities. The MMC, however, is intended to serve as a certificate of identification and a certificate of service, specifying the grade and rating in which the holder is qualified to serve on board commercial vessels. It should be inherently obvious that more individuals would qualify to receive a TWIC because they do not pose a security risk, than would qualify to serve as a merchant mariner aboard commercial vessels.

The qualification standards for the MMC have been kept, in large part, the same as were required to obtain an MMD, license, COR or STCW endorsement. With few exceptions as set out in this SNPRM and the NPRM published May 22, 2006 in the **Federal Register** at 71 FR 29462, the standards for mariners have remained the same. Just as in the current regulations, if a mariner poses a safety risk, but not a security risk, he or she would be denied a mariner credential. Higher standards are necessary for the MMC as it will include a safety and suitability assessment due to the inherently dangerous nature of a career in the merchant marine, and the remote location and isolated workplaces associated with maritime transportation.

12. MERPAC recommends that Coast Guard remove the self-disclosure portion of the application process. The TWIC search will discover sufficient criminal convictions that should be applied by both agencies.

The Coast Guard disagrees, and has not eliminated the requirement for applicants to disclose possible or actual disqualifying crimes for several reasons. First, there is no guarantee that an arrest and conviction are documented in automated police records, particularly those police records maintained at the State and local levels. Disclosure of this information provides the Coast Guard the ability to know where to start looking in the correct Federal, State or local databases, either electronically or by mail, if records are not accessible through electronic means. Second, people assume new identities to either hide on-going or past criminal activities, or just as a matter of course (marriage, nickname, etc.) which makes it difficult to locate records and verify that they actually relate to the applicant. Third, there is no worldwide criminal record database. Without personal disclosure of foreign convictions, it is extremely difficult for the Coast Guard to know which countries to approach for records.

Finally, requiring full disclosure of applicants supported by background checks demonstrate that the Coast Guard is putting as many processes in place to ensure the highest standards are met before issuing something as important as merchant mariner credentials. We welcome comments on the possibility of limiting this disclosure requirement to only those convictions not previously disclosed on a merchant mariner application.

13. MERPAC has concerns about the appeal process, and encourages the agencies to further define and explain this process. We believe that the process as described will result in all of the expense and burden of proof being placed on the applicant, even if the information is found to be in error. There should be a recovery process for expenses if the applicant is denied a document due to mistakes made by the government.

If an MMC is issued, unless the situation calls for temporary suspension under 46 U.S.C. 7702, or the circumstances call for suspension and revocation for a reason other than security, the Coast Guard would not begin suspension and revocation proceedings until we were notified that the applicant had fully exhausted his or her TSA appeal rights. If the Coast Guard is notified by TSA that final agency action has occurred and a mariner has either been denied a TWIC or their TWIC has been revoked, the Coast Guard would begin suspension and revocation action against the individual's MMC. The suspension and revocation procedures for the MMC would remain the same as those presently used. The Coast Guard will not review a TSA decision regarding the issuance or revocation of a TWIC. Decisions regarding the issuance and revocation of TWICs are solely the responsibility of TSA. The Coast Guard does not have the authority to review, in any way, TSA decisions with respect to the issuance or revocation of TWICs. Language to this effect has been added to the proposed regulations in this SNPRM at 46 CFR 10.235(g) and 10.237(c).

The appeal processes for the MMC would remain the same as those presently used; the right of appeal for an applicant receiving an unfavorable decision during the application process remains in 46 CFR 1.03. The right of appeal associated with suspension and revocation remains as stated in 46 CFR 5.701. The proposed regulations have

retained the paper appeal process for the Coast Guard's refusal to issue an MMC. Similarly, if a mariner is issued a license or document, he or she would be a ''holder'' of that license or document, and would be given a hearing before an Administrative Law Judge (ALJ) before adverse action, such as suspension and revocation, would be taken against that credential.

All appeals regarding the issuance or revocation of TWICs would be handled by TSA under the TWIC appeal process. That process involves a paper appeal for all denials, and the use of an ALJ for appeals of waiver decisions. For more information on the TWIC appeal process, please see the TWIC Final Rule published elsewhere in today's **Federal Register.**

Provisions for the reimbursement of costs to mariners after a successful administrative appeal will not be added to the regulations at this time. The right to administrative appeal is offered to mariners as a due process right. A cost recovery process is available to mariners under the Equal Access to Justice Act (Pl. 96–481).

14. MERPAC recommends that Coast Guard redesign the rulemaking to assure that mariners can make application for their TWIC and their MMC simultaneously, allowing the two processes to move forward concurrently, and not make the mariner wait for the delivery and activation of the TWIC card before applying for their MMC.

The Coast Guard agrees that processing the MMC only after the TWIC has been issued could potentially increase this backlog and be overly burdensome to the mariner. As a result, changes have been made 46 CFR 10.225(b)(2) to allow new applicants to apply for their MMC if they can prove that they either hold a valid TWIC or have applied for one in the past 30 days. The MMC application could be processed simultaneously with the individual's TWIC application. However, because of the Coast Guard's need to obtain biometric and biographic information submitted by the applicant at a TWIC enrollment center, the TWIC application must be submitted before the MMC application. In addition, because of the need to ensure that the applicant's identity has been verified and that he or she has been determined not to pose a security risk, the Coast Guard proposes to retain the requirement that the TWIC be issued to the applicant before an MMC would be issued.

15. MERPAC recommends that the Coast Guard and TSA develop an interim clearance process, and that mariners be allowed to train and work, while awaiting a final determination.

The Coast Guard has decided not to allow merchant mariners to serve prior to the issuance of their MMC. We have amended the proposed regulations to include concurrent applications, which should speed the application process, however, it is imperative that the Coast Guard verify that an individual has the required qualifications before they are allowed to serve aboard a commercial vessel. The potential risks to life and property and the inherently dangerous nature of a career in the merchant marine creates a heightened need to ensure that the individual is a safe and suitable person for the job in addition to the security review provided by the TWIC. Mariners are not allowed to obtain interim credentials under our current regulations, and we believe it would be inappropriate to create such an interim measure in these proposed regulations.

In addition to the safety risk associated with allowing mariners to work without undergoing a full vetting process, there are also administrative burdens involved. In the past, the Coast Guard issued temporary MMDs to applicants who provided a letter from a shipping company stating that they would hire the person if the Coast Guard were to issue them an MMD. The process led to abuse and put the applicant in the position of trying to get a job before they had the proper credentials. Furthermore, the industry complained of added administrative overhead because they often issued a letter of commitment of employment to people who would sail for a short time, then quickly leave the industry.

In the late 70's or early 80's, the Coast Guard issued temporary MMDs in the form of a letter that allowed an applicant to sail for six months during which he or she could decide if they wanted to remain a seafarer. No commitment of employment was required. This soon became an administrative burden on the Coast Guard. Mariners would sail for a short time then find better employment ashore and few continued to be employed at sea. The Coast Guard had many records of temporary issuance credentials with no closure because the applicant never returned to apply for a final MMD.

For these administrative burden reasons, the safety concerns noted above, and because of the additional administrative overhead of having to prepare and issue a second MMC, the Coast Guard has chosen not to create an interim clearance process at this time.

C. Additional Changes Made in This SNPRM

Although not prompted by public comment or an Advisory Committee recommendation, the following changes have also been made to the proposed regulatory text published in the NPRM. This discussion does not include those changes that have already been discussed above.

1. Purpose of Rules in This Part. (10.101)

References to the Coast Guard verifying a mariner's identity were removed from paragraphs (a) and (c). Paragraph (c) was modified to reference only the security vetting process of the TWIC, and a new paragraph (d) was created to collect the language removed from previous paragraph (c) regarding the requirements that a mariner be a safe and suitable person and qualified as to character and habits of life.

2. Definitions in Subchapter B. (10.107)

Small non-substantive tense, grammatical, or citation changes were made in some of the definitions. In addition to those minor changes, the following substantive changes have been made:

Edits were made to the definition of the term ''day'' to remove confusion as to watchstanders.

Edits were made to the definition of the term ''directly supervised'' to ensure that the definition only applies to those seeking a tankerman endorsement. This definition exists in our current regulations only once, in the part applicable only to tankermen at 46 CFR 13.103. There is no current definition for the term ''directly supervised'' with respect to any other type of endorsement, and none has been created in this SNPRM.

The definition for the term ''invalid credential'' was expanded to include the MMD, license, COR and STCW endorsement, not just the MMC, because during the five-year phase in period, mariners could hold any combination of these credentials. It was also revised to remove the words ''or was issued fraudulently'' as one of the reasons a credential could be invalid. Credentials should not be issued fraudulently, and if for some reason there is fraud involved in the application process that results in invalidation of the credential, except for the originally issued credential, it will occur after a suspension and revocation proceeding and the credential will be confiscated by the Coast Guard.

The definition for the term ''Merchant Mariner Credential or ''MMC'' was

revised to include the fact that the MMC is not only a qualification document, but that under 46 U.S.C. 7302, it also serves as the mariner's certificate of identification and certificate of service. It was also revised to change the grammar from future to present tense.

The definition for ''merchant vessel'' was removed as it does not exist in our current regulations, is needlessly limiting, and should not have appeared in the NPRM.

The definition for the term ''Officer in Charge, Marine Inspection (OCMI)'' was modified to remove the reference to 46 CFR 10.217. The REC locations are no longer listed in 10.217, so the reference here is no longer appropriate.

The definition for the terms ''operate, operating or operation'' has been modified to limit the definition to the manning requirements of vessels carrying passengers. Now that the definitions for the entire subchapter are contained in one location, the broad definition used in the NPRM was likely to cause confusion with respect to vessels not carrying passengers whose regulations use these terms. An example of regulatory language using the term ''operating'' with respect to vessels not carrying passengers can be found in 46 CFR 15.610.

The definitions for ''officer endorsement'', ''rating endorsement'', and ''STCW endorsement'' have been amended to clarify that these endorsements will act as the license, MMD, or STCW qualification that was previously issued as a separate document.

In the definition for ''undocumented vessel'' the word ''document'' was replaced with ''certificate of documentation'' to refer to the correct term for the document required.

3. General Characteristics of the Merchant Mariner Credential. (10.201)

Paragraph (a) was amended to add a reference to the fact that the MMC would also consolidate the STCW endorsement, not just the MMD, license and COR; and the second sentence was amended to change the tense from future tense to present tense. Paragraph (b) was deleted because it was duplicative of 46 CFR 10.203(d).

Paragraph (c) was added to the SNPRM. This language was added to the current 46 CFR 12.02–3(a) in a technical amendment published in the **Federal Register**, and states that MMDs may be issued at the NMC or at any REC during usual business hours. The technical amendment was published in between the NPRM and SNPRM on August 21, 2006 at 71 FR 48480. Because this rulemaking proposes to make the entire credentialing process possible through the mail (unless an examination is required), the language in paragraph (c) also clearly states that an MMC can be issued through the mail. Since the MMC will not be the mariner's primary identification credential, and the mariner will already have to hold a TWIC, personal appearance should not be required for the issuance of the MMC.

4. Requirement To Hold a TWIC and a Merchant Mariner Credential. (10.203)

Paragraph (b) was rewritten entirely to remove the automatic invalidation of a mariner's MMC, MMD, license, COR or STCW endorsement if the mariner either fails to obtain a TWIC or if their TWIC is revoked by TSA. It was determined that an automatic invalidation would violate a mariner's Constitutional right to due process. It now states that failure to obtain or hold a valid TWIC may serve as a basis for the Coast Guard to deny a mariner's application. Although a mariner must provide proof that they hold a valid TWIC before an MMC will be issued, the Coast Guard should be able to officially deny an application once we receive word from TSA that it has issued its final agency action denying or revoking the applicant's TWIC.

Also, language has been added that if a mariner fails to hold a valid TWIC their MMC, MMD, license, COR or STCW endorsement could be subject to suspension and revocation under 46 U.S.C. 7702 and 7703. Those statutes provide for the suspension or revocation of a mariner's credential if they have violated or fail to comply with any other law or regulation intended to promote marine safety or to protect navigable waters as well as individuals who are a security risk that poses a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment. The language of 46 U.S.C. 70105 requires all credentialed mariners to obtain a biometric transportation security card (the TWIC) and states that the Secretary must issue that biometric transportation security card (the TWIC) to an individual unless the Secretary decides that the individual poses a security risk warranting denial of the card. Individuals who are denied a TWIC, therefore, must have been deemed a security risk by TSA, and should not be holding merchant mariner credentials. Those who have not applied for a TWIC also should not be holding merchant mariner credentials as the identity and security vetting done during the TWIC application process is an essential part of the MMC vetting. Mariners should not be credentialed without first undergoing a security review and identity verification.

Paragraph (d) was amended to make it clear that the MMD and the MMC serve as certificates of identification under 46 U.S.C. 7302, but that the TWIC is the mariner's primary identification document and must be shown to an authorized official as proof of identity when requested.

5. Validity of a Merchant Mariner Credential. (10.205)

In paragraph (d) the word ''void'' was changed to ''invalid'' to conform to the use of the term ''valid'' in other parts of the regulation. In paragraph (h), the words ''STCW Certificate'' were changed to ''STCW Endorsement'' to reflect the proper name of the document.

Paragraph (e) was amended to include ''other duly authorized Coast Guard officials'' as those who may sign an MMC to make it valid. This change was made because the Coast Guard's National Maritime Center was recently given credentialing authority, but not full OCMI authority.

6. General Application Procedures. (10.209)

This section was renamed ''General application procedures''. It was determined that listing all of the application requirements for renewal, duplicate and raise in grade in 10.209, resulted in the unintentional inclusion of additional application requirements. When we attempted to list all of the requirements for originals that renewals, duplicates and/or raises in grade are exempted from, we found the maze of cross references to be needlessly confusing. The SNPRM has been changed so that the application requirements, contained in 10.209(c) in the NPRM, have been moved and restated in 10.225(b), the section for original applications (a new section added to this SNPRM), in 10.227(d) the section for renewals, in 10.223 the section for modification or removal of limitations and scope, and in 10.231(b) for raises in grade (called ''Requirements for raises of grade or new endorsements and raise of grade'' in this SNPRM).

Since paragraph (c) has been deleted in this SNPRM, the language from 10.225(a) and 10.227(c) was moved to fill its place. This is the statement that applications are valid for 12 months from the date of approval. It is a general application requirement that seems more appropriate in this section, than in sections 10.225 and 10.227.

In paragraph (d), the items that may be submitted by mail have been expanded to include the consent for NDR check and the oath. A new subparagraph (7) was added to paragraph (d) that allows mariners to submit by mail any certificates or other supplementary materials required to show that the mariner meets the mandatory requirements for the specific endorsement sought, as established in parts 11, 12 or 13 of this chapter. This general statement is intended to catch any miscellaneous training certificates or other documents not otherwise captured, such as the firefighting certificate required by 11.205(d). Finally, note that in paragraph (d)(6), the requirement that the MMC issued with endorsements as a medical doctor or professional nurse will reflect any limitations listed on their state medical license. This change was made in the NPRM, but inadvertently omitted from the preamble table of changes.

With the reorganization of this section, a new paragraph (e) has been written to reflect those things that must be made a part of the application before an MMC application can be approved, but are not required to be submitted by the applicant. These items include the NDR check, criminal record review and information obtained from TSA, and are all generated or obtained by the Coast Guard from sources other than the applicant. The requirements for an NDR check and criminal record review have been amended to restrict the requirement to only MMCs issued as an original, reissued with a new expiration date, and new officer endorsements NDR checks and criminal record reviews are not required for duplicates.

For organizational purposes, paragraphs (f) and (g) have been added to 10.209 in the SNPRM. These paragraphs were moved from paragraphs 10.225 (c) and (d) in the NPRM. Paragraph (f) states that when the Coast Guard determines that an applicant meets all of the requirements for an MMC or endorsement, the Coast Guard will issue the properly endorsed MMC to the applicant. Paragraph (g) contains the requirement from 10.225(d) that mariners return their old credentials to the Coast Guard once a new MMC is issued, but it has been amended to state that upon written request submitted at the time of application, the cancelled, previously issued credentials will be returned to the applicant.

7. Criminal Record Review. (10.211)

Paragraph (c) was modified to reflect all of the information submitted to the Coast Guard by TSA from the applicant's TWIC application that could be used by the Coast Guard to determine whether the applicant has a record of a criminal conviction. Depending on the length of time between when the applicant applied for the TWIC and the submission of the MMC or endorsement application, the Coast Guard may opt to review the criminal record report generated by TSA in the TWIC application process. If the applicant applied for their TWIC more than two years before the MMC application, however, the Coast Guard may opt to use the mariner's fingerprints, or FBI number if applicable, to receive a new criminal record report from the FBI. An individual will only have an FBI number if they have a criminal record. Applicants who have a clean record will not have an FBI number.

Paragraph (f) has been amended to insert the words ''except as provided elsewhere in this section'' after the statement that no person who has been convicted of a violation of the dangerous drug laws of the United States, the District of Columbia, any State, territory, or possession of the United States, or a foreign country, by any military or civilian court, is eligible for an MMC. Without that exception, the blanket disqualification statement conflicted with the exemptions contained elsewhere in section 10.211. The language ''No person who has ever been the user of, or addicted to the use of a dangerous drug, or'' was also added to this paragraph because it is language that exists in our current regulations, but was unintentionally omitted from the NPRM.

Paragraph (f) was also amended to move the language inadvertently inserted into 10.213(b) in the NPRM. That paragraph contains the ineligibility of individuals who have ever been convicted of an NDR offense because of addiction to or abuse of alcohol, without furnishing satisfactory evidence of suitability for service. That paragraph's inadvertent relocation to the NDR section unintentionally created an indefinite look back period for NDR reviews, when the look back was intended to review those crimes that appeared on one's criminal record, not their NDR record. Its inclusion in section 10.211 corrects that error.

The table at 10.211(g) has been revised to reflect the difference in criminal conviction requirements for officers and ratings. Officers are currently held to a higher standard than ratings with respect to criminal convictions. This table has been revised to reflect that difference in standards. It should no longer contain any substantive change from our current regulations, other than with respect to the removal of the crimes involving national security which are reviewed by TSA, and the way that we handle the crime of robbery. Although robbery is a listed offense in our current regulations at 10.201(h) for licenses, robbery is not one of the listed offenses in the table for MMDs in the current 46 CFR 12.02–4(c). As a practical matter, however, robbery is included in the ''other crimes against persons'' specifically referenced in our current table, and is taken into consideration by the evaluator when reviewing applications for both MMDs and licenses. Robbery has been included in the ''Crimes Against Persons'' section of the table in the SNPRM for conformity and is not considered a substantive change.

Paragraph (m) was deleted entirely. This paragraph dealt with the automatic suspension of a mariner's credential if, after issuance, the Coast Guard learns of disqualifying information on the applicant's criminal record. The language of this paragraph, as written in our current regulations at 10.205(f)(4), is contained in proposed 11.205(c)(vi). As written in our current regulations and this SNPRM, that section applies to original licenses, CORs and STCW endorsements only. Its inclusion in part 10 of the NPRM did not limit its application to only original issuance, and it expanded it to include rating endorsements. The procedures set out in that paragraph should only be applied in cases where the action occurred before the issuance of the officer endorsement. For crimes committed after issuance, the suspension and revocation procedures in 10.235 would apply. The changes to the text as well as the inclusion of it in section 10.211 as well as 11.205 had unintended consequences, so it has been removed entirely from 10.211 in this SNPRM.

8. Medical and Physical Requirements. (10.215)

This entire section was revised based on public comments and comments from Coast Guard medical personnel.

In the introductory text to paragraph (a), a statement about table 10.215(a) was added, the reference to the availability of any other Coast Guard guidance or material regarding the medical and physical requirements was removed, and the words ''(including a doctor of osteopathy)'' were removed from the last sentence because they were redundant and added no value. Language was added to allow medical doctors, licensed physician assistants, and licensed nurse practitioners to not only perform and witness any required test, exam or demonstration, but to

review them as well. This change was made to account for any test, exam or demonstration that may be conducted by a specialist or other medical professional by referral and the results reviewed by the certifying doctor, physician assistant or nurse practitioner.

Paragraph (a)(1) was amended to include the submission of annual physical examinations to the Coast Guard not only by licensed first class pilots but also those serving as pilots, pursuant to section 15.812, on vessels and tank barges of 1600 GRT or more. The group of mariners serving as pilots was unintentionally omitted from this section in the NPRM. In addition, unless exempt by 46 CFR 16.220, licensed first class pilots and those serving as pilots must also submit passing results of a chemical test for dangerous drugs to the Coast Guard. The National Transportation Safety Board (NTSB), in their report on the 2003 allision of the Staten Island Ferry ANDREW J. BARBERI, recommended that the Coast Guard require submission of annual pilot physicals and drug tests. The Coast Guard agrees with the NTSB that it is not effective to require pilots to undergo annual physical examinations and drug tests without an affirmative obligation for pilots to actually submit them to the Coast Guard for review.

Title 46 CFR 10.709 (proposed 11.709 in this SNPRM) currently requires that first class pilots on vessels of 1600 GRT or more provide the Coast Guard with a copy of their most recent annual physical examination upon request. This includes those individuals who ''serve as'' pilots in accordance with Title 46 CFR 15.812(b)(3) and (c). On September 28, 2006, the Coast Guard issued a Notice in the **Federal Register** at (71 FR 56999) advising that we request submission of the most recent physical examination from these mariners. The requirement that individuals licensed as first class pilots submit an annual physical examination was placed in the NPRM, but unintentionally omitted from the preamble table. Similarly, the language of 46 CFR 16.220 currently states that unless excepted under 46 CFR 16.220(c), each pilot who is required to complete an annual physical examination must also pass a chemical test for dangerous drugs, and that he or she must submit the passing results of the chemical test to the Coast Guard when applying for license renewal, or when requested by the Coast Guard. This includes first class pilots on vessels greater than 1600 GRT, and those individuals who ''serve as'' pilots in accordance with 46 CFR 15.812(b)(3) and (c) on vessels greater than 1600 GRT. On December 12, 2006, the Coast Guard issued a Notice in the **Federal Register** at (71 FR 74552) advising that all first class pilots on vessels greater than 1600 GRT, and all other individuals who ''serve as'' pilots in accordance with 46 CFR 15.812(b)(3) and (c) on vessels greater than 1600 GRT, must provide the passing results of their annual chemical tests for dangerous drugs to the Coast Guard, unless they provide satisfactory evidence that they have met the exceptions stated in 46 CFR 16.220(c).

Both 46 CFR 10.709 and 16.220 have also been revised in this SNPRM to remove the requirement that chemical tests for dangerous drugs and annual physical exams be submitted to the Coast Guard ''upon request'' since the Coast Guard is already requesting this information from all pilots and those who act as pilots as discussed above.

In table 10.215(a), the citations in the vision test column were corrected, the requirements for Food Handlers were broken out into those that are required for those serving on vessels to which STCW applies, and those that do not, and the last row in the table was amended to limit the requirement for demonstrations of physical ability to only those ratings serving on vessels to which STCW applies.

Paragraph (b) was amended to allow the Coast Guard to approve additional tests to determine color sense. The Coast Guard needs the flexibility to approve alternate tests as new medical technology becomes available.

Paragraph (c) was amended to require the hearing test only if the medical practitioner conducting the general medical exam required in paragraph (d) has concerns that an applicant's ability to adequately hear may impact maritime safety. The hearing test should be administered by an audiologist or other hearing specialist, and should consist of an audiometer test and/or a speech discrimination test, as appropriate. The particular test ordered has been left to the professional judgment of the medical provider. The requirements for the audiometer test and speech discrimination test have been set out in paragraphs (c)(1) and (2). Although these test requirements were provided in the NPRM, it was unclear that they referenced requirements for separate tests, and that they would be required only at the medical provider's discretion. Additional threshold information has also been provided to aid medical professionals.

In paragraph (d), food handlers have been exempted from the general medical examination requirement except that they must obtain a statement from a licensed physician, physician assistant or nurse practitioner attesting that they are free of communicable diseases. This communicable disease requirement exists in the current regulations at 46 CFR 12.25–20. The currently proposed language creates no change from the current requirements for food handlers.

In paragraph (e), the requirement for a demonstration of physical ability has been changed. As currently proposed, it will only be required if the medical practitioner, conducting the general medical examination required in paragraph (d), is concerned that an applicant's physical ability may impact maritime safety. As stated in the discussion of public comments above, the requirements that an applicant must satisfactorily demonstrate have been written to allow a medical professional to certify that the applicant has the ability to complete those tasks without actually requiring the medical professional to board a vessel to witness the demonstration.

In paragraph (g), the language ''vision does not meet the requirements in § 10.227(1)(i) and (1)(ii)'' was replaced with ''corrected vision in the better eye is not at least 20/40 for deck officers or 20/50 for engineer officers''. Section 10.227(l)(i) does not exist. The language inserted has been taken directly out of our current regulations at 10.205(d)(4).

9. MMC Application and Examination Locations. (10.217)

Several linguistic edits were made, for example replacing ''certificate'' with the more appropriate term ''credential'' and ''sector'' with ''OCMI''. One sentence in paragraph (3) was rewritten for clarity. Also, paragraph (a) was changed to reflect the language of a technical amendment that removed the list of REC locations and inserted the website and contact information for the National Maritime Center. The technical amendment was published in between the NPRM and SNPRM on August 21, 2006 at 71 FR 48480.

10. Fees. (10.219)

Paragraph (e)(3), was rewritten for clarification. Instead of stating that one issuance fee would be charged for each MMC application, it was revised to state that only one issuance fee will be charged for each MMC issued, regardless of the number of endorsements placed on the credential. The intent of the subparagraph is to explain that a $45 issuance fee will not be charged for each endorsement issued. The issuance fee is tied to the number of MMCs issued, not to the endorsements. Issuance fees will be

charged for original, duplicate, raise in grade, and renewal MMCs. A sentence was also added to make it clear that there is no fee for a document of continuity. As discussed elsewhere in this preamble, the document of continuity has been created to replace the continuity endorsement that is currently written on licenses pursuant to the Coast Guard's current regulations at 10.209(g) and for MMDs at 12.02–27(g). Under current Coast Guard regulations, a $45 issuance fee is charged for the continuity endorsement. Since the document of continuity will not be in the form of an MMD, MMC or license, the Coast Guard has opted not to charge the $45 issuance fee for it, and will issue the document free of charge.

The civil penalty in paragraph (g) was changed from $5,000 to $6,500 to adjust for inflation per 33 CFR 27.3. The penalty for failure to pay, currently reflected in 46 CFR 10.111, is based upon 46 U.S.C. 2110(e). In the table to 33 CFR 27.3, the adjustment for inflation for 46 U.S.C. 2110(e) shows an increase from $5K to $6.5K. The change in this SNPRM is merely technical to conform to that inflationary change.

In paragraph (h)(2), the words ''Commanding Officer'' were deleted as a technical change for consistency.

11. Citizenship. (10.221)

The title of this section was changed from ''Applications submitted by aliens'' to ''Citizenship'' to account for the fact that it contains the proof of citizenship requirements for all applicants, not only aliens. Also, this section was re-written to include the OUPV citizenship exemption discussed in the response to comments above, as well as to include the exemption for foreign nationals who are enrolled in the United States Merchant Marine Academy (USMMA). The proposed regulation now retains the Coast Guard's regulatory exemption for OUPVs created from the language of 46 U.S.C. 7102, and allows USMMA cadets to obtain rating endorsements on a documented vessel, irrespective of their nationality, as provided in 46 U.S.C. 8103.

In addition, changes were made to reflect the new TWIC requirement that mariners submit their proof of citizenship to TSA during the TWIC enrollment process. By requiring mariners to submit their proof of citizenship to TSA, the agencies remove all need for mariners to appear in person at one of the Coast Guard RECs. TSA will scan the proof of citizenship and other identity information into its database and forward it to the Coast Guard electronically as discussed elsewhere in this preamble.

We also changed the acceptable proofs of citizenship to reduce the likelihood of submission of fraudulent documents, and to conform to the TWIC citizenship requirements. The following proofs of citizenship would no longer be acceptable for rating endorsements: baptismal certificate or parish record recorded within one year after birth; statement of a practicing physician certifying the physician's attendance at the birth and who possesses a record showing the date and location at which it occurred; delayed certificate of birth issued under a state seal in the absence of any collateral facts indicating fraud in its procurement; applicant's affidavit; report of the Census Bureau showing the earliest available record of age or birth; affidavits of parents, other relatives, or two or more responsible citizens of the U.S. stating citizenship; school records; immigration records; or insurance policies. The acceptable proofs of citizenship for officers have not changed from those currently required in 46 CFR 10.205. We are aware that the proofs of citizenship were changed by the Licensing Interim Rule published January 13, 2006 at 71 FR 2154. As with other changes made in that interim rule or the MMD Interim Rule published January 6, 2004 at 69 FR 526, all comments submitted to those rulemaking projects and any changes that could be made as a result of those comments will be addressed in the final rules associated with those rulemaking projects.

Requirements have also been proposed for cadets enrolled in the United States Merchant Marine Academy. Although these individuals are currently issued MMDs pursuant to the statutory authority in 46 U.S.C. 8103, Coast Guard regulations do not currently establish acceptable documents to prove enrollment or identity. This SNPRM proposes that the Coast Guard would accept an original letter from the USMMA, signed by the Superintendent attesting to the individual's enrollment along with an unexpired foreign passport issued by the government of the country in which the alien is a citizen or subject, with a valid U.S. visa affixed to the passport. All of the proposed acceptable proofs of citizenship have been coordinated with TSA to ensure that all individuals who would be authorized to hold an MMC would also be able to meet the citizenship/alien status requirements for the TWIC.

Finally, on October 17, 2006, Congress passed the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). In that Act, Congress amended 46 U.S.C. 8103 to permit an alien allowed to be employed in the U.S. under the Immigration and Nationality Act who meets additional requirements for service as a steward aboard large passenger vessels to obtain an MMD. Although language has not been proposed in this rulemaking to address this new statutory authority, the Coast Guard is aware of it and is initiating a separate rulemaking to address these new requirements.

12. Modification or Removal of Limitations or Scope. (10.223)

The title to this section has been revised to include modification or removal of scope. This section includes, for example, increasing from Chief Engineer (limited-near coastal) to Chief Engineer, adding to Qualified Member of the Engine Department (QMED), extending route, or horsepower increases.

The language of paragraph (b) was deleted because the substance of that paragraph was duplicative of paragraph (c) of the NPRM (now paragraph (d)), and is better explained in the paragraph that has been retained. In its place, language has been added to explain that the modification or removal of limitations or scope on an existing MMC will not change the expiration date of that MMC unless the applicant renews all endorsements on the MMC. Because of the statutory requirement in 46 U.S.C. 7106, 7107 and 7302(f) that the identification and qualification credentials appearing in the form of the MMC must be valid for no more and no less than five years, the addition, subtraction or modification of endorsements on the MMC will not change the expiration date unless the mariner renews all endorsements on his or her MMC.

New paragraph (c) contains the requirements for a complete application, and was taken in large part from the former 10.209(c) in the NPRM. The language of the NPRM also included requirements that must be met before an MMC may be issued, but which are added to the applicant's record by the Coast Guard. These requirements (criminal record review, National Driver Register review, and information supplied by TSA) must still be met before the modification or removal will be granted, but have been moved to a new paragraph (e) in 10.209 because they are not submitted by the applicant. Here, the NDR provision has been replaced with the requirement that applicants submit the form providing consent to a check of the NDR. This is a requirement that is currently in the Coast Guard regulations and is also

required by 46 U.S.C. 7101(g) and 7302(c).

The language requiring the submission of a signed application has been amended. Instead of requiring a signed ''written'' application, we now require a ''completed'', signed application. This change will allow for the submission of a digitally signed electronic form, should the Coast Guard system be changed to create this option.

The requirement to submit a continuous discharge book, certificate of identification, MMD, MMC, license, STCW endorsement or COR, if one or more of those credentials are valid at the time of application, has been amended to allow for the submission of photocopies. The change will preclude mariners from having to mail in their credentials while they are still valid and needed to serve. The photocopies must be of the front and back of all pages of the credentials and attachments. If the credential is expired, mariners will be required to submit the original credential to the Coast Guard for invalidation, but at the time they submit their application mariners may request that the invalid credential be returned to them once the new credential is issued.

13. Requirements for Originals. (10.225)

As discussed earlier in the discussion of the changes to section 10.209, instead of creating a list of all requirements for a complete application in section 10.209 and then exempting or adding requirements by reference in later sections, we broke out the application requirements for originals, duplicates, renewals, modification or removal of limitations and scope, and new endorsements. Since 10.225 in the NPRM contained general requirements about the issuance of the MMC, we moved the substance of 10.225 as proposed in the NPRM into section 10.209 (with the exception of the oath) and rewrote section 10.225 to list the requirements for original applications.

For clarity, in paragraph (a) we defined those instances in which an applicant would be required to apply for an original MMC, rather than for a duplicate, modification or removal of limitation or scope, renewal, or new endorsement.

As discussed earlier, paragraphs (c) and (d) were moved to section 10.209 and amended. These are the paragraphs stating that when the Coast Guard determines that an applicant meets all of the requirements for an MMC or endorsement, the Coast Guard will issue the properly endorsed MMC to the applicant (paragraph c), and the requirement that mariners return their old credential to the Coast Guard once a new MMC is issued (paragraph d).

New paragraph (b) is the substance of the former 10.209(c) from the NPRM. This paragraph contains the requirements for a complete application. The language of the NPRM, however, included requirements that must be met before an MMC may be issued, but which are added to the applicant's record by the Coast Guard. These requirements (criminal record review, National Driver Register review, and information supplied by TSA) have been removed from this paragraph and moved to a new paragraph (e) in 10.209. The NDR provision has been replaced with the requirement that applicants submit the form providing consent to a check of the NDR. This is a requirement that is currently in the Coast Guard regulations and is also required by 46 U.S.C. 7101(g) and 7302(c).

The language requiring the submission of a signed application has been amended. Instead of requiring a signed ''written'' application, we now require a ''completed'', signed application. This change will allow for the submission of a digitally signed electronic form, should the Coast Guard system be changed to create this option.

The requirement to submit a continuous discharge book, certificate of identification, MMD, MMC, license, STCW Endorsement or COR, if one or more of those credentials are valid at the time of application, as been amended to allow for the submission of photocopies. The change will prevent mariners from having to mail in their credentials while they are still valid and needed to serve. The photocopies must be of the front and back of the credentials. If a passport-style format is chosen for the MMC, this language will be amended to require ''a photocopy of all pages and attachments, front and back''. If the credential is expired, mariners will be required to submit the original credential to the Coast Guard for invalidation, but the mariner may request that the invalid credential be returned to them once the new credential is issued.

This section has also been revised to add new paragraph (b)(10). The oath, because it would be submitted in writing rather than done in person, would be required to be submitted with the application for original applicants. The oath is not a requirement for other types of applications such as renewals or duplicates.

14. Requirements for Renewal. (10.227)

As discussed above, section 10.227 was revised in this SNPRM to include a clear list of the application requirements for renewal. As written in the NPRM, all applicants were required to meet the requirements of section 10.209 as well as the requirements in section 10.227. This would have had the effect of creating more requirements for renewals than for originals. The language of this section has been revised to include a list of all the elements needed for renewal applications. The requirements should be no more expansive or restrictive than the requirements for renewal in the Coast Guard's current regulations at sections 10.209(c) and 12.02–27(c).

The application requirements are contained in paragraph (d). The language of the NPRM included requirements that must be met before an MMC may be issued, but which are added to the applicant's record by the Coast Guard. These requirements (criminal record review, National Driver Register review, and information supplied by TSA) have been removed from paragraph and moved to a new paragraph (e) in section 10.209. The NDR provision has been replaced with the requirement that applicants submit the form providing consent to a check of the NDR. This is a requirement that is currently in the Coast Guard regulations and is also required by 46 U.S.C. 7101(g) and 7302(c).

The language requiring the submission of a signed application has been amended. Instead of requiring a signed ''written'' application, we now require a ''completed'', signed application. This change will allow for the submission of a digitally signed electronic form, should the Coast Guard system be changed to create this option.

The requirement to submit a continuous discharge book, certificate of identification, MMD, MMC, license, STCW endorsement or COR, if one or more of those credentials are valid at the time of application, has been amended to allow for the submission of photocopies. The change will preclude mariners from having to mail in their credentials while they are still valid and needed to serve. The photocopies must be of the front and back of the credentials. If a passport-style format is chosen for the MMC, this language will be amended to require ''a photocopy of all pages and attachments, front and back''. If the credential is expired, mariners will be required to submit the original credential to the Coast Guard for invalidation, but the mariner may request that the invalid credential be returned to them once the new credential is issued.

In reviewing the professional requirements, we noticed that we failed to list those endorsements that do not

require professional requirements for renewal. Paragraph (d)(8)(viii) was added to list those exempted endorsements. These endorsements should be no more expansive or restrictive than those exempted from the professional requirements in our current regulations at section 12.02–27(c) or 10.209(c).

We also noticed that we failed to carry over the requirement that an applicant seeking to renew a tankerman endorsement must meet the additional requirements listed in section 13.120 of this chapter. The omission of this language in the NPRM was an oversight. It has been added to the SNPRM as (d)(8)(vii).

Finally, in paragraph (l) from the NPRM has been deleted. That section contained a list of those portions of the application that could be submitted by mail. Section 10.209(d) lists that information. Since section 10.209 is a general section applying to all applicants, it made proposed paragraph (l) duplicative and unnecessary.

15. Requirements for Raises of Grade or New Endorsements. (10.231)

The title of this section has been renamed to include new endorsements, not only those endorsements obtained as a result of a raise in grade.

A new paragraph (a) has been added to set out the type of applicants to whom the section would apply. The section is intended to apply to applicants who already hold a valid credential (MMC, license, MMD, COR or STCW endorsement) and want to add a new endorsement or obtain a raise of grade of an existing endorsement.

A new paragraph (b) has been added to explain that new endorsements or raises of grade of existing endorsements added to an existing MMC will not change the expiration date of that MMC unless the applicant renews all endorsements on the MMC. Because of the statutory requirement in 46 U.S.C. 7106, 7107 and 7302(f) that the identification and qualification credentials appearing in the form of the MMC must be valid for no more and no less than five years, the addition of new endorsements to the MMC will not change the expiration date of the MMC unless the mariner renews all endorsements on his or her MMC.

As discussed above, as written in the NPRM, all applicants were required to meet the requirements of section 10.209 as well as the requirements for raises of grade. This would have had the effect of creating more requirements for raises of grade than for originals. The language of this section has been revised to include a list of all the elements needed for raise of grade and new endorsement applications.

The application requirements are contained in paragraph (c). The language of the NPRM included requirements that must be met before an MMC may be issued, but which are added to the applicant's record by the Coast Guard. These requirements (criminal record review, National Driver Register review, and information supplied by TSA) have been removed from paragraph and moved to a new paragraph (e) in section 10.209. The NDR provision has been replaced with the requirement that applicants submit the form providing consent to a check of the NDR. This is a requirement that is currently in the Coast Guard regulations and is also required by 46 U.S.C. 7101(g) and 7302(c).

The language requiring the submission of a signed application has been amended. Instead of requiring a signed ''written'' application, we now require a ''completed'', signed application. This change will allow for the submission of a digitally signed electronic form, should the Coast Guard system be changed to create this option.

The requirement to submit a continuous discharge book, certificate of identification, MMD, MMC, license, STCW Endorsement or COR, if one or more of those credentials are valid at the time of application, has been amended to allow for the submission of photocopies. The change will preclude mariners from having to mail in their credentials while they are still valid and needed to serve. The photocopies must be of the front and back of the credentials. If a passport-style format is chosen for the MMC, this language will be amended to require ''a photocopy of all pages and attachments, front and back''. If the credential is expired, mariners will be required to submit the original credential to the Coast Guard for invalidation, but the mariner may request that the invalid credential be returned to them once the new credential is issued.

The requirement to provide evidence of vision, hearing, medical and/or physical exams as required by section 10.215, has been limited in this SNPRM to only those applicants who have not submitted proof of passing those tests within the past three years. This three year limitation conforms to the Coast Guard's current regulations in section 10.207(e)(1).

All other information contained in this section in the NPRM has been retained, but moved to paragraphs (d) and (e) with the following exceptions:

The general requirements that were contained in the NPRM at paragraphs (a), (b), and (c)(1) are included in the application requirements contained elsewhere in the regulations, so the language was removed from this section.

The requirement that appeared in paragraph (c)(1) of the NPRM that applicants for raise of grade must appear at a REC to present their letters, discharges or other official documents certifying to the amount and character of their experience and the names of the vessels on which acquired was removed. The documents proving that applicants meet the sea service requirements for original and new officer endorsements may be submitted by mail. It seemed inappropriate to require travel to a REC for personal submission just because the new officer endorsement is sought as a result of a raise in grade application.

Paragraphs (d)(2) and (e) from the NPRM have been removed. Those paragraphs contained the location of requirements for radar observer endorsements and endorsements for which a firefighting certificate is required. These paragraphs were duplicative and unnecessary since paragraph (c)(3) already requires that applicants submit all supplementary materials required to show that the mariner meets the mandatory requirements for the new endorsement(s) sought.

The information in paragraph (d) was carried over from the Coast Guard's current regulations at 46 CFR 10.207 and the NPRM at 10.231(c)(3) through (d)(2).

16. Obligations of the Holder of a Merchant Mariner Credential. (10.233)

Paragraph (a) was amended for clarity and to include the MMD and COR in the list of credentials that could be subject to suspension and revocation.

17. Suspension or Revocation of Merchant Mariner Credentials. (10.235)

Paragraph (g) was revised in the SNPRM. The NPRM tied the validity of the MMC to the validity of a TWIC. The Coast Guard has determined that due process demands that unless allowed by statute, a mariner must be provided the right to appeal before their mariner credential is invalidated. The SNPRM removes this automatic invalidation upon the loss or denial of a TWIC.

As proposed in the SNPRM, if the Coast Guard is advised by TSA that a mariner has either been denied a TWIC or that their TWIC has been revoked, the Coast Guard will initiate suspension and revocation proceedings against the mariner's MMC, license, MMD, and COR under 46 U.S.C. 7702 and 7703. Sections 7702 and 7703 allow for

suspension and revocation of a mariner's credentials if they have been convicted of an offense that would prevent the issuance or renewal of the credential or if the mariner has been deemed a security risk that poses a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment. Because a TWIC will only be denied or revoked if TSA decides that the individual poses a security risk, if the mariner has been deemed ineligible for a TWIC, the Coast Guard would initiate suspension and revocation actions against their credential.

Language was also added to paragraph (g) because a mariner whose TWIC is revoked by TSA will not be able to appeal that agency's decision through the Coast Guard MMC appeal process. Although mariners must hold a TWIC to get an MMC, these credentials are separate and distinct and the Coast Guard cannot overturn a decision by TSA with respect to its TWIC. Mariners have a separate right of appeal under the TWIC. It includes a paper appeal process much like the Coast Guard process in 46 CFR 1.03 for initial denials and revocations; and a hearing before an Administrative Law Judge for appeals of waiver denials. The TWIC final rule, published elsewhere in today's **Federal Register**, provides additional information on the TWIC appeal process. Once a mariner has exhausted TSA's TWIC appeal process that decision is final and the Coast Guard cannot review it.

A new paragraph (h) was added to this SNPRM. It is a direct reference to 46 U.S.C. 7702(d)(1)(iv), which calls for the immediate suspension of credentials for not more than 45 days if a mariner is deemed a security risk that poses a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment. For the reasons discussed above, if a TWIC is denied or revoked by TSA, the Coast Guard will deem the individual a security risk, and may avail itself of this statutory provision to suspend the mariner's credential.

18. Right of Appeal. (10.237)

Paragraphs (a) and (b) were swapped for better organization. A new paragraph (c) was added to advise that Coast Guard appeals will not review a decision by TSA with respect to their TWIC as discussed in section 10.235 above.

19. Quick Reference Table for MMC Requirements. (10.239)

In the NPRM, we proposed to move table 10.203 to section 11.203; however, after further consideration, we now propose to move that quick reference table to the end of the general requirements in Part 10 because it references requirements for both officers and ratings, as well as multiple sections of Parts 10, 11, and 12.

20. Application Process

The way an applicant's information is envisioned to be transferred to the Coast Guard from TSA has changed. The process discussed on page 29464 of the NPRM involved the mariner checking a box on the TWIC application form to notify TSA to push the data to the Coast Guard. This method, however, would not alert TSA to send information when a TWIC holder decided to become a mariner at some point in the middle of the TWIC validity period. The new process envisioned involves both the pushing of data to the Coast Guard when TSA receives an application from a mariner as well as the ability for the Coast Guard to pull data should a TWIC applicant later decide to become a mariner. If the pull function were to be used, the Coast Guard would notify TSA when we receive an applicant's MMC application, which would trigger the transfer.

21. Amendatory Instructions

The amendatory instructions to the regulatory text of the NPRM was drafted according to the style established by the National Archives and Records Administration in the *Federal Register Document Drafting Handbook,* and were written properly. We acknowledge, however, that long amendatory instructions advising where to remove language and insert new language into existing text may be confusing. To aid the public in their review of this SNPRM, the Coast Guard has decided to follow the amendatory instructions as provided in the NPRM to re-write the regulatory text amended for those sections whose amendatory instructions in the NPRM were greater than or equal to one full column of **Federal Register** text. This change has been applied to the following sections: 11.201, 11.205, 11.304, 11.401, 11.462, 11.464, 11.465, 11.467, 11.470, 11.503, 12.02–7 and 15.812.

22. Eligibility for Officer Endorsements, General. (11.201)

In subparagraph (i), the words ''on its face'' were removed. Although the authority granted by an officer endorsement will be restricted to reflect any modifications made by the OCMI to satisfy the unique qualification requirements of an applicant, the language ''on its face'' seemed to imply a one page document. If the format of the MMC ends up being a multi-page document, the words ''on its face'' would be inappropriate. If a single paged document is chosen as the format of the MMC, this language would likely be reinserted at the final rule stage.

23. Identification Credentials for Persons Requiring Access to Waterfront Facilities or Vessels. (33 CFR part 125)

The proposed changes to this section were removed because they have already been made in the TWIC final rule published elsewhere in today's **Federal Register**.

24. Amendments From the TWIC Final Rule. (10.113, 12.01–11 and 15.415)

These sections are new sections that are added to title 46 by the TWIC final rule published elsewhere in today's **Federal Register**. This SNPRM proposes to remove 46 CFR sections 10.113, 12.01–11 and 15.415 as they will be duplicative and will no longer be necessary if the proposed regulatory text in this SNPRM becomes effective.

25. Other Corrections Outside 46 CFR Part 10

We removed the amendatory instruction for 46 CFR 5.15. The proposed change is no longer necessary because it has already been made by a technical amendment entitled Mariner Licensing and Documentation Program Restructuring and Centralization published on August 21, 2006 at 71 FR 48480.

In 46 CFR 11.467(h), we made a correction for clarification. Where it previously read ''An applicant * * * who intends to serve only in the vicinity of Puerto Rico, and who speaks Spanish only, may be issued an endorsement * * *'' we changed it to read ''who speaks Spanish but not English''. The correction was made because we do not intend to restrict individuals who speak multiple languages from obtaining this endorsement.

The table in section 10.403 (now 11.403) was revised to reflect the change from license to officer endorsements. The table, with changes, has been added to this SNPRM.

VI. Other Regulations

Since the publication of the NPRM, on November 24, 2006 the Department of State (DOS) published its ''Documents Required for Travelers Departing From or Arriving in the United States at Air Ports-of-Entry From Within the Western Hemisphere'' final rule (71 FR 68412). In that rulemaking, DOS implemented new documentation requirements for certain U.S. citizens

and nonimmigrant aliens entering the U.S. The DOS designated the MMD in addition to the passport as sufficient to denote identity and citizenship and acceptable for air and sea travel. A TWIC was deemed insufficient for this purpose. In its rule, DOS noted the proposed 5 year phase out of the MMD, but made no determination as to whether the MMC would also be deemed sufficient. The Coast Guard will provide DOS with a sample MMC and information regarding the credential once it is available.

V. Regulatory Evaluation

A. Executive Order 12866 (Regulatory Planning and Review)

Executive Order 12866, ''Regulatory Planning and Review'', 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This proposed rule is not significant under Executive Order 12866 and has not been reviewed by OMB.

This proposed rule makes substantive changes to the requirements in 46 CFR parts 10, 12, 13, 14, and 15 for the form on which the mariner's qualifications appear and the credential that would serve as the mariner's primary identification credential, and makes many non-substantive nomenclature changes throughout Titles 33 and 46 of the Code of Federal Regulations. Title 46 lays out the standards for merchant mariners, including eligibility and training requirements to obtain credentials needed to serve in one of the many roles in the merchant marine; whereever possible, this rulemaking would not change these qualification requirements. This rulemaking would combine the elements of the Merchant Mariner's License (License), Merchant Mariner's Document (MMD), Standards of Training, Certification and Watchkeeping (STCW) Endorsement, and Certificate of Registry (COR) into one document, called the Merchant Mariner Credential (MMC). Although it technically serves as a certificate of identification, practically, the MMC would serve as the mariner's qualification document.

This Supplementary Notice of Proposed Rulemaking (SNPRM) is published in conjunction with a joint Final rule published by the Coast Guard and the Transportation Security Administration entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' (the ''TWIC rule''). This SNPRM and the TWIC rule follow the publication of a Notice of Proposed Rulemaking for this rulemaking published May 22, 2006 at 71 FR 29462, and a joint Notice of Proposed Rulemaking published by the Coast Guard and the Transportation Security Administration for the TWIC rule published the same day at 71 FR 29396.

The TWIC rule implements requirements required by the 46 U.S.C. 70105 and would require all merchant mariners holding an active License, MMD, COR or STCW Endorsement to hold a TWIC. The TWIC is a biometric identification card. With this consolidation of credentials, the TWIC would replace the MMD as the mariner's primary identity document, and the MMD, License, COR, and STCW Endorsement would consolidate into the MMC, which would serve as the mariner's qualification document. All current qualification and suitability requirements associated with Licenses, MMDs, STCW Endorsements, and CORs would remain the same with only minor exceptions.

Currently, all four credentials (MMD, License, COR, and STCW Endorsement) are issued at one of 17 Coast Guard Regional Examination Centers (RECs). For first time applicants, the process of obtaining an MMD, License, COR, or STCW Endorsement requires at least two visits to an REC. During the first visit, an applicant must be fingerprinted by, and establish his or her identity and legal presence in the U.S., to an REC employee.

After the successful completion of a safety and security review, verification of an applicant's identity, and verification that the applicant has satisfied all other requirements for the particular credential sought, an REC will issue the credential to the applicant. All first time applicants must then return to the REC a second time to receive their credential and take an oath to faithfully perform all duties required of them by law. Individuals renewing credentials do not need to restate the oath and may receive their renewed credentials by mail. However, all applicants, those seeking new credentials as well as those seeking to renew their credentials, must travel to an REC once in the application process to be fingerprinted by, and show proof of identification to an REC employee.

The requirements to receive a TWIC are similar to the requirements to receive an MMD. In order for an applicant to receive a TWIC, the applicant is required to travel to a designated TWIC enrollment center to submit fingerprints, proofs of identity, citizenship and alien status (if applicable). A background check is conducted to determine that the applicant is not a security risk. Once the applicant has been approved, they must return to the TWIC enrollment center to pick up the TWIC and prove their identity by a one to one match of their fingerprint against the electronic fingerprint stored on the card. TSA will submit to the Coast Guard the applicant's fingerprints, photograph, proof of citizenship, proof of alien status (if applicable), and FBI number and criminal record (if applicable) provided with the individual's TWIC application.

Since the applicant's fingerprints, photograph and proofs of citizenship and identity will have been verified by TSA, this proposed rulemaking would no longer require the merchant mariner to travel to an REC to submit this information. In addition to allowing the merchant mariner to mail in their application, this proposed rule would also allow new applicants to mail in their notarized oath, which would be a nominal cost to the applicant. This would remove the requirement for a second trip to the REC to pick up their card and take the oath. This rulemaking proposes to create the possibility for a mariner to receive his or her MMC entirely through the mail. Written examinations would still occur at RECs, and the RECs would remain accessible to mariners should they choose to seek their services in person.

This rulemaking would also remove the $45 issuance fee for continuity licenses and MMDs. These documents are issued to applicants for renewal of licenses and MMDs that are endorsed with qualified ratings who are unwilling or otherwise unable to meet all the requirements to serve, and allows the mariner to renew the license or MMD with the following restrictive endorsement placed on the license: ''License renewed for continuity purposes only; service under the authority of this license is prohibited.'' Merchant mariner's documents are issued with the following restrictive endorsement: ''Continuity only; service under document prohibited.''

The following sections discuss the baseline population of applicants that will be affected by this rulemaking and provides an assessment of the impacts to merchant mariners by this proposed rulemaking.

Baseline Population

The Coast Guard data for the number of affected merchant mariners came from the National Maritime Center

(NMC), which provides credentialing, training, and certification services to all merchant mariners. There are approximately 205,000 credentialed merchant mariners. The NMC also estimates that the current population of mariners with a continuity document is approximately 4,500. In addition to the current population of merchant mariners there are a number of new applicants every year.

Assessment

Under the current rule, applicants pay a $45 issuance fee for each credential that they apply for. Under the proposed rulemaking the applicants would only apply for a single credential (the MMC) and as a result would only be required to pay one $45 issuance fee regardless of the number of endorsements that they carry. This change is not a reduction in any fee that a mariner must pay, but a reduction in the number of fees that the mariner must pay. Any mariner that would, under the current rules, solicit multiple mariner qualifying documents, would benefit from this change in the fee structure.

If the merchant mariner has not synchronized the expiration dates of his or her current credentials then they may currently be traveling to an REC multiple times. The issuance of the MMC would require mariners to track and update only one document and would potentially eliminate the need to travel to an REC entirely. This would provide greater flexibility to the mariner. Currently, approximately 13,843 mariners have more than one credential and have not aligned their expiration dates. These mariners would not only receive a benefit from reduced application fees but also from fewer, if any, trips to an REC.

In order to reduce the burden of traveling and having to apply for a new MMC before the mariner's current MMD, license, COR or STCW endorsement expires, this proposed rulemaking would allow mariners to apply for an MMC at the time that their current credentials expire, which would essentially phase in the MMC over a five-year period. Since all currently issued credentials are valid for five-year periods, all mariners would have to renew their credentials by the close of the five-year grace period. When a mariner applies to renew his or her MMD, License, COR, or STCW endorsement, they would instead be issued an MMC, which would reflect all of their qualifications in the form of endorsements on the MMC. This would allow mariners to apply over a longer period of time and would not create an additional burden by requiring mariners to make an extra trip to the RECs. Mariners whose credentials do not expire simultaneously may choose to wait to renew the credentials that have yet to expire, but if the applicant later chooses to renew that credential, the expiration date of the MMC on which the endorsement would be added would not change unless the mariner also renews all other endorsements on the MMC.

Currently, mariners may only renew their credentials within 12 months of their expiration date. This proposed rulemaking would allow mariners to apply for renewal anytime before their current credentials expire, and up to one year after the expiration date. As a result, this rulemaking would provide greater flexibility to mariners by allowing them to apply for an MMC at the time they choose.

In the Licensing rule, published on January 13, 2006 (71 FR 2154), it was estimated that approximately 60 percent of current mariners live within one-day roundtrip travel to an REC, 30 percent live within overnight roundtrip travel (one night and two days) to an REC, and 10 percent live at a distance greater than overnight roundtrip travel (greater than one night and two days) to an REC. This was derived from national percentages for all mariners who have addresses on file with the NMC. In the TWIC rule, TSA and the Coast Guard foresee that there would be many more TWIC centers than Coast Guard RECs. By allowing mariners to visit TWIC enrollment centers instead of RECs, this proposed rule would provide a potential benefit to mariners by reducing their current travel costs and time currently required to receive a credential.

In the Licensing rule, the cost for mariners to travel to and from one of 17 RECs was estimated. The travel cost to mariners for a one-day roundtrip travel to and from an REC is $387. The estimated cost to mariners for overnight roundtrip travel is $911. Applicants who live distances greater than 200 miles and must travel for more than one night would incur the maximum estimated cost of $1,185.

The TWIC has the effect of transferring the cost of travel from an REC to the cost of travel to a TWIC enrollment center, but that cost is associated with the TWIC rule, not with this rule. The overall cost for mariners associated with this rulemaking would decrease or remain the same and would serve to provide more flexibility to mariners since there will be more TWIC enrollment centers than RECs, so the distance required and the amount of time spent traveling would be reduced. Based on the percentages above, 60 percent of the mariners that live within one-day roundtrip travel would potentially receive the economic benefits of having a TWIC enrollment center located closer to them than one of the current RECs. The remaining 30 percent of mariners that live within an overnight round-trip travel and the 10 percent of mariners that live a distance greater than an overnight roundtrip travel have an increased likelihood of having a TWIC enrollment center located closer to them than one of the current RECs and would potentially receive an even greater benefit in travel cost savings from this proposed rule.

In addition to these benefits, the removal of the issuance fee for continuity documents would provide mariners who choose to apply for a continuity document a savings of $45.

B. Regulatory Flexibility Act

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

We do not expect this proposed rule to have a significant impact on a large number of small entities. This rulemaking consolidates the number of credentials merchant mariners must carry and streamlines the application process in a way that would help prevent abuse, reduce cost and assist the Coast Guard in its effort to help secure U.S. marine infrastructure, commercial activities, and the free flow of trade.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of U.S. small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rulemaking will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think your business qualifies and how and to what degree this rulemaking would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the proposed rule so that

they could better evaluate its effects on them and participate in the rulemaking. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the individuals listed in above in the section titled **FOR FURTHER INFORMATION CONTACT.**

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

D. Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995, Title 44, United States Code (44 U.S.C.) sections 3501–3520. This rulemaking will require the modification of one or more credentialing program collections of information currently approved by the Office of Management and Budget (OMB) under OMB Control Numbers 1625–0040, 1625–0012, 1625–0078 and 1625–0079. A number of policy decisions must be made before the changes to those collections can be finalized such as methods of submission, the format of the application form, and the format of the MMC itself. Because the proposed regulatory changes in this SNPRM would not go into effect until approximately August 2008, approval for revisions to these OMB Control Numbers will not be submitted to OMB until these policy decisions have been made. This submission will occur, however, prior to the publication of any Final Rule.

We request public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the collection burden.

If you submit comments on the collection of information, submit them to both OMB and the Docket Management Facility where indicated under **ADDRESSES,** by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

E. Executive Order 13132 (Federalism)

This 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. Therefore, in accordance with section 6 of Executive Order 13132, the Coast Guard certifies that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

The law is well settled that States may not regulate in categories expressly reserved for regulation by the Coast Guard. The law also is well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. See *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000). Since this proposed rule involves the credentialing of merchant mariners, it relates to personnel qualifications and is foreclosed from regulation by the States. Because the States may not regulate within this category, this rule does not present new preemption issues under Executive Order 13132.

F. Unfunded Mandates Reform Act

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

G. Executive Order 12630 (Taking of Private Property)

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

H. Executive Order 12988 (Civil Justice Reform)

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

I. Executive Order 13045 (Protection of Children)

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

J. Executive Order 13175 (Indian Tribal Governments)

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Executive Order 13211 (Energy Effects)

The Coast Guard has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order. This rule would affect only the issuance of credentials to merchant mariners and therefore is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

The Administrator of the Office of Information and Regulatory Affairs for the Office of Management and Budget has not designated this proposed rule as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

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

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

M. National Environmental Policy Act

The Coast Guard has analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe this rule should be categorically excluded from further environmental documentation under Figure 2–1, paragraph (34) (c) of the Instruction. This rule involves the training, qualifying, licensing and disciplining of maritime personnel and involves matters of procedure only; it consolidates the credentials issued to merchant mariners and revises the application process for issuing those credentials. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

33 CFR Part 20

Administrative practice and procedure, Hazardous substances, Oil pollution, Penalties, Water pollution control.

33 CFR Part 70

Navigation (water) and Penalties.

33 CFR Part 95

Alcohol abuse, Drug abuse, Marine safety, and Penalties.

33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 141

Citizenship and naturalization, Continental shelf, Employment, Reporting and recordkeeping requirements.

33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 162

Navigation (water) and Waterways.

33 CFR Part 163

Cargo vessels, Harbors, Navigation (water), Waterways.

33 CFR Part 164

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

33 CFR Part 165

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

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 4

Administrative practice and procedure, Drug testing, Investigations, Marine safety, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR Part 5

Administrative practice and procedure, Alcohol abuse, Drug abuse, Investigations, Seamen.

46 CFR Part 10

Penalties, Reporting and recordkeeping requirements, Seamen, Transportation worker identification card.

46 CFR Part 11

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 13

Cargo vessels, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 14

Oceanographic research vessels, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR Part 26

Marine safety, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 28

Alaska, Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 42

Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 58

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 97

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

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 105

Cargo vessels, Fishing vessels, Hazardous materials transportation, Marine safety, Petroleum, Seamen.

46 CFR Part 114

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 115

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 122

Marine safety, Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 125

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Seamen.

46 CFR Part 131

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 166

Schools, Seamen, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 185

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 196

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 199

Cargo vessels, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 401

Administrative practice and procedure, Great lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 402

Great Lakes, Navigation (water), Seamen.

The Amendments

For the reasons listed in the preamble, the Coast Guard proposes to amend 33 CFR parts 1, 20, 70, 95, 101, 110, 141, 155, 156, 160, 162, 163, 164, and 165; 46 CFR parts 1, 4, 5, 10, 12, 13, 14, 15, 16, 26, 28, 30, 31, 35, 42, 58, 61, 78, 97, 98, 105, 114, 115, 122, 125, 131, 151, 166, 169, 175, 176, 185, 196, 199, 401 and 402; and in 46 CFR, add a new part 11 as follows:

33 CFR Chapter I

PART 1—GENERAL PROVISIONS

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

Authority: 14 U.S.C. 633; 33 U.S.C. 401, 491, 525, 1321, 2716, and 2716a; 42 U.S.C. 9615; 49 U.S.C. 322; 49 CFR 1.45(b), 1.46; section 1.01–70 also issued under the authority of E.O. 12580, 3 CFR, 1987 Comp., p. 193; and sections 1.01–80 and 1.01–85 also issued under the authority of E.O. 12777, 3 CFR, 1991 Comp., p. 351.

§ 1.08–5 [Amended]

2. In § 1.08–5(b)(1), after the word ''licensed'', add the words ''or credentialed''.

§ 1.25–1 [Amended]

3. In § 1.25–1(a), remove the words ''documents, certificates, or licenses'' and add, in their place, the words ''merchant mariner credentials, merchant mariner documents, licenses or certificates''.

PART 20—RULES OF PRACTICE, PROCEDURE, AND EVIDENCE FOR FORMAL ADMINISTRATIVE PROCEEDINGS OF THE COAST GUARD

4. The authority citation for part 20 continues to read as follows:

Authority: 33 U.S.C. 1321; 42 U.S.C. 9609; 46 U.S.C. 7701, 7702; 49 CFR 1.46.

5. In § 20.102—

a. In the definition for ''Complaint'', after the word ''merchant'', add the words ''mariner credential,'';

b. In the definition for ''Suspension and revocation proceeding or S&R proceeding'', after the words ''merchant mariner's'', add the word ''credential,''; and

c. Add definitions for the terms ''credential'' and ''Merchant mariner credential or MMC'', in alphabetical order, to read as follows:

§ 20.102 Definitions.

* * * * *

Credential means any or all of the following:

(1) Merchant mariner's document.
(2) Merchant mariner's license.
(3) STCW endorsement.
(4) Certificate of registry.
(5) Merchant mariner credential.

* * * * *

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

* * * * *

§ 20.904 [Amended]

6. In § 20.904—

a. In paragraph (e)(1) introductory text, after the words ''certificate of registry'' remove the word ''or''; and, after the word ''document'', add the words '', credential, or endorsement'';

b. In paragraph (e)(1)(i)(B), after the word ''certificate'' remove the word ''or''; and, after the word ''document'', add the words '', credential, or endorsement'';

c. In paragraph (f) introductory text, after the words ''revocation of a'', add the words ''credential, endorsement,''; and

d. In paragraph (f)(1), after the words ''issuance of a new'' remove the words

''license, certificate, or document'' and add, in their place the words ''merchant mariner credential with appropriate endorsement''.

§ 20.1201 [Amended]

7. In § 20.1201—

a. In paragraph (a), remove the word ''merchant mariner's license, certificate of registry, or document'' and add, in their place, the words ''mariner's credential'';

b. In paragraph (b) introductory text, before the words ''license, certificate, or document'' wherever they appear, add the words ''merchant mariner credential,''; and

c. In paragraph (b)(2)(ii), after the words ''renewal of the'', add the words ''merchant mariner credential,''.

§ 20.1202 [Amended]

8. In § 20.1202(a), before the words ''license, certificate of registry, or document'', add the word ''credential,''.

§ 20.1205 [Amended]

9. In § 20.1205—

a. In the section heading, before the words ''license, certificate of registry, or document'', add the words ''merchant mariner credential,'';

b. In paragraph (a), after the words ''move that his or her'', add the words ''merchant mariner credential,''; and

c. In paragraph (b), after the words ''return of the suspended'', add the word ''credential,''.

§ 20.1307 [Amended]

10. In § 20.1307 paragraph (c)(2), after words ''merchant mariner's license'', add the words '', merchant mariner credential,''.

PART 70—INTERFERENCE WITH OR DAMAGE TO AIDS TO NAVIGATION

11. The authority citation for part 70 continues to read as follows:

Authority: Secs. 14, 16, 30 Stat. 1152, 1153; secs. 84, 86, 92, 633, 642, 63 Stat. 500, 501, 503, 545, 547 (33 U.S.C. 408, 411, 412; 14 U.S.C. 84, 86, 92, 633, 642).

§ 70.05–10 [Amended]

12. In § 70.05–10—

a. In the section heading, after the words ''Revocation of'', add the words ''merchant mariner credential officer endorsement or''; and

b. In the text of the section, after the words ''shall also have his'', add the words ''merchant mariner credential officer endorsement or''.

PART 95—OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL OR A DANGEROUS DRUG

13. Revise the authority citation for part 95 to read as follows:

Authority: 33 U.S.C. 2071; 46 U.S.C. 2302; Department of Homeland Security Delegation No. 0170.1.

§ 95.015 [Amended]

14. In § 95.015(b), remove the words ''a licensed individual'' and add, in their place, the words ''an officer''.

§ 95.045 [Amended]

15. In § 95.045 introductory text, remove the words ''a licensed individual'' and add, in their place, the words ''an officer''.

PART 101—MARITIME SECURITY: GENERAL

16. The authority citation for part 101 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

17. In § 101.105—

a. In the definitions for ''Master'' and ''Operator, Uninspected Towing Vessel'', before the word ''license'', wherever it appears, add the words ''merchant mariner credential or''; and

b. Add a definition for the term ''Merchant mariner credential or MMC'' to read as follows:

§ 101.105 Definitions.

* * * * *

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

* * * * *

PART 110—ANCHORAGE REGULATIONS

18. The authority citation for part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

§ 110.186 [Amended]

19. In § 110.186(b)(3), after the words ''English speaking licensed'', add the words ''or credentialed''.

§ 110.188 [Amended]

20. In § 110.188(b)(10), after the word ''licensed'', add the words ''or credentialed''.

§ 110.214 [Amended]

21. In § 110.214(a)(3)(i), after the word ''licensed'' add the words ''or credentialed''.

PART 141—PERSONNEL

22. The authority citation for part 141 is revised to read as follows:

Authority: 43 U.S.C. 1356; 46 U.S.C. 70105; 49 CFR 1.46(z) .

§ 141.5 [Amended]

23. In § 141.5(b)(1) remove the words ''licensed officers, and unlicensed crew'' and add, in their place, the words ''crew, and officers holding a valid license or MMC with officer endorsement''.

24. In § 141.10, add a definition for the term ''Transportation Worker Identification Credential or TWIC'', in alphabetical order, to read as follows:

§ 141.10 Definitions.

* * * * *

Transportation Worker Identification Credential or TWIC means an identification credential issued by the Transportation Security Administration according to 49 CFR part 1572.

§ 141.25 [Amended]

25. In § 141.25—

a. In paragraph (a) introductory text, remove the word ''The'' and add, in its place, the words ''For the purposes of this part, the''; and

b. In paragraph (a)(1), before the words ''merchant mariner's document'', add the word ''valid'', and remove the words ''under 46 CFR Part 12''.

§ 141.30 [Amended]

26. In § 141.30—

a. In the introductory text, remove the first appearance of the word ''The'' and add, in its place, the words ''For the purposes of this part, the'';

b. In paragraph (a), before the words ''merchant mariner's document'', add the word ''valid'', and remove the words ''under 46 CFR Part 12''; and

c. In paragraph (b), remove the words ''Immigration and Naturalization Service'' and add, in their place, the words ''Immigration and Customs Enforcement Agency''; and

d. Add a new paragraph (d) to read as follows:

§ 141.30 Evidence of status as a resident alien.

* * * * *

(d) A valid Transportation Worker Identification Credential.

§ 141.35 [Amended]

27. In § 141.35(a)(1), after the words ''merchant mariner's document'', add

the words, ''Transportation Worker Identification Credential,''.

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

28. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Sections 155.480, 155.490, 155.750(e), and 155.775 are also issued under 46 U.S.C. 3703. Section 155.490 also issued under section 4110(b) of Pub. L. 101–380.

29. Revise § 155.110 to read as follows:

§ 155.110 Definitions.

Except as specifically stated in a section, the definitions in part 151 of this chapter, except for the word ''oil'', and in part 154 of this chapter, apply to this part. The following definition also applies to this part:

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

§ 155.710 [Amended]

30. In § 155.710—

a. In paragraph (a)(2), after the word ''license'', add the words ''or officer endorsement'';

b. In paragraph (e)(1), remove the words ''a licensed person'' and add, in their place, the words ''an officer''; after the words ''holds a valid license'', add the words ''or merchant mariner credential''; remove the words ''part 10'' and add, in their place, the words ''chapter I, subchapter B,''; and after the words ''merchant mariner's document'', add the words ''or merchant mariner credential'';

c. In paragraph (f), after the word ''MMD'', add the words '' or merchant mariner credential''; and after the words ''either a license'', add the words '', officer endorsement,''; and

d. In paragraph (g), after the words ''need not hold any of the'', add the words ''merchant mariner credentials,''.

§ 155.815 [Amended]

31. In § 155.815(b), after the word ''licensed'' add the words ''or credentialed''.

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

32. The authority citation for part 156 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703a, 3715; E.O. 11735, 3 CFR 1971–1975 Comp., p. 793. Section 156.120(bb) and (ee) are also issued under 46 U.S.C. 3703.

§ 156.210 [Amended]

33. In § 156.210(d), remove the words ''a licensed individual'' and add, in their place, the words ''an officer''.

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

34. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

§ 160.113 [Amended]

35. In § 160.113(b)(4), remove the word ''licensed''.

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

36. The authority citation for part 162 is revised to read as follows:

Authority: 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.1.

37. Add a new § 162.5 to read as follows:

§ 162.5 Definitions.

The following definition applies to this part:

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

§ 162.130 [Amended]

38. In § 162.130(c), in the definition for ''Master'', after the words ''means the'', remove the word ''licensed''; and, after the words ''vessel not requiring'', remove the words ''licensed personnel'' and add, in their place, the words ''persons holding licenses or merchant mariner credential officer endorsements''.

PART 163—TOWING OF BARGES

39. The authority citation for part 163 continues to read as follows:

Authority: 33 U.S.C. 152, 2071; 49 CFR 1.46(n).

§ 163.01 [Amended]

40. In § 163.01(b), after the word ''license'', add the words ''or merchant mariner credential''.

41. Add a new § 163.03 to read as follows:

§ 163.03 Definitions.

The following definition applies to this part:

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

PART 164—NAVIGATION SAFETY REGULATIONS

42. The authority citation for part 164 continues to read as follows:

Authority: 33 U.S.C. 1222(5), 1223, 1231; 46 U.S.C. 2103, 3703; Department of Homeland Security Delegation No. 0170.1 (75). Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

§ 164.13 [Amended]

43. In § 164.13—

a. In paragraph (b), remove the words ''a licensed engineer'' and add, in their place, the words ''an engineer with a properly endorsed license or merchant mariner credential''; and

b. In paragraph (c), after the words ''at least two'', remove the word ''licensed''; after the words ''deck officers'' add the words ''with a properly endorsed license or merchant mariner credential''; and, after the words ''must be an individual'', remove the word ''licensed'' and add, in its place, the words ''holding an appropriately endorsed license or merchant mariner credential''.

44. In § 164.70, add a new definition for the term ''Merchant mariner credential or MMC'', in alphabetical order, to read as follows:

§ 164.70 Definitions.

* * * * *

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single

credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

45. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

46. Add a new § 165.3 to read as follows:

§ 165.3 Definitions.

The following definitions apply to this part:

Credential means any or all of the following:

(1) Merchant mariner's document.

(2) Merchant mariner's license.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

§ 165.120 [Amended]

47. In § 165.120(b)(1), remove the words '' the Licensed Federal Pilot'' and add, in their place, the words ''an individual holding a valid merchant mariner's license or merchant mariner credential endorsed as pilot''.

§ 165.153 [Amended]

48. In § 165.153(d)(6) and (d)(7), remove the word ''licensed'' wherever it appears.

§ 165.810 [Amended]

49. In § 165.810(f)(1), remove the words ''licensed engineer'' and add, in their place, the words ''appropriately licensed or credentialed engineer officer''.

§ 165.1310 [Amended]

50. In § 165.1310(f)(2), remove the word ''licensed'' and add, in its place, the words ''holding a license or merchant mariner credential issued''.

46 CFR Chapter I

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

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

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

52. In § 1.01–05, add new paragraphs (d) and (e) to read as follows:

§ 1.01–05 Definitions.

* * * * *

(d) The term *Credential* means any or all of the following:

(1) Merchant mariner's document.

(2) Merchant mariner's license.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

(e) The term *Merchant mariner credential or MMC* means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

§ 1.01–10 [Amended]

53. In § 1.01–10, in paragraph (b)(1)(ii)(C), remove the words ''licenses, documents or certificates'' and add, in their place, the word ''credentials''.

§ 1.01–15 [Amended]

54. In § 1.01–15—

a. In paragraph (a)(1), remove the words ''licenses, certificates, and documents'' and add, in their place, the word ''credentials'' and remove the words ''licensing, certificating'' and add, in their place, the word ''credentialing''; and

b. In paragraph (b), remove the words ''licensing, certificating'' and add, in their place, the word ''credentialing'', and after the words ''misbehavior of persons holding'', remove the words ''licenses, certificates, or documents'' and add, in their place, the word ''credentials'', and after the words ''46 U.S.C. chapter 77 of'', remove the words ''licenses, certificates and documents'' and add, in their place, the word ''credential''.

§ 1.01–25 [Amended]

55. In § 1.01–25—

a. In paragraph (b)(1), remove the words ''licenses, certificates, or documents'' and add, in their place, the word ''credentials''; and

b. In paragraphs (c) introductory text and (c)(1) introductory text, remove the words ''license, certificate or document'' wherever they appear and add, in their place, the word ''credential''.

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

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

Authority: 33 U.S.C. 1231, 1321; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; Department of Homeland Security Delegation No. 170.1. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); Department of Homeland Security Delegation No. 0170.1.

57. Add § 4.03–75 to read as follows:

§ 4.03–75 Merchant mariner credential and credential.

The following definitions apply to this part:

Credential means any or all of the following:

(1) Merchant mariner's document.

(2) Merchant mariner's license.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

§ 4.07–1 [Amended]

58. In § 4.07–1(c)(3), remove the words ''any licensed or certificated person'' and add, in their place, the words ''any person holding a Coast Guard credential''; and remove the words ''license or certificate'' and add, in their place, the word ''credential''.

§ 4.07–10 [Amended]

59. In § 4.07–10(a)(3), remove the words ''licenses or certificates'' and add, in their place, the word ''credentials''.

PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION

60. The authority citation for part 5 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101, 7301, 7701; Department of Homeland Security Delegation No. 0170.1.

§ 5.3 [Amended]

61. In § 5.3 text, remove the words ''licenses, certificates or documents''

and add, in their place, the words ''credentials or endorsements''.

§ 5.5 [Amended]

62. In § 5.5 text, remove the word ''certification'' and add, in its place, the words ''certificate, merchant mariner credential, endorsement,''.

§ 5.19 [Amended]

63. In § 5.19(b), remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

64. Add a new § 5.40 to read as follows:

§ 5.40 Credential and merchant mariner credential.

Credential means any or all of the following:

(1) Merchant mariner's document.

(2) Merchant mariner's license.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

§ 5.55 [Amended]

65. In § 5.55(a) introductory text, remove the words ''license, certificate or document'' and add, in their place, the word ''credential''.

66. In § 5.57—

a. Revise the section heading and paragraph (b) to read as set out below;

b. In paragraph (a) introductory text, remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''; and

c. In paragraph (c), remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

§ 5.57 Acting under authority of Coast Guard credential or endorsement.

* * * * *

(b) A person is considered to be acting under the authority of the credential or endorsement while engaged in official matters regarding the credential or endorsement. This includes, but is not limited to, such acts as applying for renewal, taking examinations for raises of grade, requesting duplicate or replacement credentials, or when appearing at a hearing under this part.

* * * * *

§ 5.59 [Amended]

67. In § 5.59—

a. In the section heading, remove the words ''licenses, certificates or documents'' and add, in their place, the words ''credentials or endorsements''; and

b. In the introductory text, remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

§ 5.61 [Amended]

68. In § 5.61—

a. In the section heading, remove the words ''licenses, certificates or documents'' and add, in their place, the word ''credentials''; and

b. In paragraphs (a) introductory text and (b), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsements''.

§ 5.101 [Amended]

69. In § 5.101(a) introductory text, (a)(1), and (a)(2), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

§ 5.105 [Amended]

70. In § 5.105(b), (c), and (e), remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

Subpart E—[Amended]

71. In the heading to subpart E, remove the words ''License, Certificate or Document'' and add, in their place, the words ''Coast Guard Credential or Endorsement''.

§ 5.201 [Amended]

72. In § 5.201(a), (b) introductory text, (b)(4), (c), and (d), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

§ 5.203 [Amended]

73. In § 5.203(a), (b) introductory text, (b)(2), and (c), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

§ 5.205 [Amended]

74. In § 5.205—

a. In the section heading, remove the words ''license, certificate of registry, or merchant mariners document'' and add, in their place, the words ''credential or endorsement''; and

b. In paragraphs (a), (b) introductory text, (c) introductory text, and (d), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

§ 5.501 [Amended]

75. In § 5.501, remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

§ 5.521 [Amended]

76. In § 5.521—

a. In the section heading, remove the words ''license, certificate or document'' and add, in their place, the word ''credential'';

b. In paragraph (a), after the words ''all valid'', remove the words ''licenses, certificates, and/or documents'' and add, in their place, the word ''credentials''; and, after the words ''alleges that'', remove the words ''such license, certificate or document'' and add, in their place, the word ''credential''; and

c. In paragraph (b), remove the words ''license, certificate, or document'' and add, in their place, the word ''credential''.

§ 5.567 [Amended]

77. In paragraphs (b), (c) introductory text, (d), and (e), remove the words ''licenses, certificates or documents'' wherever they appear and add, in their place, the words ''credentials or endorsements''; and remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

§ 5.707 [Amended]

78. In § 5.707—

a. In the section heading, remove the words ''license, certificate, or document'' and add, in their place, the words ''credential or endorsement'';

b. In paragraph (a), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement'';

c. In paragraph (c), remove the words ''document or license'' and add, in their place, the words ''credential or endorsement'';

d. In paragraph (d), after the words ''All temporary'', remove the word ''documents'' and add, in its place, the words ''credentials or endorsements''; and, after the words ''If a temporary'', remove the word ''document'' and add, in its place, the words ''credential or endorsement'';

e. In paragraph (e), remove the word ''document'' and add, in its place, the words ''credential or endorsement''; and

f. In paragraph (f), remove the word ''documents'' and add, in its place, the word ''credential''.

§ 5.713 [Amended]

79. In § 5.713(a), remove the words ''licenses, certificates, or documents'' and add, in their place, the words ''credentials or endorsements''.

§ 5.715 [Amended]

80. In § 5.715—

a. In the section heading, remove the words ''document and/or license'' and add, in their place, the words ''credential and/or endorsement'';

b. In paragraph (a), remove the words ''document or license'' and add, in their place, the words ''credential and/or endorsement''; and

c. In paragraph (c), remove the words ''document and/or license'' and add, in their place, the words ''credential and/or endorsement''; and, after the words ''order. This'', remove the word ''document'' and add, in its place, the words ''credential and/or endorsement''.

Subpart L—[Amended]

81. In the heading to subpart L, remove the words ''Licenses, Certificates or Documents'' and add, in their place, the words ''Credential or Endorsement''.

§ 5.901 [Amended]

82. In § 5.901(a), (c), (d) introductory text, and (e), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

§ 5.903 [Amended]

83. In § 5.903(a), (c) introductory text, and (c)(2), remove the words ''license, certificate or document'' wherever they appear and add, in their place, the words ''credential or endorsement''.

§ 5.905 [Amended]

84. In § 5.905(b), remove the words ''license, certificate or document'' and add, in their place, the words ''credential or endorsement''.

PART 10—MERCHANT MARINER OFFICERS AND SEAMEN

85. The authority citation for part 10 is revised to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, 8906, and 70105; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

PART 10—[REDESIGNATED AS PART 11]

86. Redesignate part 10, consisting of §§ 10.101 through 10.1105, as part 11, §§ 11.101 through 11.1105.

87. Add a new part 10 to subchapter B to read as follows:

PART 10—MERCHANT MARINER CREDENTIAL

Subpart A—General

Sec.

10.101 Purpose of rules in this part.
10.103 Incorporation by reference.
10.105 Paperwork approval. [Reserved].
10.107 Definitions in subchapter B.
10.109 Classification of endorsements.

Subpart B—General Requirements for All Merchant Mariner Credentials

10.201 General characteristics of the merchant mariner credential.
10.203 Requirement to hold a TWIC and a merchant mariner credential.
10.205 Validity of a merchant mariner credential.
10.207 Identification number.
10.209 General application procedures.
10.211 Criminal record review.
10.213 National Driver Register.
10.215 Medical and physical requirements.
10.217 MMC application and examination locations.
10.219 Fees.
10.221 Citizenship.
10.223 Modification or removal of limitations.
10.225 Requirements for original merchant mariner credentials.
10.227 Requirements for renewal.
10.229 Issuance of duplicate merchant mariner credentials.
10.231 Requirements for new endorsements.
10.233 Obligations of the holder of a merchant mariner credential.
10.235 Suspension or revocation of merchant mariner credentials.
10.237 Right of appeal.
10.239 Quick reference table for MMC requirements.

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. chapter 71; 46 U.S.C. chapter 72; 46 U.S.C. chapter 75; 46 U.S.C. 7701, 8906 and 70105; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1.

Subpart A—General

§ 10.101 Purpose of rules in this part.

The regulations in this part provide:

(a) A means of determining and verifying the qualifications an applicant must possess to be eligible for certification to serve on merchant vessels;

(b) A means of determining that an applicant is competent to serve under the authority of their merchant mariner credential (MMC);

(c) A means of confirming that an applicant does not pose a threat to national security through the requirement to hold a Transportation Worker Identification Credential (TWIC); and

(d) A means of determining whether the holder of an MMC is a safe and suitable person.

§ 10.103 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at the Coast Guard, Office of Operating and Environmental Standards (CG–3PSO), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources indicated in this section.

(b) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, England:

(1) The STCW—International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (the STCW Convention or the STCW), incorporation by reference approved for §§ 10.107, 10.109, 10.209, 10.215, and 10.277.

(2) The Seafarers' Training, Certification and Watchkeeping Code, as amended (the STCW Code), incorporation by reference approved for §§ 10.107, 10.109, 10.209, 10.215, and 10.277.

§ 10.105 Paperwork approval. [Reserved]

§ 10.107 Definitions in subchapter B.

(a) With respect to part 16 and § 15.1101 of this title only, if the definitions in paragraph (b) of this section differ from those set forth in either § 16.105 or § 15.1101, the definition set forth in either § 16.105 or § 15.1101, as appropriate, applies.

(b) As used in this subchapter, the following terms apply only to merchant marine personnel credentialing and the manning of vessels subject to the manning provisions in the navigation and shipping laws of the United States:

Apprentice mate (steersman) of towing vessels means a mariner qualified to perform watchkeeping on the bridge, while in training onboard a towing vessel under the direct supervision and in the presence of a master or mate (pilot) of towing vessels.

Approved means approved by the Coast Guard according to § 11.302 of this chapter.

Approved training means training that is approved by the Coast Guard or meets the requirements of § 11.309 of this chapter.

Assistance towing means towing a disabled vessel for consideration.

Assistant engineer means a qualified officer in the engine department.

Authorized official includes, but is not limited to, a Federal, State or local law enforcement officer.

Ballast control operator or BCO means an officer restricted to service on mobile offshore drilling units (MODUs) whose duties involve the operation of the complex ballast system found on many MODUs. When assigned to a MODU, a ballast control operator is equivalent to a mate on a conventional vessel.

Barge supervisor or BS means an officer restricted to service on MODUs whose duties involve support to the offshore installation manager (OIM) in marine-related matters including, but not limited to, maintaining watertight integrity, inspecting and maintaining mooring and towing components, and maintaining emergency and other marine-related equipment. A barge supervisor, when assigned to a MODU, is equivalent to a mate on a conventional vessel.

Boatswain means the leading seaman and immediate supervisor of deck crew who supervises the maintenance of deck gear.

Cargo engineer means a person holding an officer endorsement on a dangerous-liquid tankship or a liquefied-gas tankship whose primary responsibility is maintaining the cargo system and cargo-handling equipment.

Chief engineer means any person responsible for the mechanical propulsion of a vessel and who is the holder of a valid officer endorsement as chief engineer.

Chief mate means the deck officer next in seniority to the master and upon whom the command of the vessel will fall in the event of incapacity of the master.

Coast Guard-accepted means that the Coast Guard has officially acknowledged in writing that the material or process at issue meets the applicable requirements; that the Coast Guard has issued an official policy statement listing or describing the material or process as meeting the applicable requirements; or that an entity acting on behalf of the Coast Guard under a Memorandum of Agreement has determined that the material or process meets the applicable requirements.

Coastwise seagoing vessel means a vessel that is authorized by its Certificate of Inspection to proceed beyond the Boundary Line established in part 7 of this chapter.

Competent person as used in part 13 only, means a person designated as such under 29 CFR 1915.7.

Conviction means that the applicant for a merchant mariner credential has been found guilty, by judgment or plea by a court of record of the United States, the District of Columbia, any State, territory, or possession of the United States, a foreign country, or any military court, of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982, as amended (49 U.S.C. 30304). If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of a trial court's conviction, then the Coast Guard will consider the applicant to have received a conviction. A later expungement of the conviction will not negate a conviction unless the Coast Guard is satisfied that the expungement is based upon a showing that the court's earlier conviction was in error.

Credential means any or all of the following:

(1) Merchant mariner's document.

(2) Merchant mariner's license.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

Criminal record review means the process or action taken by the Coast Guard to determine whether an applicant for, or holder of, a credential is a safe and suitable person to be issued such a credential or to be employed on a vessel under the authority of such a credential.

Dangerous drug means a narcotic drug, a controlled substance, or a controlled-substance analogue (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. 802)).

Dangerous liquid or DL means a liquid listed in 46 CFR 153.40 of this chapter that is not a liquefied gas as defined in this part. Liquid cargoes in bulk listed in 46 CFR part 153, table 2, of this chapter are not dangerous-liquid cargoes when carried by non-oceangoing barges.

Day means, for the purpose of complying with the service requirements of this subchapter, eight hours of watchstanding or day-working not to include overtime. On vessels where a 12-hour working day is authorized and practiced, each work day may be creditable as one and one-half days of service. On vessels of less than 100 gross register tons, a day is considered as eight hours unless the Coast Guard determines that the vessel's operating schedule makes this criteria inappropriate, in no case will this period be less than four hours. When computing service required for MODU endorsements, a day is a minimum of four hours, and no additional credit is received for periods served over eight hours.

Deck crew (excluding individuals serving under their officer endorsement) means, as used in 46 U.S.C. 8702, only the following members of the deck department: able seamen, boatswains, and ordinary seamen.

Designated areas means those areas within pilotage waters for which first class pilot's endorsements are issued under part 11, subpart G, of this chapter, by the Officer in Charge, Marine Inspection (OCMI). The areas for which first class pilot's endorsements are issued within a particular Marine Inspection Zone and the specific requirements to obtain them may be obtained from the OCMI concerned.

Designated duty engineer or DDE means a qualified engineer, who may be the sole engineer on vessels with a periodically unattended engine room.

Designated examiner means a person who has been trained or instructed in techniques of training or assessment and is otherwise qualified to evaluate whether an applicant has achieved the level of competence required to hold a merchant mariner credential (MMC) endorsement. This person may be designated by the Coast Guard or by a Coast Guard-approved or accepted program of training or assessment. A faculty member employed or instructing in a navigation or engineering course at the U.S. Merchant Marine Academy or at a State maritime academy operated under 46 CFR part 310 is qualified to serve as a designated examiner in his or her area(s) of specialization without individual evaluation by the Coast Guard.

Directly supervised, only when referring to issues related to tankermen, means being in the direct line of sight of the person-in-charge or maintaining direct, two-way communications by a convenient, reliable means, such as a

predetermined working frequency over a handheld radio.

Disabled vessel means a vessel that needs assistance, whether docked, moored, anchored, aground, adrift, or underway, but does not mean a barge or any other vessel not regularly operated under its own power.

Drug test means a chemical test of an individual's urine for evidence of dangerous drug use.

Employment assigned to is the total period a person is assigned to work on MODUs, including time spent ashore as part of normal crew rotation.

Endorsement is a statement of a mariner's qualifications, which may include the categories of officer, staff officer, ratings, and/or STCW appearing on a merchant mariner credential.

Entry-level mariner means those mariners holding no rating other than ordinary seaman, wiper, or steward's department (F.H.)

Evaluation means processing an application, from the point of receipt to approval or rejection of the application, including review of all documents and records submitted with an application as well as those obtained from public records and databases.

Fails a chemical test for dangerous drugs means that the result of a chemical test conducted under 49 CFR part 40 was reported as ''positive'' by a Medical Review Officer because the chemical test indicated the presence of a dangerous drug at a level equal to or exceeding the levels established in 49 CFR part 40.

First assistant engineer means the engineer officer next in seniority to the chief engineer and upon whom the responsibility for the mechanical propulsion of the vessel will fall in the event of the incapacity of the chief engineer.

Great Lakes for the purpose of calculating service requirements for an officer endorsement, means the Great Lakes and their connecting and tributary waters including the Calumet River as far as the Thomas J. O'Brien Lock and Controlling Works (between mile 326 and 327), the Chicago River as far as the east side of the Ashland Avenue Bridge (between mile 321 and 322), and the Saint Lawrence River as far east as the lower exit of Saint Lambert Lock. For purposes of requiring merchant mariner credentials with rating endorsements, the connecting and tributary waters are not part of the Great Lakes.

Harbor assist means the use of a towing vessel during maneuvers to dock, undock, moor, or unmoor a vessel, or to escort a vessel with limited maneuverability.

Horsepower means, for the purpose of this subchapter, the total maximum continuous shaft horsepower of all the vessel's main propulsion machinery.

IMO means the International Maritime Organization.

Inland waters means the navigable waters of the United States shoreward of the Boundary Lines as described in part 7 of this chapter, excluding the Great Lakes, and, for towing vessels, excluding the Western Rivers. For establishing credit for sea service, the waters of the Inside Passage between Puget Sound and Cape Spencer, Alaska, are inland waters.

Invalid credential means a merchant mariner credential, merchant mariner's document, merchant mariner's license, STCW endorsement, or certificate of registry that has been suspended or revoked, or has expired.

Liquefied gas or LG means a cargo that has a vapor pressure of 172 kPa (25 psia) or more at 37.8 C (100 F).

Liquid cargo in bulk means a liquid or liquefied gas listed in § 153.40 of this chapter and carried as a liquid cargo or liquid-cargo residue in integral, fixed, or portable tanks, except a liquid cargo carried in a portable tank actually loaded and discharged from a vessel with the contents intact.

Lower level is used as a category of deck and engineer officer endorsements established for assessment of fees. Lower-level officer endorsements are other than those defined as upper level, for which the requirements are listed in subparts D, E, and G of part 11.

Marine chemist means a person certificated by the National Fire Protection Association.

Master means the officer having command of a vessel.

Mate means a qualified officer in the deck department other than the master.

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

MMC application means the application for the MMC, as well as the application for any endorsement on an MMC.

Mobile offshore drilling unit or MODU means a vessel capable of engaging in drilling operations for the exploration for or exploitation of subsea resources. MODU designs include the following:

(1) Bottom bearing units, which include:

(i) Self-elevating (or jack-up) units with moveable, bottom bearing legs capable of raising the hull above the surface of the sea; and

(ii) Submersible units of ship-shape, barge-type, or novel hull design, other than a self-elevating unit, intended for operating while bottom bearing.

(2) Surface units with a ship-shape or barge-type displacement hull of single or multiple hull construction intended for operating in a floating condition, including semi-submersibles and drill ships.

Month means 30 days, for the purpose of complying with the service requirements of this subchapter.

National Driver Register or NDR means the nationwide repository of information on drivers maintained by the National Highway Traffic Safety Administration under 49 U.S.C. chapter 303.

NDR-listed convictions means a conviction of any of the following motor vehicle-related offenses or comparable offenses:

(1) Operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or

(2) A traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

Near coastal means ocean waters not more than 200-miles offshore.

Oceans means the waters seaward of the Boundary Lines as described in 46 CFR part 7. For the purposes of establishing sea service credit, the waters of the Inside Passage between Puget Sound and Cape Spencer, Alaska, are not considered oceans.

Officer endorsement means an annotation on a merchant mariner credential that allows a mariner to serve in the capacities in § 10.109(a). The officer endorsement serves as the license and/or certificate of registry pursuant to 46 U.S.C. subtitle II part E.

Officer in Charge, Marine Inspection or OCMI means, for the purposes of this subchapter, the individual so designated at one of the Regional Examination Centers, or any person designated as such by the Commandant.

Offshore installation manager or OIM means an officer restricted to service on MODUs. An assigned offshore installation manager is equivalent to a master on a conventional vessel and is the person designated by the owner or operator to be in complete and ultimate command of the unit.

On location means that a mobile offshore drilling unit is bottom bearing or moored with anchors placed in the drilling configuration.

Operate, operating, or operation, as applied to the manning requirements of vessels carrying passengers, refers to a vessel anytime passengers are embarked whether the vessel is underway, at anchor, made fast to shore, or aground.

Operator means an individual qualified to operate certain uninspected vessels.

Orally assisted examination means an examination as described in part 11, subpart I of this chapter verbally administered and documented by an examiner.

Participation, when used with regard to the service on transfers required for tankerman by §§ 13.120, 13.203, or 13.303 of this chapter, means either actual participation in the transfers or close observation of how the transfers are conducted and supervised.

Passes a chemical test for dangerous drugs means that the result of a chemical test conducted according to 49 CFR part 40 is reported as ''negative'' by a Medical Review Officer according to that part.

PIC means a person in charge.

Pilot of towing vessels means a qualified officer of a towing vessel operated only on inland routes.

Pilotage waters means the navigable waters of the United States, including all inland waters and offshore waters to a distance of three nautical miles from the baseline from which the Territorial Sea is measured.

Practical demonstration means the performance of an activity under the direct observation of a designated examiner for the purpose of establishing that the performer is sufficiently proficient in a practical skill to meet a specified standard of competence or other objective criterion.

Qualified instructor means a person who has been trained or instructed in instructional techniques and is otherwise qualified to provide required training to candidates for a merchant mariner credential endorsement. A faculty member employed at a State maritime academy or the U.S. Merchant Marine Academy operated under 46 CFR part 310 and instructing in a navigation or engineering course is qualified to serve as a qualified instructor in his or her area of specialization without individual evaluation by the Coast Guard.

Qualified rating means various categories of able seaman, qualified member of the engine department, lifeboatman, or tankerman endorsements formerly issued on merchant mariner's documents.

Raise of grade means an increase in the level of authority and responsibility associated with an officer or rating endorsement.

Rating endorsement is an annotation on a merchant mariner credential that allows a mariner to serve in those capacities set out in § 10.109(b) and (c). The rating endorsement serves as the merchant mariner's document pursuant to 46 U.S.C. subtitle II part E.

Regional examination center or REC means a Coast Guard office that issues merchant mariners' credentials and endorsements.

Restricted tankerman endorsement means a valid tankerman endorsement on a merchant mariner credential restricting its holder as the Coast Guard deems appropriate. For instance, the endorsement may restrict the holder to one or a combination of the following: a specific cargo or cargoes; a specific vessel or vessels; a specific facility or facilities; a specific employer or employers; a specific activity or activities (such as loading or unloading in a cargo transfer); or a particular area of water.

Rivers means a river, canal, or other similar body of water designated as such by the Coast Guard.

Safe and suitable person means a person whose prior record, including but not limited to criminal record and/or NDR record, provides no information indicating that his or her character and habits of life would support the belief that permitting such a person to serve under the MMC and/or endorsement sought would clearly be a threat to the safety of life or property, detrimental to good discipline, or adverse to the interests of the United States.

Self propelled has the same meaning as the terms ''propelled by machinery'' and ''mechanically propelled.'' This term includes vessels fitted with both sails and mechanical propulsion.

Self-propelled tank vessel means a self-propelled tank vessel, other than a tankship.

Senior company official means the president, vice president, vice president for personnel, personnel director, or similarly titled or responsible individual, or a lower-level employee designated in writing by one of these individuals for the purpose of certifying employment and whose signature is on file at the REC at which application is made.

Service as, used when computing the required service for MODU endorsements, means the time period, in days, a person is assigned to work on MODUs, excluding time spent ashore as part of crew rotation. A day is a minimum of four hours, and no additional credit is received for periods served over eight hours.

Simulated transfer means a transfer practiced in a course meeting the requirements of § 13.121 of this chapter that uses simulation supplying part of the service on transfers required for tankerman by § 13.203 or 13.303 of this chapter.

Staff officer means a person who holds an MMC with an officer endorsement listed in § 10.109(a)(31).

Standard of competence means the level of proficiency to be achieved for the proper performance of duties onboard vessels according to national and international criteria.

STCW means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (incorporated by reference in § 10.103).

STCW Code means the Seafarer's Training, Certification and Watchkeeping Code, as amended (incorporated by reference in § 10.103).

STCW endorsement means an annotation on a merchant mariner credential that allows a mariner to serve in those capacities under § 10.109(d). The STCW endorsement serves as evidence that a mariner has met the requirements of STCW.

Tank barge means a non-self-propelled tank vessel.

Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that:

(1) Is a vessel of the United States;

(2) Operates on the navigable waters of the United States; or

(3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

Tankerman assistant means a person holding a valid ''Tankerman-Assistant'' endorsement to his or her merchant mariner credential.

Tankerman engineer means a person holding a valid ''Tankerman-Engineer'' endorsement to his or her merchant mariner credential.

Tankerman PIC means a person holding a valid ''Tankerman-PIC'' endorsement on his or her merchant mariner credential.

Tankerman PIC (Barge) means a person holding a valid ''Tankerman-PIC (Barge)'' endorsement to his or her merchant mariner credential.

Tankship means any tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or as cargo residue and propelled by power or sail.

Transfer means any movement of dangerous liquid or liquefied gas as cargo in bulk or as cargo residue to, from, or within a vessel by means of pumping, gravitation, or displacement.

Section 13.127 of this chapter describes what qualifies as participation in a creditable transfer.

Transportation Worker Identification Credential or TWIC means an identification credential issued by the Transportation Security Administration under 49 CFR part 1572.

Underway means that a vessel is not at anchor, made fast to the shore, or aground. When referring to a mobile offshore drilling unit (MODU), underway means that the MODU is not in an on-location or laid-up status and includes that period of time when the MODU is deploying or recovering its mooring system.

Undocumented vessel means a vessel not required to have a certificate of documentation issued under the laws of the United States.

Upper level is used as a category of deck and engineer officer endorsements established for assessment of fees. Upper-level endorsements are those for which the requirements are listed in §§ 11.404 to 11.407 of this subchapter and §§ 11.510, 11.512, 11.514, and 11.516 of this subchapter.

Western rivers means the Mississippi River, its tributaries, South Pass, and Southwest Pass, to the navigational demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States, and the Port Allen-Morgan City Alternate Route, and that part of the Atchafalaya River above its junction with the Port Allen-Morgan City Alternate Route including the Old River and the Red River, and those waters specified in 33 CFR 89.25.

Year means 360 days for the purpose of complying with the service requirements of this subchapter.

§ 10.109 Classification of endorsements.

(a) The following officer endorsements are established in part 11 of this subchapter. The endorsements indicate that an individual holding a valid MMC with this endorsement is qualified to serve in that capacity and the endorsement has been issued under the requirements contained in part 11 of this subchapter:

(1) Master.
(2) Chief mate.
(3) Second mate.
(4) Third mate.
(5) Mate.
(6) Master of towing vessel.
(7) Mate (pilot) of towing vessel.
(8) Apprentice mate (Steersman).
(9) Offshore installation manager (OIM).
(10) Barge supervisor (BS).
(11) Ballast control operator (BCO).
(12) Radio officer.
(13) Operator of uninspected passenger vessels (OUPV).
(14) Master of uninspected fishing industry vessels.
(15) Mate of uninspected fishing industry vessels.
(16) Master of offshore supply vessels.
(17) Chief mate of offshore supply vessels.
(18) Mate of offshore supply vessels.
(19) Chief engineer.
(i) Chief engineer (limited ocean).
(ii) Chief engineer (limited near coastal).
(20) First assistant engineer.
(21) Second assistant engineer.
(22) Third assistant engineer.
(23) Assistant engineer.
(24) Designated duty engineer (DDE).
(25) Chief engineer offshore supply vessel.
(26) Engineer offshore supply vessel.
(27) Chief engineer MODU.
(28) Assistant engineer MODU.
(29) Chief engineer uninspected fishing industry vessels.
(30) Assistant engineer uninspected fishing industry vessels.
(31) Staff officers who are registered in the following grades:
(i) Chief purser.
(ii) Purser.
(iii) Senior assistant purser.
(iv) Junior assistant purser.
(v) Medical doctor.
(vi) Professional nurse.
(vii) Marine physician assistant.
(viii) Hospital corpsman.

(b) The following rating endorsements are established in part 12 of this subchapter. The endorsements indicate that an individual holding a valid MMC with this endorsement is qualified to serve in that capacity and the endorsement has been issued under the requirements contained in part 12 of this subchapter:

(1) Able seaman.
(2) Ordinary seaman.
(3) Qualified member of the engine department (QMED).
(i) Refrigerating engineer.
(ii) Oiler.
(iii) Deck engineer.
(iv) Fireman/Watertender.
(v) Junior engineer.
(vi) Electrician.
(vii) Machinist.
(viii) Pumpman.
(ix) Deck engine mechanic.
(x) Engineman.
(4) Lifeboatman.
(5) Wiper.
(6) Steward's department.
(7) Steward's department (F.H.).
(8) Cadet.
(9) Student observer.
(10) Apprentice engineer.
(11) Apprentice mate.

(c) The following ratings are established in part 13 of this subchapter. The endorsements indicate that an individual holding a valid MMC with this endorsement is qualified to serve in that capacity and the endorsement has been issued under the requirements contained in part 13 of this subchapter:

(1) Tankerman PIC.
(2) Tankerman PIC (Barge).
(3) Restricted tankerman PIC.
(4) Restricted tankerman PIC (Barge).
(5) Tankerman assistant.
(6) Tankerman engineer.

(d) The following STCW endorsements are established by STCW and issued according to the STCW Code, STCW Convention and parts 11 and 12 of this subchapter. The endorsements indicate that an individual holding a valid MMC with this endorsement is qualified to serve in that capacity and the endorsement has been issued under the requirements contained in parts 11 or 12 of this subchapter as well as the STCW Code and STCW Convention (incorporated by reference see § 10.103):

(1) Master.
(2) Chief mate.
(3) Officer in charge of a navigational watch (OICNW).
(4) Chief engineer.
(5) Second engineer officer.
(6) Officer in charge of an engineering watch in a manned engineroom or designated duty engineer in a periodically unmanned engineroom (OICEW).
(7) Rating forming part of a navigational watch (RFPNW).
(8) Rating forming part of a watch in a manned engineroom or designated to perform duties in a periodically unmanned engineroom (RFPEW).
(9) Proficiency in survival craft and rescue boats other than fast rescue boats (PSC).
(10) Proficiency in fast rescue boats.
(11) Person in charge of medical care.
(12) Medical first aid provider.
(13) GMDSS at-sea maintainer.
(14) GMDSS operator.

Subpart B—General Requirements for all Merchant Mariner Credentials

§ 10.201 General characteristics of the merchant mariner credential.

(a) A merchant mariner credential (MMC) (Coast Guard Form CG–XXXX), is a credential combining the elements of the merchant mariner's document (MMD), merchant mariner's license (license), and certificate of registry (COR) enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement issued pursuant to the STCW Convention and STCW Code incorporated by reference in § 10.103. MMDs, licenses, STCW endorsements

and CORs are no longer issued as separate documents and all qualifications formerly entered on those separate documents appear in the form of an endorsement(s) on an MMC.

(b) An MMC authorizes the holder to serve in any capacity endorsed thereon, or in any lower capacity in the same department, or in any capacity covered by a general endorsement.

(c) An MMC may be issued to qualified applicants by the National Maritime Center or at any Regional Examination Center during usual business hours, or through the mail.

§ 10.203 Requirement to hold a TWIC and a merchant mariner credential.

(a) Any mariner required to hold a license, MMD, COR, and/or an STCW endorsement by a regulation in 33 CFR chapter I or 46 CFR chapter I must hold an MMC. A mariner may continue to serve under the authority of and within any restriction on their license, MMD, COR, and/or STCW endorsement until the first renewal or upgrade of that credential, but not later than [Insert date five years after effective date of the final rule].

(b) Failure to obtain or hold a valid TWIC serves as a basis for the denial of an application for an original, renewal, new endorsement, duplicate, or raise of grade of a mariner's credential and may serve as a basis for suspension and revocation under 46 U.S.C. 7702 and 7703.

(c) An MMC, license, MMD, COR, or STCW endorsement must be retained by the mariner to whom it was issued and, while valid, must be produced to verify qualifications when requested by an authorized official.

(d) Although an MMD and an MMC serve as certificates of identification, a TWIC must be retained by the mariner to whom it was issued and, while valid, serves as the mariner's primary identification document. The TWIC must be produced to verify identity when required by an authorized official.

§ 10.205 Validity of a merchant mariner credential.

(a) An MMC is valid for a term of five years from the date of issuance.

(b) All endorsements are valid until the expiration date of the MMC on which they appear.

(c) A mariner may not serve under the authority of an MMC past its expiration date. An expired MMC may be renewed during an administrative grace period of up to one year beyond its expiration date as per § 10.227(f) of this part.

(d) When an MMC is renewed or re-issued before its expiration date in accordance with § 10.227, the MMC that has been replaced becomes invalid.

(e) An MMC is not valid until signed by the applicant and a duly authorized Coast Guard official.

(f) A mariner's STCW endorsement is valid only when the related officer or rating endorsement is valid.

(g) A mariner's endorsements authorize the holder to serve in any capacity endorsed on the MMC, or in any lower capacity in the same department, or in any capacity covered by a general endorsement thereon.

(h) If a mariner chooses to renew his or her license, MMD, COR, or STCW endorsement and receive their first MMC, the Coast Guard may also renew all other credentials for which the mariner is qualified.

§ 10.207 Identification number.

For recordkeeping purposes only, a mariner's official MMC identification number is the individual's social security number. However, a unique serial number, and not the social security number, will appear on the credential.

§ 10.209 General application procedures.

(a) The applicant for an MMC, whether original, renewal, duplicate, raise of grade, or a new endorsement on a previously issued MMC, must establish to the Coast Guard that he or she satisfies all the requirements for the MMC and endorsement(s) sought before the Coast Guard will issue the MMC. This section contains the general requirements for all applicants. Additional requirements for duplicates, renewals, new endorsements, and raises of grade appear later in this part.

(b) The Coast Guard may refuse to process an incomplete MMC application. The requirements for a complete application for an original MMC are contained in § 10.225, the requirements for a renewal MMC application are in § 10.227, the requirements for a duplicate MMC application are contained in § 10.229, and the requirements for an application for a new endorsement or raise of grade are contained in § 10.231.

(c) Applications are valid for 12 months from the date that the Coast Guard approves the application.

(d) The portions of the application that may be submitted by mail, fax, or other electronic means may include:

(1) The application, consent for NDR check, and notarized oath on Coast Guard-furnished forms, and the evaluation fee required by § 10.219 of this part;

(2) The applicant's continuous discharge book, certificate of identification, MMD, MMC, license, STCW endorsement, COR, or, if it has not expired, a photocopy of the credential, including the back and all attachments;

(3) Proof, documented on a form provided by the Coast Guard, that the applicant passed the applicable vision, hearing, medical or physical exam as required by § 10.215 of this part;

(4) If the applicant desires a credential with a radar-observer endorsement in accordance with § 11.480 of this chapter, either the radar-observer certificate or a certified copy;

(5) Evidence of, or acceptable substitute for, sea service, if required;

(6) For an endorsement as a medical doctor or professional nurse as required in § 11.807, evidence that the applicant holds a currently valid, appropriate license as physician, surgeon, or registered nurse, issued under the authority of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia. Any MMC issued will retain any limitation associated with the medical license;

(7) Any certificates or other supplementary materials required to show that the mariner meets the mandatory requirements for the specific endorsement sought, as established in parts 11, 12 or 13 of this chapter; and

(8) An open-book exercise, in accordance with § 10.227(d)(8)(i) of this part.

(e) The following requirements must be satisfied before an original or renewal MMC, or new endorsement or a raise of grade added to a previously issued MMC, will be issued. These materials will be added to the individual's record by the Coast Guard:

(1) *Determination of safety and suitability.* No MMC will be issued as an original or reissued with a new expiration date, and no new officer endorsement will be issued if the applicant fails the criminal record review as set forth in § 10.211 of this part;

(2) *NDR review.* No MMC will be issued as an original or reissued with a new expiration date, and no new officer endorsement will be issued until the applicant has passed an NDR review as set forth in § 10.213 of this part; and

(3) *Information supplied by the Transportation Security Administration (TSA).* No MMC or endorsement will be issued until the Coast Guard receives the following information from the applicant's TWIC application: the applicant's fingerprints, FBI number and criminal record (if applicable), photograph, proof of citizenship, and proof of legal resident alien status (if applicable).

(f) Upon determining that the applicant satisfactorily meets all requirements for an MMC or an endorsement thereon, the Coast Guard will issue the properly endorsed MMC to the applicant. The Coast Guard will not issue an MMC until it has received proof that the mariner holds a valid TWIC.

(g) When a new MMC is issued, the mariner must return the previously issued MMC, license, MMD, COR, or STCW endorsement to the Coast Guard, unless the new MMC is being issued to replace a lost or stolen credential. Upon written request at the time of application, the cancelled, previously issued credential(s) will be returned to the applicant.

(h) Unless otherwise stated in this part, an applicant who fails a chemical test for dangerous drugs will not be issued an MMC.

§ 10.211 Criminal record review.

(a) The Coast Guard may conduct a criminal record review to determine the safety and suitability of an applicant for an MMC and any endorsements. An applicant conducting simultaneous MMC transactions will undergo a single criminal record review. At the time of application, each applicant must provide written disclosure of all prior convictions.

(b) A criminal record review is not required for applicants seeking a duplicate MMC under § 10.229.

(c) Fingerprints. The Transportation Security Administration (TSA) will provide to the Coast Guard the applicant's fingerprints submitted by the applicant with his or her TWIC application and, if applicable, the applicant's FBI number and criminal record generated in the TWIC review process. This information will be used by the Coast Guard to determine whether the applicant has a record of any criminal convictions.

(d) When a criminal record review leads the Coast Guard to determine that an applicant is not a safe and suitable person or cannot be entrusted with the duties and responsibilities of the MMC or endorsement applied for, the application may be denied.

(e) If an application is disapproved, the applicant will be notified in writing of that fact, the reason or reasons for disapproval, and advised that the appeal procedures in subpart 1.03 of part 1 of this chapter apply. No examination will be given pending decision on appeal.

(f) No person who has been convicted of a violation of the dangerous drug laws of the United States, the District of Columbia, any State, territory, or possession of the United States, or a foreign country, by any military or civilian court, is eligible for an MMC, except as provided elsewhere in this section. No person who has ever been the user of, or addicted to the use of a dangerous drug, or has ever been convicted of an offense described in section 205 of the National Driver Register Act of 1982, as amended (49 U.S.C. 30304) because of addiction to or abuse of alcohol is eligible for an MMC, unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (l) of this section. A conviction for a drug offense more than 10 years before the date of application will not alone be grounds for denial.

(g) The Coast Guard will use table 10.211(g) to evaluate applicants who have criminal convictions. The table lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the Coast Guard will establish an appropriate assessment period using the list as a guide. The assessment period commences when an applicant is no longer incarcerated. The applicant must establish proof of the time incarcerated and periods of probation and parole to the satisfaction of the Coast Guard. The assessment period may include supervised or unsupervised probation or parole.

TABLE 10.211(G).—GUIDELINES FOR EVALUATING APPLICANTS FOR MMCS WHO HAVE CRIMINAL CONVICTIONS

Crime [1]	Minimum	Maximum
ASSESSMENT PERIODS FOR OFFICER AND RATING ENDORSEMENTS		
	Assessment periods	
Crimes Against Persons		
Homicide (intentional)	7 years	20 years.
Homicide (unintentional)	5 years	10 years.
Assault (aggravated)	5 years	10 years.
Assault (simple)	1 year	5 years.
Sexual Assault (rape, child molestation)	5 years	10 years.
Robbery	5 years	10 years.
Other crimes against persons [2].		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highways	1 year	2 years.
Other vehicular crimes [2].		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety [2].		
Dangerous Drug Offenses [3 4 5]		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions [6].		

TABLE 10.211(G).—GUIDELINES FOR EVALUATING APPLICANTS FOR MMCS WHO HAVE CRIMINAL CONVICTIONS—Continued

Crime [1]	Minimum	Maximum
ASSESSMENT PERIODS FOR OFFICER ENDORSEMENTS ONLY		
	Assessment periods	
Crime [1]	Minimum	Maximum
Criminal Violations of Environmental Laws		
Criminal violations of environmental laws involving improper handling of pollutants or hazardous materials	1 year	10 years.
Crimes Against Property		
Burglary	3 years	10 years.
Larceny (embezzlement)	3 years	5 years.
Other crimes against property [2].		

[1] Conviction of attempts, solicitations, aiding and abetting, accessory after the fact, and conspiracies to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

[2] Other crimes will be reviewed by the Coast Guard to determine the minimum and maximum assessment periods depending on the nature of the crime.

[3] Applicable to original applications only. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (f) of this section. **Note:** Applicants for reissue of an MMC with a new expiration date including a renewal or additional endorsement(s), who have been convicted of a dangerous drug offense while holding a license, MMC, MMD, STCW endorsement or COR, may have their application withheld until appropriate action has been completed by the Coast Guard under the regulations which appear in 46 CFR part 5 governing the administrative actions against merchant mariner credentials.

[4] The Coast Guard may consider dangerous drug convictions more than 10 years old only if there has been another dangerous drug conviction within the past 10 years.

[5] Applicants must demonstrate rehabilitation under paragraph (l) of this section, including applicants with dangerous drug use convictions more than 10 years old.

[6] Other dangerous drug convictions will be reviewed by the Coast Guard on a case by case basis to determine the appropriate assessment period depending on the nature of the offense.

(h) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in table 10.211(g) and table 10.213(c) of § 10.213 based upon the applicant's convictions; the maximum assessment period will be the longest shown in table 10.211(g) and table 10.213(c) of § 10.213 based upon the applicant's convictions.

(i) If a person with a criminal conviction applies before the minimum assessment period shown in table 10.211(g) or established by the Coast Guard under paragraph (g) of this section has elapsed, then the applicant must provide, as part of the application package, evidence of suitability for service in the merchant marine. Factors that are evidence of suitability for service in the merchant marine are listed in paragraph (l) of this section. The Coast Guard will consider the applicant's evidence submitted with the application and may issue the MMC and/or endorsement in less than the listed minimum assessment period if the Coast Guard is satisfied that the applicant is suitable to hold the MMC and/or endorsement for which he or she has applied. If an application filed before the minimum assessment period has elapsed does not include evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the Coast Guard.

(j) If a person with a criminal conviction submits their MMC application during the time between the minimum and maximum assessment periods shown in table 10.211(g) or established by the Coast Guard under paragraph (g) of this section, then the Coast Guard will consider the conviction and, unless there are offsetting factors, will grant the applicant the MMC and/or endorsement for which he or she has applied. Offsetting factors include such factors as multiple convictions, failure to comply with court orders (*e.g.*, child support orders), previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the Coast Guard considers the applicant unsuitable for service in the merchant marine at the time of application, the Coast Guard may disapprove the application.

(k) If a person with a criminal conviction submits their MMC application after the maximum assessment period shown in table 10.211(g) or established by the Coast Guard under paragraph (g) of this section has elapsed, then the Coast Guard will grant the applicant the MMC or endorsement for which he or she has applied unless the Coast Guard considers the applicant still unsuitable for service in the merchant marine. If the Coast Guard disapproves an applicant with a conviction older than the maximum assessment period listed in table 10.211(g), the Coast Guard will notify the applicant in writing of the reason(s) for the disapproval. The Coast Guard will also inform the applicant, in writing, that the reconsideration and appeal procedures contained in subpart 1.03 of this chapter apply.

(l) If an applicant has one or more alcohol or dangerous drug related criminal or NDR-listed convictions, if the applicant has ever been the user of, or addicted to the use of, a dangerous drug, or if the applicant applies before the minimum assessment period has elapsed for his or her conviction, the Coast Guard may consider the following factors, as applicable, in assessing the applicant's suitability to hold an MMC. This list is intended as a guide for the Coast Guard. The Coast Guard may consider other factors appropriate to a particular applicant, such as:

(1) Proof of completion of an accredited alcohol or drug abuse rehabilitation program;

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous;

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine including parole or probation officers;

(4) Steady employment; and

(5) Successful completion of all conditions of parole or probation.

§ 10.213 National Driver Register.

(a) No MMC will be issued as an original or reissued with a new expiration date, and no new officer endorsement will be issued, unless the applicant consents to a check of the NDR for offenses described in section 205(a)(3) (A) or (B) of the NDR Act (*i.e.*, operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways).

(b) The Coast Guard will not consider NDR-listed civil convictions that are more than three years old from the date of request unless that information relates to a current suspension or revocation of the applicant's license to operate a motor vehicle. The Coast Guard may determine minimum and maximum assessment periods for NDR-listed criminal convictions using table 10.213(c). An applicant conducting simultaneous MMC transactions is subject to only one NDR check.

(c) The guidelines in table 10.213(c) will be used by the Coast Guard in evaluating applicants who have drug or alcohol related NDR-listed convictions. Non-drug or alcohol related NDR-listed convictions will be evaluated by the Coast Guard under table 10.211(g) of § 10.211 as applicable.

TABLE 10.213(C).—GUIDELINES FOR EVALUATING APPLICANTS FOR MMCS WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL [1]

Number of convictions	Date of conviction	Assessment period
1	Less than 1 year	1 year from date of conviction.
1	More than 1, less than 3 years.	Application will be processed, unless suspension, or revocation [2] is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1	More than 3 years old	Not necessary unless suspension or revocation is still in effect.
2 or more	Any less than 3 years old	1 year since last conviction and at least 3 years from 2nd most recent conviction, unless suspension or revocation is still in effect.
2 or more	All more than 3 years old	Application will be processed unless suspension or revocation is still in effect.

[1] Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section.

[2] Suspension or revocation, when referred to in table 10.213, means a State suspension or revocation of a motor vehicle operator's license.

(d) Any application may be disapproved if information from the NDR check leads the Coast Guard to determine that the applicant cannot be entrusted with the duties and responsibilities of the MMC or endorsement for which the application is made. If an application is disapproved, the Coast Guard will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in subpart 1.03 of part 1 of this chapter apply. No examination will be given pending decision on appeal.

(e) Before disapproving an application because of information received from the NDR, the Coast Guard will make the information available to the applicant for review and written comment. The applicant may submit records from the applicable State concerning driving record and convictions to the Coast Guard REC processing the application. The REC will hold an application with NDR-listed convictions pending the completion of the evaluation and delivery by the individual of the underlying State records.

(f) If an applicant has one or more alcohol or dangerous drug related criminal or NDR-listed convictions, if the applicant has ever been the user of, or addicted to the use of, a dangerous drug, or if the applicant applies before the minimum assessment period for his or her conviction has elapsed, the Coast Guard may consider the following factors, as applicable, in assessing the applicant's suitability to hold an MMC. This list is intended as a guide for the Coast Guard. The Coast Guard may consider other factors, which it judges appropriate to a particular applicant, such as:

(1) Proof of completion of an accredited alcohol or drug abuse rehabilitation program;

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous;

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine including parole or probation officers;

(4) Steady employment; and

(5) Successful completion of all conditions of parole or probation.

§ 10.215 Medical and physical requirements.

(a) *Medical and Physical Exams.* To qualify for an MMC an applicant must meet the medical and physical standards in this section. Columns 2 through 5 of table 10.215(a) provide the specific exam, test, or demonstrations required to obtain the corresponding credential listed in column 1. Further clarifications of the requirements contained in the table are found throughout this section. Any required test, exam, or demonstration must have been performed, witnessed, or reviewed by a licensed medical doctor, licensed physician assistant, or licensed nurse practitioner.

(1) First-class pilots, and those serving as pilots under § 15.812 of this part, on vessels and tank barges of 1,600 GRT or more must satisfactorily complete annual medical exams and, unless exempt per 46 CFR 16.220, pass annual chemical tests for dangerous drugs and submit the results to the Coast Guard.

(2) Medical exams for Great Lakes Pilots must be conducted by a licensed medical doctor in accordance with the physical exam requirements in 46 CFR 402.210.

TABLE 10.215(A)

1 Credential	2 Vision test	3 Hearing test	4 General medical exam	5 Demonstration of physical ability
(i) Deck officer, including pilot	§ 10.215(b)(1)	X	X	X
(ii) Engineering officer	§ 10.215(b) (2)	X	X	X
(iv) Radio officer	§ 10.215(b)(2)	X	X	X
(v) Offshore installation manager, barge supervisor, or ballast control operator	§ 10.215(b)(2)	X	X	X
(vi) Able seaman	§ 10.215(b)(1)	X	X	X
(vii) QMED	§ 10.215(b)(2)	X	X	X
(viii) RFPNW	§ 10.215(b)(1)	X	X	X
(ix) RFPEW	§ 10.215(b)(2)	X	X	X
(x) Tankerman	§ 10.215(b)(2)	X	X	X
(xi) Food handler serving on vessels to which STCW does not apply	.....	.....	§ 10.215(d)(2)	.....
(xii) Food handler serving on vessels to which STCW applies	.....	.....	§ 10.215(d)(2)	X
(xiii) Ratings, including entry level, serving on vessels to which STCW applies, other than those listed above	.....	.....	.....	X

(b) *Vision Test.* (1) Deck Standard. An applicant must have correctable vision to at least 20/40 in one eye and uncorrected vision of at least 20/200 in the same eye. An applicant having lost vision in one eye must wait six months before application and provide a statement of demonstrated ability on his or her medical examination. The color sense must be determined to be satisfactory when tested by any of the following methods or an alternative test approved by the Coast Guard, without the use of color-sensing lenses:

(i) Pseudoisochromatic Plates (Dvorine, 2nd Edition; AOC; revised edition or AOC–HRR; Ishihara 16-, 24-, or 38-plate editions).

(ii) Eldridge—Green Color Perception Lantern.

(iii) Farnsworth Lantern.

(iv) Keystone Orthoscope.

(v) Keystone Telebinocular.

(vi) SAMCTT (School of Aviation Medicine Color Threshold Tester).

(vii) Titmus Optical Vision Tester.

(viii) Williams Lantern.

(2) Engineering, radio operator, tankerman, and MODU standard. An applicant must have correctable vision of at least 20/50 in one eye and uncorrected vision of at least 20/200 in the same eye and need only have the ability to distinguish the colors red, green, blue and yellow.

(3) Any applicant whose uncorrected vision does not meet the standards listed above, and is granted a waiver in accordance with paragraph (g) of this section, may not serve under the authority of the endorsement unless corrective lenses are worn and spare lenses are carried onboard a vessel.

(c) *Hearing test.* If the medical practitioner conducting the general medical exam has concerns that an applicant's ability to hear may impact maritime safety, the examining medical practitioner must refer the applicant to an audiologist or other hearing specialist to conduct an audiometer test and/or a speech discrimination test, as appropriate.

(1) The audiometer test should include testing at the following thresholds: 500 Hz; 1,000 Hz; 2,000 Hz; and 3,000 Hz. The frequency responses for each ear should be averaged to determine the measure of an applicant's hearing ability. Applicants must demonstrate an unaided threshold of 20 decibels or less in each ear.

(2) The functional speech discrimination test should be carried out at a level of 55 decibels. For issuance of an original MMC or endorsement the applicant must demonstrate functional speech discrimination of at least 90%. For renewal or raise of grade, the applicant must demonstrate functional speech discrimination of at least 80%. An applicant who is unable to meet the standards of the audiometer test, but who can pass the functional speech discrimination test, may be eligible for a medical waiver in accordance with paragraph (g) of this section.

(d) *General medical exam.* (1) This exam must be documented and of such scope to ensure that there are no conditions that pose an inordinate risk of sudden incapacitation or debilitating complication. This exam must also document any condition requiring medication that impairs judgment or reaction time. Examples of physical impairment or medical conditions that could lead to disqualification include, but are not limited to, poorly controlled diabetes, myocardial infarctions, psychiatric disorders, and convulsive disorders.

(2) Food handlers are not required to submit to a general medical exam, but must obtain a statement from a licensed physician, physician assistant, or nurse practitioner attesting that they are free of communicable diseases.

(e) *Demonstration of physical ability.* (1) A demonstration of physical ability is required only if the medical practitioner conducting the general medical exam is concerned that an applicant's physical ability may impact maritime safety or if table 10.215(a) shows that the mariner must pass a demonstration of physical ability, but he or she is not required to pass a general medical exam.

(2) For an applicant to satisfactorily pass a demonstration of physical ability, the examiner must be satisfied that the applicant:

(i) Has no disturbance in the sense of balance;

(ii) Is able, without assistance, to climb up and down vertical ladders and inclined stairs;

(iii) Would be able, without assistance, to step over a door sill or coaming;

(iv) Would be able to grasp, lift, and manipulate various common shipboard tools; move hands and arms to open and close valve wheels in vertical and horizontal directions, and rotate wrists to turn handles;

(v) Does not have any impairment or disease that could prevent normal movement and physical activities;

(vi) Is able to stand and walk for extended periods;

(vii) Does not have any impairment or disease that could prevent response to a visual or audible alarm; and

(viii) Is capable of normal conversation.

(f) *Reports of medical and physical exams, demonstrations, and tests.* These reports must be submitted within 12 months from the date signed by the licensed medical professional. When submitted with a complete application

package these reports remain valid for 12 months from the date of the application approval.

(g) *Medical waivers.* Where an applicant does not possess the vision, hearing, or general physical condition necessary, the Coast Guard, after consultation with the examining licensed physician, licensed physician assistant, or licensed nurse practitioner may grant a waiver if extenuating circumstances warrant special consideration. An applicant may submit to the Coast Guard additional correspondence, records, and reports in support of a waiver. In this regard, recommendations from agencies of the Federal Government operating government vessels, as well as owners and operators of private vessels, made on behalf of their employees, will be given full consideration. Waivers are not normally granted to an applicant whose corrected vision in the better eye is not at least 20/40 for deck officers or 20/50 for engineer officers.

(h) Individuals holding only a staff officer endorsement need not meet the medical and physical requirements of this section.

§ 10.217 Merchant mariner credential application and examination locations.

(a) Applicants may apply to the Coast Guard National Maritime Center or any of the Regional Examination Centers. Applicants may contact the National Maritime Center at 4200 Wilson Boulevard, Suite 630, Arlington, Virginia 22203–1804, or by telephone at 202–493–1002. A list of Regional Examination Center locations is available through the Coast Guard Web site at *http://www.uscg.mil*.

(b) *Coast Guard-designated facilities.* The Coast Guard may designate additional locations to provide services to applicants for MMCs.

(c) *Exam Locations Abroad.* (1) Coast Guard Merchant Marine Details abroad may conduct exams for ratings at locations other than the RECs, but are not prepared to conduct the physical examination where required. Merchant Marine Details may not issue regular rating endorsements, but temporary permits in lieu thereof. Merchant Marine Details will instruct the recipient of each temporary permit to present it to the OCMI, upon arrival in the first port in the United States in order to exchange it for a permanent credential.

(2) The temporary permit must be accepted by the OCMI as proof that the bearer has complied with the rules and regulations governing the issuance of credentials, except as noted in the body of the temporary permit. The requirements noted in the exceptions will be complied with as in the case of other applicants.

(3) The written examinations are forwarded to the National Maritime Center by Merchant Marine Details. When an applicant with a temporary permit appears before an OCMI, that OCMI may request and obtain the examination from the National Maritime Center. Any OCMI who doubts the propriety of issuing a permanent credential instead of a temporary permit which has been issued by an overseas Merchant Marine Detail must inform the National Maritime Center fully as to the circumstances.

§ 10.219 Fees.

(a) Use table 10.219(a) of this section to calculate the mandatory fees for MMCs and associated endorsements.

TABLE 10.219(A).—FEES

If you apply for	And you need . . .		
	Evaluation then the fee is . . .	Examination then the fee is . . .	Issuance then the fee is . . .
MMC with officer endorsement:			
Original:			
Upper level	$100	$110	$45.
Lower level	$100	$95	$45.
Renewal	$50	$45	$45.
Raise of grade	$100	$45	$45.
Modification or removal of limitation or scope	$50	$45	$45.
Radio officer endorsement:			
Original	$50	$45	$45.
Renewal	$50	n/a	$45.
Staff officer endorsements:			
Original	$90	n/a	$45.
Renewal	$50	n/a	$45.
MMC with rating endorsement:			
Original endorsement for ratings other than qualified ratings	$95	n/a	$45.
Original endorsement for qualified rating	$95	$140	$45.
Upgrade or Raise of Grade	$95	$140	$45.
Renewal endorsement for ratings other than qualified ratings	$50	n/a	$45.
Renewal endorsement for qualified rating	$50	$45	$45.
STCW certification:			
Original	No fee	No fee	No fee.
Renewal	No fee	No fee	No fee.
Reissue, replacement, and duplicate	n/a	n/a	$45.[1]

[1] Duplicate for MMC lost as result of marine casualty—No Fee.

(b) *Fee payment procedures.* Applicants may pay:

(1) All fees required by this section at the time the application is submitted; or

(2) A fee for each phase at the following times:

(i) An evaluation fee when the application is submitted.

(ii) An examination fee before the first examination section is taken.

(iii) An issuance fee before receipt of the MMC.

(c) If the examination is administered at a place other than an REC, the examination fee must be paid to the REC at least one week before the scheduled examination date.

(d) Unless the REC provides additional payment options, fees must be paid as follows:

(1) Fee payment(s) must be for the exact amount.

(2) Payments may be made by cash, check, money order, or credit card.

(3) Payments submitted by mail may not be made in cash.

(4) Checks or money orders must be made payable to the U.S. Coast Guard, and full legal name and last four digits of the applicant's security number must appear on the front of each check or money order.

(e) Unless otherwise specified in this part, when two or more endorsements are processed on the same application:

(1) *Evaluation fees.* If an applicant simultaneously applies for a rating endorsement and a deck or engineer officer's endorsement, only the evaluation fee for the officer's endorsement will be charged. If an applicant simultaneously applies for a staff officer or radio officer endorsement along with the deck or engineer officer's endorsement, only the evaluation fee for the deck or engineer officer's endorsement will be charged. No evaluation fee is charged for an STCW endorsement.

(2) *Examination fees.* One examination fee will be charged for each exam or series of exams for an original, raise of grade, or renewal of an endorsement on an MMC taken within one year from the date of the application approval. An examination fee will also be charged to process an open-book exercise used to renew an MMC. If an officer endorsement examination under part 11 of this chapter also fulfills the examination requirements in part 12 of this chapter for rating endorsements, only the fee for the officer endorsement examination is charged.

(3) *Issuance fees.* Only one issuance fee will be charged for each MMC issued, regardless of the number of endorsements placed on the credential. There is no fee for a Document of Continuity.

(f) The Coast Guard may assess additional charges to anyone to recover collection and enforcement costs associated with delinquent payments, failure to pay a fee, or returned checks. The Coast Guard will not provide credentialing services to a mariner who owes money for credentialing services previously provided.

(g) Anyone who fails to pay a fee or charge established under this subpart is liable to the United States Government for a civil penalty of not more than $6,500 for each violation.

(h) *No-fee MMC for certain applicants.*

(1) For the purpose of this section, a no-fee MMC applicant is a person who is a volunteer, or a part-time or full-time employee of an organization that is:

(i) Charitable in nature;

(ii) Not for profit; and

(iii) Youth oriented.

(2) *Determination of eligibility.*

(i) An organization may submit a written request to U.S. Coast Guard National Maritime Center, 4200 Wilson Boulevard, Suite 630, Arlington, VA 22203–1804, in order to be considered an eligible organization under the criteria set forth in paragraph (h)(1) of this section. With the written request, the organization must provide evidence of its status as a youth-oriented, not-for-profit, charitable organization.

(ii) The following organizations are accepted by the Coast Guard as meeting the requirements of paragraph (h)(1) of this section and need not submit evidence of their status: Boy Scouts of America, Sea Explorer Association, Girl Scouts of the United States of America, and Young Men's Christian Association of the United States of America.

(3) A letter from an organization determined eligible under paragraph (h)(2) of this section must also accompany the person's MMC application to the Coast Guard. The letter must state that the purpose of the person's application is solely to further the conduct of the organization's maritime activities. The applicant then is eligible under this section to obtain a no-fee MMC if other requirements for the MMC are met.

(4) An MMC issued to a person under this section is endorsed restricting its use to vessels owned or operated by the sponsoring organization.

(5) The holder of a no-fee MMC issued under this section may have the restriction removed by paying the appropriate evaluation, examination, and issuance fees that would have otherwise applied.

§ 10.221 Citizenship.

(a) (1) MMCs with officer Endorsements. Only individuals with valid U.S. citizenship may apply for officer endorsements, except individuals applying for endorsements as operators of uninspected passenger vessels authorizing service on undocumented vessels in accordance with § 11.201(d) of this part.

(2) All other MMCs. All other applicants must be either:

(A) Citizens of the United States;

(B) Aliens lawfully admitted to the United States for permanent residence; or

(C) Foreign nationals who are enrolled in the United States Merchant Marine Academy (USMMA).

(b) Proof of citizenship or alien status must be submitted to the Transportation Security Administration (TSA) with the applicant's TWIC application in accordance with 49 CFR 1572.17(a)(11).

(c) TSA and the Coast Guard may reject any evidence of citizenship that is not believed to be authentic. Acceptable evidence of citizenship may be an original or a copy certified as true by the agency responsible for issuing the document of the following:

(1) If the individual is applying for an officer endorsement (with the exception of those applying for an MMC endorsed only as Operator of an Uninspected Passenger Vehicle (OUPV) of an undocumented vessel), the individual must provide an original of any one of the following documents:

(i) Certified copy of a birth certificate, issued by a State, county, municipality or outlying possession of the U.S. bearing an official seal;

(ii) Unexpired U.S. passport;

(iii) Certificate of Citizenship issued by U.S. Citizenship and Immigration Services or the Immigration and Naturalization Service;

(iv) Certificate of Naturalization issued by U.S. Citizenship and Immigration Services or the Immigration and Naturalization Service; or

(v) Merchant mariner's document issued by the Coast Guard after February 3, 2003, that shows that the holder is a citizen of the United States.

(2) If the individual is applying for a rating endorsement and they hold one of the documents listed in paragraph (c)(1)(i) through (v) above, these documents are also acceptable as evidence of citizenship. If the individual does not hold any one of those documents listed in paragraph (c)(1)(i) through (v) above, the individual must provide an original unexpired foreign passport and an original of any one of the following documents:

(i) Alien registration receipt card issued by U.S. Citizenship and Immigration Services bearing the certification that the alien was admitted to the United States as an immigrant,

(ii) A declaration of intention to become a citizen of the United States issued by a naturalization court; or

(iii) A certificate issued by the consular representative of the country of which the alien is a citizen or subject.

(3) If the individual is the holder of or applying for a rating endorsement and the individual does not hold any of the documents listed in paragraphs (c)(1) or (2) above, proof of enrollment in the United States Merchant Marine Academy (USMMA) in the form of an

original letter from the USMMA, signed by the Superintendent attesting to the individual's enrollment along with a an unexpired foreign passport issued by the government of the country in which the alien is a citizen or subject, with a valid U.S. visa affixed to the passport, will be acceptable evidence of lawful status in the United States.

(4) If the individual is applying for an MMC endorsed only as OUPV of an undocumented vessel, the individual must provide an original of any one of the documents enumerated in paragraphs (c)(1)(i) through (v) or (c)(2)(i) or (ii) above, or proof of acceptable alien status as provided in 49 CFR 1572.105.

§ 10.223 Modification or removal of limitations or scope.

(a) If the Coast Guard is satisfied by the documentary evidence submitted that an applicant is entitled by experience, training, and knowledge to an endorsement or increase in the scope of any MMC held, any limitations that were previously placed upon the MMC by the Coast Guard may be changed or removed. Such an increase in scope may include a change in horsepower or tonnage limitations, or geographic route restrictions.

(b) Modifications or removal of limitations or scope to MMC endorsement(s) under this section will not change the expiration date of the mariner's MMC unless the applicant renews all endorsements that would appear on the MMC under § 10.227 of this part.

(c) A complete application for modification or removal of limitation of scope must contain the following:

(1) A completed signed application;

(2) Proof that the mariner holds a valid TWIC;

(3) All supplementary materials required to show that the mariner meets the mandatory requirements for the transaction sought:

(i) The mandatory requirements for officer endorsements are contained in part 11 of this chapter.

(ii) The mandatory requirements for rating endorsements are contained in part 12 of this chapter.

(iii) The mandatory requirements for tankerman rating endorsements are contained in part 13 of this chapter.

(iv) The mandatory requirements for STCW endorsements are contained in parts 11 and 12 of this chapter and in the STCW Convention and Code (incorporated by reference, see § 10.103).

(4) The appropriate fee as set forth in § 10.219 of this part; and

(5) Any uncanceled MMD, MMC, license, STCW endorsement, or COR held by the applicant. If one or more of these credentials are still valid at the time of application, a photocopy, front and back of all pages, and all attachments, will satisfy this requirement. If the applicant submits a photocopy, upon the issuance of the new MMC, the applicant must surrender the old, original credential to the Coast Guard. If requested in writing at the time of submission, the old MMD, MMC, license, COR, or STCW endorsement may be returned to the applicant after cancellation.

(d) No limitation on any endorsement may be changed before the applicant has made up any deficiency in the experience prescribed for the endorsement or endorsement desired and passed any necessary examination.

§ 10.225 Requirements for original merchant mariner credentials.

(a) An applicant must apply as an original if the MMC sought is:

(1) The first credential issued to the applicant;

(2) The first credential issued to an applicant after their previous credential has expired and they do not hold a document of continuity under § 10.227(e) of this part or an equivalent unexpired continuity endorsement on their license or MMD; or

(3) The first credential issued to an applicant after their previous credential was revoked pursuant to § 10.235 of this part.

(b) A complete application for an original MMC must contain the following:

(1) A completed, signed application;

(2) Proof that the mariner either holds a valid TWIC or has applied for a TWIC within the past 30 days;

(3) All supplementary materials required to show that the mariner meets the mandatory requirements for all endorsements sought;

(i) The mandatory requirements for officer endorsements are contained in part 11 of this chapter.

(ii) The mandatory requirements for rating endorsements are contained in part 12 of this chapter.

(iii) For a tankerman rating endorsement, the applicant must also provide those documents or proofs required in part 13 of this chapter.

(iv) The mandatory requirements for STCW Endorsements are contained in parts 11 and 12 of this chapter and in the STCW Convention and Code (Incorporated by reference, see § 10.103).

(4) The appropriate fee as set forth in § 10.219 of this part;

(5) Any uncanceled MMD, MMC, license, STCW endorsement, or COR held by the applicant. If one or more of these credentials are still valid at the time of application, a photocopy, front and back and all attachments, will satisfy this requirement. If the applicant submits a photocopy, upon the issuance of the new MMC, the applicant must surrender the old original credential to the Coast Guard. If requested in writing at the time of submission, the old MMD, MMC, license, COR, or STCW endorsement may be returned to the applicant after cancellation;

(6) Evidence of having passed a chemical test for dangerous drugs or of qualifying for an exemption from testing in § 16.220 of this subchapter;

(7) Discharges or other documentary evidence of service indicating the name, tonnage, and propulsion power of the vessels, dates of service, capacity in which the applicant served, and on what waters, where sea service is required;

(8) Proof, documented on a form provided by the Coast Guard, that the applicant passed all applicable vision, hearing, medical and/or physical exams as required by § 10.215 of this part.

(9) Consent to a Coast Guard check of the NDR for offenses described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982, as amended; and

(10) The oath as required in paragraph (c) below.

(c) Oath. Every person who receives an original MMC must first take an oath, before an official authorized to give such oath, that he or she will faithfully and honestly, according to his or her best skill and judgment, without concealment or reservation, perform all the duties required by law and obey all lawful orders of superior officers. An oath may be administered by any Coast Guard-designated individual or any person legally permitted to administer oaths in the jurisdiction where the person taking the oath resides. An oath administered at a location other than those listed in § 10.217 must be verified in writing by the administering official and submitted to the same REC where the applicant applied for his or her MMC. This oath remains binding for any subsequently issued MMC and endorsements added to the MMC unless specifically renounced in writing.

§ 10.227 Requirements for renewal.

(a) Except as provided in paragraph (e) of this section, an applicant for renewal of a credential must establish possession of all of the necessary qualifications before the renewal MMC will be issued.

(b) A credential may be renewed at any time during its validity and for one year after expiration.

(c) No credential will be renewed if it has been suspended without probation or revoked as a result of action under part 5 of this chapter or if facts that would render a renewal improper have come to the attention of the Coast Guard.

(d) Except as provided in paragraph (e) of this section, a complete application for renewal must contain the following:

(1) A completed, signed application;

(2) Proof that the mariner holds a valid TWIC;

(3) The appropriate fee as set forth in § 10.219 of this part;

(4) Any uncanceled MMD, MMC, license, STCW endorsement, or COR held by the applicant. If one or more of these credentials are still valid at the time of application, a photocopy, front and back and all attachments, will satisfy this requirement. If the applicant submits a photocopy, upon the issuance of the new MMC, the applicant must surrender the old original credential to the Coast Guard. If requested in writing at the time of submission, the old MMD, MMC, license, COR, or STCW endorsement may be returned to the applicant after cancellation;

(5) Evidence of having passed a chemical test for dangerous drugs or of qualifying for an exemption from testing in § 16.220 of this subchapter:

(6) Proof, documented on a form provided by the Coast Guard, that the applicant passed all applicable vision, hearing, medical and/or physical exams as required by § 10.215 of this part.

(7) Consent to a Coast Guard check of the NDR for offenses described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982, as amended.

(8) Except as provided in sub-paragraph (viii) below, the applicant must meet the following professional requirements for renewal:

(i) The applicant must either—

(A) Present evidence of at least one year of sea service during the past five years;

(B) Pass a comprehensive, open-book exercise covering the general subject matter contained in appropriate sections of subpart I of this part;

(C) Complete an approved refresher training course; or

(D) Present evidence of employment in a position closely related to the operation, construction or repair of vessels (either deck or engineer as appropriate) for at least three years during the past five years. An applicant for a deck license or officer endorsement with this type of employment must also demonstrate knowledge on an applicable Rules of the Road open book exercise.

(ii) The qualification requirements for renewal of radar observer endorsement are in § 11.480 of this chapter.

(iii) Additional qualification requirements for renewal of an officer endorsement as first-class pilot are contained in § 11.713 of this chapter.

(iv) An applicant for renewal of a radio officer's endorsement must, in addition to meeting the requirements of this section, present a currently valid license as first-or second-class radiotelegraph operator issued by the Federal Communications Commission. This license will be returned to the applicant.

(v) An applicant for renewal of an endorsement as medical doctor or professional nurse must, in addition to meeting the requirements of this section, present evidence that he or she holds a currently valid, appropriate license as physician, surgeon, or registered nurse issued under the authority of a State or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia. Any such renewal will retain the limitations placed upon the medical license by the issuing body. There are no professional requirements for renewal of an endorsement as marine physician assistant or hospital corpsman.

(vi) An applicant for renewal of an endorsement as master or mate (pilot) of towing vessels must submit satisfactory evidence of:

(A) Having completed a practical demonstration of maneuvering and handling a towing vessel to the satisfaction of a designated examiner; or

(B) Ongoing participation in training and drills during the validity of the license or MMC being renewed.

(vii) An applicant seeking to renew a tankerman endorsement must meet the additional requirements listed in § 13.120 of this chapter.

(viii) There are no professional requirements for renewal for the following endorsements: (A) Radio officer;

(B) Staff officers (all types);

(C) Ordinary seaman;

(D) Wiper;

(E) Steward's department (F.H.);

(F) Cadet;

(G) Student observer;

(H) Apprentice engineer;

(I) Apprentice mate (issued under Part 12 of this Subchapter);

(J) Person in charge of medical care;

(K) Medical first aid provider;

(L) GMDSS at-sea maintainer; and

(M) GMDSS operator.

(9) Except as otherwise provided, each candidate for a renewal of an STCW endorsement must meet the applicable requirements of § 11.202 of this chapter and must meet the requirements of Section A–VI/2, paragraphs 1 to 4 of the STCW Code.

(e) *Document of continuity.* (1) Applicants for renewal who are unwilling or otherwise unable to meet the requirements of paragraph (d) of this section, including but not limited to the medical and physical standards of § 10.215, drug tests, and TWIC may apply for a document of continuity issued by the Coast Guard. Documents of continuity do not expire and are issued solely to maintain an individual's eligibility for renewal. A document of continuity does not entitle an individual to serve as a merchant mariner. A holder of a document of continuity may obtain a properly endorsed, valid MMC at any time by satisfying the requirements for renewal as provided in paragraph (d).

(2) Applications for a document of continuity must include:

(i) The credential to be renewed. Upon written request, the Coast Guard will return the credential to the applicant after it has been cancelled; and

(ii) An application including a signed statement from the applicant attesting to an awareness of the limited purpose of the Document of Continuity, their inability to serve, and the requirements to obtain an MMC.

(f) *Administrative grace period.* Except as provided herein, a credential may not be renewed more than 12 months after it has expired. To obtain a reissuance of the credential, an applicant must comply with the requirements of paragraph (g) of this section. When an applicant's credential expires during a time of service with the Armed Forces and there is no reasonable opportunity for renewal, including by mail, this period may be extended. The period of military service following the date of expiration which precluded renewal may be added to the 12-month grace period. The 12-month grace period and any extensions do not affect the expiration date of the credential. A license, MMD, COR, STCW endorsement, MMC, and any endorsements thereon, are not valid for use after the expiration date.

(g) *Re-issuance of expired credentials.* (1) Whenever an applicant applies for re-issuance of an endorsement as deck officer, engineer officer, or qualified rating more than 12 months after expiration, instead of the requirements of paragraph (g) of this section, the

applicant must demonstrate continued professional knowledge by completing a course approved for this purpose, or by passing the complete examination. The examination may be oral-assisted if the expired credential was awarded on an oral exam. The fees set forth in § 10.219 apply to these examinations. In the case of an expired radio officer's endorsement, the endorsement may be issued upon presentation of a valid first- or second-class radiotelegraph operator license issued by the Federal Communications Commission.

(2) An endorsement for chief purser, purser, senior assistant purser, junior assistant purser, hospital corpsman, marine physician assistant, medical doctor, or professional nurse that has been expired for more than 12 months shall be renewed in the same way as a current endorsement of that type. There are no additional requirements for reissuing endorsements for chief purser, purser, senior assistant purser, junior assistant purser, hospital corpsman, marine physician assistant, medical doctor, or professional nurse that have been expired for more than 12 months.

§ 10.229 Issuance of duplicate merchant mariner credentials.

(a) Upon request and without examination, a mariner may be issued a duplicate credential after submitting an application with an affidavit describing the circumstances of the loss. The Coast Guard will only issue the duplicate credential after confirming the validity of the mariner's credential and TWIC.

(b) The duplicate will have the same authority, wording, and expiration date as the lost credential. A duplicate credential will reference the serial number, type, place of issue, and date of issue of the replaced credential(s). The duplicate issued will be in the form of an MMC. Until [Insert date 5 years after the effective date of the final rule], if a mariner seeks a duplicate of more than one credential, the MMC issued will reflect endorsements for all credentials lost, and the expiration date will match the earliest expiration date of the credentials lost.

(c) If a person loses a credential by shipwreck or other casualty, a duplicate will be issued free of charge. The term ''other casualty'' includes any damage to a ship caused by collision, explosion, tornado, wreck, flooding, beaching, grounding, or fire; or personal loss associated with a federally declared natural disaster.

(d) If a person loses a credential by means other than those noted in paragraph (c) of this section and applies for a duplicate, the appropriate fee set out in § 10.219 must be paid.

(e) No application from an alien for a duplicate credential will be accepted unless the alien complies with the requirements of § 10.221 of this part.

(f) Applications for duplicate credentials will not be subject to a criminal record review.

§ 10.231 Requirements for raises of grade or new endorsements.

(a) This section applies to applicants who already hold a valid credential and want to make the following transaction(s):

(1) Add a new endorsement; or

(2) Raise of grade of an existing endorsement.

(b) New endorsements or raises of grade of existing endorsements on an MMC under this section will not change the expiration date of the MMC unless the applicant renews all endorsements that appear on the MMC under § 10.227 of this part.

(c) A complete application for a new endorsement or raise of grade must contain the following:

(1) A completed, signed application;

(2) Proof that the mariner holds a valid TWIC;

(3) All supplementary materials required to show that the mariner meets the mandatory requirements for the new endorsement(s) sought;

(i) The mandatory requirements for officer endorsements are contained in part 11 of this chapter and paragraph (d) of this section.

(ii) The mandatory requirements for rating endorsements are contained in part 12 of this chapter.

(iii) The mandatory requirements for tankerman rating endorsements are contained in part 13 of this chapter.

(iv) The mandatory requirements for STCW endorsements are contained in parts 11 and 12 of this chapter and in the STCW Convention and Code (incorporated by reference, see § 10.103).

(4) The appropriate fee as set forth in § 10.219 of this part;

(5) Any uncanceled MMD, MMC, license, STCW endorsement, or COR held by the applicant. If one or more of these credentials are still valid at the time of application, a photocopy, front and back and all attachments, will satisfy this requirement. If the applicant submits a photocopy, upon the issuance of the new MMC, the applicant must surrender the old original credential to the Coast Guard. If requested in writing at the time of submission, the old MMD, MMC, license, COR, or STCW endorsement may be returned to the applicant after cancellation;

(6) Applicants for the following endorsements must produce evidence of having passed a chemical test for dangerous drugs or of qualifying for an exemption from testing in § 16.220 of this subchapter:

(i) any officer endorsement; and

(ii) the first endorsement as able seaman, lifeboatman, qualified member of the engine department, or tankerman.

(7) An applicant for an endorsement where sea service is required must produce discharges or other documentary evidence of service, indicating the name, tonnage, and horsepower of the vessels, dates of service, capacity in which the applicant served, and on what waters;

(8) Applicants who have not submitted evidence within the past three years that they have passed all applicable vision, hearing, medical and/or physical exams required in § 10.215 for the particular endorsement sought, must submit proof, on a Coast Guard approved form, that the applicant has passed those medical/physical tests and exams; and

(9) Consent to a Coast Guard check of the NDR for offenses described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982, as amended.

(d) Additional requirements for an applicant seeking a raise of grade of an officer endorsement:

(1) Sea service acquired before the issuance of an officer endorsement is generally not accepted as any part of the service required for a raise of grade of that endorsement. However, service acquired before issuance of an officer endorsement will be accepted for certain crossovers, endorsements, or increases in scope of an MMC, as appropriate. In the limited tonnage categories for deck officers, total accumulated service is a necessary criterion for most raises of grade; service acquired before the issuance of such officer endorsements will, therefore, be accepted.

(2) No raise of grade may be issued to any naturalized citizen on less experience in any grade than would have been required of a citizen of the United States by birth.

(3) Experience and service acquired on foreign vessels while holding a valid U.S. officer endorsement is creditable for establishing eligibility for a raise of grade, subject to evaluation by the Coast Guard to determine that it is a fair and reasonable equivalent to service acquired on merchant vessels of the United States, with respect to grade, tonnage, horsepower, waters, and operating conditions. An applicant who has obtained the qualifying experience on foreign vessels shall submit satisfactory documentary evidence of

such service (including any necessary translations into English) in the forms prescribed by paragraph (c)(7) of this section.

(4) An applicant remains eligible for a raise of grade while on probation as a result of action under part 5 of this chapter. A raise of grade issued to a person on probation will be subject to the same probationary conditions imposed against the applicant's other credentials. The offense for which he or she was placed on probation will be considered on the merits of the case in determining fitness to hold the endorsement applied for. No applicant will be examined for a raise of grade during any period when a suspension without probation or a revocation imposed under part 5 of this chapter is effective against the applicant's credential or while an appeal from these actions is pending.

(5) *Professional examination.* (i) When the Coast Guard finds an applicant's experience and training for raise of grade to be satisfactory and the applicant is eligible in all other respects, the Coast Guard will authorize a professional examination.

(ii) Oral-assisted examinations may be administered in accordance with § 11.205(f) of this chapter. The Coast Guard will place in the applicant's file a record indicating the subjects covered.

(iii) The general instructions for administration of examinations and the lists of subjects for all officer endorsements appear in part 11, subpart I of this chapter.

§ 10.233 Obligations of the holder of a merchant mariner credential.

(a) The holder of a credential may not voluntarily part with it or place it beyond his or her personal control by pledging or depositing it with any other person. If the holder violates this section, the Coast Guard may pursue suspension or revocation of the license, MMD, COR, or MMC under the provisions of part 5 of this chapter.

(b) Whenever a mariner loses a credential, he or she must immediately report the loss to the Coast Guard. The report must be made in writing, giving the facts incident to its loss.

(c) Invalid credentials must be returned to the Coast Guard. Upon written request the Coast Guard will return the cancelled credential to the mariner.

§ 10.235 Suspension or revocation of merchant mariner credentials.

(a) Any MMC or endorsement is subject to suspension or revocation on the same grounds, in the same manner, and with like procedure as provided in 46 U.S.C. chapter 77.

(b) When any individual's credential is revoked, it is no longer valid for any purpose and any MMC subsequently requested must be applied for as an original. When an endorsement on an individual's MMC is revoked, it is no longer valid and any endorsement of the same type subsequently requested must be applied for as an original. When an officer's endorsement is revoked, the Coast Guard will issue an MMC containing any rating endorsement for which the holder is qualified.

(c) An applicant who has had a TWIC, credential, or endorsement revoked, and who is applying for a subsequent MMC or endorsement, must state in his or her application the date of revocation, the serial number of the document revoked, and the type of document or endorsement revoked.

(d) A person whose credential or endorsement has been revoked or suspended without probation may not be issued a replacement credential or endorsement without approval of the Commandant. If a mariner has multiple endorsements and one or more, but not all, of those endorsements are suspended or revoked, the mariner may apply for a replacement MMC reflecting those endorsements for which the mariner remains qualified.

(e) When a credential or endorsement that is about to expire has been suspended, the renewal of the credential or endorsement will be withheld until expiration of the suspension period.

(f) An applicant for renewal or return of a credential with endorsement as master or mate (pilot) of towing vessels whose most recent credential has been suspended or revoked by an administrative law judge for incompetence must complete the practical demonstration required under § 10.227(d)(8)(vi)(A).

(g) If the Coast Guard is advised by the Transportation Security Administration (TSA) that a mariner has either been denied a TWIC or their TWIC has been revoked, the Coast Guard may initiate suspension and revocation action against the mariner's MMC, license, MMD, and COR under 46 U.S.C. 7702 and 7703. During the subsequent suspension and revocation proceeding, the TSA decision to deny issuance of, or to revoke, a mariner's TWIC will not be subject to review and the mariner's failure to hold a TWIC will be treated by the Coast Guard as proof that the mariner constitutes a security threat.

(h) A mariner that has either been denied issuance of a TWIC or whose TWIC has been revoked will be deemed a security risk that poses a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment.

§ 10.237 Right of appeal.

(a) If the Coast Guard refuses to grant an applicant an MMC or endorsement, a written statement listing the reason(s) for denial will be provided

(b) Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal under the provisions of subpart 1.03 of part 1 of this chapter.

(c) The Coast Guard will not review decisions made by the Transportation Security Administration to suspend, revoke or deny a mariner's TWIC.

§ 10.239 Quick reference table for MMC requirements.

Table 10.239 provides a guide to the requirements for officer endorsements. Provisions in the reference section are controlling.

TABLE 10.239.

Endorsement category	Minimum age	Citizenship	Medical and physical exam	Experience	Recommendations and character check	Firefighting	Professional exam	Demonstration of professional ability	Recency of service	First aid and CPR
Master, mates and operators of uninspected passenger vessels (original).	21, 11.201(e) Note: exceptions.	U.S., 11.201(d) Note: exception for OUPV.	Yes, 10.215 Note: exceptions.	Yes, 11.205 (b); subpart D.	11.205(c)	11.205(d) Note: exceptions.	Yes, 11.205 (f); 11.903; 11.910 Note: 11.903(b).	Yes, 11.205(g); 11.901(c); 11.903(c).	Yes, 3 months in past 3 years, 11.201(c).	11.205(e) Note: exceptions.
Engineers (original)	21, 11.201(e) Note: exceptions.	U.S., 11.201(d) no exceptions.	Yes, 10.215 Note: exceptions.	Yes, 11.205(b); subpart E.	11.205(c)	11.205(d)	11.205(f); 11.903; 11.950.	Yes, 11.205(g); 11.901(c); 11.903(c).	Yes, 3 months in past 3 years, 11.201(c).	11.205(e) Note: exceptions.
Officer raises of grade	21, 11.201(e) Note: exceptions.	U.S., 11.201(d) no exceptions.	Yes, 10.215 Note: exceptions.	Yes, 10.231 (c); subpart D and E.	N/A	Yes; 10.231 (e)	Yes, 10.231(d); 11.903; 11.910; 11.920; 11.950.	Yes, 11.205(g); 11.901(c); 11.903(c).	Yes, 3 months in past 3 years, 11.201(c).	N/A.
Officer renewals	N/A	U.S., 11.201(d) no exceptions.	Yes, 10.215 Note: exceptions.	Yes, 10.227(g) Note: exceptions.	N/A	N/A	10.227(g)	Towing officers, 10.227(i).	Yes, 1 year in past 5, 10.227(g) Note: alternative.	N/A.
Pilot	21, 46 U.S.C. 7101.	U.S., 11.201(d) no exceptions.	Yes, 10.215 Note: exceptions.	Yes, 11.703	11.205(c)	N/A	11.707; 11.903; 11.910.	N/A	Yes, 11.703, 11.75(e), 11.713.	11.205(e) Note: exceptions.
Towing vessels	21, Master 19, Mate 18, App. Mate 11.201(e).	U.S., 11.201(d) no exceptions.	Yes, 10.215 Note: exceptions.	Yes, 10.464; 10.465; 10.466.	11.205(c)	Yes, 11.205(d) oceans.	Yes, 11.205 (f); 11.903; 11.910 Note: 11.903(b).	Yes, 11.464; 11.465; 11.205(g); 11.901(c).	Yes, 3 months in past 3 years, 11.201(c).	11.205(e) Note: exceptions.
Uninspected fishing industry vessels.	21, 11.201(e) Note: exceptions.	U.S., 11.201(d) no exceptions.	Yes, 10.215 Note: exceptions.	Deck: 11.462; Eng: 11.530.	11.205(c)	11.205(d) Note: exceptions.	Yes, 11.205 (f); 11.903; 11.910 Note: 11.903(b).	N/A	Yes, 3 months in past 3 years, 11.201(c).	11.205(e) Note: exceptions.
Radio officer	19, 11.201(e)(1)	U.S., 11.201(d) no exceptions.	Yes, 10.215 Note: exceptions.	11.603	11.205(c)	N/A	N/A	N/A	N/A	11.205(e) Note: exceptions.
Staff officer	N/A	U.S., 11.201(d) no exceptions.	Yes, 10.215 Note: exceptions.	11.807	11.205(c)	N/A	N/A	N/A	N/A	N/A.
Staff officer renewals ...	N/A	U.S., 11.201(d) no exceptions.	Yes, 10.215 Note: exceptions.	10.227(g)(5)	N/A	N/A	N/A	N/A	N/A	N/A.
Offshore installation manager, barge supervisor, ballast control operator.	21, 11.201(e) Note: exceptions.	U.S., 11.201(d) no exceptions.	Yes, 10.215 Note: exceptions.	OIM: 11.470 B.S.: 11.472 BCO: 11.474 Eng: 11.540.	11.205(c)	11.205(d)	Yes, 11.205 (f); 11.903; 11.920.	N/A	Yes, 3 months in past 3 years, 11.201(c).	11.205(e) Note: exceptions.
Able seamen	18, 12.05–3 (a)(1).	U.S. or alien admitted for permanent residence, 10.221.	Yes, 10.215 Note: exceptions.	12.05–7	N/A	N/A	Yes, 12.05–3 (a); 12.05–9.	Yes, 12.05–3 (c); 12.05–9.	Renewal only, 1 year in past 5, 10.227(g) Note: alternative.	12.05–3(b).
Qualified members of engine department.	N/A	U.S. or alien admitted for permanent residence, 10.221.	Yes, 10.215 Note: exceptions.	12.15–7	N/A	N/A	Yes, 12.15–9	Yes, 12.15–3(d)	Renewal only, 1 year in past 5, 10.227(g) Note: alternative.	12.15–3(d).
Entry level ratings	N/A	U.S. or alien admitted for permanent residence, 10.221.	Yes, 10.215 Note: exceptions.	N/A	N/A	N/A	N/A	N/A	N/A	N/A.

88. Revise the heading to newly redesignated part 11 to read as follows:

PART 11—REQUIREMENTS FOR OFFICER ENDORSEMENTS

89. The authority citation for part 11 continues to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, and 8906; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

90. In newly redesignated § 11.101—

a. Revise paragraphs (a) introductory text and (a)(1) to read as set out below;

b. In paragraph (a)(2), remove the words ''certificate or'' and, after the words ''as amended'', remove the words ''in 1995'';

c. In paragraph (b), remove the word ''licenses'' and add, in its place, the words ''officer endorsements''; remove the words ''all licensed personnel shall'' and add, in their place, the words ''each officer credentialed under this part must''; and, after the words ''characteristics of'', remove the word ''each'' and add, in its place, the word ''a''; and

d. In paragraph (c)(1), remove the words ''license or license endorsement'' and add, in their place, the words ''officer endorsement'':

§ 11.101 Purpose of regulations.

(a) These regulations provide—

(1) A means of determining the qualifications an applicant must possess to be eligible for an officer endorsement as a staff officer, deck officer, engineer, pilot, or radio officer on merchant vessels, or for an endorsement to operate uninspected passenger vessels; and

* * * * *

91. Revise newly redesignated § 11.102 to read as follows:

§ 11.102 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at the Coast Guard, Office of Operating and Environmental Standards (CG–3PSO), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources indicated in this section.

(b) *International Maritime Organization (IMO),* 4 Albert Embankment, London SE1 7SR, England:

(1) The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (the STCW Convention or the STCW), approved for incorporation by reference in §§ 11.202, 11.304, 11.603; 11.901, 11.903, 11.1005, and 11.1105.

(2) The Seafarers' Training, Certification and Watchkeeping Code, as amended (the STCW Code), approved for incorporation by reference in §§ 11.202, 11.304, 11.603, 11.901, 11.903, 11.1005, and 11.1105.

§ 11.103 [Removed and Reserved]

92. Remove and reserve newly redesignated § 11.103.

§ 11.105 [Removed and Reserved]

93. Remove and reserve newly redesignated § 11.105.

94. In newly redesignated § 11.107, revise paragraphs (b)(1), (2) and (3) to read as follows:

§ 11.107 Paperwork approval.

* * * * *

(b) * * *

(1) OMB 1625–0040–46 CFR 11.201, 11.202, 11.205, 11.470, 11.472, 11.474, 11.542, and 11.544.

(2) OMB 1625–028–46 CFR 11.302, 11.303, 11.304, 11.480.

(3) OMB 1625–0079–46 CFR 11.304 and 11.309.

§ 11.109 [Removed and Reserved]

95. Remove and reserve newly redesignated § 11.109.

§ 11.110 [Removed and Reserved]

96. Remove and reserve newly redesignated § 11.110.

§ 11.111 [Removed and Reserved]

97. Remove and reserve newly redesignated § 11.111.

§ 11.112 [Removed and Reserved]

98. Remove and reserve newly redesignated § 11.112.

§ 11.113 [Removed and Reserved]

99. Remove and reserve newly redesignated § 11.113.

Subpart B—[Amended]

100. In the heading to subpart B remove the words ''All License and Certificates of Registry'' and add in their place the words ''Officer Endorsements''

101. Revise newly redesignated § 11.201 to read as follows:

§ 11.201 Eligibility for officer endorsements and STCW endorsements, general.

(a) In addition to the requirements of part 10 of this chapter, the applicant for an officer endorsement, whether original, renewal, duplicate, or raise of grade, must establish to the satisfaction of the Coast Guard that he or she possesses all the qualifications necessary (including but not limited to age, experience, character references and recommendations, physical health, citizenship, approved training, passage of a professional examination, a test for dangerous drugs, and when required by this part, a practical demonstration of skills) before the Coast Guard will issue a merchant mariner credential (MMC).

(b) Except as provided in § 11.467(h) this part, an applicant for an officer endorsement must demonstrate an ability to speak and understand English as found in the navigation rules, aids to navigation publications, emergency equipment instructions, machinery instructions, and radiotelephone communications instructions.

(c) An applicant for an officer endorsement must have at least three months of qualifying service on vessels of appropriate tonnage or horsepower within the three years immediately preceding the date of application.

(d) No officer endorsement may be issued to any person who is not a citizen of the United States with the exception of operator of uninspected passenger vessels limited to vessels not documented under the laws of the United States.

(e) Except as specified in this paragraph, no officer endorsement may be issued to a person who has not attained the age of 21 years. The required evidence of age may be established using any of the items submitted to establish citizenship set out in 49 CFR 1572.17 of this chapter:

(1) An endorsement may be granted to an applicant who has reached the age of 19 years as:

(i) Master of near coastal, Great Lakes and inland, inland, or river vessels of 25–200 GRT;

(ii) Third mate;

(iii) Third assistant engineer;

(iv) Mate of vessels of 200–1,600 GRT;

(v) Ballast control operator (BCO);

(vi) Assistant engineer (MODU);

(vii) Assistant engineer of fishing industry vessels;

(viii) Mate (pilot) of towing vessels;

(ix) Radio officer;

(x) Assistant engineer (limited oceans); or

(xi) Designated duty engineer of vessels of not more than 4,000 horsepower.

(2) An endorsement may be granted to an applicant who has reached the age of 18 years as:

(i) Limited master of near-coastal vessels of not more than 100 GRT;

(ii) Limited master of Great Lakes and inland vessels of not more than 100 GRT;

(iii) Mate of Great Lakes and inland vessels of 25–200 GRT;

(iv) Mate of near coastal vessels of 25–200 GRT;

(v) Operator of uninspected passenger vessels (OUPV);

(vi) Designated duty engineer of vessels of not more than 1,000 horsepower; or

(vii) Apprentice mate (steersman) of towing vessels.

(f) Persons serving or intending to serve in the merchant marine service are encouraged to take the earliest opportunity to ascertain, through examination, whether their visual acuity, color vision, hearing, and general physical condition where required, are such as to qualify them for service in that profession. Any physical impairment or medical condition which would render an applicant incompetent to perform the ordinary duties required of an officer at sea is cause for denial of an officer endorsement.

(g) Applications for an original officer's endorsement, raises of grade, extensions of route, or STCW endorsements must be current and up to date with respect to service and the physical examination, as appropriate. Physical examinations and applications are valid for 12 months from the date the application is approved.

(h) Applicants for an endorsement as OUPV must meet the requirements for an officer endorsement.

(i) The Officer in Charge, Marine Inspection (OCMI), may modify the service and examination requirements in this part to satisfy the unique qualification requirements of an applicant. The OCMI may also lower the age requirement for OUPV applicants. The authority granted by an officer endorsement will be restricted to reflect any modifications made under the authority of this paragraph. These restrictions may not be removed without the approval of the OCMI issuing the license or officer endorsement.

102. Revise newly redesignated § 11.202 to read as follows:

§ 11.202 STCW endorsements.

(a) *General.* When an original MMC is issued, renewed, upgraded, or otherwise modified, the OCMI will determine whether the applicant needs to have an STCW endorsement for service on a seagoing vessel and then, if the applicant is qualified, will issue the appropriate endorsement. The OCMI will also issue an STCW endorsement at other times, if circumstances so require and if the applicant is qualified to hold the endorsement.

(b) *Basic safety training or instruction.* Except as provided in paragraph (f) of this section, an STCW endorsement will be issued only when the candidate provides evidence of having achieved or, if training has been completed, having maintained the minimum standards of competence for the following four areas of basic safety within the previous five years upon assessment of a practical demonstration of skills and abilities:

(1) Personal survival techniques as set out in table A–VI/1–1 of the STCW Code (incorporated by reference in § 11.102).

(2) Fire prevention and firefighting as set out in table A–VI/1–2 of the STCW Code (incorporated by reference, see § 11.102).

(3) Elementary first aid as set out in table A–VI/1–3 of the STCW Code (incorporated by reference, see § 11.102).

(4) Personal safety and social responsibilities as set out in table A–VI/1–4 of the STCW Code (incorporated by reference § 11.102).

(c) *Competence in the use of Automatic Radar-Plotting Aids (ARPA).* (1) Subject to paragraphs (c)(2) and (f) of this section, each candidate for an STCW endorsement as master or mate for service on vessels in ocean or near-coastal service, must present a certificate of completion from an approved course or from accepted training on an ARPA simulator. The course or training must be sufficient to establish that the applicant is competent to maintain safe navigation through the proper use of ARPA, by correctly interpreting and analyzing the information obtained from that device and taking into account both the limitations of the equipment and the prevailing circumstances and conditions. The simulator used in the course or training must meet or exceed the performance standards established under STCW Regulation I/12.

(2) Training and assessment in the use of ARPA are not required for mariners serving exclusively on vessels not fitted with ARPA. However, when any mariner so serving has not completed it, his or her STCW endorsement will indicate this limitation.

(d) *Endorsement for operator of radio in the Global Maritime Distress and Safety System (GMDSS).* (1) Subject to paragraphs (d)(2) and (f) of this section, each candidate for an STCW endorsement as master or mate for service on vessels in ocean or near-coastal service, shall present:

(i) A certificate for operator of radio in the GMDSS issued by the Federal Communications Commission (FCC); and

(ii) A certificate of completion from a Coast Guard-approved or accepted course for operator of radio in the GMDSS or from another approved-or-accepted program of training and assessment covering the same areas of competence. The course or program must be sufficient to establish that the applicant is competent to perform radio duties on a vessel participating in the GMDSS and meets the standard of competence under STCW Regulation IV/2.

(2) Paragraph (d)(1) of this section does not apply to a candidate intending to serve only as a pilot, or intending to serve only on vessels not required to comply with the provisions of the GMDSS in Chapter IV of the Convention for the Safety of Life at Sea, 1974, as amended (SOLAS).

(3) Each candidate presenting a certificate described in paragraph (d)(1) of this section may receive a GMDSS endorsement.

(e) *Procedures for bridge team work.* Except as otherwise provided in paragraph (f) of this section, each candidate for an STCW endorsement as master or mate for service on vessels in ocean or near-coastal service, must present sufficient documentary proof that he or she understands and can effectively apply procedures for bridge team work as an essential aspect of maintaining a safe navigational watch, taking into account the principles of bridge-resource management enumerated in Section B–VIII/2 of the STCW Code.

(f) Notwithstanding paragraph (b) through (e) of this section, § 11.304, and § 11.901, each mariner found qualified to hold any of the following officer endorsements will also be entitled to hold an STCW endorsement corresponding to the service or other limitations on the MMC, because the vessels concerned are not subject to further obligation under STCW because of their special operating conditions as small vessels engaged in domestic voyages:

(1) Masters, mates, or engineers endorsed for service on small passenger vessels that are subject to subchapter T or K of this chapter and that operate beyond the boundary line.

(2) Masters, mates, or engineers endorsed for service on seagoing vessels of less than 200 gross register tons (GRT), other than passenger vessels subject to subchapter H of this chapter.

(g) No mariner serving on, and no owner or operator of any of the following vessels, need hold an STCW endorsement, because they are exempt from application of STCW:

(1) Uninspected passenger vessels as defined in 46 U.S.C. 2101(42).

(2) Fishing vessels as defined in 46 U.S.C. 2101(11)(a).

(3) Fishing vessels used as fish-tender vessels as defined in 46 U.S.C. 2101(11)(c).

(4) Barges as defined in 46 U.S.C. 2101(2), including non-self-propelled mobile offshore drilling units.

(5) Vessels operating exclusively on the Great Lakes or on the inland waters of the U.S. in the Straits of Juan de Fuca inside passage.

§ 11.203 [Removed and Reserved]

103. Remove and reserve newly redesignated § 11.203.

§ 11.204 [Removed and Reserved]

104. Remove and reserve newly redesignated § 11.204.

105. Revise newly redesignated § 11.205 to read as follows:

§ 11.205 Requirements for original officer endorsements and STCW endorsements.

(a) *General.* In addition to the requirements in part 10 of this chapter and §§ 11.201 through 11.203, the applicant for an original officer endorsement must also satisfy the requirements of this section.

(b) *Experience or training.* (1) All applicants for original officer or STCW endorsements shall present to the OCMI letters, discharges, or other documents certifying the amount and character of their experience and the names, tonnage, and horsepower of the vessels on which acquired. The OCMI must be satisfied as to the authenticity and acceptability of all evidence of experience or training presented. Certificates of discharge are returned to the applicant. The OCMI shall note on the application that service represented by these documents has been verified. All other documentary evidence of service, or authentic copies thereof, are filed with the application. An MMC is not considered as satisfactory evidence of any qualifying experience.

(2) No original officer or STCW endorsement may be issued to any naturalized citizen based on less experience in any grade or capacity than would have been required of a citizen of the United States by birth.

(3) Experience and service acquired on foreign vessels is creditable for establishing eligibility for an original officer or STCW endorsement, subject to evaluation by the OCMI to determine that it is a fair and reasonable equivalent to service acquired on merchant vessels of the United States, with respect to grade, tonnage, horsepower, waters, and operating conditions. An applicant who has obtained qualifying experience on foreign vessels shall submit satisfactory documentary evidence of such service (including any necessary translation into English) in the forms prescribed by paragraph (b)(1) of this section.

(4) No applicant for an original officer or STCW endorsement who is a naturalized citizen, and who has obtained experience on foreign vessels, will be given an original officer endorsement in a grade higher than that upon which he or she has actually served while acting under the authority of a foreign credential.

(c) *Character check and references.*

(1) Each applicant for an original officer or STCW endorsement must submit written recommendations concerning the applicant's suitability for duty from a master and two other individuals holding officer endorsements or licenses on vessels on which the applicant has served.

(i) For an officer endorsement as engineer or as pilot, at least one of the recommendations must be from the chief engineer or pilot, respectively, of a vessel on which the applicant has served.

(ii) For an officer endorsement as engineer where service was obtained on vessels not carrying a credentialed engineer and for an officer endorsement as master or mate (pilot) of towing vessels, the recommendations may be by recent marine employers with at least one recommendation from a master, operator, or person in charge of a vessel upon which the applicant has served.

(iii) For an officer endorsement as offshore installation manager, barge supervisor, or ballast control operator, at least one recommendation must be from an offshore installation manager of a unit on which the applicant has served.

(iv) Where an applicant qualifies for an endorsement through an approved training school or program, one of the character references must be an official of that school or program.

(v) For an endorsement for which no commercial experience may be required, such as master or mate 25–200 gross tons, OUPV, radio officer, or certificate of registry, the applicant may have the written recommendations of three persons who have knowledge of the applicant's suitability for duty.

(vi) A person may apply for an original officer or STCW endorsement, or officer or STCW endorsement of a different type, while on probation as a result of administrative action under part 5 of this chapter. The offense for which the applicant was placed on probation will be considered in determining his or her fitness to hold the endorsement applied for. An officer or STCW endorsement issued to an applicant on probation will be subject to the same probationary conditions as were imposed against the applicant's other credential. An applicant may not take an examination for an officer or STCW endorsement during any period when a suspension without probation or a revocation is effective against the applicant's currently held license, merchant mariner's document, or MMC, or while an appeal from these actions is pending.

(vii) If an original license, certificate of registry, or officer endorsement has been issued when information about the applicant's habits of life and character is brought to the attention of the OCMI, if such information warrants the belief that the applicant cannot be entrusted with the duties and responsibilities of the license, certificate of registry, or endorsement issued, or if such information indicates that the application for the license, certificate of registry, or endorsement was false or incomplete, the OCMI may notify the holder in writing that the license, certificate of registry, or endorsement is considered null and void, direct the holder to return the credential to the OCMI, and advise the holder that, upon return of the credential, the appeal procedures of § 10.237 of this chapter apply.

(d) *Firefighting certificate.* Applicants for officer endorsements in the following categories must present a certificate of completion from a firefighting course of instruction which has been approved by the Commandant. The course must meet both the basic and advanced sections of the International Maritime Organization's (IMO) Resolution A.437 (XI) *Training of Crews in Firefighting.* The course must have been completed within five years before the date of application for the officer endorsement requested.

(1) Officer endorsement as master on vessels of 200 GRT or less in ocean service.

(2) Officer endorsements as master or mate on vessels of over 200 GRT.

(3) All officer endorsements for master or mate (pilot) of towing vessels, except apprentice mate (steersman) of the vessels, on oceans.

(4) All officer endorsements for MODUs.

(5) All officer endorsements for engineers.

(e) *First aid and cardiopulmonary resuscitation (CPR) course certificates.* All applicants for an original officer endorsement, except as provided in §§ 11.429, 11.456, and 11.467 of this part, must present to the OCMI:

(1) A certificate indicating completion of a first aid course not more than one year from the date of application from:

(i) The American National Red Cross *Standard First Aid and Emergency Care* or *Multi-media Standard First Aid course;*

(ii) A Coast Guard-approved first aid training course; or

(iii) A course the OCMI determines meets or exceeds the standards of the American Red Cross courses; and

(2) A currently valid certificate of completion of a CPR course from either:

(i) The American National Red Cross;

(ii) The American Heart Association;

(iii) A Coast Guard approved CPR training course; or

(iv) A course the OCMI determines meets or exceeds the standards of the American Red Cross or American Heart Association courses.

(f) *Professional Examination.* (1) When the OCMI finds the applicant's experience and training to be satisfactory and the applicant is eligible in all other respects, the OCMI will authorize the examination in accordance with the following requirements:

(i) Any applicant for a deck or engineer officer endorsement limited to vessels not exceeding 500 GRT, or an officer endorsement limited to uninspected fishing-industry vessels, may request an oral-assisted examination in lieu of any written or other textual examination. If there are textual questions that the applicant has difficulty reading and understanding, the OCMI will offer the oral-assisted examination. Each officer endorsement based on an oral-assisted examination is limited to the specific route and type of vessel upon which the applicant obtained the majority of service.

(ii) The general instructions for administration of examinations and the lists of subjects for all officer endorsements appear in subpart I of this part. The OCMI will place in the applicant's file a record indicating the subjects covered.

(2) When the application of any person has been approved, the applicant should take the required examination as soon as practicable. If the applicant cannot be examined without delay at the office where the application is made, the applicant may request that the examination be given at another office.

(3) The qualification requirements for radar observer are contained in § 11.480.

(4) An examination is not required for a staff officer or radio officer endorsement.

(g) *Practical demonstration of skills.* Each candidate for an original STCW endorsement must successfully complete any practical demonstrations required under this part and appropriate to the particular endorsement concerned, to prove that he or she is sufficiently proficient in skills required under subpart I of this part. The OCMI must be satisfied with the authenticity and acceptability of all evidence that each candidate has successfully completed the demonstrations required under this part in the presence of a designated examiner. The OCMI will place a written or electronic record of the skills required, the results of the practical demonstrations, and the identification of the designated examiner in whose presence the requirements were fulfilled in the file of each candidate.

§ 11.207 [Removed and Reserved]

106. Remove and reserve newly redesignated § 11.207.

§ 11.209 [Removed and Reserved]

107. Remove and reserve newly redesignated § 11.209.

§ 11.210 [Removed and Reserved]

108. Remove and reserve newly redesignated § 11.210.

§ 11.211 [Amended]

109. In newly redesignated § 11.211—

a. In the section heading, remove the words ''licensing purposes'' and add, in their place, the words ''officer endorsements'';

b. In paragraph (a), remove the words ''licensing purposes'' and add, in their place, the words, ''the purposes of this part''; and remove the words ''officials or licensed masters'' and add, in their place, the words ''officials, or individuals holding an officer endorsement or license as master'';

c. In paragraph (b) introductory text, remove the word ''license'' and add, in its place, the words ''officer endorsement'';

d. In paragraph (c), after the words ''raise of grade of'' remove the word ''license'' and add, in its place, the words ''officer endorsement''; and after the words ''equivalent while holding''; remove the word ''a'' and add, in its place, the words ''an officer endorsement or''; and, after the words ''unlimited, nonrestricted'' remove the word ''licenses'' and add, in its place, the words ''officer licenses or endorsements''; and

e. In paragraph (d), after the words ''raise of grade of any deck'', remove the word ''licenses'' and add, in its place, the words ''officer endorsement''; and, after the words ''required for an unlimited'', remove the word ''license'' and add, in its place, the words ''officer endorsement''.

§ 11.213 [Amended]

110. In newly redesignated § 11.213—

a. In paragraph (a), after the words ''in scope of all'', remove the word ''licenses'' and add, in its place, the words ''officer endorsements''; and after the words ''and limit of'', remove the word ''license'' and add, in its place, the words ''officer endorsement''; and after the words ''or chief engineer's unlimited'', remove the word ''license'' and add, in its place, the words ''officer endorsement'';

b. In paragraph (b), remove the words ''licensing purposes'' wherever they appear and add, in their place, the words ''the purposes of this part'';

c. In paragraph (d), remove the word ''licenses'' wherever it appears and add, in its place, the words ''officer endorsements''; after the words ''submitted for the'' remove the word ''license'' and add, in its place, the word ''endorsement''; and after the words ''submitted for an original'', remove the word ''license'' and add, in its place, the words ''officer endorsement''; and

d. In paragraph (e), after the words ''in which a license'', add the words ''or officer endorsement''.

§ 11.215 [Removed and Reserved]

111. Remove and reserve § 11.215.

§ 11.217 [Amended]

112. In newly redesignated § 11.217—

a. In the section heading, remove the word ''licenses'' and add, in its place, the words ''officer endorsements'';

b. In paragraph (a)(1), after the words ''deck and engineer unlimited'', remove the word ''licenses'' and add, in its place, the words ''officer endorsements'', and remove the words ''table 10.109 in § 10.109'' and add, in their place, the words ''table 10.219(a) in § 10.219 of this chapter'';

c. In paragraph (a)(2), after words ''deck and engineer'', remove the words ''license'' and add, in its place, the words ''officer endorsement''; and remove the words ''table 10.109 in § 10.109'' and add, in their place, the words ''table 10.219(a) in § 10.219''; and

d. In paragraph (b), remove the word ''license'' and add, in its place, the word

''endorsement''; and remove the words ''the applicant is furnished'' and add, in their place, the words ''the Coast Guard will provide the applicant''.

§ 11.219 [Removed and Reserved]

113. Remove and reserve newly redesignated § 11.219.

§ 11.221 [Removed and Reserved]

114. Remove and reserve newly redesignated § 11.221.

§ 11.223 [Removed and Reserved]

115. Remove and reserve newly redesignated § 11.223.

§ 11.302 [Amended]

116. In newly redesignated § 11.302(e), remove the words ''parts 10, 12, 13 or 15,'' and add, in their place, the words ''parts 10, 11, 12, 13, or 15''.

117. Revise newly designated § 11.304 paragraphs (a), (c), (d), (e), (f), (g)(6), (g)(7), (h) introductory text, (h)(5) and (h)(8) to read as follows:

§ 11.304 Substitution of training for required service, use of training-record books, and use of towing officer assessment records.

(a) Satisfactory completion of certain training courses approved by the Commandant may be substituted for a portion of the required service for many deck and engineer officer endorsements and for qualified rating endorsements. The list of all currently approved courses of instruction including the equivalent service and applicable endorsements is maintained by the National Maritime Center. Satisfactory completion of an approved training course may be substituted for not more than two-thirds of the required service on deck or in the engine department for deck or engineer officer endorsements, respectively, and qualified rating endorsements.

* * * * *

(c) Training obtained before receiving an officer endorsement may not be used for subsequent raises of grade.

(d) Simulator training in combination with a Coast Guard-approved training course may be submitted to the Commanding Officer, National Maritime Center for evaluation and determination of equivalency to required sea service. Simulator training cannot be substituted for recency requirements, but may substitute for a maximum of 25 percent of the required service for any officer endorsement transaction.

(e) Except as provided in § 11.202, when a candidate both applies for an STCW endorsement as OICNW, on the basis of training or sea service, and uses completion of approved training to substitute for required service, then not less than one year of the remaining service must be part of approved training that meets the appropriate requirements of Chapter II of STCW and the requirements of subpart C of this part. The training of a candidate must be documented in a Coast Guard-accepted training-record book.

(f) Except as provided in § 11.202, each candidate who applies for an STCW endorsement as an OICEW on the basis of training or sea service for service on seagoing vessels, shall complete onboard training as part of approved training that meets the appropriate requirements of Chapter III of STCW (incorporated by reference in § 11.102) and the requirements of subpart C of this part. The training must be documented in a Coast Guard-accepted training-record book.

(g) * * *

* * * * * *

(6) The identity of each qualified instructor, including any MMC endorsements, license, or document held, and the instructor's signature.

(7) The identity of each designated examiner, when any assessment of competence is recorded, including any MMC endorsement, license, or document held, and the examiner's signature confirming that his or her initials certify that he or she has witnessed the practical demonstration of a particular task or skill by the candidate.

(h) Each applicant for an endorsement as master or mate (pilot) of towing vessels, and each master or mate of self-propelled vessels of greater than 200 GRT seeking an endorsement for towing vessels, shall complete a towing officers' assessment record that contains at least the following:

(1) * * *

* * * * * *

(5) A place for a qualified instructor or credentialed officer (with authority to operate a towing vessel) to indicate by his or her initials that the candidate has received training in the proper performance of the tasks or skills.

* * * * *

(7) Identification of each qualified instructor or credentialed officer (with authority to operate a towing vessel) by full name, home address, employer, job title, ship name or business address, serial number of the TWIC, MMC, license, or document held, and personal signature.

(8) Identification of each designated examiner by full name, home address, employer, job title, ship name or business address, serial number of the TWIC, MMC, license, or document held, and personal signature confirming that his or her initials certify that he or she has witnessed the practical demonstration of a particular task or skill by the candidate.

* * * * *

§ 11.309 [Amended]

118. In newly redesignated § 11.309—

a. In paragraph (a) introductory text, remove the words ''§ 10.302'' and add, in their place, the words ''§ 11.302''; after the words ''hold an STCW''; remove the words ''certificate or''; and remove the words ''for service on or after February 1, 2002'';

b. In paragraph (a)(3)(iii), after the words ''level of license,'' add the word ''officer'';

c. In paragraph (a)(4), after the words ''maritime license'', add the words '', MMC,'';

d. In paragraph (b), remove the word ''licenses'' and add, in its place, the word ''officer'';

e. In paragraph (c)(2), remove the words ''(G–MOC)'' and add, in their place, the words ''(CG–3PCV)''; and

f. In paragraph (c)(3), remove the words ''STCW endorsement'' and add, in their place, the words ''officer or STCW endorsements''.

Subpart D—[Amended]

119. In the heading for subpart D, remove the words ''Officers'' Licenses'' and add in their place the word ''Officers''.

120. Revise newly redesignated § 11.401 to read as follows:

§ 11.401 Ocean and near-coastal officer or STCW endorsements.

(a) Any license or MMC endorsement for service as master or mate on ocean waters qualifies the mariner to serve in the same grade on any waters, subject to the limitations of the endorsement.

(b) A license or MMC endorsement issued for service as master or mate on near-coastal waters qualifies the mariner to serve in the same grade on near-coastal, Great Lakes, and inland waters, subject to the limitations of the endorsement.

(c) Near-coastal endorsements for any gross tons require the same number of years of service as the ocean-unlimited endorsements. The primary differences in these endorsements are the nature of the service and the professional examination as explained in subpart I of this part.

(d) A mariner having a master or mate near-coastal license or MMC endorsement obtained with ocean service may have an MMC endorsed for ocean service by completing the appropriate examination deficiencies, provided that the additional service

requirements of paragraph (e) of this section do not apply.

(e) Master or third mate near-coastal unlimited endorsements may be obtained by completing the prescribed examination in subpart I of this part and satisfying the requirements of paragraph (g) while holding a license or MMC endorsement as unlimited master or mate, respectively, upon Great Lakes and inland waters. To have a near-coastal-unlimited endorsement obtained in this manner endorsed for ocean service, the mariner must obtain 12 months of service as a deck-watch officer or higher on ocean waters on vessels of 1,600 GRT of over, in addition to completing the examination topics.

(f) Masters and mates endorsements for service on vessels of over 200 gross tons may be endorsed for sail or auxiliary sail as appropriate. The applicant must present the equivalent total qualifying service required for conventional officer endorsements including at least one year of deck experience on that specific type of vessel. For example, for an officer endorsement as a master of vessels of not more than 1,600 gross tons endorsed for auxiliary sail, the applicant must meet the total experience requirements for the conventional officer endorsement, including time as mate and the proper tonnage experience, including at least one year of deck service on appropriately sized auxiliary-sail vessels. For an endorsement to serve on vessels of 200 gross tons or less see individual endorsement requirements.

(g) In order to obtain a master or mate endorsement with a tonnage limit above 200 gross tons, or an endorsement for 200 gross tons or less with an ocean route, whether an original, raise in grade, or increase in the scope of the endorsement authority to a higher tonnage category, the applicant must successfully complete the following training and examination requirements:

(1) Approved firefighting course;

(2) Approved radar-observer course; and,

(3) Qualification as an able seaman unlimited or able seaman limited (able seaman special or able seaman offshore supply vessels satisfy the able seaman requirement for endorsements permitting service on vessels of 1,600 gross tons and less).

(h) Each applicant for a deck officer endorsement, which authorizes service on vessels above 1,600 gross tons on ocean or near-coastal waters, whether original or raise of grade, must pass a practical-signaling examination (flashing light). An applicant who fails in practical signaling, but passes every other part of the examination, may be issued an endorsement with a 1,600 gross ton limitation. The tonnage limitation can be removed upon successful completion of the signaling examination.

§ 11.402 [Amended]

121. In newly redesignated § 11.402—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

b. In paragraph (a), remove the word ''license'' and add, in its place, the word ''endorsement'';

c. In paragraph (b), remove the words ''original or raise of grade of a license'' and add, in their place, the word ''endorsement'' and remove the words ''§ 10.407(c)'' and add, in their place, the words ''§ 11.407(c)''; after the words ''is placed on the'' remove the word ''license'' and add, in its place the word ''endorsement''; before the words ''is limited to'', remove the word ''license'' and add, in its place, the word ''endorsement''; and after the words ''an unlimited tonnage'', remove the word ''license'' and add, in its place, the word ''endorsement'';

d. In paragraph (c)(1), remove the word ''licensed'' and add in its place, the word ''endorsed'';

e. In paragraph (c)(2), remove the words ''licensed capacity'' and add, in their place, the words ''capacity as an officer''; after the words ''for which'', remove the word ''licensed'' and add, in its place, the word ''endorsed''; after the words ''next higher grade'', remove the word ''license'' and add, in its place, the word ''endorsement''; and after the words ''limited license'', add the words ''or MMC endorsement'';

f. In paragraph (c)(3), after the words ''a license'', add the words ''or endorsement''; and after the words ''third mate's license'', add the words ''or MMC endorsement''; and

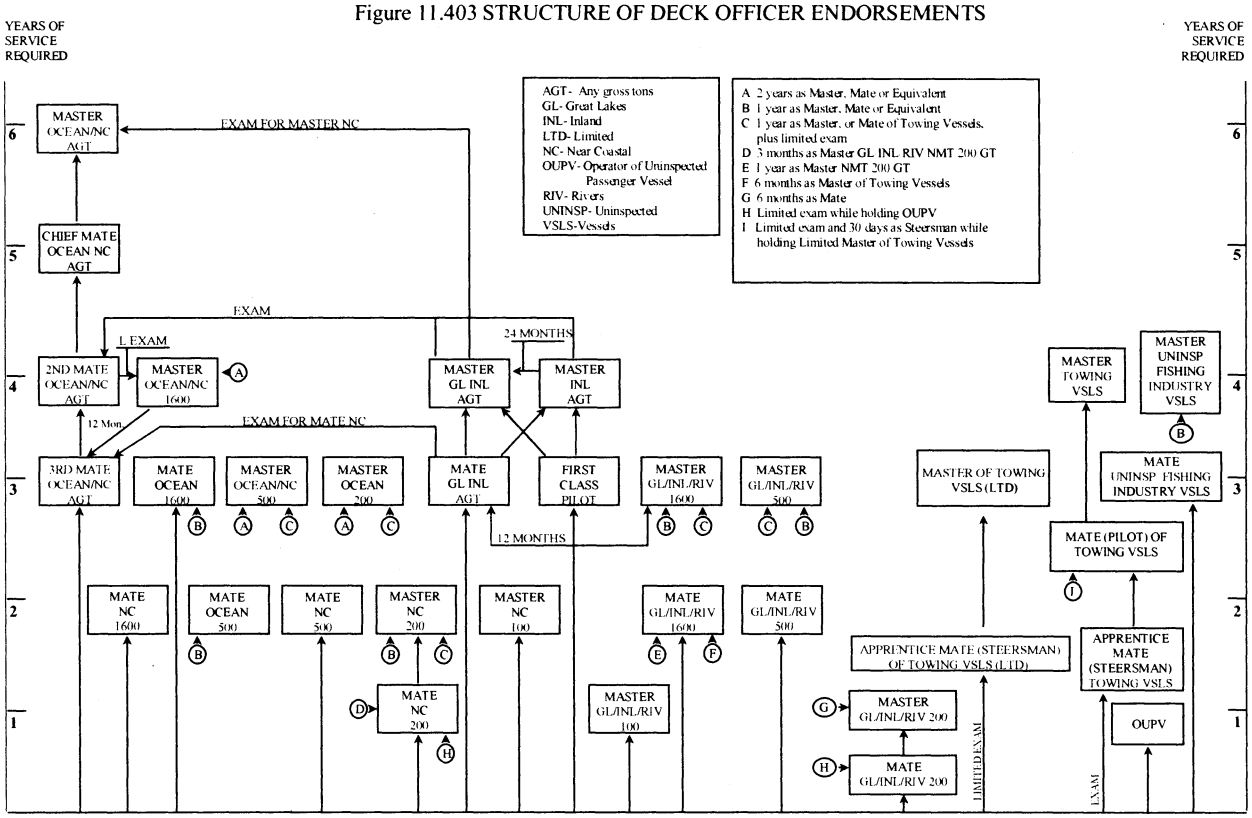
g. In paragraph (d), after the word ''licenses'', wherever it appears, add the words ''or endorsements''.

122. Revise § 11.403 to read as follows:

§ 11.403 Structure of deck officer endorsements.

The following diagram illustrates the deck officer endorsement structure, including cross over points. The section numbers on the diagram refer to the specific requirements applicable.

Figure 11.403 STRUCTURE OF DECK OFFICER ENDORSEMENTS



§ 11.404 [Amended]

123. In newly redesignated § 11.404—

a. In the introductory text, remove the word ''license'' and add, in its place, the words ''an endorsement''; and

b. In paragraph (b) introductory text, after the words ''holding a license'', add the words ''or MMC endorsement''.

§ 11.405 [Amended]

124. In newly redesignated § 11.405, after the words ''qualify an applicant for'' remove the word ''license'' and add, in its place, the words ''an endorsement''; and after the words ''holding a license'', add the words ''or MMC endorsement''.

§ 11.406 [Amended]

125. In newly redesignated § 11.406—

a. In the introductory text, remove the word ''license'' and add, in its place, the words ''an endorsement'';

b. In paragraph (a), after the words ''holding a license'', add the words ''or endorsement'';

c. In paragraph (b) introductory text, after the words ''holding a license'', add the words ''or MMC endorsement'';

d. In paragraph (b)(2), after the words ''holding a certificate'', add the words ''or MMC endorsement''; and

e. In paragraph (c), remove the words ''A licensed'' and add, in their place, the words ''An individual holding an endorsement or license as''; and after the words ''may obtain'', remove the words ''a license'' and add, in their place, the words ''an endorsement''.

§ 11.407 [Amended]

126. In newly redesignated § 11.407—

a. In paragraph (a) introductory text, remove the word ''license'' and add, in its place, the words ''an endorsement'';

b. In paragraph (a)(1), after the words ''a certificate'', add the words ''or endorsement''; and remove the word ''license'' and add, in its place, the words ''officer endorsement'';

c. In paragraph (b), remove the words ''a license'' and add, in their place, the words ''an endorsement''; and

d. In paragraph (c), after the words ''holding a license'', add the words ''or MMC endorsement''; and after the words ''qualify the applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''.

§ 11.410 [Amended]

127. In newly redesignated § 11.410—

a. In the section heading, remove the word ''licenses'' and add, in its place, the words ''officer endorsements'';

b. In paragraph (a) introductory text, remove the word ''Licenses'' and add, in its place, the word ''Endorsements'';

c. In paragraph (b), remove the word ''license'' and add, in its place, the word ''endorsement''; and

d. In paragraph (c), remove the words ''A license'' and add, in their place, the words ''An officer's endorsement''.

§ 11.412 [Amended]

128. In newly redesignated § 11.412—

a. In the introductory text, remove the words ''a license'' and add, in their place, the words ''an endorsement'';

b. In paragraph (a), after the words ''holding a license'', add the words ''or MMC endorsement''; and remove the words '' master, mate master or mate (pilot)'' wherever they appear and add, in their place, the words ''master, mate, master or mate (pilot)''; and

c. In paragraph (b), after the words ''holding a license'', add the words ''or MMC endorsement''; and after the words ''eligible for this'', remove the word ''license'' and add, in its place, the word ''endorsement''.

§ 11.414 [Amended]

129. In newly redesignated § 11.414—

a. In the introductory text, remove the words ''a license'' and add, in their place, the words ''an endorsement''; and

b. In paragraph (a), after the words ''holding a license'' add the words ''or MMC endorsement''; and remove the words '' master, mate master or mate (pilot)'' wherever they appear and add, in their place, the words ''master, mate, master or mate (pilot)''.

§ 11.416 [Amended]

130. In newly redesignated § 11.416 text, remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''holding a certificate'', add the words ''or endorsement''.

§ 11.418 [Amended]

131. In newly redesignated § 11.418—

a. In the introductory text, remove the words ''a license'' and add, in their place, the words ''an endorsement'';

b. In paragraph (a), after the words ''holding a license'', add the words ''or MMC endorsement'';

c. In paragraph (b), after the words ''The holder of a license'', add the words ''or MMC endorsement''; and after the words ''is eligible for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''.

§ 11.420 [Amended]

132. In newly redesignated § 11.420 text, after the words ''qualify an applicant for'' remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''position while holding a license'', add the words ''or endorsement''.

§ 11.421 [Amended]

133. In newly redesignated § 11.421 text, remove the words ''a license'' and add, in their place, the words ''an endorsement''; and, after the words ''holding a certificate'', add the words ''or endorsement''.

§ 11.422 [Amended]

134. In newly redesignated § 11.422—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

b. In paragraph (a), remove the word ''licenses'' and add, in its place, the word ''endorsements''; and remove the word ''license'' and add, in its place, the word ''endorsement'';

c. In paragraph (b) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

d. In paragraphs (b)(1) and (b)(2), remove the word ''license'' wherever it appears and add, in its place, the word ''endorsement'';

e. In paragraph (b)(3), remove the word ''license'' and add, in its place, the words ''officer endorsement'';

f. In paragraph (b)(4), after the words ''increment on the'', remove the word ''license'' and add, in its place, the words ''officer's license or MMC endorsement'';

g. In paragraph (c), after the words ''vessels upon which'', remove the words ''licensed personnel are not required'' and add, in their place, the words ''no personnel need an officer endorsement or license''; and after the words ''required to engage'', remove the words ''licensed individuals'' and add, in their place, the words ''individuals with officer endorsements''; and

h. In paragraph (e), remove the word ''license'' and add, in its place, the words ''officer endorsement''.

§ 11.424 [Amended]

135. In newly redesignated § 11.424—

a. In paragraph (a) introductory text, remove the words ''a license'' and add, in their place, the words ''an officer endorsement'';

b. In paragraph (a)(1), after the words ''holding a license'', add the words ''or MMC endorsement'';

c. In paragraph (a)(2), remove the word ''licensed'';

d. In paragraph (b), remove the words ''endorsement on this license'' and add, in their place, the words ''officer endorsement''; and after the words ''master's license'', add the words ''or MMC endorsement''; and

e. In paragraph (c), remove the words ''§ 10.401(g) of this subpart'' and add, in their place, the words ''§ 11.401(g)''.

§ 11.426 [Amended]

136. In newly redesignated § 11.426—

a. In paragraph (a) introductory text, remove the words ''a license'' and add, in its place, the words ''an endorsement'';

b. In paragraph (a)(1), after the words ''holding a license'' add the words ''or endorsement'';

c. In paragraph (a)(2), remove the word ''licensed''; and

d. In paragraph (b), remove the words ''an endorsement on this license'' and add, in its place, the words ''this officer endorsement''; and after the words ''of the master's license'', add the words ''or MMC endorsement''.

§ 11.427 [Amended]

137. In newly redesignated § 11.427—

a. In paragraph (a) introductory text, remove the word ''license'' and add, in its place, the word ''endorsement'';

b. In paragraph (a)(2), after the words ''holding a license'', add the words ''or MMC endorsement'';

c. In paragraph (b), after the words ''holder of a license'', add the words ''or MMC endorsement''; and after the words ''may obtain this'', remove the word ''license'' and add, in its place, the word ''endorsement'';

d. In paragraph (c), remove the words ''an endorsement on this license'' and add, in its place, the words ''this officer endorsement'';

e. In paragraph (d), after the words ''A license'', add the words ''or MMC endorsement''; and

f. In paragraph (e), after the words ''a tonnage endorsement'', remove the word ''of'' and add, in its place, the word ''for''.

§ 11.428 [Amended]

138. In newly redesignated § 11.428—

a. In paragraph (a), remove the words ''a license'' and add, in their place, the words ''an endorsement''; and

b. In paragraph (b), remove the words ''endorsement on this license'' and add, in their place, the word ''endorsement''; and after the words ''issuance of the license'', add the words ''or MMC endorsement''.

§ 11.429 [Amended]

139. In newly redesignated § 11.429—

a. In paragraph (a) introductory text after the words ''Limited masters' '', remove the word ''licenses'' and add, in its place, the word ''endorsements''; after the words ''educational institutions.'', remove the words ''A license'' and add, in their place, the words ''An endorsement''; and, after the words ''obtain this restricted'', remove the word ''license'' and add, in its place, the word ''endorsement'';

b. In paragraph (a)(1), after the words ''for which the'' remove the word ''license'' and add, in its place, the word ''endorsement'';

c. In paragraph (b), remove the words ''§ 10.205(h) of this part'' and add in their place, the words ''§ 11.205(e)''; and

d. In paragraph (c), after the words ''obtain an endorsement'', remove the words ''on this license'' and after the words ''issuance of the license'' add the words ''or MMC endorsement''.

§ 11.430 [Amended]

140. In newly redesignated § 11.430—

a. In the section heading, remove the word ''Licenses'' and add, in its place, the word ''Endorsements''; and

b. In the text, after the words ''Any license'', wherever they appear, add the words ''or MMC endorsement''; after the word ''licenses'', wherever it appears, add the words ''and MMC endorsements''; and, after the words ''COLREGS or the'', remove the words ''license must be endorsed with an exclusion from'' and add, in their place, the words ''endorsement must exclude''.

§ 11.431 [Amended]

141. In newly redesignated § 11.431—

a. In the section heading, remove the word ''licenses'', and add, in its place, the word ''endorsements'';

b. In paragraph (a), remove the word ''licenses'', and add, in its place, the word ''endorsements''; and

c. In paragraph (b), remove the word ''licenses'', and add, in its place, the word ''endorsements''; and remove the words ''§ 10.402'' and add, in their place, the place, the words ''§ 11.402''.

§ 11.433 [Amended]

142. In newly redesignated § 11.433—

a. In the introductory text, remove the word ''license'' and add, in its place, the words ''an endorsement''; and

b. In paragraph (c), after the words ''holding a license'', add the word ''or MMC endorsement''.

§ 11.435 [Amended]

143. In newly redesignated § 11.435—

a. In the introductory text, remove the word ''license'', and add, in its place, the word ''an endorsement''; and

b. In paragraph (b), after the words ''mate/ first class pilot license'', add the words ''or MMC endorsement''.

§ 11.437 [Amended]

144. In newly redesignated § 11.437—

a. In paragraph (a) introductory text, remove the word ''license'', and add, in its place, the words ''an endorsement''; and

b. In paragraph (a)(3), after the words ''holding a license'', add the words ''or MMC endorsement''.

§ 11.442 [Amended]

145. In newly redesignated § 11.442—

a. In the introductory text, remove the words ''a license'', and add, in their place, the words ''an endorsement''; and

b. In paragraphs (a) and (b), after the words ''holding a license'', wherever they appear, add the words ''or MMC endorsement''.

§ 11.444 [Amended]

146. In newly redesignated § 11.444—

a. In the introductory text, remove the word ''license'' and add, in its place, the words ''an endorsement'';

b. In paragraph (a), after the words ''holding a certificate'', add the words ''or endorsement''; and

c. In paragraph (b), after the words ''holding a license'', add the words ''or MMC endorsement''.

§ 11.446 [Amended]

147. In newly redesignated § 11.446—

a. In the introductory text, remove the words ''a license'' and add, in their place, the words ''an endorsement'';

b. In paragraph (a), after the words ''holding a license'', add the words ''or MMC endorsement''; and

c. In paragraph (b), after the words ''holding a license'', wherever they appear, add the words ''or MMC endorsement''; and after the words ''eligible for this'', remove the word ''license'' and add, in its place, the word ''endorsement''.

§ 11.448 [Amended]

148. In newly redesignated § 11.448 text, after the words ''an applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''holding a certificate'', add the words ''or endorsement''.

§ 11.450 [Amended]

149. In newly redesignated § 11.450—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

b. In paragraph (a), remove the word ''licenses'' and add, in its place, the word ''endorsements''; and remove the text ''§ 10.422'' each time it appears and add, in its place, the text ''§ 11.422'';

c. In paragraph (c), after the words ''vessels upon which'', remove the words ''licensed personnel'' and add, in their place, the words ''personnel with licenses or endorsements''; and, after the words ''required to engage'', remove the words ''licensed individuals'' and add, in their place, the words ''individuals with endorsements''; and

d. In paragraph (d), remove the word ''license'' and add, in its place, the word ''endorsement''.

§ 11.452 [Amended]

150. In newly redesignated § 11.452—

a. In paragraph (a), after the words ''qualify an applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; after the words ''holding a license'', add the words ''or MMC endorsement''; and after the words ''otherwise the'', remove the word ''license'' and add, in its place, the word ''endorsement''; and

b. In paragraph (b), after the words ''In order to obtain an endorsement'', remove the words ''on this license''; and after the words ''master's license'' add the words ''or MMC endorsement''.

§ 11.454 [Amended]

151. In newly redesignated § 11.454—

a. In paragraph (a), after the words ''qualify an applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''otherwise the'', remove the word ''license'' and add, in its place, the word ''endorsement'';

b. In paragraph (b), after the words ''In order to obtain an endorsement'', remove the words ''on this license'';

c. In paragraph (c), before the words ''as master of steam'', remove the words ''A license'' and add, in their place, the words ''An endorsement''; and

d. In paragraph (d), after the words ''The holder of a license'', add the words ''or MMC endorsement''; after the words ''may obtain this'', remove the word ''license'' and add, in its place, the word ''endorsement''; and after the words ''otherwise the'', remove the word ''license'' and add, in its place, the word ''endorsement''.

§ 11.455 [Amended]

152. In newly redesignated § 11.455—

a. In paragraph (a), after the words ''qualify an applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''otherwise the'', remove the word ''license'' and add, in its place, the word ''endorsement''; and

b. In paragraph (b), after the words ''In order to obtain an endorsement'', remove the words ''on this license''; and after the words ''issuance of the'', remove the word ''license'' and add, in its place, the word ''endorsement''.

§ 11.456 [Amended]

153. In newly redesignated § 11.456—

a. In the introductory text, after the words ''Limited masters' '', remove the word ''licenses'' and add, in its place, the word ''endorsements''; before the words ''issued under this'', remove the words ''A license'' and add, in their place, the words ''An endorsement''; and after the words ''In order to obtain this restricted'', remove the word ''license'' and add, in its place, the word ''endorsement'';

b. In paragraph (a), remove the word ''license'' and add, in its place, the word ''endorsement''; and

c. In paragraph (d), after the words ''required by'', remove the text ''§ 10.205(h)'' and add, in its place, the text ''§ 11.205(e)''.

§ 11.457 [Amended]

154. In newly redesignated § 11.457—

a. In paragraph (a), after the words ''An applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''requirements of'', remove the text ''§ 10.452'' and add, in its place, the text ''§ 11.452''; and

b. In paragraph (b), after the words ''In order to obtain an endorsement'', remove the words ''on this license''; and, after the words ''issuance of the license'', add the words ''or MMC endorsement''.

§ 11.459 [Amended]

155. In newly redesignated § 11.459—

a. In paragraph (a), after the words ''An applicant for'', remove the words

''a license'' and add, in their place, the words ''an endorsement''; and

b. In paragraph (b), after the words ''An applicant for'', remove the words ''a license'' and add, in their place, the words ''an endorsement''; and after the words ''and inland steam or motor'', remove the word ''license'' and add, in its place, the word ''endorsement''.

156. In newly designated § 11.462, revise the heading and paragraphs (a) introductory text, (b), (c) introductory text, (c)(1) through (3), (c)(4) introductory text, (c)(4)(v), (c)(4)(vi), (d)(1) through (3), (d)(4) introductory text, and (d)(4)(iv) through (vi) to read as follows:

§ 11.462 Endorsements for master or mate of uninspected fishing industry vessels.

(a) This section applies to endorsements for masters and mates of all vessels, however propelled navigating the high seas, which are documented to engage in the fishing industry, with the exception of:

* * * * *

(b) Endorsements as master or mate of uninspected fishing industry vessels are issued for either ocean or near-coastal routes, depending on the examination completed. To qualify for an uninspected fishing industry vessel endorsement, the applicant must satisfy the training and examination requirements of § 11.401(g) of this subpart.

(c) An applicant for an endorsement as master of uninspected fishing industry vessels must have four years of total service on ocean or near coastal routes. Service on Great Lakes or inland waters may substitute for up to two years of the required service. One year of the required service must have been as master, mate, or equivalent supervisory position while holding a license or MMC endorsement as master, mate, master or mate (pilot) of towing vessels, or OUPV.

(1) To qualify for an endorsement for not more than 500 gross tons, at least two years of the required service, including the one year as master, mate or equivalent, must have been on vessels of over 50 gross tons.

(2) To qualify for an endorsement for not more than 1,600 gross tons, at least two years of the required service, including the one year as master, mate, or equivalent, must have been on vessels of over 100 gross tons.

(3) To qualify for an endorsement for over 1,600 gross tons, but not more than 5,000 gross tons, the vessel tonnage upon which the four years of required service was obtained will be used to compute the tonnage. The endorsement is limited to the maximum tonnage on which at least 25 percent of the required service was obtained or 150 percent of the maximum tonnage on which at least 50 percent of the service was obtained, whichever is higher. Limitations are in multiples of 1,000 gross tons, using the next higher figure when an intermediate tonnage is calculated. An endorsement as master of uninspected fishing industry vessels authorizing service on vessels over 1,600 gross tons also requires one year as master, mate, or equivalent on vessels over 100 gross tons.

(4) The tonnage limitation for this endorsement may be raised using one of the following methods, but cannot exceed 5,000 gross tons. Limitations are in multiples of 1,000 gross tons, using the next higher figure when an intermediate tonnage is calculated.

* * * * *

(v) Two years of service as a deckhand on a vessel while holding a license or MMC endorsement as master results in a limitation on the MMC equal to 150% of the tonnage of that vessel up to 5,000 gross tons; or

(vi) One year of service as deckhand on a vessel while holding a license or MMC endorsement as master results in a limitation on the MMC equal to the tonnage of that vessel.

(d) An applicant for an endorsement as mate of uninspected fishing industry vessels must have three years of total service on ocean or near-coastal routes. Service on Great Lakes or inland waters may substitute for up to 18 months of the required service.

(1) To qualify for an endorsement of not more than 500 gross tons, at least one year of the required service must have been on vessels of over 50 gross tons.

(2) To qualify for an endorsement of not more than 1,600 gross tons, at least one year of the required service must have been on vessels of over 100 gross tons.

(3) To qualify for an endorsement of over 1,600 gross tons, but not more than 5,000 gross tons, the vessel tonnage upon which the three years of required service was obtained will be used to compute the tonnage. The endorsement is limited to the maximum tonnage on which at least 25 percent of the required service was obtained, or 150 percent of the maximum tonnage on which at least 50 percent of the service was obtained, whichever is higher. Limitations are in multiples of 1,000 gross tons, using the next higher figure when an intermediate tonnage is calculated.

(4) The tonnage limitation on this endorsement may be raised using one of the following methods, but cannot exceed 5,000 gross tons. Limitations are in multiples of 1000 gross tons, using the next higher figure when an intermediate tonnage is calculated.

* * * * *

(iv) One year of service as deckhand on vessels over 1,600 gross tons while holding a license or MMC endorsement as mate, results in raising the limitation on the MMC to 5,000 gross tons;

(v) Two years of service as a deckhand on a vessel while holding a license or MMC endorsed as mate results in a limitation on the MMC equal to 150% of the tonnage of that vessel up to 5,000 gross tons; or

(vi) One year of service as deckhand on a vessel while holding a license or MMC endorsement as mate results in a limitation on the MMC equal to the tonnage of that vessel.

* * * * *

§ 11.463 [Amended]

157. In newly redesignated § 11.463—

a. In the section heading, remove the words ''licenses for'' and add, in their place, the words ''endorsements as'';

b. In paragraph (a) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements''; and

c. In paragraphs (b) and (c), remove the words ''a license'' wherever they appear and add, in their place, the words ''an endorsement''.

158. In newly redesignated § 11.464, revise the section heading, paragraphs (a) through (e), including tables 11.464(a) and 11.464(b), and paragraphs (f) introductory text, (f)(2)(i), and (f)(3) to read as follows:

§ 11.464 Requirements for endorsements as master of towing vessels.

(a) If you would like to obtain an endorsement as master of towing vessels with a route listed in column 1 of table 11.464(a) of this section, then you must complete the service requirements indicated in columns 2 through 5. You may serve on the subordinate routes listed in column 6 without further endorsement.

TABLE 11.464(A).—REQUIREMENTS FOR ENDORSEMENT AS MASTER OF TOWING VESSELS [1]

1	2	3	4	5	6
Route endorsed	Total service [2]	TOS [3] on T/V as mate (pilot)	TOS [3] T/V as mate (pilot) not as harbor assist	TOS [3] particular route	Subordinate route authorized
(1) OCEANS (O)	48	18 of 48	12 of 18	3 of 18	NC, GL–I.
(2) NEAR–COASTAL (NC)	48	18 of 48	12 of 18	3 of 18	PGL–I.
(3) GREAT LAKES–INLAND (GL–I)	48	18 of 48	12 of 18	3 of 18.	
(4) WESTERN RIVERS (WR)	48	18 of 48	12 of 18	3 of 18.	

[1] If you hold an endorsement as master of towing vessels you may have an endorsement-as mate (pilot) of towing vessels for a route superior to your current route on which you have no operating experience-placed on your MMC after passing an examination for that additional route. After you complete 90 days of experience and complete a Towing Officer's Assessment Record on that route, we will add it to your endorsement as master of towing vessels and remove the one for mate (pilot) of towing vessels.
[2] Service is in months.
[3] TOS is time of service.

(b) If you would like to obtain an endorsement as master of towing vessels (limited), then you must complete the requirements listed in columns 2 through 5 of table 11.464(b) of this section.

TABLE 11.464(B).—REQUIREMENTS FOR ENDORSEMENT AS MASTER OF TOWING VESSELS (LIMITED)

1	2	3	4	5
Route endorsed	Total service [1]	TOS [2] on T/V as limited apprentice mate (steersman)	TOAR or an approved course	TOS [2] on particular route
Limited local area (LLA)	36	18 of 48	12 of 18	3 of 18.

[1] Service is in months.
[2] TOS is time of service.

(c) If you hold a license or MMC endorsement as mate (pilot) of towing vessels, you may have master of towing vessels (limited) added to your MMC for a limited local area within the scope of your current route.

(d) Before you serve as master of towing vessels on the Western Rivers, you must possess 90 days of observation and training and have your MMC include an endorsement for Western Rivers.

(e) Each company must maintain evidence that every vessel it operates is under the direction and control of a mariner with the appropriate endorsement and experience, including 30 days of observation and training on the intended route other than Western Rivers.

(f) If you hold a license or MMC endorsement as a master of inspected, self-propelled vessels of greater than 200 gross register tons, you may operate towing vessels within any restrictions on your endorsement if you:

(1) * * *

(2) * * *

(i) Hold a completed Towing Officer's Assessment Record (TOAR) described in § 11.304(h) that shows evidence of assessment of practical demonstration of skills; or

* * * * *

(3) Your license or MMC does not need to include a towing endorsement if you hold a TOAR or a course completion certificate.

* * * * *

159. In newly redesignated § 11.465, revise the heading and paragraphs (a) through (c), including table 11.465(a), (d) introductory text, (d)(2), (d)(3), and (e) to read as follows:

§ 11.465 Requirements for endorsements as mate (pilot) of towing vessels.

(a) If you would like to obtain an endorsement as mate (pilot) of towing vessels endorsed with a route listed in column 1 of table 11.465(a) of this section, then you must complete the service in columns 2 through 5. If you hold a license or MMC endorsement as master of towing vessels (limited) and would like to upgrade it to mate (pilot) of towing vessels, then you must complete the service in columns 5 and 6. If you hold a license or MMC endorsement as mate (pilot) of towing vessels (limited) and would like to upgrade it to mate (pilot) of towing vessels, then you must complete the service in columns 2 through 5 and pass a limited examination. An endorsement with a route endorsed in column 1 authorizes service on the subordinate routes listed in column 7 without further endorsement.

TABLE 11.465(A).—REQUIREMENTS FOR ENDORSEMENT AS MATE (PILOT [1]) OF TOWING VESSELS

1	2	3	4	5	6	7
Route endorsed	Total service [2]	TOS [3] on T/V as apprentice mate (steersman)	TOS [3] on particular route	TOAR [4] or an approved course	30 Days of observation and training while holding mater (limited) and pass a limited examination	Subordinate route authorized
(1) OCEANS (O)	30	12 of 30	3 of 12	YES	YES	NC, GL–I.
(2) NEAR-COASTAL (NC)	30	12 of 30	3 of 12	YES	YES	GL–I.
(3) GREAT LAKES–INLAND (GL–I)	30	12 of 30	3 of 12	YES	YES.	
(5) WESTERN RIVERS (WR)	30	12 of 30	3 of 12	YES	NO (90 days service required).	

[1] For all inland routes, as well as Western Rivers, the endorsement as pilot of towing vessels is equivalent to that as mate of towing vessels. All qualifications and equivalencies are the same.
[2] Service is in months unless otherwise indicated.
[3] TOS is time of service.
[4] TOAR is Towing Officers' Assessment Record.

(b) Before you serve as mate (pilot) of towing vessels on the Western Rivers, you must possess 90 days of observation and training and have your MMC include an endorsement for Western Rivers.

(c) Each company must maintain evidence that every vessel it operates is under the direction and control of a mariner with the appropriate endorsement and experience, including 30 days of observation and training on the intended route other than Western Rivers.

(d) If you hold a license or MMC endorsement as a mate of inspected, self-propelled vessels of greater than 200 GRT or one as first-class pilot, then you may operate towing vessels within any restrictions on your credential if you:

(1) * * *

(2) Hold a completed Towing Officer's Assessment Record (TOAR) described in § 11.304(h) that shows evidence of assessment of practical demonstration of skills.

(3) Your license or MMC does not need to include a towing endorsement if you hold a TOAR or a course completion certificate.

(e) An approved training course for mate (pilot) of towing vessels must include formal instruction and practical demonstration of proficiency either onboard a towing vessel or at a shoreside training facility before a designated examiner, and must cover the material (dependent upon route) required by § 11.910–2 for apprentice mate (steersman), towing vessels on ocean and near coastal routes; apprentice mate (steersman), towing vessels on Great Lakes and inland routes; or, steersman, towing vessels on Western Rivers routes.

* * * * *

160. In newly redesignated § 11.466—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

b. In paragraph (a), after the words ''As Table'' remove the word ''10.466–1'' and add, in its place, the word ''11.466(a)''; and after the words ''like to obtain'', remove the words ''a license'' and add, in their place, the words ''an endorsement'';

c. Redesignate table 10.466–1 as table 11.466(a) and revise it to read as follows; and

d. In paragraph (b), after the words ''hold a license'' add the words ''or endorsement''; after the words ''endorsement will go on your'', remove the word ''license'' and add, in its place, the word ''MMC''; and after the words ''may have the'', remove the words ''restricted endorsement'' and add, in their place, the word ''restriction'':

§ 11.466 Requirements for endorsements as apprentice mate (steersman) of towing vessels.

* * * * *

TABLE 11.466(A)—REQUIREMENTS FOR ENDORSEMENT AS APPRENTICE MATE (STEERSMAN) OF TOWING VESSELS

1	2	3	4	5	6
Endorsement	Route endorsed	Total service [1]	TOS [2] on T/V	TOS [2] on particular route	Pass Examination [3]
(1) APPRENTICE MATE (STEERSMAN)	OCEANS (O)	18	12 of 18	3 of 18	YES.
	NEAR–COASTAL (NC)	18	12 of 18	3 of 18	YES.
	GREAT LAKES–	18	12 of 18	3 of 18	YES.
	INLAND (GL–I)	18	12 of 18	3 of 18	YES.
	WESTERN RIVERS (WR)	18	12 of 18	3 of 18	YES.
(2) APPRENTICE MATE (STEERSMAN) (LIMITED).	NOT APPLICABLE	18	12 of 18	3 of 18	YES.

[1] Service is in months.
[2] TOS is time of service.
[3] The examination for apprentice mate is specified in subpart I of this part. The examination for apprentice mate (limited) is a limited examination.
[4] For all inland routes, as well as Western Rivers, the endorsement as steersman is equivalent to that as apprentice mate. All qualifications and equivalencies are the same.

* * * * *

161. Revise newly redesignated § 11.467 to read as follows—

§ 11.467 Endorsement as operators of uninspected passenger vessels of less than 100 gross tons

(a) This section applies to an applicant for the endorsement to operate an uninspected vessel of less than 100 gross tons, equipped with propulsion machinery of any type, carrying six or less passengers.

(b) An endorsement for OUPV issued for ocean waters will be limited to near-coastal waters not more than 100 miles offshore. An endorsement issued for inland waters will include all inland waters, except Great Lakes. An endorsement may be issued for a particular local area under paragraph (g) of this section.

(c) For an endorsement as OUPV on near-coastal waters, an applicant must have a minimum of 12-months experience in the operation of vessels, including at least three-months service on vessels operating on ocean or near-coastal waters.

(d) For an endorsement as OUPV on the Great Lakes and inland waters, an applicant must have 12-months service on Great Lakes or inland waters, including at least three-months service operating vessels on Great Lakes waters.

(e) For an endorsement as OUPV on inland waters, an applicant must have a minimum of 12-months experience in the operation of vessels.

(f) An endorsement as OUPV, limited to undocumented vessels, may be issued to a person who is not a citizen of the United States.

(g) Limited OUPV endorsements may be issued to applicants to be employed by organizations such as formal camps, yacht clubs, educational institutions, and marinas. An endorsement issued under this paragraph will be limited to the specific activity and the locality of the camp, yacht club, or marina. In order to obtain this restricted endorsement, an applicant must:

(1) Have three-months service in the operation of the type of vessel for which the endorsement is requested;

(2) Satisfactorily complete a safe-boating course approved by the National Association of State Boating Law Administrators, or those public education courses conducted by the U.S. Power Squadron or the American National Red Cross or a Coast Guard-approved course;

(3) Pass a limited examination appropriate for the activity to be conducted and the route authorized; and

(4) The first aid and cardiopulmonary resuscitation (CPR) course certificates required by § 11.205(e) of this part will only be required when, in the opinion of the OCMI, the geographic area over which service is authorized precludes obtaining medical services within a reasonable time.

(h) An applicant for an endorsement as OUPV who intends to serve only in the vicinity of Puerto Rico, and who speaks Spanish but not English, may be issued an endorsement restricted to the navigable waters of the United States in the vicinity of Puerto Rico.

§ 11.468 [Amended]

162. In newly redesignated § 11.468—

a. In the section heading and text, remove the word ''Licenses'' wherever it appears and add, in its place, the words ''Officer endorsements''; and

b. In the text, remove the word ''license'' and add, in its place, the word ''endorsement''.

163. In newly redesignated § 11.470, revise the heading and paragraphs (a) introductory text, (b) introductory text, (b)(2)(i), (b)(2)(iv), (c), (d) introductory text, (d)(2)(i), (d)(2)(iv), (e), (f) introductory text, (f)(2)(i), (f)(2)(iii), (g) introductory text, (h) introductory text, (h)(2)(iii), (j) introductory text, (j)(2)(i), (j)(2)(iii), and (k) introductory text to read as follows:

§ 11.470 Officer endorsements as offshore installation manager.

(a) Officer endorsements as offshore installation manager (OIM) include:

* * * * *

(b) To qualify for an endorsement as OIM unrestricted, an applicant must:

(1) * * *

(2) * * *

(i) A certificate from a Coast Guard-approved stability course approved for a license or MMC endorsement as OIM unrestricted;

* * * * *

(iv) A certificate from a firefighting training course as required by § 11.205(d) of this part; and

* * * * *

(c) An applicant for an endorsement as OIM unrestricted who holds an unlimited license or MMC endorsement as master or chief mate must satisfy the requirements in paragraphs (b)(2) and (b)(3) of this section and have at least 84 days of service on surface units and at least 28 days of service on bottom bearing units.

(d) To qualify for an endorsement as OIM surface units on location, and applicant must:

(1) * * *

(2) * * *

(i) A certificate from a Coast Guard approved stability course approved for a license or MMC endorsement as OIM surface units;

* * * * *

(iv) A certificate from a firefighting training course as required by § 11.205(d) of this part.

(e) An applicant for an endorsement as OIM surface units on location who holds an unlimited license or MMC endorsement as master or chief mate must satisfy the requirements of paragraph (d)(2) of this section and have at least 84 days of service on surface units.

(f) To qualify for an endorsement as OIM surface units underway, an applicant must:

(1) * * *

(2) * * *

(i) A certificate from a Coast Guard-approved stability course approved for an OIM surface units endorsement;

* * * * *

(iii) A certificate from a firefighting training course as required by § 11.205(d) of this part.

(g) An applicant for endorsement as OIM surface units underway who holds an unlimited license or MMC endorsement as master or chief mate must satisfy the requirements in paragraph (f)(2) of this section and provide a company recommendation signed by a senior company official which:

* * * * *

(h) To qualify for an endorsement as OIM bottom bearing units on location, an applicant must:

(1) * * *

(2) * * *

(iii) A certificate from a firefighting training course as required by § 11.205(d) of this part.

(i) An applicant for an endorsement as OIM bottom bearing units on location who holds an unlimited license or MMC endorsement as master or chief mate must satisfy paragraph (h)(2) of this section and have at least 28 days of service on bottom bearing units.

(j) To qualify for an endorsement as OIM bottom bearing units underway, an applicant must:

(1) * * *

(2) * * *

(i) A certificate from a Coast Guard-approved stability course approved for a license or MMC endorsement as OIM bottom bearing units;

* * * * *

(iii) A certificate from a firefighting training course as required by § 11.205(d) of this part.

(k) An applicant for endorsement as OIM bottom bearing units underway who holds an unlimited license or MMC endorsement as master or chief mate

must satisfy the requirements in paragraph (j)(2) of this section and provide a company recommendation signed by a senior company official, which:

* * * * *

§ 11.472 [Amended]

164. In newly redesignated § 11.472—

a. In the section heading, remove the words ''License for'' and add, in their place, the words ''Officer endorsements as'';

b. In paragraph (a) introductory text, remove the words ''a license or'' and add, in their place, the word ''an'';

c. In paragraph (a)(2)(i), remove the words ''barge supervisor license or endorsement'' and add, in their place, the words ''license or MMC endorsement as barge supervisor'';

d. In paragraph (a)(2)(iii), remove the words ''§ 10.205(g)'' and add, in their place, the words ''§ 11.205(d)''; and

e. In paragraph (b), after the words ''unlimited license'' add the words ''or MMC endorsement''.

§ 11.474 [Amended]

165. In newly redesignated § 11.474—

a. In the section heading, remove the words ''License for'' and add, in their place, the words ''Officer endorsements as'';

b. In paragraph (a) introductory text, remove the words ''a license or'' and add, in its place, the words ''an'';

c. In paragraph (a)(1)(i) and (ii), remove the words ''a licensed'' wherever they appear and add, in their place, the words ''an individual holding a license or MMC endorsement as'';

d. In paragraph (a)(2)(i), remove the words ''barge supervisor or ballast control operator license or endorsement'' and add, in their place, the words ''license or MMC endorsement as barge supervisor or ballast control operator'';

e. In paragraph (a)(2)(iii), remove the words ''§ 10.205(g)'' and add, in their place, the words ''§ 11.205(d)'';

f. In paragraph (b), after the words ''unlimited license'', add the words ''or MMC endorsement''; and remove the word ''licensed'' and add, in its place, the words ''an individual holding an endorsement as'';

§ 11.476 [Removed and Reserved]

166. Remove and reserve § 11.476.

§ 11.480 [Amended]

167. In newly redesignated § 11.480—

a. In paragraph (b) introductory text, remove the words ''deck officer's license'' and add, in their place, the word ''MMC'';

b. In paragraph (c), remove the words ''Endorsement as'' wherever they appear;

c. In paragraph (f), remove the last sentence;

d. Remove paragraphs (g) and (k) and redesignate paragraphs (h) through (j) as paragraphs (g) through (i);

e. In redesignated paragraph (h), after the words ''a license'', add the words ''or MMC''; and after the words ''may renew'', remove the words ''the license''; and

f. In redesignated paragraph (i), after the words ''grade of a license'' add the words ''or MMC endorsement''.

§ 11.482 [Amended]

168. In newly redesignated § 11.482—

a. In paragraph (a), after the words ''endorsement authorizing'', remove the words ''an applicant'' and add, in their place, the words ''a mariner''; after the words ''applies to all'', remove the words ''licenses except those for'' and add, in their place, the words ''MMCs except''; before the words ''master or mate authorizing'', remove the words ''those for''; after the words ''Holders of any of these''; remove the word ''licenses'' and add, in its place, the word ''endorsements''; and remove the words ''the licenses and without the endorsement'' and add, in their place, the words ''their MMC or license'';

b. In paragraph (c), remove the words ''An assistance towing endorsement on a license as master, mate, or operator authorizes the holder'' and replace them with ''The holder of a license or MMC for master, mate, or operator endorsed for assistance towing is authorized''; and after the words ''scope of the license'', add the words ''or MMC''; and

c. In paragraph (d), after the words ''same as the license'', add the words ''or MMC''; remove the words ''on which it is endorsed'' and add, in their place, the words ''on which it is included''; and after the words ''renewed with the'', remove the word ''license'' and add, in their place, the word ''MMC''.

§ 11.491 [Amended]

169. In newly redesignated § 11.491—

a. In the section heading, remove the word ''Licenses'' and add, in its place, the word ''Officer endorsements''; and

b. In the text, before the words ''for service on'', remove the word ''license'' and add, in its place, the words ''officer endorsement''; and after the words ''restrictions placed on the license'', add the words ''or MMC''.

§ 11.493 [Amended]

170. In newly redesignated § 11.493(a), remove the words ''a license'' and add, in their place, the words ''an endorsement''.

§ 11.495 [Amended]

171. In newly redesignated § 11.495(a), remove the words ''a license'' and add, in their place, the words ''an endorsement''.

§ 11.497 [Amended]

172. In newly redesignated § 11.497(a), remove the words ''a license'' and add, in their place, the words ''an endorsement''.

Subpart E—[Amended]

173. In the heading for subpart E, remove the words ''Officers' Licenses'' and add, in their place, the word ''Officer''.

§ 11.501 [Amended]

174. In newly redesignated § 11.501—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

b. In paragraph (a) introductory text, remove the word ''Licenses'' and add, in its place, the words ''Engineer endorsements'';

c. In paragraph (b) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

d. In paragraph (c) introductory text, after the words ''Engineer licenses'' add the words ''or MMC endorsements''; and

e. In paragraph (d) introductory text, remove the words ''Engineer licenses are endorsed to authorize'' and add, in its place, the words ''An engineer officer's license or MMC endorsement authorizes''; and after the words ''vessels or may be'', remove the words ''be endorsed for'' and add, in their place, the word ''authorize''; and

f. In paragraph (e), after the words ''holding an engineer license'' add the words ''or MMC endorsement''; and after the words ''limitations of the license'', add the words ''or MMC''.

§ 11.502 [Amended]

175. In newly redesignated § 11.502—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

b. In paragraph (a), after the words ''engineer licenses'' add the words ''or MMC endorsements'';

c. In paragraph (b) introductory text, remove the words ''a licensed applicant desires to obtain an endorsement on an engineer license in the other propulsion mode (steam or motor)'' and add, in their place, the words ''an applicant desires to add a propulsion mode to his or her endorsement''; and after the words ''holding a license'', add the words ''or MMC endorsement'';

d. In paragraph (b)(1), remove the words ''licensed capacity'' and add, in their place, the words ''capacity as their endorsement'';

e. In paragraph (b)(2), remove the words ''a licensed officer at a lower license level'' and add, in their place, the words ''an engineer officer at a lower level''; and

f. In paragraph (c), after the words ''of an engineer license'', add the words ''or MMC endorsement''; and remove the text ''§ 10.205(g)'' and add, in its place, the text ''§ 11.205(d)''.

176. Revise newly redesignated § 11.503 to read as follows—

§ 11.503 Horsepower limitations.

(a) Engineer licenses and endorsements of all grades and types may be subject to horsepower limitations. Other than as provided in § 11.524 for the designated duty engineer (DDE), the horsepower limitation placed on a license or MMC endorsement is based on the applicant's qualifying experience considering the total shaft horsepower of each vessel on which the applicant has served.

(b) When an applicant for an original or raise of grade of an engineer license or MMC endorsement, other than a DDE, has not obtained at least 50 percent of the required qualifying experience on vessels of 4,000 or more horsepower, a horsepower limitation is placed on the MMC based on the applicant's qualifying experience. The endorsement is limited to the maximum horsepower on which at least 25 percent of the required experience was obtained, or 150 percent of the maximum horsepower on which at least 50 percent of the service was obtained, whichever is higher. Limitations are in multiples of 1,000 horsepower, using the next higher figure when an intermediate horsepower is calculated. When the limitation as calculated equals or exceeds 10,000 horsepower, an unlimited horsepower endorsement is issued.

(c) The following service on vessels of 4,000 horsepower or over will be considered qualifying for the raising or removing of horsepower limitations placed on an engineer license or MMC endorsement:

(1) Six months of service in the highest-grade endorsed: removal of all horsepower limitations.

(2) Six months of service as an officer in any capacity other than the highest grade for which licensed or endorsed: Removal of all horsepower limitations for the grade in which service is performed and raise the next higher grade endorsement to the horsepower of the vessel on which service was performed. The total cumulative service before and after issuance of the limited license or MMC endorsement may be considered in removing all horsepower limitations.

(3) Twelve months of service as oiler or junior engineer while holding a license or MMC endorsement as third assistant engineer or assistant engineer (limited oceans): removal of all horsepower limitations on third assistant engineer or assistant engineer's (limited oceans) endorsement.

(4) Six months of service as oiler or junior engineer while holding a license or MMC endorsement as second assistant engineer: removal of all horsepower limitations on third assistant engineer's endorsement.

(d) Raising or removing horsepower limitations based on service required by paragraph (c) of this section may be granted without further written examination providing the OCMI who issued the applicant's license or MMC endorsement, considers further examination unnecessary.

§ 11.504 [Amended]

177. In newly redesignated § 11.504—

a. In the section heading, remove the word ''licenses'' and add, in its place, the word ''endorsements''; and

b. In the text, remove the words ''a license'' and add, in their place, the words ''an endorsement''.

178. In newly redesignated § 11.505—

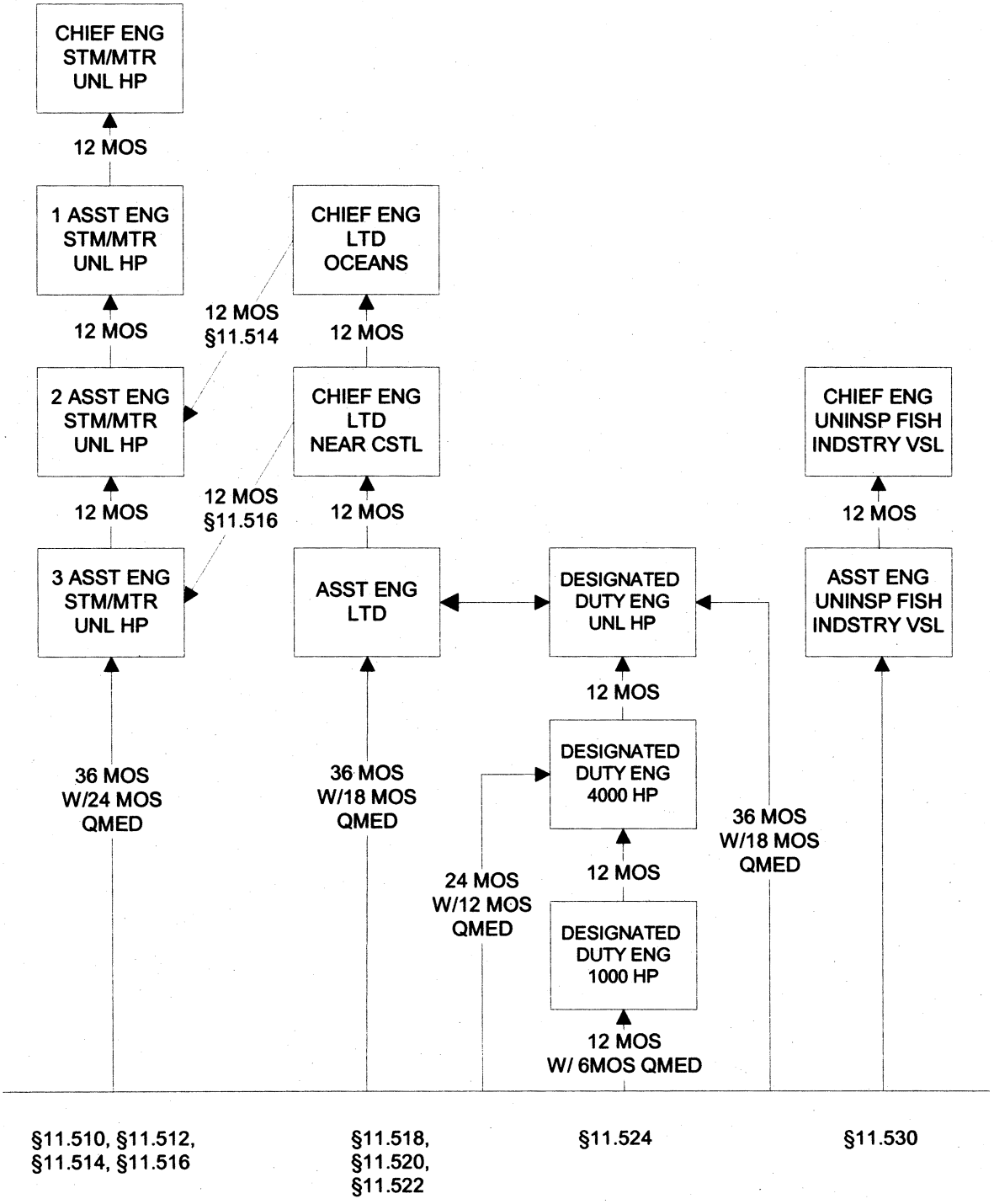
a. In the section heading, remove the word ''license'' and add, in its place, the word ''officer'';

b. In the text, remove the word ''license'' and add, in its place, the word ''endorsement''; and

c. Redesignate Figure 10.505 as Figure 11.505 and revise it to read as follows:

§ 11.505 Engineer officer structure.

BILLING CODE 4910–15–P



BILLING CODE 4910–15–C

§ 11.510 [Amended]

179. In newly redesignated § 11.510—

a. In the introductory text, remove the word ''license'' and add, in its place, the word ''endorsement''; and

b. In paragraph (b), after the words ''holding a license'' add the words or MMC endorsement''.

§ 11.512 [Amended]

180. In newly redesignated § 11.512, after the words ''qualify an applicant for'', remove the word ''license'' and add, in its place, the word ''endorsement''; and after the words ''holding a license'', add the words or MMC endorsement''.

§ 11.514 [Amended]

181. In newly redesignated § 11.514—

a. In the introductory text, after the words ''qualify an applicant for'' remove the word ''license'' and add, in its place, the word ''endorsement''; and

b. In paragraphs (a) and (b) introductory text, after the words ''holding a license'', wherever they appear, add the words ''or MMC endorsement''.

§ 11.516 [Amended]

182. In newly redesignated § 11.516, in paragraph (a) introductory text, after the words ''an applicant for'', remove the word ''license'' and add, in its place, the word ''endorsement''.

183. Revise newly redesignated § 11.518 to read as follows:

§ 11.518 Service requirements for chief engineer (limited oceans) of steam and/or motor vessels.

The minimum service required to qualify an applicant for endorsement as chief engineer (limited oceans) of steam and/or motor vessels is five-years total service in the engineroom of vessels. Two years of this service must have been as an engineer officer. Thirty months of the service must have been as a qualified member of the engine department or equivalent supervisory position.

184. Revise newly redesignated § 11.520 to read as follows:

§ 11.520 Service requirements for chief engineer (limited near coastal) of steam and/or motor vessels.

The minimum service required to qualify an applicant for endorsement as chief engineer (limited near coastal) of steam and/or motor vessels is four-years total service in the engineroom of vessels. One year of this service must have been as an engineer officer. Two years of the service must have been as a qualified member of the engine department (QMED) or equivalent supervisory position.

185. Revise newly redesignated § 11.522 to read as follows:

§ 11.522 Service requirements for assistant engineer (limited oceans) of steam and/or motor vessels.

The minimum service required to qualify an applicant for endorsement as assistant engineer (limited oceans) of steam and/or motor vessels is three years of service in the engineroom of vessels. Eighteen months of this service must have been as a QMED or equivalent supervisory position.

186. Amend newly redesignated § 11.524 by revising paragraphs (a) and (b) introductory text to read as follows:

§ 11.524 Service requirements for designated duty engineer of steam and/or motor vessels.

(a) DDE endorsements are issued in three levels of horsepower limitations dependent upon the total service of the applicant and completion of appropriate examination. These MMCs are limited to vessels of not more than 500 gross tons on certain waters as specified in § 11.501.

(b) The service requirements for endorsements as DDE are:

* * * * *

187. Revise newly redesignated § 11.530 to read as follows:

§ 11.530 Endorsements for engineers of uninspected fishing industry vessels.

(a) This section applies to endorsements for chief and assistant engineers of all vessels, however propelled, navigating the high seas, which are documented to engage in the fishing industry, with the exception of:

(1) Wooden ships of primitive build;

(2) Unrigged vessels; and,

(3) Vessels of less than 200 gross tons.

(b) Endorsements as chief engineer and assistant engineer of uninspected fishing industry vessels are issued for ocean waters and with horsepower limitations in accordance with the provisions of § 11.503.

(c) For an endorsement as chief engineer, the applicant must have served four years in the engineroom of vessels. One year of this service must have been as an assistant-engineer officer or equivalent supervisory position.

(d) For an endorsement as assistant engineer, an applicant must have served three years in the engine room of vessels.

(e) Two-thirds of the service required under this section must have been on motor vessels.

(f) Applicants may request an orally assisted examination on the subjects listed in subpart I of this part.

188. Revise newly redesignated § 11.540 to read as follows:

§ 11.540 Endorsements for engineers of mobile offshore drilling units.

Endorsements as chief engineer (MODU) or assistant engineer (MODU) authorize service on certain self-propelled or non-self-propelled units of any horsepower where authorized by the vessel's certificate of inspection.

§ 11.542 [Amended]

189. In newly redesignated § 11.542—

a. In the section heading, remove the words ''License for'' and add, in their place, the words ''Endorsement as'';

b. In the introductory text and paragraph (c), remove the words ''a license'' wherever they appear and add, in their place, the words ''an endorsement''; and

c. In paragraph (b), remove the number ''10.205(g)'' and add, in its place, the number ''11.205(d)''.

§ 11.544 [Amended]

190. In newly redesignated § 11.544—

a. In the section heading, remove the words ''License for'' and add, in their place, the words ''Endorsement as'';

b. In the introductory text and paragraph (c), remove the words ''a license'' wherever they appear and add, in their place, the words ''an endorsement'';

c. In paragraph (a)(3), remove the words ''Commanding Officer'' and add, in their place, the word ''The''; and

d. In paragraph (b), remove the number ''10.205(g)'' and add, in its place, the number ''11.205(d)''.

191. Revise newly redesignated § 11.551 to read as follows:

§ 11.551 Endorsements for service on offshore supply vessels.

Each endorsement for service on OSVs as chief engineer (OSV) or engineer (OSV) authorizes service on OSVs as defined in 46 U.S.C. 2101(19) and as interpreted under 46 U.S.C. 14104(b), subject to any restrictions placed on the MMC.

§ 11.553 [Amended]

192. In newly redesignated § 11.553(a), remove the words ''a license'' and add, in their place, the words ''an endorsement''.

§ 11.555 [Amended]

193. In newly redesignated § 11.555(a), remove the words ''a license'' and add, in their place, the words ''an endorsement''.

Subpart F—[Amended]

194. In the heading for subpart F, remove the word ''Licensing'' and add, in its place, the word ''Credentialing''.

195. Revise newly redesignated § 11.601 to read as follows:

§ 11.601 Applicability.

This subpart provides for endorsement as radio officers for employment on vessels, and for the issue of STCW endorsements for those qualified to serve as radio operators on vessels subject to the provisions on the Global Maritime Distress and Safety System (GMDSS) of Chapter IV of SOLAS.

196. In newly redesignated § 11.603, revise the heading and paragraphs (a) and (c), and remove and reserve paragraph (b) to read as follows:

§ 11.603 Requirements for radio officers' endorsements and STCW endorsements for GMDSS radio operators.

(a) Each applicant for an original endorsement or renewal of license shall present a current first or second class radiotelegraph operator license issued by the Federal Communications Commission. The applicant shall enter on the endorsement application form the number, class, and date of issuance of his or her Federal Communications Commission license.

(b) [Reserved]

(c) Each applicant who furnishes evidence that he or she meets the standard of competence set out in STCW Regulation IV/2 (incorporated by reference in Sec. 11.102), including the competence to transmit and receive information using subsystems of GMDSS, to fulfill the functional requirements of GMDSS, and to provide radio services in emergencies is entitled to hold an STCW endorsement suitable for performing duties associated with GMDSS.

* * * * *

Subpart G—[Amended]

197. In the heading for subpart G, remove the words ''Pilot Licenses'' and add, in their place, the word ''Pilots''.

198. Revise newly redesignated § 11.701 to read as follows:

§ 11.701 Scope of pilot endorsements.

(a) An applicant for an endorsement as first-class pilot need not hold any other officer endorsement issued under this part.

(b) The issuance of an endorsement as first-class pilot to an individual qualifies that individual to serve as pilot over the route(s) specified on the endorsement, subject to any limitations imposed under paragraph (c) of this section.

(c) The OCMI issuing an endorsement as first-class pilot, imposes appropriate limitations commensurate with the experience of the applicant, with respect to class or type of vessel, tonnage, route, and waters.

(d) A license or MMC endorsement issued for service as a master, mate, or operator of uninspected towing vessels authorizes service as a pilot under the provisions of § 15.812 of this subchapter. Therefore, first-class pilot endorsements will not be issued with tonnage limitations of 1,600 gross tons or less.

199. In newly redesignated § 11.703—

a. Revise paragraphs (a) introductory text and (c) to read as set out below; and

b. In paragraph (d), after the words ''holding a license'', add the words ''or MMC endorsement'':

§ 11.703 Service requirements.

(a) The minimum service required to qualify an applicant for an endorsement as first-class pilot is predicated upon the nature of the waters for which pilotage is desired.

* * * * *

(c) Completion of a course of pilot training approved by the National Maritime Center under subpart C of this part may be substituted for a portion of the service requirements of this section in accordance with § 11.304. Additionally, round trips made during this training may apply toward the route familiarization requirements of § 11.705. An individual using substituted service must have at least nine months of shipboard service.

* * * * *

200. In newly redesignated § 11.705, revise paragraphs (b) and (c) to read as follows:

§ 11.705 Route familiarization requirements.

* * * * *

(b) An applicant holding no other deck officer endorsement seeking an endorsement as first-class pilot shall furnish evidence of having completed a minimum number of round trips, while serving as quartermaster, wheelsman, able seaman, apprentice pilot, or in an equivalent capacity, standing regular watches at the wheel or in the pilot house as part of routine duties, over the route sought. Evidence of having completed a minimum number of round trips while serving as an observer, properly certified by the master and/or pilot of the vessel, is also acceptable. The range of round trips for an endorsement is a minimum of 12 round trips and a maximum of 20 round trips. An applicant may have additional routes added to the first-class pilot endorsement by meeting the requirements in paragraph (c) of this section.

(c) An applicant who currently holds a deck officer license or MMC endorsement seeking an endorsement as first-class pilot for a particular route shall furnish evidence of having completed the number of round trips over the route, specified by the OCMI, within the range limitations of this paragraph, for the particular grade of existing license or MMC endorsement held. The range of round trips for an endorsement is a minimum of eight round trips and a maximum of 15 round trips.

* * * * *

201. Revise newly redesignated § 11.707 to read as follows:

§ 11.707 Examination requirements.

(a) An applicant for an endorsement as first-class pilot, except as noted in paragraph (b) of this section, is required to pass the examination described in subpart I of this part.

(b) An applicant for an extension of route, or an applicant holding a license or MMC endorsement as master or mate authorized to serve on vessels of over 1,600 gross tons seeking an endorsement as first-class pilot, is required to pass those portions of the examination described in subpart I of this part that concern the specific route for which endorsement is sought.

202. Revise newly redesignated § 11.709, paragraphs (b), (c), (d) and (e) to read as follows:

§ 11.709 Annual physical examination requirements.

* * * * *

(b) Every person holding a license or MMC endorsement as first-class pilot shall have a thorough physical examination each year.

(c) Each annual physical examination must meet the requirements specified in § 10.215.

(d) An individual's first class pilot credential becomes invalid on the first day of the month following the first anniversary of the individual's most recent physical examination satisfactorily completed; the individual may not operate under the authority of that credential until a physical examination has been satisfactorily completed.

(e) A first class pilot must provide the Coast Guard with a copy of his or her most recent physical examination.

§ 11.711 [Amended]

203. In newly redesignated § 11.711—

a. In paragraphs (a) and (d), after the words ''first class pilot'', remove the words ''license or''; and

b. In paragraph (b), after the words ''1,600 gross tons, the'' remove the words ''license or'' and, after the words ''contained in § '' remove the number ''10.705'' and add, in its place, the number ''11.705''.

§ 11.713 [Amended]

204. In newly redesignated § 11.713—

a. In paragraphs (a) and (b), wherever the phrase ''license or endorsement'' appears, insert the word ''MMC'' before the word ''endorsement''; and

b. In paragraph (b), after the words ''of the renewed'' remove the words ''license or''.

§ 11.803 [Removed and Reserved]

205. Remove and reserve newly redesignated § 11.803.

206. Revise newly redesignated § 11.805 to read as follows:

§ 11.805 General requirements.

(a) The applicant for an endorsement as staff officer is not required to take any examination; however, the applicant shall present to the OCMI a letter justifying the need for the endorsement.

(b) [RESERVED]

(c) An applicant for a higher grade in the staff department shall apply in the same manner as for an original endorsement and shall surrender the previous Coast Guard-issued credentials upon issuance of the new MMC. A staff officer may serve in a lower grade of service for which he or she is registered.

(d) Title 46 U.S.C. 8302 addresses uniforms for staff officers who are members of the Naval Reserve.

(e) A duplicate MMC may be issued by the OCMI. (See § 10.229.)

(f) An MMC is valid for a term of five years from the date of issuance. Procedures for renewing endorsements are found in § 10.227.

(g) Each applicant for an original or a higher grade of endorsement, as described by paragraph (c) of this section, shall produce evidence of having passed a chemical test for dangerous drugs or of qualifying for an exception from testing in § 16.220 of this subchapter. An applicant who fails a chemical test for dangerous drugs will not be issued an MMC.

207. In newly redesignated § 11.807—

a. In paragraph (a) introductory text, after the words ''The applicant for'' remove the words ''a certificate of registry'' and add, in their place, the words ''an endorsement'';

b. In paragraph (c), after the words ''an applicant for'' remove the words ''a certificate of registry'' and add, in their place, the words ''an endorsement'';

c. In paragraph (d), after the words ''an applicant for'' remove the words ''a certificate of registry'' and add, in their place, the words ''an endorsement'', and after the words ''may issue the'' remove the words ''certificate of registry'' and add, in their place, the word ''MMC''; and

d. Add new paragraphs (a)(7) and (8) to read as follows:

§ 11.807 Experience requirements for registry.

(a) * * *

* * * * *

(7) *Marine physician assistant.* Successful completion of an accredited course of instruction for a physician's assistant or nurse practitioner program.

(8) *Hospital corpsman.* A rating of at least hospital corpsman or health services technician, first class in the U.S. Navy, U.S. Coast Guard, U.S. Marine Corps, or an equivalent rating in the U.S. Army (not less than staff sergeant, Medical Department, U.S.A.), or in the U.S. Air Force (not less than technical sergeant, Medical Department, U.S.A.F.), and a period of satisfactory service of at least one month in a military hospital or U.S. Public Health Service Hospital.

* * * * *

§ 11.809 [Removed and Reserved]

208. Remove and reserve newly redesignated § 11.809.

Subpart I—[Amended]

209. In the heading for subpart I, remove the word ''License''.

210. In newly redesignated § 11.901—

a. In paragraph (a), remove the word ''license'' and add, in its place, the word ''endorsement'', and remove the words ''10.903(b)'' and add, in its place, the words ''11.903(b)'';

b. Revise paragraph (b) to read as set out below; and

c. In paragraph (c) introductory text, after the words ''as provided in §§ '' remove the words ''10.202 and 10.209'' and add, in their place, the words ''11.202 and 10.227''; and after the words ''reference in'' remove the number ''10.102'' and add, in its place, the number ''11.102'':

§ 11.901 General provisions

* * * * *

(b) If the endorsement is to be limited in a manner which would render any of the subject matter unnecessary or inappropriate, the examination may be amended accordingly by the OCMI. Limitations which may affect the examination content are:

(1) MMCs endorsed for restricted routes for reduced service (master or mate of vessels of not more than 200 gross tons, OUPV or master or mate (pilot) of towing vessels); or

(2) Engineer endorsements with horsepower restrictions.

* * * * *

§ 11.903 [Amended]

211. In newly redesignated § 11.903—

a. In the section heading, remove the word ''Licenses'' and add, in its place, the word ''Endorsements'';

b. In paragraph (a) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

c. In paragraph (b) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements'';

d. In paragraphs (b)(2) and (3), remove the word ''license'';

e. In paragraph (c) introductory text, remove the word ''licenses'' and add, in its place, the word ''endorsements''; remove the number ''10.102'' and add, in its place, the number ''11.102''; and remove the words ''table 903–1'' and add, in their place, the words ''table 11.903(c)'';

f. In paragraph (d), remove the words ''After July 31, 1998, any'' and add, in their place, the word ''Any''; remove the words ''a license'' and add, in their place, the words ''an endorsement''; remove the words ''table 10.903–1'' and add in their place the words ''table 11.903(c)''; remove the number ''10.102'' and add, in its place, the number ''11.102''; and remove the words ''10.910, or 10.950'' and add, in their place, the words ''11.910, or 11.950''; and

g. Redesignate table 10.903–1 as table 11.903(c).

212. In newly redesignated § 11.910—

a. Revise the section heading and introductory text as set out below;

b. Redesignate table 10.910–1 as table 11.910–1 and revise the heading and subheading to read as set out below; and

c. In table 10.910–2—

i. Redesignate table 10.910–2 as table 11.910–2;

ii. In the subheading for newly redesignated table 11.910–2, remove the word ''License'' and add, in its place, the word ''Endorsement'';

iii. In the first column entitled ''Examination topics'', on line 182, remove the words ''Licensing & Certification'' and add, in their place, the word ''Credentialing'';

iv. In footnotes 6 and 7, remove the word ''licenses'' wherever it appears and add, in its place, the words ''officer endorsements''; and

v. In footnote 8, remove the word ''licenses'':

§ 11.910 Subjects for deck officer endorsements.

Table 11.910–1 gives the codes used in table 11.910–2 for all deck officers. Table 11.910–2 indicates the examination subjects for each endorsement, by code number. Figures in the body of the table, in place of the letter ''x'', refer to notes.

Table 11.910–1 Codes for Deck Officer Endorsements

Deck Officer Endorsements:

* * * * *

213. In newly redesignated § 11.920—

a. Revise the section heading and introductory text to read as set out below;

b. Redesignate table 10.920–1 as table 11.920–1 and revise it to read as set out below; and

c. Redesignate table 10.920–2 as table 11.920–2 and in the first column entitled ''Examination topics'', under the entry for ''National maritime law'', remove the words ''Licensing and certification'' and add, in their place, the word ''Credentialing'':

§ 11.920 Subjects for MODU endorsements.

Table 11.920–1 gives the codes used in table 11.920–2 for MODU endorsements. Table 11.920–2 indicates the examination subjects for each endorsement by the code number.

Table 11.920–1 Codes for MODU Endorsements

* * * * *

214. In newly redesignated § 11.950, revise the section heading and redesignate table 10.950 as table 11.950 and revise the heading to read as follows:

§ 11.950 Subjects for engineer endorsements.

Table 11.950 Subjects for Engineer Endorsements

* * * * *

215. Revise newly redesignated § 11.1005 to read as follows:

§ 11.1005 General requirements for officers.

To serve on a Ro-Ro passenger ship after January 31, 1997, a person endorsed as master, chief mate, mate, chief engineer, or engineer shall meet the appropriate requirements of STCW Regulation V/2 and Section A–V/2 of the STCW Code (incorporated by reference in § 11.102) and shall hold documentary evidence to show his or her meeting these requirements.

216. Revise newly redesignated § 11.1105 introductory text and paragraph (a) to read as follows:

§ 11.1105 General requirements for officer's endorsements.

If you are a master, mate, chief mate, engineer, or chief engineer, then, before you may serve on a passenger ship, you must—

(a) Meet the appropriate requirements of the STCW Regulation V/3 and of section A–V/3 of the STCW Code (incorporated by reference in § 11.102); and

* * * * *

PART 12—CERTIFICATION OF SEAMEN

217. Revise the title of part 12 to read as follows:

PART 12—REQUIREMENTS FOR RATING ENDORSEMENTS

218. The authority citation for part 12 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701, and 70105; Department of Homeland Security Delegation No. 0170.1.

§ 12.01–1 [Amended]

219. In § 12.01–1—

a. In paragraph (a)(2), after the words ''and to receive the'', remove the words ''certificate or''; and

b. Remove paragraphs (a)(3) and (c).

220. Revise § 12.01–3 to read as follows:

§ 12.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at the Coast Guard, Office of Operating and Environmental Standards (CG–3PSO), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in this section.

(b) *International Maritime Organization (IMO),* 4 Albert Embankment, London, SE1 7SR, England.

(1) The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (the STCW Convention or the STCW) , incorporation by reference approved for §§ 12.01–1, 12.02–7, 12.02–11, 12.03–1, 12.05–3, 12.05–7, 12.05–11, 12.10–3; 12.10–5, 12.10–7, 12.10–9, 12.15–3, 12.15–7, 12.25–45, 12.30–5, and 12.35–5.

(2) The Seafarers' Training, Certification and Watchkeeping Code (the STCW Code), incorporation by reference approved for §§ 12.01–1, 12.02–7, 12.02–11, 12.03–1, 12.05–3, 12.05–7, 12.05–11, 12.10–3, 12.10–5, 12.10–7, 12.10–9, 12.15–3, 12.15–7, 12.25–45, 12.30–5, and 12.35–5.

§ 12.01–6 [Removed and Reserved]

221. Remove and reserve § 12.01–6.

§ 12.01–7 [Removed and Reserved]

222. Remove and reserve § 12.01–7.

§ 12.01–11 [Removed and Reserved]

223. Remove and reserve § 12.011.

§ 12.02–3 [Removed and Reserved]

224. Remove and reserve § 12.02–3.

§ 12.02–4 [Removed and Reserved]

225. Remove and reserve § 12.02–4.

§ 12.02–5 [Removed and Reserved]

226. Remove and reserve § 12.02–5.

227. Revise § 12.02–7, paragraphs (a) through (e) and (f) introductory text to read as follows:

§ 12.02–7 When documents are required.

(a) Every seaman employed on any merchant vessel of the United States of 100 gross tons or upward, except vessels employed exclusively in trade on the navigable rivers of the United States, must carry a valid merchant mariner credential (MMC) or merchant mariner's document (MMD) with all appropriate endorsements for the position served and a valid Transportation Worker Identification Credential (TWIC). Provisions of this section are not applicable to unrigged vessels except seagoing barges and certain tank barges.

(b) Every seaman, as referred to in paragraph (a) of this section, shall produce a valid MMC or MMD with all applicable rating endorsements for the position sought and a valid TWIC to the master of the vessel at the time of his or her employment before signing articles of agreement. Seamen who do not possess one of these credentials may be employed at a foreign port or place.

(c) * * *

(1) Every person employed on any merchant vessel of the United States of 100 gross tons and upward, except those navigating rivers exclusively and the smaller inland lakes, below the grades of officer and staff officer, must possess a valid MMC or MMD with all

appropriate endorsements for the positions served;

(2) No endorsements are required of any person below the rank of officer employed on any unrigged vessel except seagoing barges and certain tank barges.

(3) No endorsements are required of any person below the rank of officer employed on any sail vessel of less than 500 net tons while not carrying passengers for hire and while not operating outside the line dividing inland waters from the high seas, as defined in section 2 of the act of February 19, 1895, as amended (33 U.S.C. 151) and in 33 CFR part 82.

(d) Each person serving as an able seaman or a rating forming part of a navigational watch on a seagoing ship of 500 gross tonnage (200 GRT) or more shall hold an STCW endorsement certifying him or her as qualified to perform the navigational function at the support level, in accordance with STCW (incorporated by reference in § 12.01–3).

(e) Each person serving as a qualified member of the engine department (QMED) or a rating forming part of a watch in a manned engine-room or designated to perform duties in a periodically unmanned engine-room, on a seagoing ship driven by main propulsion machinery of 750 kW [1,000 hp] of propulsion power or more, shall hold an STCW endorsement certifying him or her as qualified to perform the marine-engineering function at the support level, in accordance with STCW.

(f) Notwithstanding any other rule in this part, no person subject to this part serving on any of the following vessels needs hold an STCW endorsement, either because he or she is exempt from application of the STCW, or because the vessels are not subject to further obligation under STCW, on account of their special operating conditions as small vessels engaged in domestic voyages:

* * * * *

§ 12.02–9 [Removed and Reserved]

228. Remove and reserve § 12.02–9.

§ 12.02–10 [Removed and Reserved]

229. Remove and reserve § 12.02–10.

230. Revise § 12.02–11 to read as follows:

§ 12.02–11 General provisions respecting rating endorsements.

(a) (1) An MMC with a deck officer endorsement will also be endorsed for ''any rating in the deck department, except able seaman'', and will authorize the holder to serve in any rating capacity in the deck department, except able seaman. If a deck officer qualifies as able seaman, the MMC will be endorsed, ''any rating in the deck department, including able seaman'', and such endorsement will be deemed to include an endorsement as lifeboatman.

(2) An MMC issued to an engineer officer endorsed for inspected vessels of over 2,000 horsepower will be endorsed for ''any rating in the engine department'', and will authorize the holder to serve in any rating capacity in the engine department. If an engineer officer qualifies as a lifeboatman, the further endorsement, ''lifeboatman'' will be placed on the MMC.

(b) The authorized holder of any valid rating endorsement may serve in any capacity in the staff department of a vessel, except in those capacities requiring a staff officer; except that whenever the service includes the handling of food, no person may be so employed unless his or her credential bears the food handler's endorsement ''(F.H.)''.

(c) A rating endorsement as able seaman or lifeboatman authorizes service as lifeboatman.

(d) When a rating endorsement is issued, renewed, or endorsed, the OCMI will determine whether the holder of the credential is required to hold an STCW endorsement for service on a seagoing vessel, and then, if the holder is qualified, the OCMI will issue the appropriate endorsement. The OCMI will also issue an STCW endorsement at other times, if circumstances so require and if the holder of the document is qualified to hold the endorsement. The OCMI will issue an STCW endorsement for the following ratings:

(1) A rating forming part of a navigational watch on a seagoing ship of 500 GT or more if the holder of the credential is qualified according to STCW Regulation II/4 of the STCW Code (incorporated by reference, see § 12.01–3) to perform the navigational function at the support level.

(2) A rating forming part of a watch in a manned engineroom, or designated to perform duties in a periodically unmanned engineroom, on a seagoing ship driven by main propulsion machinery of 750 kW (1,000 hp) of propulsion power or more, if the holder is qualified in according to STCW Regulation III/4 and Section A-III/4 of the STCW Code, to perform the marine-engineering function at the support level.

(e) At the request of the holder of the document, the OCMI may add an endorsement to indicate that a qualified holder has received basic-safety training or instruction required under Chapter VI of STCW.

§ 12.02–12 [Removed and Reserved]

231. Remove and reserve § 12.02–12.

§ 12.02–13 [Removed and Reserved]

232. Remove and reserve § 12.02–13.

§ 12.02–14 [Removed and Reserved]

233. Remove and reserve § 12.02–14.

§ 12.02–15 [Removed and Reserved]

234. Remove and reserve § 12.02–15.

§ 12.02–17 [Amended]

235. In § 12.02–17—

a. In the section heading, remove the words ''Preparation and issuance of documents'' and add, in their place, the words ''Examination procedures and denial of rating endorsements'';

b. In paragraph (a), remove the words ''of a person for a merchant mariner's document'' and add, in their place, the words ''for a rating endorsement'';

c. Remove paragraphs (b), (c), (d), (e), and (h);

d. Redesignate paragraph (f) as paragraph (b); remove the words ''certificate of service or efficiency'' and add, in their place, the words ''rating endorsement''; and after the words ''examined and refused'', remove the words ''a certificate'' and add, in their place, the words ''the endorsement''; and

e. Redesignate paragraph (g) as paragraph (c); remove the word ''certificate'' and add, in its place, the words ''rating endorsement''.

§§ 12.02–18 through 12.02–27 [Removed and Reserved]

236. Remove and reserve §§ 12.02–18 through 12.02–27.

§ 12.03–1 [Amended]

237. In § 12.03–1—

a. In paragraph (a) introductory text, after the words ''part 10 of this'', remove the word ''chapter'' and add, in its place, the word ''subchapter''; remove the text ''§ 10.302'' and add, in its place, the text ''§ 11.302''; after the words ''used to qualify'', add the words ''an applicant''; after the words ''hold an STCW'', remove the words ''certificate or'' and add, in their place, the words ''or rating''; and remove the words ''for service on or after February 1, 2002,'';

b. In paragraph (a)(3)(iii), remove the words ''license, endorsement,'' and add, in their place, the words ''Coast Guard credential'';

c. In paragraph (a)(4), remove the words ''maritime license or document'' and add, in their place, the words ''Coast Guard credential'';

d. In paragraph (b), after the words ''training necessary for'', remove the word ''licenses'' and add, in its place, the words ''both officer''.

e. In paragraph (c) introductory text, before the words ''particular training does'', add the word ''the''; and

f. In paragraph (c)(2), remove the words ''Commanding Officer,''; and after the words ''National Maritime Center'', add the text ''(NMC)''.

§ 12.05–1 [Amended]

238. In § 12.05–1—

a. In paragraph (a), remove the words ''employed in a rating'' and add, in their place, the words ''serving under the authority of a rating endorsement''; and remove the words ''a merchant mariner's document'' and add, in their place, the words ''an MMC or MMD endorsement''; and

b. In paragraph (b), remove the word ''certificate'' and add, in its place, the words ''MMD or MMC endorsed''.

§ 12.05–3 [Amended]

239. In § 12.05–3—

a. In paragraph (a) introductory text, remove the word ''certification'' and add, in its place, the words ''an endorsement'';

b. In paragraph (a)(2), remove the word ''examination'' and add, in its place, the words ''and medical examination in § 10.215 of this subchapter'';

c. In paragraph (b) introductory text, remove the words ''valid for any period on or after February 1, 2002,''; and

d. In paragraph (c), remove the word ''certification'' and add, in its place, the words ''an endorsement''.

§ 12.05–5 [Removed and Reserved]

240. Remove and reserve § 12.05–5.

§ 12.05–7 [Amended]

241. In § 12.05–7—

a. In paragraph (a) introductory text, after the words ''categories of'' remove the words ''able seaman is as'' and add, in their place, the words ''endorsement as able seaman are''; and,

b. Remove paragraphs (c), (d), and (e).

§ 12.05–9 [Amended]

242. In § 12.05–9—

a. In paragraph (a) introductory text, remove the word ''certified'' and add, in its place, the words ''issued an endorsement''; and

b. In paragraph (e), remove the words ''is in valid possession of a certificate as able seaman endorsed'' and add, in their place, the words ''holds a valid MMC or MMD endorsed as able seaman''; after the words ''service to qualify for'', remove the words ''a certificate as able seaman endorsed'' and add, in their place, the words ''an endorsement as able seaman''; after the words ''issued a new'', remove the word ''document'' and add, in its place, the word ''MMC''; after the words ''for cancellation the'' remove the word ''document'' and add, in its place, the word ''credential''; remove the words ''by a medical officer of the Public Health Service''; and after the words ''determine his competency'', add the words ''as set forth in § 10.215 of this chapter''.

§ 12.05–11 [Amended]

243. In § 12.05–11—

a. In the section heading, remove the words ''merchant mariner's document endorsed'' and add, in their place, the words ''endorsements'';

b. In paragraph (a), remove the words ''a merchant mariner's document'' and add, in their place, the words ''an MMC or MMD''; remove the word ''unlicensed''; and after the words ''when serving'', remove the words ''in as a ''rating forming part of a navigational watch'''' and add, in their place, the words ''as a rating forming part of a navigational watch (RFPNW)''; and

c. In paragraph (b), remove the words ''A merchant mariner's document'' and add, in their place, the words ''An MMC or MMD''; remove the words ''a certificate of efficiency'' and add, in their place, the words ''an endorsement''; and remove the words ''without further endorsement''.

§ 12.10–1 [Amended]

244. In § 12.10–1—

a. In the section heading, remove the word ''Certification'' and add, in its place, the word ''Credentials''; and

b. In the text, remove the words ''employed in a rating'' and add, in their place, the words ''serving under the authority of a rating endorsement''; remove the words ''certificated lifeboatmen shall produce a certificate as lifeboatman or merchant mariner's document endorsed as lifeboatman or able seaman to the shipping commissioner,'' and add, in their place, the words ''lifeboatmen must produce an MMC or MMD endorsed as lifeboatman or able seaman to the''; and remove the words ''certificate of efficiency'' and add, in their place, the word ''endorsement''.

§ 12.10–3 [Amended]

245. In § 12.10–3—

a. In paragraph (a) introductory text, remove the word ''certification'' and add, in its place, the words ''an endorsement'';

b. In paragraph (a)(5), after the words ''National Maritime Center,'', remove the word ''and'' and add, in its place, the word ''or'';

c. In paragraph (b), remove the word ''certification'' and add, in its place, the words ''an endorsement''; and

d. In paragraph (c), remove the word ''certified'' and add, in its place, the words ''eligible for an endorsement''.

§ 12.10–5 [Amended]

246. In § 12.10–5—

a. In paragraph (a) introductory text, remove the word ''certified'' and add, in its place, the words ''issued an endorsement''; and

b. In paragraph (d), remove the words ''After July 31, 1998, each'' and add, in their place, the word ''Each''; and remove the words ''certificate endorsed for'' and add, in their place, the words ''endorsement with an STCW endorsement for''.

§ 12.10–7 [Amended]

247. In § 12.10–7—

a. In the section heading, after the words ''provisions respecting'', remove the words ''merchant mariner's documents'' and add, in their place, the words ''an MMC or MMD'' ; and

b. In the text, before the words ''endorsed as able seaman'', remove the words ''A merchant mariner's document'' and add, in their place, the words ''An MMC or MMD''; after the words ''equivalent of'', remove the words ''a certificate as lifeboatman or of''; after the words ''will be accepted'' remove the words ''as either of these wherever either is'' and add, in their place, the words ''wherever a lifeboatman is''; after the words ''that, when'', remove the words ''the holder documented as''; and remove the word ''certificated'' and add, in its place, the word ''endorsed''.

248. In § 12.10–9, revise the heading, paragraph (a), and paragraph (b) introductory text to read as follows:

§ 12.10–9 Endorsement for proficiency in fast rescue boats.

(a) Each person engaged or employed as a lifeboatman proficient in fast rescue boats must hold an appropriately endorsed MMC or MMD.

(b) To be eligible for an MMC endorsed for proficiency in fast rescue boats, an applicant must:

* * * * *

§ 12.13–3 [Amended]

249. In § 12.13–3 text, remove the words ''license or document'' and add, in their place, the word ''MMC''.

§ 12.15–1 [Amended]

250. In § 12.15–1—

a. In the section heading, remove the word ''Certification'' and add, in its place, the word ''Credentials'';

b. In paragraph (a), remove the words ''employed in a rating'' and add, in their place, the words ''serving under the authority of a rating endorsement''; after

the words ''vessel requiring'', remove the word ''certificated''; and after the words ''shall produce'', remove the words ''a certificate'' and add, in their place, the words ''an endorsement''; and c. In paragraph (b), remove the word ''certificate'' and add, in its place, the word ''endorsement''.

§ 12.15–3 [Amended]

251. In § 12.15–3—

a. In paragraph (a), after the words ''any person below'', remove the words ''the rating of licensed''; after the words ''who holds'', remove the words ''a certificate of service as such'' and add, in their place, the words ''an MMC or MMD endorsed as''; and after the words ''Coast Guard'', remove the words ''or predecessor authority'';

b. In paragraph (b), after the words ''considered a rating'', remove the words ''not above that of'' and add, in their place, the words ''equal to''; and after the words ''passer or wiper'', remove the words '', but equal thereto'';

c. In paragraph (c), remove the word ''certification'' and add, in its place, the words ''an endorsement'';

d. In paragraph (d) introductory text, remove the words ''After July 31, 1998, an'' and add, in their place, the word ''An''; and remove the word ''certification'' and add, in its place, the word ''endorsement''; and

e. In paragraph (e), remove the words ''After July 31, 1998, an'' and add, in their place, the word ''An''; remove the words ''valid for any period on or after February 1, 2002,''; and remove the word ''certification'' and add, in its place, the word ''endorsement''.

252. Revise § 12.15–5 to read as follows:

§ 12.15–5 Physical and medical requirements.

The physical and medical requirements for an endorsement as QMED are found in § 10.215 of this chapter.

§ 12.15–7 [Amended]

253. In § 12.15–7—

a. In paragraph (a), after the words ''applicant for'', remove the words ''a certificate of service'' and add, in their place, the words ''an endorsement'';

b. In paragraph (b)(1), after the words ''graduate of a school ship may'', remove the words ''be rated'' and add, in their place, the words ''qualify for a rating endorsement''; and

c. In paragraph (c), after the words ''qualified rating'', add the words ''in the engineer department''.

§ 12.15–9 [Amended]

254. In § 12.15–9—

a. In paragraph (a), remove the word ''certification'' and add, in its place, the word ''endorsement''; and b.

In paragraphs (c) and (d), remove the word ''certification'' wherever it appears and add, in its place, the words ''an endorsement''.

§ 12.15–11 [Amended]

255. In § 12.15–11—

a. In the section heading, remove the words ''merchant mariner's documents endorsed'' and add, in their place, the words ''an endorsement''; and

b. In the introductory text, after the words ''The holder of'', remove the words ''a merchant mariner's document endorsed'', and add, in their place, the words ''an endorsement''; after the words ''Each qualified member of the engine department rating'', remove the words ''for which a holder of a merchant mariner's document is qualified must be endorsed separately'' and add, in their place, the words ''must be a separate endorsement''; and after the words ''all ratings covered by'', remove the words ''a certificate as a qualified member of the engine department, the certification'' and add, in their place, the words ''an endorsement as a QMED, the endorsement''.

§ 12.15–13 [Amended]

256. In § 12.15–13—

a. In paragraph (a) introductory text, remove the words ''a certificate'' and add, in their place, the words ''an endorsement''; and remove the words ''a merchant mariner's document'' and add, in their place, the words ''an MMC or MMD'';

b. In paragraph (b), remove the words ''merchant mariner's document'' and add, in their place, the word ''MMC''; and

c. In paragraph (c), remove the words ''a merchant mariner's document'' and add, in their place, the words ''an MMC or MMD''; remove the word ''unlicensed''; and after the words ''entered on his'', remove the word ''document'' and add, in its place, the words ''or her credential''.

§ 12.15–15 [Amended]

257. In § 12.15–15—

a. In paragraph (a) introductory text, remove the words ''a certificate'' and add, in their place, the words ''an endorsement''; remove the words ''a merchant mariner's document'' and add, in their place, the words ''an MMC or MMD''; and remove the word ''certification'' and add, in its place, the word ''endorsement'';

b. In paragraph (b), remove the words ''current merchant mariner's document held by the applicant'', and add, in their place, the words ''applicant's MMC''; and

c. In paragraph (c), remove the words ''a merchant mariner's document'', and add, in their place, the words ''an MMC or MMD''; and remove the word ''unlicensed''; and after the words ''entered on his'', remove the word ''document'' and add, in its place, the words ''or her credential''.

§ 12.25–1 [Amended]

258. In § 12.25–1—

a. In the section heading, remove the word ''Certification'' and add, in its place, the word ''Credentials''; and

b. In the text, remove the word ''certificated''; and remove the words ''a merchant mariner's document'' and add, in their place, the words ''an MMC or MMD with the appropriate endorsement''.

259. Revise § 12.25–10 to read as follows:

§ 12.25–10 General requirements.

(a) Rating endorsements shall be issued without professional examination to applicants in capacities other than able seaman, lifeboatman, tankerman, or QMED. For example, ordinary seaman—wiper—steward's department (F.H.). Holders of MMCs or MMDs endorsed as ordinary seaman may serve in any unqualified rating in the deck department. Holders of MMCs or MMDs endorsed as wiper may serve in any unqualified rating in the engine department. MMCs or MMDs endorsed as steward's department (F.H.) will authorize the holder's service in any capacity in the steward's department. (See § 12.02–11(b) for unqualified ratings in the staff department.)

(b) When the holder of an endorsement is qualified as a food handler, the steward's department endorsement will be followed by the further endorsement (F.H.).

260. Revise § 12.25–20 to read as follows:

§ 12.25–20 Physical and medical requirements.

The physical and medical requirements for this subpart are found in part 10.

261. Revise § 12.15–25 to read as follows:

§ 12.25–25 Members of Merchant Marine Cadet Corp.

No ratings other than cadet (deck) or cadet (engine), as appropriate, and lifeboatman will be shown on an MMC issued to a member of the U.S. Merchant Marine Cadet Corps. The MMC will also indicate that it is valid only while the holder is a cadet in the U.S. Maritime

Administration training program. The MMC must be surrendered upon the holder being endorsed in any other rating or upon being issued an officer's endorsement and the rating of cadet (deck) or cadet (engine) will be omitted.

§ 12.25–30 [Amended]

262. In § 12.25–30 text, remove the words ''merchant mariner's document'' and add, in their place, the words ''MMC endorsed''; and remove the words ''documents or certificates'' and add, in their place, the word ''endorsements''.

§ 12.25–35 [Amended]

263. In § 12.25–35—

a. In paragraph (a), remove the words ''a merchant mariner's document'' and add, in their place, the words ''an endorsement''; and

b. In paragraph (b), remove the words ''merchant mariner's document with''.

§ 12.25–40 [Amended]

264. In § 12.25–40, remove the words ''a merchant mariner's document'' and add, in their place, the words ''an endorsement''.

§ 12.25–45 [Amended]

265. In § 12.25–45, remove the words ''certificates or''.

§ 12.30–1 [Amended]

266. In § 12.30–1, remove the words ''certification of'' and add, in their place, the words ''endorsements for''.

§ 12.30–3 [Removed and Reserved]

267. Remove and reserve § 12.30–3.

§ 12.30–5 [Amended]

268. In § 12.30–5, remove the words ''after January 31, 1997,''; and remove the word ''MMD'' and add, in its place, the word ''endorsement''.

§ 12.35–1 [Amended]

269. In § 12.35–1, remove the word ''certification'' and add, in its place, the word ''qualification''; and remove the word ''§ 12.35–3'' and add, in its place, the words ''part 10''.

§ 12.35–3 [Removed and Reserved]

270. Remove and reserve § 12.35–3.

§ 12.35–5 [Amended]

271. In § 12.35–5—

a. In the introductory text, remove the words ''If you are an unlicensed person, then, before you'' and add, in their place, the words ''A mariner with no endorsements,''; and remove the words ''you must'' and add, in their place, the words ''only after meeting the following conditions''; and

b. In paragraph (b), remove the words ''you do meet'', and add, in their place, the words ''the mariner meets''.

PART 13—CERTIFICATION OF TANKERMEN

272. The authority citation for part 13 continues to read as follows:

Authority: 46 U.S.C. 3703, 7317, 8105, 8703, 9102; Department of Homeland Security Delegation No. 0170.1.

§ 13.101 [Amended]

273. In § 13.101, remove the words ''to a merchant mariner's document'' and add, in their place, the words ''on a merchant mariner credential''.

§ 13.103 [Removed and Reserved]

274. Remove and reserve § 13.103.

275. Add new § 13.106 to read as follows:

§ 13.106 Requirement to hold an MMC.

An applicant for any endorsement in this part must also meet the requirements for the MMC on which the endorsement would appear. These requirements are set out in part 10 of this chapter.

§ 13.107 [Amended]

276. In § 13.107—

a. In paragraphs (a), (b), (c), (d), (e), and (f), remove the word ''MMD'' wherever it appears, and add, in its place, the word ''MMC'';

b. In paragraph (a), remove the words ''engineer's license'' and add, in its place, the words ''engineer license or engineer endorsement'';

c. In paragraph (d), place quotation marks (''') before and after the words ''Tankerman-Engineer''; after the words ''No person licensed'', add the words ''or credentialed''; and remove the number ''10.105'', and add, in its place, the number ''11.105'';

d. In paragraph (e), remove the text ''13.103'' and add, in its place, the text ''10.107''; and

e. In paragraph (f), remove the text ''10.105'', and add, in its place, the text ''10.217''; and remove the word ''chapter'' and add, in its place, the word ''title''.

§ 13.109 [Amended]

277. In § 13.109(c), remove the text ''10.105'' and add, in its place, the text ''10.217''; and remove the word ''MMD'' and add, in its place, the word ''MMC''.

§ 13.111 [Amended]

278. In § 13.111—

a. In the section heading, after the word ''Restricted'', add the word ''tankerman'';

b. In paragraph (a), remove the words ''46 CFR 10.105'' and add, in their place, the words ''§ 10.217 of this chapter'';

c. In paragraph (d)(3), after the words ''passing a physical'', add the words ''and medical''; and remove the words ''in accordance with § 13.125'' and add, in their place, the words ''according to § 10.215 of this chapter''; and

d. In paragraph (f), after the words ''Seafarers, 1978'', add the words '', as amended''.

§ 13.119 [Amended]

279. In § 13.119 text, remove the word ''MMD'' and add, in its place, the words ''merchant mariner's document or merchant mariner credential on which the endorsement appears''.

§ 13.120 [Amended]

280. In § 13.120, in the section heading, before the word ''endorsement'', add the word ''tankerman''; remove the number ''12.02–27'' and add, in its place, the number ''10.227''; and remove the word ''MMD'' and add, in its place, the word ''MMC''.

§ 13.121 [Amended]

281. In § 13.121—

a. In the section heading, remove the word ''training'' and after the word ''tankerman'', add the word ''endorsements''; and

b. In paragraph (a), remove the text ''10.203 and 10.304'' and add, in its place, the text ''11.302 and 11.304''.

§ 13.125 [Amended]

282. In § 13.125—

a. In the section heading, after the word ''Physical'' add the words ''and medical''.

b. In the text, remove the words ''10.205(d) of this chapter, excluding paragraph (d)(2) of that section'' and add, in their place, the words ''10.215 of this chapter''.

§ 13.129 [Amended]

283. In § 13.129—

a. In the section heading, after the word ''tankerman'', add the word ''endorsements''.

b. In table 13.129, in the column ''Physical required'', remove the numbers ''13.125'', ''13.111(b)'', ''13.111(c)'', and ''13.111(d)(3)'' wherever they appear and add, in their place, the number ''10.215''.

§ 13.201 [Amended]

284. In paragraph (c), after the word ''physical'' add the words ''and medical''; and remove the words ''in accordance with § 13.125'' and add, in their place, the words ''according to § 10.215 of this chapter''.

§ 13.203 [Amended]

285. In § 13.203—

a. In paragraph (a)(1), after the words ''service as a'', remove the word ''licensed''; after the words ''deck officer or'', remove the words ''a licensed''; and before the word ''engineering'', add the word ''an'';

b. In paragraph (a)(2), remove the word ''unlicensed'' and add, in its place, the word ''rating''; and

c. In paragraph (c) introductory text, after the word ''MMD'', add the words ''or MMC''.

§ 13.207 [Amended]

286. In § 13.207 text, remove the words ''license or a tankerman endorsement'' and add, in their place, the words ''license, tankerman endorsement, or officer endorsement on an MMC''.

§ 13.301 [Amended]

287. In § 13.301(c), after the word ''physical'' add the words ''and medical''; and remove the words ''in accordance with § 13.125'' and add, in their place, the words ''according to § 10.215 of this chapter''.

§ 13.303 [Amended]

288. In § 13.303(c) introductory text, after the word ''MMD'' add the words ''or MMC''.

§ 13.307 [Amended]

289. In § 13.307(a), remove the words ''license or a tankerman endorsement'' and add, in their place, the words ''license, tankerman endorsement on an MMD or MMC, or an officer endorsement on an MMC''.

§ 13.401 [Amended]

290. In § 13.401(c), after the word ''physical'' add the words ''and medical''; and remove the words ''in accordance with § 13.125'' and add, in their place, the number ''according to § 10.215 of this chapter''.

§ 13.403 [Amended]

291. In § 13.403(b) introductory text, after the word ''MMD'' add the words ''or MMC''.

§ 13.407 [Amended]

292. In § 13.407, remove the words ''for a license or endorsement'' and add, in their place, the words ''to the Coast Guard for any other endorsement or credential''.

§ 13.501 [Amended]

293. In § 13.501(c), after the word ''physical'' add the words ''and medical''; and remove the words ''in accordance with § 13.125'' and add, in their place, the words ''according to § 10.215 of this chapter''.

§ 13.503 [Amended]

294. In § 13.503—

a. In paragraph (a)(1), remove the words ''a licensed'' and add, in their place, the word ''an''; and after the words ''engineering officer'', remove the word ''of'' and add, in its place, the word ''on'';

b. In paragraph (a)(2), remove the word ''unlicensed'' and add, in its place, the word ''rating''; and

c. In paragraph (b), after the word ''MMD'', add the words ''or MMC''.

§ 13.505 [Amended]

295. In § 13.505(a)(2), remove the words ''licensed and unlicensed'' and add, in their place, the words ''officer, rating, and cadet''.

§ 13.507 [Amended]

296. In § 13.507, remove the words ''license or tankerman endorsement'' and add, in their place, the words ''license, tankerman endorsement, or officer endorsement on an MMC''.

PART 14—SHIPMENT AND DISCHARGE OF MERCHANT MARINERS

297. The authority citation for part 14 is revised to read as follows:

Authority: 5 U.S.C. 552; 46 U.S.C. Chapters 103 and 104; 46 U.S.C. 70105.

§ 14.205 [Amended]

298. In § 14.205, after the words ''every document, certificate,'' add the word '' credential,''.

§ 14.207 [Amended]

299. In § 14.207(a)(1), after the words ''specify at least the name, the'', remove the words ''number of the license or merchant mariner's document'' and add the words ''TWIC number (if the mariner is required by law to hold a TWIC) and license, MMD, or MMC number,''.

§ 14.307 [Amended]

300. In § 14.307(a), remove the words ''and merchant mariner's document number'' and add, in their place, the words ''TWIC number, and MMD or MMC number''.

PART 15—MANNING REQUIREMENTS

301. The authority citation for part 15 is revised to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906, 9102, and 70105; and Department of Homeland Security Delegation No. 0170.1.

§ 15.103 [Amended]

302. In § 15.103—

a. In paragraph (b), remove the words ''of licensed individuals and members of the crew'' and add, in their place, the words ''number of officers and rated crew''; and after the words ''minimum qualifications concerning licenses'', add the words ''and MMC endorsements'';

b. In paragraph (c), remove the words ''licensed individuals'' and add, in their place, the word ''officers''; and

c. In paragraph (g), remove the words ''Licensed personnel'' and add, in their place, the word ''Personnel''; after the words ''an appropriate STCW'', remove the words ''certificate or endorsement'' and add, in their place, the words ''endorsement on their license or MMC''; and before the words ''endorsement will be expressly limited'', remove the words ''certificate or''.

Subpart B [Removed and Reserved]

303. Remove and reserve subpart B, consisting of § 15.301.

304. Revise § 15.401 to read as follows:

§ 15.401 Employment and service within restrictions of credential.

A person may not employ or engage an individual, and an individual may not serve, in a position in which an individual is required by law or regulation to hold a license, certificate of registry, merchant mariner's document, transportation worker identification credential, and/or merchant mariner credential, unless the individual holds all credentials required, as appropriate, authorizing service in the capacity in which the individual is engaged or employed and the individual serves within any restrictions placed on the credential. All mariners holding an active license, certificate of registry, MMD, or MMC issued by the Coast Guard must also hold a valid TWIC issued by the Transportation Security Administration under 49 CFR part 1572.

§ 15.405 [Amended]

305. In § 15.405, remove the words ''licensed, registered, or certificated'' and add, in their place, the word ''credentialed''.

§ 15.410 [Amended]

306. In § 15.410—

a. In the section heading, remove the word ''Licensed'' and add, in its place, the word ''Credentialed''; and

b. In the text, remove the words ''a licensed individual authorized'' and add, in their place, the words ''an individual holding a license or MMC authorizing them''.

§ 15.415 [Removed and Reserved]

307. Remove and reserve § 15.415.

§ 15.515 [Amended]

308. In § 15.515(b) introductory text, remove the words ''issued by the Coast Guard'' and add, in their place, the words ''or appropriate officer endorsement on their MMC''.

§ 15.520 [Amended]

309. In § 15.520—

a. In paragraph (b), remove the words ''licensed individuals'' and add, in their place, the word ''officers'';

b. In paragraph (c), after the words ''A license'', add the words ''or officer endorsement on an MMC''; and after the words ''operation specified on the'', remove the word ''license'' and add, in its place, the word ''credential'';

c. In paragraph (d), after the words ''endorsed as an OIM'', add the words ''or an MMC with master and OIM officer endorsements'';

d. In paragraph (e), after the words ''who holds a license'', add the words ''or MMC officer endorsement''; and after the words ''as master endorsed as OIM'', add the words ''or an MMC with master and OIM officer endorsements'';

e. In paragraph (f), after the words ''holds a license or'' add the words ''MMC officer'';

f. In paragraph (g), after the words ''appropriate license'', add the words ''or MMC officer endorsement''; and after the words ''holding a license or'', add the words ''MMC officer''; and

g. In paragraphs (h), (i), and (l), after the words ''holding a license or'' wherever they appear, add the words ''MMC officer''.

§ 15.605 [Amended]

310. In § 15.605—

a. In the section heading, remove the word ''Licensed'' and add, in its place, the word ''Credentialed'';

b. In the introductory text, remove the word ''licensed'' and add, in its place, the word ''credentialed'';

c. In paragraph (a), remove the words '', carrying not more than six passengers,''; and after the words ''holding a license'', add the words ''or MMC endorsed''; and after the words ''as operator'', add the words ''of uninspected passenger vessels''; and

d. In paragraph (b), remove the word ''licensed'' and add, in its place, the word ''credentialed''.

§ 15.610 [Amended]

311. In § 15.610—

a. In paragraph (a), after the words ''and control of a person'', remove the word ''licensed'' and add, in its place, the words ''holding a license or MMC officer endorsement''; and after the words ''endorsement on his or her license'', add the words ''or MMC'';

b. Remove paragraphs (b) and (c);

c. Redesignate paragraph (d) as paragraph (b); and

d. In newly redesignated paragraph (b) introductory text, remove the words ''who holds a first-class pilot's license or endorsement for that route, or'' and add, in their place, the words ''meeting the requirements of paragraph (a) of this section who holds either a first-class pilot's endorsement for that route, MMC officer endorsement for the Western Rivers, or meets the requirements of paragraph (a) and ''; and remove the words ''paragraph (d)(1) or paragraph (d)(2)'' and add, in their place, the words ''paragraphs (b)(1) or (b)(2)''.

§ 15.701 [Amended]

312. In § 15.701(b), after the words ''must hold a license'', add the words ''or MMC officer endorsement''; and remove the words ''part 10'' and add, in their place, the words ''parts 10 and 11''.

§ 15.705 [Amended]

313. In § 15.705—

a. In paragraph (b), remove the words ''licensed individuals'' and add, in their place, the word ''officers''; and after the words ''deck department other than'', remove the word ''licensed'';

b. In paragraph (c) introductory text, remove the words ''licensed individuals'' and add, in their place, the word ''officers''; and

c. In paragraphs (d) and (e)(1) and (2), remove the word ''licensed'' wherever it appears.

§ 15.710 [Amended]

314. In § 15.710 introductory text, after the words ''on the working hours of'', remove the words ''licensed individuals'' and add, in their place, the words ''credentialed officers''; and after the words ''master or other'', remove the words ''licensed individual'' and add, in their place, the words ''credentialed officer''.

§ 15.720 [Amended]

315. In § 15.720—

a. In the section heading, remove the words ''licensed and/or documented'' and add, in their place, the word ''credentialed'';

b. In paragraph (a), remove the words ''utilize non-U.S. licensed and documented personnel'' and add, in their place, the words ''use non-U.S. credentialed personnel without a TWIC,'';

c. In paragraph (b) introductory text, after the words ''8103 (a) and (b)'' add the following words ''and the TWIC requirement of 46 U.S.C. 70105''; and after the words ''U.S. citizen'', add the words ''holding a TWIC.''; and

d. In paragraph (d), remove the words ''license or document'' wherever they appear and add, in their place, the word ''credential''.

§ 15.725 [Amended]

316. In § 15.725, remove the words ''licensed or documented'' and add, in their place, the word ''credentialed''.

§ 15.730 [Amended]

317. In § 15.730(d), remove the words ''licensed individuals'' wherever they appear and add, in their place, the word ''officers''; and after the words ''spoken directly by the'', remove the words ''licensed individual'' and add, in their place, the word ''officer''.

§ 15.805 [Amended]

318. In § 15.805—

a. In paragraph (a) introductory text, after the words ''license as'', add the words ''or a valid MMC with endorsement as master'';

b. In paragraph (a)(5) introductory text, remove the word ''licensed'' and add, in its place, the words ''holding a license or MMC endorsed''; and

c. In paragraph (a)(5)(ii), remove the word ''endorsed'' and add, in its place, the words ''or MMC with officer endorsement''.

§ 15.810 [Amended]

319. In § 15.810—

a. In paragraph (a), remove the word ''licensed'';

b. In paragraph (b) introductory text, remove the word ''licensed mates'' and add, in its place, the words ''mariners holding a license or MMC officer endorsement as mate'';

c. In paragraph (b), remove the word ''licensed'' wherever it appears;

d. In paragraph (c), after the words ''appropriate license'', add the words ''or MMC'';

e. In paragraph (d) introductory text, remove the words ''hold a license'' and add, in their place, the words ''satisfy the requirements of § 15.805(a)(5) or hold a license or MMC'';

f. In paragraph (d)(2) introductory text, after the words ''officer's license'', add the words ''or MMC''; and

g. In paragraph (d)(2)(ii), remove the word ''endorsed'' and add, in its place, the words ''or MMC with officer endorsement''.

320. In § 15.812—

a. In table 15.812(e)(1), in the heading to the second column, after the words ''First Class Pilot's licenses'', add the words ''or MMC officer endorsements'';

b. In table 15.812(e)(2), in the heading to the second column, after the words ''First Class Pilot's licenses'', add the words ''or MMC officer endorsements''; and remove the word ''Operator'' wherever it appears and add, in its place, the words ''Master, Mate (Pilot) of towing vessels'';

c. Revise paragraphs (b), (c), (f)(1) introductory text, (f)(1)(i), and (f)(2) introductory text to read as follows:

§ 15.812 Pilots.

* * * * *

(b) The following individuals may serve as a pilot for a vessel subject to paragraph (a) of this section, when underway on the navigable waters of the United States that are designated areas:

(1) An individual holding a valid first class pilot's license or MMC officer endorsement, operating within the restrictions of his or her credential, may serve as pilot on any vessel to which this section applies.

(2) An individual holding a valid license or MMC officer endorsement as master or mate, employed aboard a vessel within the restrictions of his or her credential, may serve as pilot on a vessel of not more than 1,600 gross tons propelled by machinery, described in paragraphs (a)(1) and (a)(3) of this section, provided he or she:

(i) Is at least 21 years old;

(ii) Complies with the currency of knowledge provisions of § 11.713 of this chapter; and

(iii) Has completed a minimum of four round trips over the route to be traversed while in the wheelhouse as watchstander or observer. At least one of the round trips must be made during the hours of darkness if the route is to be traversed during darkness.

(3) An individual holding a valid license or MMC officer endorsement as master, mate, or operator employed aboard a vessel within the restrictions of his or her credential, may serve as pilot on a tank barge or tank barges totaling not more than 10,000 gross tons, described in paragraphs (a)(1) and (a)(3) of this section, provided he or she:

(i) Is at least 21 years old;

(ii) Complies with the currency of knowledge provisions of § 11.713 of this chapter;

(iii) Has a current physical examination in accordance with the provisions of § 11.709 of this chapter;

(iv) Has at least six-months service in the deck department on towing vessels engaged in towing operations; and

(v) Has completed a minimum of twelve round trips over the route to be traversed, as an observer or under instruction in the wheelhouse. At least three of the round trips must be made during the hours of darkness if the route is to be traversed during darkness.

(c) An individual holding a valid license or MMC officer endorsement as master, mate, or operator, employed aboard a vessel within the restrictions of his or her credential, may serve as a pilot for a vessel subject to paragraphs (a)(1) and (a)(2) of this section, when underway on the navigable waters of the United States that are not designated areas of pilotage waters, provided he or she:

(1) Is at least 21 years old;

(2) Complies with the currency of knowledge provisions of § 11.713 of this chapter; and

(3) Has a current physical examination in accordance with the provisions of § 11.709 of this chapter.

* * * * *

(f) * * *

(1) When operating from 60°49′ north latitude to the Port of Valdez be under the direction and control of an individual holding a valid license or MMC endorsed as pilot who:

(i) Is operating under the authority of a license or MMC;

* * * * *

(2) Navigate with either two credentialed deck officers on the bridge or an individual holding a valid license or MMC endorsed as pilot when operating south of 60°49′ north latitude and in the approaches through Hinchinbrook Entrance and in the area bounded:

* * * * *

321. In § 15.815—

a. In paragraph (a), remove the words ''licensed deck individuals'' and add, in their place, the words ''deck officers''; and

b. In paragraph (c), remove the words ''be licensed'' and add, in their place, the words ''hold a license or MMC officer endorsement''; and after the words ''service as master'', remove the words '', mate, or operator'' and add, in their place, the words ''or mate''.

c. Add new paragraphs (d) and (e) to read as follows:

§ 15.815 Radar observers.

* * * * *

(d) Each person who is required to hold a radar endorsement must have their certificate of training readily available to demonstrate that the endorsement is still valid.

(e) For this section, readily available means that the documentation must be provided to the Coast Guard or other appropriate federal agency, within 48 hours. The documentation may be provided by the individual or his or her company representative electronically, by facsimile, or physical copy.

§ 15.820 [Amended]

322. In § 15.820—

a. In paragraph (a) introductory text, remove the words ''appropriate license'' and add, in their place, the words ''MMC or license endorsed''; and after the words ''as chief engineer or'', remove the words ''a license'' and add, in their place, the words ''other credential'';

b. In paragraph (a)(3), remove the words ''a licensed individual'' and add, in their place, the words ''an individual with a license or the appropriate MMC officer endorsement''; and

c. In paragraph (b), remove the words ''appropriate license'' and add, in their place, the words ''appropriately endorsed license or MMC''.

§ 15.825 [Amended]

323. In § 15.825—

a. In paragraph (a), remove the words ''appropriate license'' and add, in their place, the words ''appropriately endorsed license or MMC''; and

b. In paragraph (b), remove the word ''licensed'' and add, in its place, the word ''credentialed''.

§ 15.835 [Amended]

324. In § 15.835 text, remove the number ''10'' and add, in its place, the number ''11''.

§ 15.840 [Amended]

325. In § 15.840(a), remove the words ''licensed individuals'' and add, in their place, the words ''individuals serving as officers''.

§ 15.860 [Amended]

326. In § 15.860—

a. In paragraph (a), after the words ''merchant mariner's documents'' add the words ''or MMCs'';

b. In paragraph (f) introductory text, after the words ''merchant mariner's documents'', add the words ''or MMCs'';

c. In paragraph (f)(3), remove the words ''licensed person'' and add, in their place, the words ''credentialed officer'';

d. In paragraph (f)(4), remove the words ''licensed or unlicensed person'' and add, in their place, the words ''officer or crewmember''; and

e. In table 15.860(a)(2), in the first column, sixth row, remove the words ''Licensed Person'' and add, in their place, the words ''Credentialed Officer''; and in the first column, seventh row, remove the words ''Licensed or Unlicensed Person'' and add, in their place, the words ''Credentialed Officer or Crewmember''.

§ 15.901 [Amended]

327. In § 15.901, paragraphs (a), (b), (c), and (d), after the words ''holding a

license'' wherever they appear, add the words ''or MMC endorsed''; after the words ''on the individual's license'' wherever they appear, add the words ''or MMC''; and remove the words ''authorizing service'' wherever they appear.

§ 15.905 [Amended]

328. In § 15.905 (a), (b), and (c), after the words ''holding a license'' wherever they appear, add the words ''or MMC endorsed''; and after the words ''on the individual's license'' wherever they appear, add the words ''or MMC''.

329. Revise § 15.910 to read as follows:

§ 15.910 Towing vessels.

No person may serve as a master or mate (pilot) of any towing vessel without meeting the requirements of §§ 15.805(a)(5) or 15.810(d).

§ 15.915 [Amended]

330. In § 15.915—

a. In the introductory text, after the words ''following licenses'', add the words ''and MMC officer endorsements''; and after the words ''on the license'', add the words ''or MMC''; and

b. In paragraphs (a) introductory text, (b), (c), and (d), after the word ''license'' wherever it appears, add the words ''or endorsement''.

§ 15.1001 [Amended]

331. In § 15.1001 remove the words ''an appropriately endorsed Federal first class pilot's license issued by the Coast Guard'' and add, in their place, the words ''a valid MMC or license with appropriate endorsement as a first-class pilot''.

§ 15.1103 [Amended]

332. In § 15.1103—

a. In the section heading, remove the words ''restrictions of a license, document, and'' and add, in their place, the words ''the restrictions of an'';

b. In paragraph (c), remove the words ''After January 31, 2002, on'' and add, in their place, the word ''On'';

c. In paragraph (d), remove the words ''§ 10.1005 (if licensed) or § 12.30–5 (if unlicensed) of this chapter'' and add, in their place, the words ''§§ 11.1005 or 12.30–5 of this chapter, as appropriate,'';

d. In paragraph (e) introductory text, remove the words ''§ 10.1105 (if licensed) or § 12.35–5 (if unlicensed) of this chapter'' and add, in their place, the words ''§§ 11.1005 or 12.35–5 of this chapter, as appropriate,'';

e. In paragraph (f), remove the words ''After January 31, 2002, on'' and add, in their place, the word ''On''; and after the words ''appropriate certificate'', add the words ''or endorsement''; and

f. In paragraph (h), remove the words ''After January 31, 2002, on'' and add, in their place, the word ''On''; and remove the words ''in accordance with § 10.205 or § 10.209'' and add, in their place, the words ''according to §§ 11.205 or 11.209''.

§ 15.1105 [Amended]

333. In § 15.1105(a) introductory text, (b), and (c) introductory text, remove the words ''After January 31, 1997, on'' wherever they appear and add, in their place, the word ''On''.

§ 15.1107 [Amended]

335. In § 15.1107—

a. In the introductory text, after the words ''mariner holding a license'', add the words '', MMC,''; and

b. In paragraph (c), remove the words ''licenses, documents, or endorsements'' and add, in their place, the word ''credentials''.

§ 15.1111 [Amended]

334. In § 15.1111, paragraph (a), remove the words ''After January 31, 1997, each'' and add, in their place, the word ''Each''.

PART 16—CHEMICAL TESTING

335. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; Department of Homeland Security Delegation No. 0170.1.

336. In § 16.105, add, in alphabetical order, a definition for ''credential'' and in the definition for ''crewmember'', redesignate paragraphs (a), (b), (b)(1), (b)(2), (b)(3), and (b)(4) as paragraphs (1), (2), (2)(i), (2)(ii), (2)(iii), and (2)(iv) respectively and revise the introductory text and newly redesignated paragraphs (1) and (2) introductory text to read as follows:

§ 16.105 Definitions of terms used in this part.

* * * * *

Credential is a term used to refer to any or all of the following:

(1) Merchant mariner's document.

(2) Merchant mariner's license.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

Crewmember means an individual who is—

(1) Onboard a vessel acting under the authority of a credential issued under this subchapter, whether or not the individual is a member of the vessel's crew; or

(2) Engaged or employed onboard a vessel owned in the United States that is required by law or regulation to engage, employ, or be operated by an individual holding a credential issued under this subchapter, except for the following:

* * * * *

§ 16.113 [Amended]

337. In § 16.113(a), remove the words ''documented and licensed'' and add, in their place, the word ''credentialed''.

§ 16.201 [Amended]

338. In § 16.201—

a. In paragraph (c), after the words ''If an individual holding'', remove the words ''a license, certificate of registry, or merchant mariner's document'' and add, in their place, the words ''a credential''; and, after the words ''against his or her'', remove the words ''license, certificate of registry, or merchant mariner's document'' and add, in their place, the word ''credential''; and

b. In paragraph (d), remove the words ''a license, certificate of registry, or merchant mariner's document'' and add, in their place, the words ''a credential''.

339. Revise § 16.220(a) and (b) to read as follows:

§ 16.220 Periodic testing requirements.

(a) Except as provided by paragraph (c) of this section and § 10.227(e) of this chapter, an applicant must pass a chemical test for dangerous drugs for—

(1) An original issuance of a license, COR, MMD, or MMC;

(2) The first issuance, raise of grade, or renewal of an officer endorsement on a merchant mariner credential;

(3) A raise of grade of a license or COR;

(4) The first endorsement as an able seaman, lifeboatman, qualified member of the engine department, or tankerman; or

(5) A reissuance of a credential with a new expiration date. The applicant must provide the results of the test to the Coast Guard Regional Examination Center (REC) at the time of submitting an application. The test results must be completed and dated not more than 185 days before submission of the application.

(b) Unless excepted under paragraph (c) of this section, each pilot required by this subchapter to receive an annual physical examination must pass a chemical test for dangerous drugs as a part of that examination, and provide the results to the Coast Guard. Applicants need not submit additional copies of their annual chemical test for dangerous drugs pursuant to paragraph (a) if the applicant submitted passing results of a chemical test for dangerous

drugs to the Coast Guard within 12 months of the date of application.

* * * * *

§ 16.230 [Amended]

340. In § 16.230—

a. In paragraph (b)(1), remove the words ''issued by the Coast Guard hold a license'' and add, in their place the words ''hold a license or MMC endorsed as master, mate, or operator''; and

b. In paragraph (k), remove the words ''license or merchant mariner's document'' and add, in their place, the word ''credential''.

§ 16.250 [Amended]

341. In § 16.250, in paragraph (a), remove the words ''license, certificate of registry, or merchant mariner's document'' and add, in their place, the word ''credential''.

PART 26—OPERATIONS

342. The authority citation for part 26 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104, 6101, 8105; Pub. L. 103–206, 107 Stat. 2439; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

Subpart 26.20—[Amended]

343. In the heading to subpart 26.20, remove the word ''License'' and add, in its place, the word ''Credential''.

§ 26.20–1 [Amended]

344. In § 26.20–1, after the words ''valid Coast Guard license'' add the words ''or MMC officer endorsement''; and after the words ''must have the license'' add the words ''or MMC''.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

345. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; Department of Homeland Security Delegation No. 0170.1.

§ 28.275 [Amended]

346. In § 28.275—

a. In paragraph (a)(2) introductory text, remove the words ''merchant mariner's license'' and add, in their place, the words ''license or officer endorsement''; and remove the words ''64 CFR'' and add, in their place, the text ''§ ''; and

b. In paragraph (a)(3) introductory text, remove the words ''merchant mariner's license'' and add, in their place, the words ''license or officer endorsement''; and remove the words ''46 CFR'' and add, in their place, the text ''§ ''.

PART 30—GENERAL PROVISIONS

347. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; Department of Homeland Security Delegation No. 0170.1; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–05 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 30.10–71 [Amended]

348. In § 30.10–71 introductory text, remove the words ''merchant mariners' documents'' and add, in their place, the word ''endorsements''.

PART 31—INSPECTION AND CERTIFICATION

349. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Section 31.10–21 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 31.15–1 [Amended]

350. In § 31.15–1, in the section heading, remove the words ''Licensed officers'' and add, in their place, the word ''Officers''.

PART 35—OPERATIONS

351. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 35.05–1 [Amended]

352. In § 35.05–1—

a. In the section heading, remove the words ''Licensed officers'' and add, in their place, the word ''Officers''; and

b. In the text, remove the words ''licensed'' and ''certificated'' wherever they appear.

PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

353. The authority citation for part 42 continues to read as follows:

Authority: 46 U.S.C. 5101–5116; Department of Homeland Security Delegation No. 0170.1; section 42.01–5 also issued under the authority of 44 U.S.C. 3507.

354. Add new § 42.05–70 to read as follows:

§ 42.05–70 Credential.

As used in this subchapter, *credential* means any or all of the following:

(a) Merchant mariner's document.

(b) Merchant mariner's license.

(c) STCW endorsement.

(d) Certificate of registry.

(e) Merchant mariner credential.

§ 42.07–50—[Amended]

355. In § 42.07–50(b)(5), remove the words ''license or merchant mariner's document'' and add, in their place, the word ''credential''.

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

356. The authority citation for part 58 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 58.16–19—[Amended]

357. In § 58.16–19(b), remove the word ''licensed'' and add, in its place, the word ''credentialed''.

PART 61—PERIODIC TESTS AND INSPECTIONS

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

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 61.15–10 [Amended]

359. In § 61.15–10(a), remove the words ''a licensed'' and add, in their place, the words ''an appropriately credentialed''.

PART 78—OPERATIONS

360. The authority citation for part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

Subpart 78.65—[Amended]

361. In the heading to subpart 78.65, remove the word ''License'' and add, in its place, the words ''Merchant Mariner Credential'';

362. Revise § 78.65–1 to read as follows:

§ 78.65–1 Officers.

All officers on a vessel must have their merchant mariner credentials conspicuously displayed.

PART 97—OPERATIONS

363. The authority citation for part 97 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757; 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

Subpart 97.53—[Amended]

364. In the heading to subpart 97.53, remove the word ''License'' and add, in its place, the words ''Merchant Mariner Credential'';

365. Revise § 97.53–1 to read as follows:

§ 97.53–1 Officers.

All officers on a vessel must have their merchant mariner credentials conspicuously displayed.

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

366. The authority citation for part 98 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3307, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 98.30–17 [Amended]

367. In § 98.30–17—

a. In paragraph (b)(1), before the words ''merchant mariner's document'', add the words ''endorsement on his or her merchant mariner credential or''; and

b. In paragraph (b)(2), remove the words ''license or certificate'' and add, in their place, the words ''merchant mariner credential, license, or certificate''; and remove the words ''on his or her MMD''.

PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

368. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 4502; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1.

§ 105.05–10 [Amended]

369. In § 105.05–10(c)(2), remove the word ''licensed''.

§ 105.45–1 [Amended]

370. In § 105.45–1—

a. In paragraph (a)(1), remove the word ''documents'' and add, in its place, the words ''merchant mariner credentials or merchant mariner's documents'';

b. In paragraph (b)(1), before the words ''merchant mariner's document'', add the words ''merchant mariner credential or''; and

c. In paragraph (b)(2), after the word ''license'', add the words ''or merchant mariner credential''.

PART 114—GENERAL PROVISIONS

371. The authority citation for part 114 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security No. 0170.1; § 114.900 also issued under 44 U.S.C. 3507.

§ 114.400 [Amended]

372. In § 114.400(b), in the definition for ''Master'', after the word ''license'', add the words ''or merchant mariner credential''.

PART 115—INSPECTION AND CERTIFICATION

373. The authority citation for part 115 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 115.113 [Amended]

374. In § 115.113(b)(1)(iii), remove the word ''licensed'' and add, in its place, the word ''credentialed''.

PART 122—OPERATIONS

375. The authority citation for part 122 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 122.402 [Amended]

376. In § 122.402—

a. In the section heading, remove the word ''Licenses'' and add, in its place, the word ''Officers''; and

b. In the text, remove the words ''licensed individual'' and add, in their place, the word ''officer''; and remove the words ''shall have his or her ''license'' and add, in their place, the words ''must have his or her license or merchant mariner credential''.

§ 122.910 [Amended]

377. In § 122.910, after the words ''An individual holding a'' add the words ''merchant mariner credential,''; and after the words ''suspension or revocation of a'' remove the words ''license, certificate, or document'' and add, in their place, the word ''credential''.

PART 125—GENERAL

378. The authority for part 125 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1.

379. In § 125.160 add, in alphabetical order, a definition for the term ''credential'' to read as follows:

§ 125.160 Definitions.

* * * * *

Credential means any or all of the following:

(1) Merchant mariner's document.

(2) Merchant mariner's license.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

* * * * *

PART 131—OPERATIONS

380. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 10104; E.O. 12234, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 131.410 [Amended]

381. In § 131.410, before the words ''merchant mariner's document'' wherever they appear, add the words ''merchant mariner credential or''.

§ 131.905 [Amended]

382. In § 131.905(b), after the words ''the suspension or revocation of'' add the words ''credentials''.

383. Revise § 131.955 to read as follows:—

§ 131.955 Display of merchant mariner credential.

Each officer on a vessel must conspicuously display his or her license or merchant mariner credential as required by 46 U.S.C. 7110.

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

384. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; Department of Homeland Security Delegation No. 0170.1.

§ 151.03–53 [Amended]

385. In § 151.03–53 introductory text, before the words ''merchant mariner's documents'', add the words ''merchant mariner credentials or''.

PART 166—DESIGNATION AND APPROVAL OF NAUTICAL SCHOOL SHIPS

386. The authority citation for part 166 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 8105; 46 U.S.C. App. 1295g; Department of Homeland Security Delegation No. 0170.1.

§ 166.01 [Amended]

387. In § 166.01(a), before the words ''or merchant mariner's documents'' add the words ''on merchant mariner credentials''.

PART 169—SAILING SCHOOL VESSELS

388. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; Pub. L. 103–206, 107 Stat. 2439; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1; § 169.117 also issued under the authority of 44 U.S.C. 3507.

§ 169.107 [Amended]

389. In § 169.107, in the definition for ''Master'', remove the word ''licensed'' and add, in its place, the word ''credentialed''.

§ 169.805 [Amended]

390. In § 169.805—

a. In the section heading, remove the word ''licenses'' and add, in its place, the words ''merchant mariner credentials''; and

b. In the text, remove the words ''Licensed personnel'' and add, in their place, the word ''Officers''; and remove the words ''shall have their licenses'' and add, in their place, the words ''must have their license or merchant mariner credential''.

PART 175—GENERAL PROVISIONS

391. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; 175.900 also issued under authority of 44 U.S.C. 3507.

§ 175.118 [Amended]

392. In § 175.118(c)(3), after the words ''All officers must be'', remove the word ''licensed'' and add, in its place, the word ''endorsed''; remove the words ''licensed engineer'' and add, in their place, the words ''an appropriately endorsed engineer officer''; before the words ''merchant mariner documents'', add the words ''merchant mariner credentials or''; and remove the words ''unlicensed deck crew must be rated as'' and add, in their place, the words ''rated deck crew must be''.

§ 175.400 [Amended]

393. In § 175.400, in the definition for ''Master'', remove the word ''license'' and add, in its place, the words ''merchant mariner credential''.

PART 176—INSPECTION AND CERTIFICATION

394. The authority citation is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 176.113 [Amended]

395. In § 176.113(b)(1)(iii), remove the word ''licensed''.

PART 185—OPERATIONS

396. The authority citation continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

397. Revise § 185.402 to read as follows:

§ 185.402 Officers.

Each officer employed on any vessel subject to this subchapter must have his or her license or merchant mariner credential onboard and available for examination at all times when the vessel is operating.

§ 185.910 [Amended]

398. In § 185.910, after the words ''individual holding a'', add the words ''merchant mariner credential,''; and after the words ''suspension or revocation of a'', add the words ''merchant mariner credential''.

PART 196—OPERATIONS

399. The authority citation for part 196 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2213, 3306, 5115, 6101; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

Subpart 196.53—[Amended]

400. In the heading to subpart 196.53, remove the word ''License'' and add, in its place, the word ''Credential''.

401. Revise § 196.53–1 to read as follows:

§ 196.53–1 Officers.

All officers on a vessel must have their licenses or merchant mariner credentials conspicuously displayed.

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

402. The authority citation for part 199 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; Department of Homeland Security Delegation No. 0170.1.

§ 199.30 [Amended]

403. In § 199.30, in the definition for ''Certificated person'', after the words ''merchant mariner's document'', add the words ''or merchant mariner credential''.

PART 401—GREAT LAKES PILOTAGE REGULATIONS

404. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304 and 70105; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

405. In § 401.110—

a. In paragraph (a)(8), after the word ''license'', add the words ''or merchant mariner credential''; and

b. In paragraph (a)(12), after the words ''who holds a license'', add the words ''or merchant mariner credential endorsed''.

c. Add a new paragraph (a)(17) to read as follows:

§ 401.110 Definitions.

(a) * * *

(17) *Merchant mariner credential or MMC* means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

§ 401.210 [Amended]

406. In § 401.210—

a. In paragraph(a)(1), after the words ''individual holds a'', remove the word ''license'' and add, in its place, the words ''MMC endorsed''.

b. In paragraph (a)(6), after the words ''Coast Guard'', add the words ''or a valid Transportation Worker Identification Credential''.

§ 401.220 [Amended]

407. In § 401.220(d), remove the word ''license'' and add, in its place, the word ''endorsement''.

§ 401.230 [Amended]

408. In § 401.230(a), remove the word ''license'' and add, in its place, the word ''endorsement''.

§ 401.250 [Amended]

409. In § 401.250(d), after the words ''whenever his or her license'', add the words ''or MMC officer endorsement''; after the words ''simultaneously with his or her license'', add the words ''and/or MMC''; after the words ''If the license'', add the words ''or officer endorsement''; and after the words ''with the suspended license'', add the words ''or officer endorsement''.

PART 402—GREAT LAKES PILOTAGE RULES AND ORDERS

410. The authority citation for part 402 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 8105, 9303, 9304; 49 CFR 1.46 (mmm).

§ 402.220 [Amended]

411. In § 402.220(a)(1), (a)(2), and (a)(3), remove the word ''license'' wherever it appears and add, in its place, the word ''endorsement''.

Dated: December 29, 2006.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention, Acting.

[FR Doc. 07–18 Filed 1–24–07; 8:45 am]

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Federal Register

Thursday
January 25, 2007

Part III

Department of Education

34 CFR Part 76
State-Administered Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 76

RIN 1890–AA13

State-Administered Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations in 34 CFR part 76 governing State reporting requirements. These final regulations require States to submit their performance reports, financial reports, and any other required reports, in the manner prescribed by the Secretary, including through electronic submission, if the Secretary has obtained approval from the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA). Failure to submit such reports in the manner prescribed by the Secretary constitutes a failure, under section 454 of the General Education Provisions Act, 20 U.S.C. 1234c, to comply substantially with a requirement of law applicable to the funds made available under the program for which the reports are submitted. If the Secretary chooses to require submission of information electronically, the Secretary may establish a transition period during which a State would not be required to submit such information electronically in the format prescribed by the Secretary, if the State meets certain requirements.

DATES: These regulations are effective February 26, 2007.

FOR FURTHER INFORMATION CONTACT: Patrick Sherrill, U.S. Department of Education, 400 Maryland Avenue, SW., room 6C103, Washington, DC 20202. *Telephone:* (202) 708–8196 or *via Internet: pat.sherrill@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

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SUPPLEMENTARY INFORMATION: On April 27, 2006, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (71 FR 24824).

In the preamble to the NPRM, the Secretary discussed on pages 24826 to 24828 the major changes proposed to the current regulations. These changes are summarized as follows:

- Under proposed § 76.720(c)(1), States would have to comply with the Secretary's requirements concerning the manner in which reports are submitted to the Department.
- Under proposed § 76.720(c)(2), failure by a State to submit reports in the manner prescribed by the Secretary would constitute a failure, under section 454 of the General Education Provisions Act (20 U.S.C. 1234c), to comply substantially with a requirement of law applicable to the Department's programs.
- Under proposed § 76.720(c)(3), which applies to reports that the Secretary requires to be submitted electronically, the Secretary would have the discretion to establish a transition period of up to two years during which a State would not be required to submit information electronically in the format prescribed by the Secretary if the State submits to the Secretary (a) evidence satisfactory to the Secretary that the State is unable to comply, (b) the information requested in the report, through an alternative means deemed acceptable by the Secretary, and (c) a plan showing how the State would come into compliance with the data submission requirements specified in the data collection instrument.

There are no differences between the NPRM and these final regulations.

These regulations highlight that the Department may require, through the PRA clearance process, that States report certain information electronically and establish that the Department may take administrative action against a State for failure to submit reports in the manner prescribed by the Secretary. These regulations will facilitate the use of the Department's electronic ED*Facts* data management system (ED*Facts*).

As explained in the NPRM, States have been submitting data through the Education Data Exchange Network (EDEN) voluntarily for the past two years. EDEN has acted as the Department's central repository and electronic data collection system for over 140 common data elements on student achievement, school characteristics, demographics, and program financial information. The Department is now in the process of increasing the EDEN capabilities to include, in addition to the Web-based interface that allows States to submit data electronically into EDEN, a capability for States, Department staff, and, eventually, the public, to query the database and independently analyze the data subject to all applicable privacy protections for disclosing statistical data. To signal the increased capabilities of the system, the Department is renaming EDEN and the expanded Web-based interface ''ED*Facts*.'' Accordingly, except as otherwise noted, we will describe the expanded system using the name ''ED*Facts*'' in this final rulemaking document.

The Department has now obtained approval from OMB to require the electronic submission of data through ED*Facts*. The Department published both PRA notices for this data collection under the title ''Annual Mandatory Collection of Elementary and Secondary Education Data for the Education Data Exchange Network.'' Because we have changed the name of the Education Data Exchange Network to ED*Facts*, the title of the justification for OMB Control No. 1875–0240 has been changed to ''Annual Mandatory Collection of Elementary and Secondary Education Data through ED*Facts*.'' We also note that some of the language in the Supporting Statement for this collection has been changed from that which was originally posted in the Education Department Information Collection System (EDICS). The Department's goal in requiring electronic submission of information, including data submitted through ED*Facts*, is to reduce State-reporting burden significantly and to streamline dozens of data collections currently required by the Department.

Analysis of Comments

In response to the Secretary's invitation in the NPRM, approximately 21 parties submitted comments on the proposed regulations and the Department's plan to require States to submit data electronically through ED*Facts* beginning with data from the 2006–07 school year. To the extent these comments related to specific elements of the ED*Facts* data collection request (1875–0240) we have addressed those comments as part of the PRA clearance process for ED*Facts*, and have not included responses to those comments in this document. For an analysis of those comments, you may download Attachment E ''Paperwork Reduction Act Submission Supporting Statement—Annual Mandatory Collection of Elementary and Secondary Education Data through ED*Facts*: ED*Facts* Response to Public Comments'' at the following Web site: *http://edicsweb.ed.gov/browse/downldatt.cfm?pkg_serial_num=3017.*

An analysis of the comments relating to the proposed regulations follows.

We group major issues according to subject. Generally, we do not address technical or minor changes, and suggested changes that we are not authorized to make under the law.

Section 76.720 State Reporting Requirements Nature and Schedule of Reports Covered by § 76.720

Comment: A few commenters asked about the reports covered by these regulations. Specifically, they asked what was meant by the phrase ''other reports by the Secretary'' in paragraph (a) of proposed § 76.720. One of the commenters asked the Department to provide a list of these proposed reports for review. A couple of commenters were concerned about which reports might be required ''more frequently than annually''. One commenter asked the Department to provide a ''reporting schedule'' for review.

Discussion: We included the phrase ''other reports by the Secretary'' in § 76.720(a) to establish that the requirements described in § 76.720 apply to all State reports that are now, and may in the future be, required by the Secretary and have been approved by OMB under the PRA, not just those reports that are specifically enumerated in the current regulations. The ability of the Secretary to require reporting more frequently than annually is not a proposed change; it can be found in current § 76.720(c). *See also* 34 CFR 80.41(b)(3)(frequency of financial reporting). The schedule for submitting data to ED*Facts* is included in the clearance package for that data collection (1875–0240), includes proposed annual data submission dates for each of the data groups, and has been provided to the State data coordinators.

Changes: None.

Comment: A number of commenters requested clarification on what constitutes the ''quality level'' expected in the submission of data under proposed § 76.720(c)(1).

Discussion: Section 76.720(c)(1) provides that States must submit reports at the quality level specified in the data collection instrument. Accordingly, the Department will specify in each data collection instrument the data quality standards that are applicable to the reports subject to the data collection instrument. Under the Department's Information Quality Guidelines, the Department seeks to ensure that data it disseminates to the public are accurate, reliable, and useful. Thus, it is important for data submitted to the Department to be complete, timely, accurate, valid, and useful.

For example, for data that would be submitted through ED*Facts*, the Department expects to establish data quality standards in collaboration with its State partners, so that the data will be helpful to the Department, its State partners, and the public. The Department will continue to work with States to provide them with detailed feedback that they can use to analyze the quality of the data they submit to the Department, and to establish mutually agreeable criteria that the Department can use to certify the data submitted through ED*Facts.*

Changes: None.

Potential Penalties Under § 76.720(c)(2)

Comment: One commenter recommended that the Secretary not impose penalties under § 76.720(c)(2) for failure to comply with the reporting requirements of the proposed regulations; others supported the ability of the Secretary to impose penalties after a reasonable transition period. Another commenter recommended that enforcement under § 76.720(c)(2) depend on whether a State is making reasonable, good-faith efforts to comply with the requirements. Several other commenters asked for clarity on how the penalties would be determined, specifically asking about when a State would be considered out of compliance, how penalties would be calculated, and whether funds would be withheld from administrative or program allocations, or both. Finally, a commenter asked if States would be penalized under § 76.720(c)(2) for failure of local educational agencies (LEAs) to report directly to the Office for Civil Rights (OCR) in the Department.

Discussion: As explained in the preamble to the NPRM, failure of a recipient to comply with the Department's reporting requirements, including submitting reports electronically, harms the Federal interest in establishing what the Department deems is an efficient and effective means of obtaining accurate, reliable, and valid information on the performance of the Department's programs and the success of States in meeting their goals under such laws as the No Child Left Behind Act of 2001 (Pub. L. 107–110). Thus, we determined that it was necessary to highlight, through these regulations, the importance of the Department's reporting requirements. Moreover, we determined that, for the Department's reporting requirements to be meaningful, it was essential for the Secretary to have the appropriate tools to enforce them. That being said, the Department will consider many factors in determining whether to impose appropriate sanctions, including whether a State is making reasonable, good-faith efforts to comply with the reporting requirements and, in the case of mandatory electronic reporting, whether a State has submitted a transition plan and whether that plan is sufficiently detailed to explain how the State would provide the requested data within the transition period.

To be clear, the Department is not interested in penalizing States for minor, technical infractions but is instead focused on collaborating with States to strengthen the States' own data systems and the use of data collected through those systems to improve education within their States. Part of the ability to use data effectively depends on the completeness of those data. Accordingly, the Department will work with States to establish reasonable criteria for what a complete submission entails.

In addition, the Department plans to continue to work closely with States as partners in the identification, collection, and reporting of complete, accurate, timely, and valid education information, to minimize the need for the Department to take administrative action to compel compliance with these regulations.

For example, with respect to ED*Facts* data, the Department currently requests each State to submit an individual State data submission plan to address the unique data submission challenges of each State data provider. Working together with States, the Department has provided tools to help States assess their specific challenges and to develop individualized State data submission plans and reporting schedules for ED*Facts* data. The Department also will adopt the suggestion of one commenter that the Department conduct site visits with individual States to determine their capacity to collect and report data, and to develop phase-in plans and agreements for each. In all cases, the Department is committed to providing the support that is needed to help individual States that are making reasonable, concerted, good-faith efforts to comply with the ED*Facts* data submission requirements.

Furthermore, the Department anticipates that States will vary in their capacity to report data electronically in accordance with § 76.720. For that reason, under § 76.720(c)(3), States may report data through an alternative means for up to two years following the date the States otherwise would be required to submit the data electronically if they meet the requirements in paragraphs (c)(3)(i) through (c)(3)(iii) of § 76.720. These requirements include developing a plan for coming into compliance with the reporting requirements within two years. The Department will work directly with individual States to develop and implement those plans,

and we anticipate they will be customized to address individual State capacities. The Department is also open to the possibility that some of these required data might be submitted by a State to a multi-State data repository, or ''public utility,'' maintained by, and for, the States, provided that the data repository enters into agreements with the participating States and the Department to ensure that data from the repository are provided to ED*Facts.*

Should the Department determine that administrative action is necessary, the Department would determine on a case-by-case basis whether and how sanctions would be imposed by considering factors such as the existence of an approved State data submission plan, the history of the State's efforts to provide required data to the Department, and evidence of a State's progress in improving its education data systems. For example, the Department may decide to commence action to withhold administrative funds from a State if the Department determines that the State was not making reasonable and good-faith efforts to implement a transition plan under § 76.720(c)(3)(iii) to submit reports electronically.

Finally, under 34 CFR 76.500, States and their subgrantees are responsible for compliance with the civil rights statutes and regulations enforced by OCR, including the obligation to provide civil rights data when requested by OCR. As part of its data collection activities, OCR has been collecting data both from States, and directly from LEAs. The Department cannot specially alter or suspend the civil rights responsibilities of States or LEAs during the migration of the Civil Rights Data Collection (CRDC) into ED*Facts.* During the migration process, when data are requested from an LEA, the primary focus of OCR's efforts will continue to be on the LEA's obligation to submit the required data. Virtually all of the LEAs participating in the 2006 CRDC have notified the Department that they are planning to provide their data submissions electronically. However, LEAs submitting CRDC data to the Department will continue to have the option of electing other formats, including paper forms.

Changes: None.

Transition Period for Mandatory Electronic Submission Requirements Under § 76.720(c)(3)

Comment: Six commenters expressed support for the two-year transition period described in § 76.720(c)(3). One commenter noted that a longer transition period would only serve to delay the presence of a fully populated data repository and would, therefore, result in the continued practice of duplicative data collections. Many other commenters questioned whether the two-year transition period was a sufficient amount of time for States to establish the data systems needed to supply the reliable and quality data that are being requested for the ED*Facts* data collection. Commenters suggested alternatives, ranging from two to five years, because of issues such as the need to obtain legislative approval within their States.

Discussion: The Department appreciates that many States will find it challenging to make the needed changes to their data systems to be able to report their data to the Department electronically for any collection of data. The Department recognizes that any automated information system will require some significant work to modify it for the collection, storage, protection, and reporting of any data that were previously uncollected. For this reason, the Department has determined that it is appropriate for the Secretary to have the discretion to establish a transition period of up to two years during which a State would not be required to submit information electronically in the format prescribed by the Secretary, if the State meets certain requirements. Because the need for good data is so important, the Department believes that the two-year transition period is reasonable.

The two-year transition period applies to the ED*Facts* data collection. Thus, if a State is not able to submit all of the required data electronically to ED*Facts* by the specified reporting deadline, the State must submit to the Secretary, in accordance with § 76.720(c)(3), evidence that the State cannot comply with the electronic submission reporting requirement, the information requested in the report through an alternative means acceptable to the Secretary, and a plan for submitting the reports in the required electronic manner no later than two years after the reporting deadline.

We recognize that States may need guidance in developing their plans under § 76.520(c)(3)(iii) with respect to the ED*FACTS* data collection. To address that need, we included in our ED*FACTS* data collection submission to OMB proposed guidance to States on when the Department would expect States to be able to submit certain data elements electronically to ED*FACTS.* The guidance, for example, identifies those ED*FACTS* data groups that the Department believes all States should have the capability to submit electronically to ED*FACTS* for the 2006–2007 school year. If a State cannot submit all of those data groups electronically for the 2006–2007 award year, the State would provide the Secretary with evidence about which data groups it could not submit electronically for the 2006–2007 award year and propose a transition plan. Under the transition plan, the State would submit those data groups that could be provided electronically to ED*FACTS* for the 2006–2007 school year and would provide all other required data elements to the Department through an alternative means in accordance with § 76.720(c)(3)(ii). The State would include in its transition plan information on when, within the two year transition period, it would submit the other data elements electronically through ED*FACTS.* We are providing as guidance information about when the Department would expect States to be able to provide data electronically through ED*FACTS*; States may need to structure their transition plans differently depending on their capacities. In all cases, however, we will work cooperatively with States to provide them support in their efforts to comply with the ED*FACTS* data collection requests.

Changes: None.

Comment: Most commenters cited scarce State resources as the reason the two-year transition period in § 76.720 was inadequate. Several commenters stated that to comply with the proposed regulations they would need to restructure their current data systems and, thus, would require more financial and human resources. One commenter estimated that it would need 4 years and $840,000 to comply with the reporting requirements in the ED*FACTS* data collection. Many commenters stated that States would need more staff to prepare and report data to ED*FACTS.* Several commenters suggested that the Federal Government provide the funding for additional staff to lead the data collection and reporting effort, explaining that the work needed at least one full-time-equivalent position similar to the position funded by the National Center for Education Statistics to manage data for the National Assessment of Educational Progress. One commenter suggested that the responsibilities of such a position include submitting and maintaining the data submission plan, managing and submitting files, reviewing and commenting on future changes, and using ED*FACTS* for reporting to management.

Discussion: Over the last two fiscal years, the Congress has appropriated nearly $50 million to assist States in developing State Longitudinal Data Systems. The Department is continuing

to explore ways to increase funding, and expand State access to these funds.

Changes: None.

Comment: One State recommended that the two-year transition period be understood as a minimum period of time during which States can obtain the first data set on any new variable. Another State noted that forcing States to report data before they have a complete data set could result in inaccurate data being reported.

Discussion: These regulations address only the submission of data in the form and format required by the Secretary and not the process by which States obtain or collect data to be reported to the Department. Whether specific data are available and the cost of acquiring or collecting those data are matters that are best addressed in the PRA public comment and clearance process for each information collection package. That being noted, the Department's goal continues to be to obtain accurate, reliable, and useful data from States, in order to monitor and evaluate the States' performance and use of Department funds.

Changes: None.

General Comments

Comment: Several commenters expressed concern that they do not currently collect some of the data requested through ED*FACTS* and that, therefore, it would be unfair to penalize them for not having the data or to require them to establish new data collection efforts.

Discussion: As part of the public comment period required under the PRA, States have been given the opportunity to identify any problems they expect to have in supplying the data required under the ED*FACTS* data collection (1875–0240). The Department has invited comment multiple times on exactly which data elements are not available from the States. The Department has also invited States to provide this information as part of one of the two public comment periods under the PRA for the most recent request for collection of ED*FACTS* data, or as part of the ongoing work with the States to implement ED*FACTS*. As noted elsewhere in this section, every effort will be made in the ED*FACTS* collection to require only those data that are needed by the Department in order to monitor and evaluate a State's performance in using funds awarded by the Department.

Changes: None.

Comment: A number of commenters expressed concern that the consolidated, mandatory collection of data through ED*FACTS* would not eliminate the numerous, redundant program collections currently required of States. One commenter suggested that the Department ought to provide a timeframe in which each data collection is to be eliminated. Several others suggested that, once data are available to the Department through ED*FACTS*, the Department take swift action to require program offices to cease collecting similar data though other means and set a clear schedule with specific dates for when each data collection is to be eliminated. If not, one commenter warned, participation in ED*FACTS* might not be worth the effort for States. Several commenters noted that there is no language in the regulations to make the use of ED*FACTS* mandatory for program offices within the Department, and that they are concerned that if this is not explicit within the regulations, program offices may continue to require their own reports.

Discussion: The Department's goal is to eliminate duplicative reporting and, accordingly, the Department is working to ensure that as many of its program offices as possible use ED*Facts*. In the future, if a program office sends forward a proposal to request data through a program-specific data collection, and those data are already being collected through ED*Facts*, the Secretary will, through the internal and PRA clearance processes, deny approval for such duplicate collections. However, if any duplicative data elements should slip through the clearance processes, States can alert the Secretary through the public comment period under the PRA, ensuring that redundant data collections are eliminated.

Changes: None.

Comment: There were several requests by commenters for the Department to explain the rationale for certain data elements and for a clear indication of what data elements are going to be eliminated now and in the future. Some States said that they do not collect or use some of the proposed data elements and that reporting those data will create extra burden. Some commenters said that States want a comprehensive data map or crosswalk for each and every data element that corresponds to the Federal law that authorizes its collection, the current Department collection forms that collect it, and the actual Federal use of the data, so that they can see that coordination exists between the efforts to collect data through ED*Facts* and the efforts of the Department's program staff to collect data outside the ED*Facts* context. One commenter noted that program staff and ED*Facts* staff frequently send mixed messages about which data are required to be submitted.

Discussion: The Department will continue to use the clearance process under the PRA to analyze the national costs and benefits of each data element it requires. Proposed data collections will face a rigorous internal clearance process at the Department before being added to an ED*Facts* collection—and then phased in, if necessary. The Department asks States to inform it of any and every Department program office message that may seem to be ''at odds'' with what has been written here, so that it can improve its communication with the public about data collection. To help prevent these mixed messages, the Department has convened a cross-program committee composed of many senior Department program managers to discuss shared data definitions and data usage and to ensure internal agency collaboration.

Changes: None.

Comment: One commenter asked if it could submit school and district data, and have the Department aggregate those data to the State level, rather than submitting all three levels of data.

Discussion: ED*Facts* has the technical capacity to aggregate school data to the district level and district data to the State level. The Department has not done this yet because it is concerned that some data might be missed in the aggregation process. The Department will work with any State that agrees to certify that the school-level data that it submits through ED*Facts* is complete in all cells and that the aggregations of those cells produce complete data at the district and State levels. The Department is willing to make available the State data aggregation option and allow States to submit only school-level data.

Changes: None.

Section 76.722 Subgrantee Reporting Requirements

Comment: None.

Discussion: Current § 76.722 provides that ''[a] State may require a subgrantee to furnish reports that the State needs to carry out its responsibilities under the program.'' In the NPRM, we proposed to amend § 76.722 slightly in order to make that provision consistent with the language in proposed § 76.720, which requires States to submit reports ''in a manner prescribed by the Secretary.'' Thus, proposed § 76.722 provides that ''[a] State may require a subgrantee to submit reports in a manner and format that assists the State * * *.'' Upon intradepartmental review of the language in proposed § 76.722, we thought it prudent to clarify that we do

not intend for this language to grant to States any authority that they do not already have to collect information from LEAs to help States carry out their responsibilities under the Department's programs. That is, a State may only require its LEAs to submit reports in a particular manner or format if that State has the requisite authority to do so under its State laws and regulations. In implementing proposed § 76.722, the Department expects that each State will take into account the capacity of their LEAs to submit reports in the manner and format determined appropriate by the State.

Changes: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement 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. The Department has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those we have determined to be necessary for administering the requirements of the Department's State-administered programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (71 FR 24828). We include additional discussion of potential costs and benefits in the section of this preamble titled *Analysis of Comments.*

Paperwork Reduction Act of 1995

The paperwork burden in § 76.720(c)(3)(iii) is approved under the PRA as part of the burden in the Annual Mandatory Collection of Elementary and Secondary Education Data for ED*Facts* (1875–0240).

Intergovernmental Review

These regulations affect State-administered programs of the Department that are subject to Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. These final regulations do not impose any Federal mandates on any State, local, or tribal governments, or the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

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(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 76

Elementary and secondary education, Reporting and recordkeeping requirements.

Dated: January 22, 2007.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends part 76 of title 34 of the Code of Federal Regulations as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

■ 1. The authority citation for part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 2. Section 76.720 is revised to read as follows:

§ 76.720 State reporting requirements.

(a) This section applies to a State's reports required under 34 CFR 80.40 (Monitoring and reporting of program performance) and 34 CFR 80.41 (Financial reporting), and other reports required by the Secretary and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

(b) A State must submit these reports annually unless—

(1) The Secretary allows less frequent reporting; or

(2) The Secretary requires a State to report more frequently than annually, including reporting under 34 CFR 80.12 (Special grant or subgrant conditions for ''high-risk'' grantees) or 34 CFR 80.20 (Standards for financial management systems).

(c)(1) A State must submit these reports in the manner prescribed by the

Secretary, including submitting any of these reports electronically and at the quality level specified in the data collection instrument.

(2) Failure by a State to submit reports in accordance with paragraph (c)(1) of this section constitutes a failure, under section 454 of the General Education Provisions Act, 20 U.S.C. 1234c, to comply substantially with a requirement of law applicable to the funds made available under that program.

(3) For reports that the Secretary requires to be submitted in an electronic manner, the Secretary may establish a transition period of up to two years following the date the State otherwise would be required to report the data in the electronic manner, during which time a State will not be required to comply with that specific electronic submission requirement, if the State submits to the Secretary—

(i) Evidence satisfactory to the Secretary that the State will not be able to comply with the electronic submission requirement specified by the Secretary in the data collection instrument on the first date the State otherwise would be required to report the data electronically;

(ii) Information requested in the report through an alternative means that is acceptable to the Secretary, such as through an alternative electronic means; and

(iii) A plan for submitting the reports in the required electronic manner and at the level of quality specified in the data collection instrument no later than the date two years after the first date the State otherwise would be required to report the data in the electronic manner prescribed by the Secretary.

(Authority: 20 U.S.C. 1221e–3, 1231a, and 3474)

■ 3. Section 76.722 is revised to read as follows:

§ 76.722 Subgrantee reporting requirements.

A State may require a subgrantee to submit reports in a manner and format that assists the State in complying with the requirements under 34 CFR 76.720 and in carrying out other responsibilities under the program.

(Authority: 20 U.S.C. 1221e–3, 1231a, and 3474)

[FR Doc. E7–1177 Filed 1–24–07; 8:45 am]

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LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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S. 159/P.L. 110–1

To redesignate the White Rocks National Recreation Area in the State of Vermont as the ''Robert T. Stafford White Rocks National Recreation Area''. (Jan. 17, 2007; 121 Stat. 3)

A cumulative list of Public Laws for the second session of the 109th Congress will be published in the **Federal Register** on January 31, 2007.

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